

TITLE 19: NATURAL RESOURCES AND WILDLIFE

CHAPTER 1: NATURAL RESOURCES GENERAL PROVISIONS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: ADMINISTRATION OF THE NATURAL LANDS PROTECTION ACT

19.1.2.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[11-30-95; Recompiled 12/31/01]

19.1.2.2 SCOPE:

These rules govern the role of the state of New Mexico and New Mexico not-for-profit corporations whose primary purpose is the preservation and conservation of unique and ecologically significant lands.

[11-30-95; Recompiled 12/31/01]

19.1.2.3 STATUTORY AUTHORITY:

This rule is made pursuant to the Natural Lands Protection Act, Section 78-5-1 et seq. NMSA 1978 (NLPA), and Section 9-1E NMSA 1978.

[8-9-89; Recompiled 12/31/01]

19.1.2.4 DURATION:

Permanent. [unless a later date is cited at the end of a Section]

[11-30-95; Recompiled 12/31/01]

19.1.2.5 EFFECTIVE DATE:

August 9, 1989.

[11-30-95; Recompiled 12/31/01]

19.1.2.6 OBJECTIVE:

These rules govern the role of the energy, minerals and natural resources department (EMNRD) in joint acquisition and protection of unique and ecologically significant lands in New Mexico by the state of New Mexico and New Mexico corporations. No lands or rights of access shall be acquired through the state's power of eminent domain or any other condemnation process.

[8-9-89, 11-30-95; Recompiled 12/31/01]

19.1.2.7 DEFINITIONS:

- A. "Access"** means authorization for use, observation, visitation and study.
- B. "Acquisition"** means obtaining a recordable interest in land by warranty, quit claim or easement and all reasonable costs associated therewith.
- C. "Consultation"** means suggestion, recommendation or discussion.
- D. "Cotenant"** means joint tenants, tenants in common or entities holding other undivided interests in land.
- E. "Destruction"** means diminishment, obliteration or elimination of existing conditions.
- F. "Education"** means an act or process of imparting knowledge.
- G. "Habitat"** means the natural place or environment of a species of plant or animal.
- H. "Lands"** mean real property located within the state of New Mexico.
- I. "List of projects"** means a prioritized list of lands to be acquired pursuant to the NLPA.
- J. "Management plan"** means a document with appropriate discussion, maps and illustrations adopted or approved by the secretary setting forth objectives, policies and standards to guide protection, use, observation, visitation and study of acquired lands.
- K. "Preservation"** means the management of the natural environment in such a way as to ensure the viability of a species of plant or animal.
- L. "Rare, threatened or endangered species"** means any plant or animal species protected under the provisions of the New Mexico Endangered Plant Species Act of 1985 (Section 75-6-1 NMSA 1978), the New Mexico Wildlife Conservation Act of 1974 (Sections 17-2-37 through 17-2-46 NMSA 1978 (1995 Repl. Pamp.)), and the federal

Endangered Species Act of 1973 (16 U.S.C. 1531-1543) all as may be amended from time to time.

M. "Research" means scholarly or scientific investigation or inquiry conducted on acquired lands pursuant to a management plan and under written arrangements.

N. "Secretary" means the secretary of the energy, minerals and natural resources department or a person designated in writing by the secretary.

[8-9-89, 11-30-95; Recompiled 12/31/01]

19.1.2.8 ADMINISTRATION:

A. The secretary of EMNRD shall administer the NLPA and shall serve as chair of the committee.

B. The secretary shall call meetings as necessary and shall prepare, keep and distribute the committee's record of activities.

C. The secretary, by annual public notice and solicitation, beginning in 1990, shall request nominations for potential lands acquisition for as long as funding is available for the acquisition of lands under the NLPA.

D. The secretary shall develop and maintain a prioritized listing of lands qualified under the Act. The secretary shall review and deliver the list to the committee at least annually.

E. The secretary shall assist the committee with deposit, management and payment of funds for lands acquisition under the NLPA.

F. No lands shall be acquired except from a willing seller and until completion of necessary land purchase procedures including acquisition of land appraisals; title insurance; boundary surveys; requisite title insurance; boundary surveys; requisite investigative reports, clearances, adjunct rights and agreements and improvements needed to protect the property for the purposes defined in the NLPA are completed.

G. For all acquired lands, the secretary may adopt a management plan submitted by the corporation. The secretary may restrict access to the land by the general public to visits conducted under the direct supervision of an employee or designated representative of the managing corporation.

H. No land shall be acquired unless a corporation, as provided in the Act, jointly acquires at least ten percent interest in the land as a cotenant with the state of New Mexico. The secretary shall select a corporation to participate in land purchases under the NLPA. The secretary may assign responsibility for the completion of certain tasks defined in Sections 8.6 and 8.7 [now Subsections F and G of 19.1.2.8 NMAC] to said

corporation. A participating corporation shall annually pay to the state and its political subdivisions a sum equal to an amount which would have been paid by a private landowner in taxes, levies and assessments.

I. In no event shall lands be acquired for greater than fair market value as determined by a qualified appraiser.

[8-9-89, 11-30-95; Recompiled 12/31/01]

PART 3: ADMINISTRATION OF THE NATURAL HERITAGE CONSERVATION ACT

19.1.3.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[19.1.3.1 NMAC - N, 7/30/2010]

19.1.3.2 SCOPE:

19.1.3 NMAC applies to application and selection procedures for conservation projects that may receive grants from the natural heritage conservation fund.

[19.1.3.2 NMAC - N, 7/30/2010]

19.1.3.3 STATUTORY AUTHORITY:

19.1.3 NMAC is adopted pursuant to the Laws of 2010, Chapter 83.

[19.1.3.3 NMAC - N, 7/30/2010]

19.1.3.4 DURATION:

Permanent.

[19.1.3.4 NMAC - N, 7/30/2010]

19.1.3.5 EFFECTIVE DATE:

July 30, 2010, unless a later date is cited at the end of a section.

[19.1.3.5 NMAC - N, 7/30/2010]

19.1.3.6 OBJECTIVE:

19.1.3 NMAC's objective is to establish procedures for carrying out the provisions of the Natural Heritage Conservation Act to protect New Mexico's natural heritage, customs and culture including establishing criteria for evaluating possible conservation projects to receive grants from the natural heritage conservation fund.

[19.1.3.6 NMAC - N, 7/30/2010]

19.1.3.7 DEFINITIONS:

A. "Agricultural easement" means a less than fee simple interest in land that is granted in perpetuity, which creates a legally enforceable land protection or preservation agreement and restricts or prohibits the future development, including subdivision, or alteration of the land or the permanent severance of any appurtenant water rights for a purpose other than agricultural production or the natural values of the land. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

B. "Agricultural production" means the production for commercial purposes of crops, livestock or livestock products, including the processing or retail marketing of crops, livestock or livestock products that are primarily produced on site by an operator of a working farm, ranch or other agricultural land. The term includes use of land that is devoted to and meets requirements and qualifications for soil conservation programs under an agreement with an agency of the federal government and may include periodic fallowing and practices that promote conservation of land and water on and near the property.

C. "Applicant" means a qualified entity.

D. "Committee" means the natural lands protection committee established pursuant to NMSA 1978, Section 75-5-4(A).

E. "Conservation easement" means a less than fee simple interest in land granted in perpetuity, which creates a legally enforceable land protection or preservation agreement that restricts or prohibits further subdivision and may restrict or prohibit development, commercial and industrial uses or other activities, or alteration of the land or any appurtenant water rights necessary to maintain or preserve certain conservation values (e.g., natural resource, wildlife habitat, scenic, open space, cultural, historic or recreational and educational) on the subject property. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.

F. "Conservation entity" means a private nonprofit charitable corporation or trust authorized to do business in New Mexico that has tax-exempt status as a public charity

pursuant to the internal revenue code of 1986 and that has the power to acquire, hold or maintain land or interests in land.

G. "Conservation project" means the acquisition of conservation or agricultural easements from a willing seller or a land restoration project that protects the state's natural heritage, customs and culture through action that preserves and conserves water quality and quantity to conserve and restore natural ecosystem function and processes; protects agricultural production on working farms, ranches and other agricultural lands; protects and restores New Mexico's forests and watersheds; conserves and restores wildlife habitat; maintains natural areas; provides outdoor recreation opportunities, including hunting and fishing and trails; or preserves cultural and historic sites with natural resources heritage value.

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

I. "Fund" means the natural heritage conservation fund.

J. "In-kind" means property or services that benefit a grant-supported conservation project that are contributed without charge or at less than fair market value. In-kind contributions for purposes of land restoration projects may consist of the cost of operating equipment or equipment rental, goods or services, including labor, directly benefitting the land restoration project and specifically identifiable to the land restoration project. Labor costs included as in-kind shall be documented as reasonable and reference rates applicable to the local area and type of service. In-kind contributions for purposes of agricultural or conservation easements means the donation of interests in real property or the payment of transactional costs such as appraisals, environmental assessments, title insurance or surveys.

K. "Land restoration project" means actions intended to renew a degraded, damaged or destroyed natural land area and associated vegetation or water features through active intervention, where the action is founded upon science-based technical information and prediction of the intervention's outcome such that it stimulates or accelerates natural system health, integrity and sustainability toward a specified outcome. Restoration includes an array of actions including erosion control, reforestation, forest thinning, re-vegetation of disturbed sites, repair of aquatic systems, removal of non-native species of animals and plants and the related sustainable re-establishment of native species, re-establishment of extirpated native species, measures taken to restrict disturbance to areas of crucial habitat or to develop and restore more suitable habitat and improved outdoor recreation opportunities and overall habitat and range improvements for native species benefit. A project includes related assessment and monitoring to judge long-term effectiveness and determine and implement periodic corrective or additional actions needed to achieve objectives.

L. "Natural resource heritage value" means a vegetation community component, animal species assemblage or combination thereof; other naturally occurring

representation of biological diversity; or esthetically appealing vistas of natural landscape that are significant or important.

M. "Partner" means a conservation entity or other individual or entity cooperating or assisting a qualified entity with planning, applying for and executing a conservation project, which is specifically identified in an application, and will be a participant in a public-private conservation project.

N. "Qualified entity" means a state agency, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a political subdivision of the state; or, for conservation projects wholly within New Mexico, an Indian tribe or pueblo.

O. "Working farm, ranch or other agricultural land" means land that has been primarily devoted to active agricultural production for at least two of the five years immediately prior to consideration for an agricultural easement or other conservation project.

[19.1.3.7 NMAC - N, 7/30/2010]

19.1.3.8 GENERAL PROVISIONS:

The department administers the Natural Heritage Conservation Act, which establishes a fund and a competitive grant program to select and fund conservation projects. The committee evaluates proposed conservation projects and recommends to the department which proposed conservation projects should receive funding.

[19.1.3.8 NMAC - N, 7/30/2010]

19.1.3.9 ELIGIBLE APPLICANTS:

Only qualified entities may apply for grants from the fund. Conservation entities may not individually apply for or receive grants directly from the fund, but they may partner with qualified entities on conservation projects. If a conservation entity will jointly acquire a conservation or agricultural easement or is a partner on a land restoration project, the conservation entity shall be identified in the application.

[19.1.3.9 NMAC - N, 7/30/2010]

19.1.3.10 CONSERVATION PROJECTS:

Conservation projects that may receive grants from the fund include the following:

A. acquisition of conservation easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities;

B. acquisition of agricultural easements from willing sellers by qualified entities, including the department, which may or may not be in partnership with conservation entities; or

C. land restoration projects by qualified entities, including the department, which may or may not be in partnership with conservation entities.

[19.1.3.10 NMAC - N, 7/30/2010]

19.1.3.11 GRANT APPLICATION PROCESS:

A. If funding is available, the department may establish one or more competitive grant application cycles each calendar year and specify the required format, forms and deadline for application submittal. Each application cycle announcement shall specify any priority area, ecological, geographic, funding, type of project or other limitations applicable to that cycle, as related to funds available, accomplishments to date and criteria specified in Subsection C of 19.1.3.12 NMAC.

B. The applicant shall submit an application in a format specified by the department that includes at a minimum the following information:

(1) the type of conservation project (e.g., conservation easement, agricultural easement or land restoration);

(2) the applicant's address, contact information and contact person;

(3) the landowner's address and contact information;

(4) general information about the property including a legal description of the property;

(5) information demonstrating how the proposed conservation project meets the requirements of the Natural Heritage Conservation Act, 19.1.3.12 NMAC and the criteria in Subsection B of 19.1.3.12 NMAC;

(6) for grant applications seeking funding to acquire a conservation easement or agricultural easement:

(a) property details supplied by the landowner to the qualified entity, including ownership interests, liens, mortgages and encumbrances;

(b) a draft deed of conservation easement or deed of agricultural easement or a descriptive list of intended easement provisions including acreage, building envelopes, conservation provisions and reserved uses;

(c) a written statement from the landowner that the landowner wishes to sell a conservation easement or agricultural easement to the applicant;

(d) a written description of the applicant's authority to acquire and hold land or interests in land, including conservation easements or agricultural easements; and

(e) a written statement or other proof that the applicant has the experience and the ability to manage lands for conservation, natural resource heritage value or agricultural value;

(7) for land restoration projects, a statement describing the intended land restoration activities with specific objectives and a designated project manager identified to be responsible for implementation of the approved project including overseeing contractor or subcontractor administration, providing liaison with affected landowners, ensuring technical viability of the project, ensuring funds expended are within budget and obtaining any necessary permits;

(8) the name of any qualified entities or conservation entities that are partnering with the qualified entity on the conservation project, a description of each entity's role and contribution and a written commitment from each conservation entity identifying that entity's proposed responsibilities and contributions;

(9) how the conservation project relates to applicable state, tribal, county or local plans;

(10) projected beginning and completion dates for the conservation project and a schedule of activities required to complete the conservation project with projected beginning and completion dates for those activities;

(11) a full budget for the project detailing the costs and in-kind contributions, if any; and

(12) a list of any permits, certifications and clearances needed to implement the project.

C. The department shall review applications for timeliness and completeness before providing the grant applications it has received to the committee. The committee may consider the grant applications at a regularly scheduled meeting or at a special meeting scheduled for the purpose of considering grant applications.

[19.1.3.11 NMAC - N, 7/30/2010]

19.1.3.12 APPLICATION REVIEW:

A. The committee shall review applications that are timely, that are complete and that comply with the Natural Heritage Conservation Act and 19.1.3 NMAC and evaluate

them against the criteria in Subsection B of 19.1.3.12 NMAC. The committee may reject untimely applications, incomplete applications or applications that do not comply with the Natural Heritage Conservation Act or 19.1.3 NMAC. The department secretary, upon request by the committee, may provide technical assistance through staff assignment or a group of public agency and private individuals selected to assist during a specified review cycle. After review, the committee shall make its recommendations on all evaluated conservation projects to the department.

B. The committee shall evaluate applications for conservation projects based upon the following criteria:

- (1) the degree to which the conservation project serves the purposes of the Natural Heritage Conservation Act;
- (2) the extent of cash and in-kind matching financial support for the conservation project from sources other than the state, in context with the amount of funding requested and available overall;
- (3) the applicant's and partner's technical qualifications and its ability to complete and maintain the proposed conservation project;
- (4) the degree to which the conservation project fosters and integrates with existing conservation plans, strategies and initiatives;
- (5) the potential for benefits at the landscape and ecosystem scale;
- (6) the potential for improved public access for outdoor recreation opportunities, including hunting and fishing;
- (7) the potential for economic benefits, including direct commerce and ecosystem services, of the completed conservation project;
- (8) complementary or strategic values through proximity to other conservation actions, priorities or projects;
- (9) conservation project readiness for completion on a timely schedule;
- (10) degree and extent of partner involvement;
- (11) the likelihood that the conservation project as proposed will have long-term success in achieving its purposes and will have long-term sustainability, including involvement of land dedicated to conservation purposes and an explicit monitoring plan.

C. The committee will evaluate and categorize applications according to the following matrix of factors and relative values and base its assessment and recommendations on the matrix. The committee has discretion to determine how to use

the information from the matrix to determine value assignments among features of each application, in consideration of any limitations identified in the application cycle announcement as provided for in Subsection A of 19.1.3.11 NMAC.

Factor	Level 4	Level 3	Level 2	Level 1
Serves purposes of the Natural Heritage Conservation Act	Clearly serves all purposes	Clearly serves multiple purposes	Clearly serves one purpose and may serve others	Questionable if any purposes are adequately served
Extent of matching cash and in-kind financial support	Applicant/Partner provide more than 75% of project costs	Applicant/Partner provide 50 to 75% of project costs	Applicant/Partner provide 25 to 49% of project costs	Applicant/Partner provide less than 25% of project costs
Qualifications and ability of applicant and partners to complete and maintain proposed project	Substantial past experience and continuing capability to do proposed work and follow-up	Demonstrated completions of similar work and is fully structured to do similar work	Demonstrates some past ability and basic documented qualifications and infrastructure	Indicates uncertain capability or has no prior experience and necessary infrastructure
Degree of fostering existing conservation plans, strategies and initiatives (PSIs) specified in the cycle announcement	Project has substantial relation to most PSIs and directly fosters several	Project clearly fosters multiple PSIs and directly relates to several	Project has clear relation to one PSI and possible service to others	Project has uncertain relation to any PSIs or no clear degree of fostering
Potential for benefits at landscape or ecosystem scale	Substantial landscape and ecological scale benefits are evident in completed work	Substantial landscape or ecological scale benefits are evident in completed work	Desired scale benefits are evident, but are judged minimal	No clear benefits are evident at desired scale

Factor	Level 4	Level 3	Level 2	Level 1
Potential for improved public access to outdoor recreation opportunities on or off project site	Multiple enhanced recreation opportunities are evident, including hunting and fishing	Some enhanced outdoor recreation opportunities are evident and have prospect for growth	Some enhanced outdoor recreation opportunities are evident but are limited	Proposal has no discernible outdoor recreation elements
Potential economic benefits of completed project	Project has multiple economic benefits at multiple scales	Project has some economic benefits locally and broader	Project shows economic benefits, at least locally	Project has no discernible economic benefits
Complementary or strategic values through proximity to other ongoing or completed conservation actions, including any priority areas formally identified by the committee	Project is within a priority area or directly links to nearby completed or ongoing conservation actions and provides added heritage values	Project is within a priority area but has limited relationship to other conservation actions that will provide synergistic heritage values	Project is not within a priority area but has proximity to other actions that may provide synergy or economy of scale or cost effectiveness	Project has no proximity to other conservation endeavors and is not otherwise distinctive as a starting point
Degree of readiness to start and complete project on timely schedule	Readiness and time schedule are clear and background work is complete; timely execution is essentially assured	Readiness and time schedule are clear and reasonable to the project, but could experience some delay	Readiness and time schedule are clear, but have acknowledged or likely delays inconsistent with the nature of the project	Readiness and completion scheduling is unspecified, unclear or uncertain

Factor	Level 4	Level 3	Level 2	Level 1
Degree and extent of partner involvement	Multiple entity project where reasonable partnering is included with clear and substantive involvement and contribution	Multiple entity project where reasonable partnering is included beyond minimal but is not extensive	Single or multiple entity project where partnering is included, but is minimal	Single entity project with no partner involvement when such partnership is possible and advised
Likely long-term success and sustainability	Project is well-described and accomplishable with substantive provisions for sustained maintenance and routine outcome assurance	Project is well-described and accomplishable with basic provisions for sustained maintenance and periodic outcome assessment	Project is inherently achievable but contains limited provisions for maintenance over the long-term	Project appears basically achievable, but long-term outcome is questionable or uncertain

D. A summary of committee judgments, without attribution to individual committee members, among factors described in Subsection C of 19.1.3.12 NMAC will be made public regarding all applications that are recommended to the department for funding and those that are not recommended to be funded.

[19.1.3.12 NMAC - N, 7/30/2010]

19.1.3.13 GRANT AWARDS:

A. A conservation project involving acquisition of a conservation or agricultural easement requires an appraisal that establishes the fair market value of the conservation or agricultural easement and meets United States treasury regulations and the uniform standards of professional appraisal practice before the department will disburse the funds to the qualified entity.

B. In addition, for conservation projects involving acquisition of a conservation or agricultural easement, the qualified entity or partner conservation entity shall provide as specified by the department documents including a title commitment; phase I environmental site assessment and, if needed based on phase I environmental site assessment, a phase II environmental site assessment; a title opinion certifying that the landowner owns the minerals rights or a report, satisfactory to the department, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; and if deemed necessary by the department, a property

boundary survey. If the landowner owns the mineral rights, an easement shall prohibit subsequent sale or development of mineral rights by the landowner granting the conservation or agricultural easement. A baseline documentation report of the property shall be recorded with the deed of conservation easement or agricultural easement in the office of the applicable county clerk.

C. Agricultural and conservation easements shall contain a provision that if a qualified entity, other than the department, or a partner conservation entity fails to enforce the easement as determined by a court or if either the qualified entity or conservation entity cease to exist, that the easement will go to another qualified entity or partner conservation entity as specified in the easement and agreed to by that qualified entity, or otherwise the easement shall become vested in the department as recommended by the department and other extant easement right holders. Any qualified entity's interest in an easement shall only go to another governmental entity. The department shall have the option to provide similar rights of enforcement or possession to other governmental entities (e.g., federal partners) where such partners have similar rules, regulations or requirements and demonstrated capacity to manage or enforce easements.

D. Grant awards may be approved for use to pay transactional costs for easement projects such as appraisals, title insurance, title opinions, surveys or environmental reviews up to three percent of the total value of the conservation project funded or 10 percent of the amount of the grant, whichever is less. The committee and the department may consider and approve grant requests for paying only transaction costs for easement projects, subject to the grant being for up to three percent of the total value of the conservation project or \$45,000, whichever is less.

E. Overhead and administrative expenses used as in-kind contributions may be no more than 10 percent of the total cost of a project.

F. A qualified entity or conservation entity may use contractors or subcontractors so long as their use is explained in the application, all applicable procurement requirements are met and the contractors or subcontractors are identified by name in the application, to the extent known. If contractors or subcontractors are identified in the application, the qualified entity or entities shall include documentation in the application that demonstrates all applicable procurement requirements were met. The qualified entity or entities associated with an approved project shall be wholly responsible for the project execution and performance, whether or not contractors or subcontractors are used. Use of contractors or subcontractors not identified in an application shall require the department's prior written approval.

G. Prior to commencing any work, any contractors or subcontractors may be required to furnish state certification from insurers for coverage in the minimum amounts as designated by the state. Appropriate coverage shall be maintained in full force and effect during the term of the project and shall not serve to limit any liabilities or any other

contractor obligations. The state and the department must be added as additional insured as required by statute, agreement or other obligation.

[19.1.3.13 NMAC - N, 7/30/2010]

19.1.3.14 PUBLIC-PRIVATE CONSERVATION PROJECTS:

A. Conservation or agricultural easements. Conservation projects that are the joint acquisition of a conservation easement or agricultural easement by a qualified entity and a conservation entity and are funded in part with a grant to a qualified entity shall meet the following requirements.

(1) The qualified entity and conservation entity shall hold title to the conservation easement or agricultural easement as cotenants having undivided interests in proportion to each entity's share of the acquisition.

(2) The conservation entity shall acquire no less than 10 percent of the easement as a percentage of the appraised easement value and may do so through cash or in-kind contributions to the total project value not paid by a qualified entity. If an in-kind contribution, no portion of that contribution shall be comprised of the portion of a donation by a landowner for which the landowner has been previously compensated through a state tax incentive or credit, but nothing in this provision shall diminish the ability for any landowner to be eligible to apply for any state tax incentive or credit.

(3) The conservation entity, as part of the qualified entity's application, shall submit a plan for the conservation and stewardship of the lands for which the conservation entity and the qualified entity are responsible. The plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing monitoring and stewardship.

B. Land restoration. When a conservation entity has partnered with a qualified entity on a land restoration project that is funded in part with a grant to a qualified entity, the following requirements apply.

(1) The conservation entity shall provide at least 10 percent of the cost of the conservation project and may do so, all or in part, through cash or in-kind contributions to the total project cost not paid by a qualified entity.

(2) The qualified entity shall submit a plan for management of the lands for which the qualified entity and conservation entity are responsible. A conservation entity partner may prepare the management plan. The management plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing management, stewardship and monitoring.

[19.1.3.14 NMAC - N, 7/30/2010]

19.1.3.15 MONITORING REPORT REQUIREMENTS:

A. Qualified entities awarded grants from the fund shall submit annual reports, by December 1 each year, to the department for 10 years after the date of the acquisition of the conservation or agricultural easement or the date of a grant agreement for a land restoration project, unless a longer or shorter monitoring period is mutually agreed in writing among the department and the qualified entity. On joint public-private conservation projects, the qualified entity may delegate this requirement to a conservation entity. The designated responsible qualified entity or conservation entity shall document easement monitoring activities in perpetuity and keep all documentation available for review by the department at any time. Annual reporting and perpetual documentation shall describe the subject property's management by the landowner and include the details of the qualified entity's and any partner conservation entity's stewardship and monitoring activities. For land restoration projects, the report shall provide at least a qualitative assessment of the degree to which the project has accomplished or is accomplishing the objectives specified in the land restoration project application and grant agreements. Monitoring involves assessment of a conservation project for indications that the pre-specified objectives and intent are being met or that trends are in that direction; there is no requirement for scientific-based, cause-effect research and data collection unless such efforts are specifically made a part of the project agreement at the outset or in subsequent amendments of the agreement. The qualified entity or any designated partner entity shall collect sufficient baseline information during the first year of the project such that subsequent monitoring and description of change can be accomplished.

B. A qualified entity's failure to comply with the reporting or documentation requirements, including ensuring proper reporting or documentation by the conservation entity if this requirement is delegated, may disqualify the qualified entity from receiving future grant funding.

[19.1.3.15 NMAC - N, 7/30/2010]

19.1.3.16 COMPLIANCE:

The department may audit a qualified entity's or conservation entity's records including stewardship records, financial statements and supporting records relating to the grant award. The qualified entity shall retain such documents pursuant to state and federal requirements, except for stewardship records, which the qualified or conservation entity shall maintain for 10 years, unless a longer or shorter period is mutually agreed in writing among the department and the qualified entity. If the qualified entity is partnering with a conservation entity, the qualified entity shall have a written agreement with the conservation entity that requires the conservation entity to maintain its records for the same time period and allow the department to audit those records. The department may terminate a grant agreement or disqualify a qualified entity from receiving future grants upon discovery of a violation of the terms of the grant agreement or 19.1.3 NMAC.

[19.1.3.16 NMAC - N, 7/30/2010]

19.1.3.17 STATUS REPORTING:

The department shall report, including committee outcomes, annually by December 15 to the governor and legislature on status of applications and funded projects.

[19.1.3.17 NMAC - N, 7/30/2010]

PART 10 COMMUNITY ENERGY EFFICIENCY DEVELOPMENT (CEED) PROGRAM

19.1.10.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[19.1.10.1 NMAC – N, 5/16/2023]

19.1.10.2 SCOPE:

Part 19.1.10 NMAC applies to all eligible entities applying for a grant from the community energy efficiency development (CEED) program.

[19.1.10.2 NMAC – N, 5/16/2023]

19.1.10.3 STATUTORY AUTHORITY:

Part 19.1.10 NMAC is authorized pursuant to Subsection B of 62-17A-3 NMSA 1978, and Subsection E of Section 9-1-5 NMSA 1978.

[19.1.10.3 NMAC – N, 5/16/2023]

19.1.10.4 DURATION:

Permanent.

[19.1.10.4 NMAC – N, 5/16/2023]

19.1.10.5 EFFECTIVE DATE:

May 16, 2023, unless a later date is cited at the end of a section.

[19.1.10.5 NMAC – N, 5/16/2023]

19.1.10.6 OBJECTIVE:

The objective is to establish procedures for administering the program, adopt application requirements and evaluation criteria, and define the purposes and qualifications for which CEED program funding may be utilized.

[19.1.10.6 NMAC – N, 5/16/2023]

19.1.10.7 DEFINITIONS:

For additional definitions, refer to Section 62-17A-2 NMSA 1978.

A. "Act" means the Community Energy Efficiency Development Block Grant Act, 62-17A NMSA 1978.

B. "Affordable housing assessment" means a calculation of rent or a mortgage that is no more than thirty percent of the United States department of housing and urban development's state income limits as updated each year for low-income, very low-income residents, and residents whose income is thirty percent of the state median income.

C. "Applicant" means one or more representatives of an eligible entity writing an application for a CEED program grant.

D. "Division director" means the director of the department's energy conservation and management division.

E. "Eligible entity" means an organization that may apply for a grant from the CEED program and includes an Indian nation, tribe, or pueblo; county; municipality; or the New Mexico mortgage finance authority (MFA).

F. "Program" means the CEED program administered by the division.

G. "Type one projects" means projects which have the eligibility requirements described in subsection 19.1.10.12 NMAC.

H. "Type two projects" means projects by the MFA which have the eligibility requirements described in subsection 19.1.10.13 NMAC.

[19.1.10.7 NMAC – N, 5/16/2023]

19.1.10.8 PURPOSE:

Community energy efficiency projects are projects that provide improvements to residential buildings in an underserved community that will, in the aggregate, reduce energy consumption, energy-related operating costs, carbon intensity of energy consumption, or a combination thereof. These projects will target the adoption of energy-efficient consumer behavior, equipment, or devices that result in a decrease in

energy consumption without reducing the amount or quality of energy services. This includes health and safety measures, including those that use efficient equipment or devices to improve indoor air or drinking water quality. It is the responsibility of the applicant to demonstrate how the proposed projects correspond to these requirements.

[19.1.10.8 NMAC – N, 5/16/2023]

19.1.10.9 ELIGIBILITY:

A. Entity categories. The CEED program will fund entities in the following categories when funds are available:

- (1) an Indian nation, tribe, or pueblo;
- (2) a county;
- (3) a municipality; and
- (4) the MFA.

B. Project location. The CEED program shall only award grants to eligible entities for a community energy efficiency project located in New Mexico.

[19.1.10.9 NMAC – N, 5/16/2023]

19.1.10.10 APPLICATION PROCESS:

A. Application acceptance. To apply for a CEED program grant, an applicant shall:

- (1) obtain the division-developed CEED program application from the division,
- (2) conform to the application instructions determined by the division,
- (3) submit the completed application to the division.

Applications will be accepted by approved electronic application system, or alternate submission options may be authorized by the division director upon request.

B. Application completeness.

(1) Upon receipt of applications, division staff will review for eligibility, completeness, and compliance with the rule and application instructions.

(2) In the event that the application is incomplete, the applicant will be notified by the division. The applicant must then submit the information requested in connection

with an incomplete application in the timeframe established by the division. Applicants that do not respond in the established timeframe may be disqualified.

(3) The division will determine whether an application is complete, and its decision is final.

(4) Approval will be granted in two stages. Preliminary approval requires an application submission and division selection. Final approval requires an additional grant of authority submission as required in 19.1.10.16 NMAC before full division approval may be granted.

C. Application review. The division may consult appropriate agencies or experts for information and advice concerning technical aspects and evaluation of any application.

D. Additional criteria. The division may require applications meet additional criteria consistent with the goal of improving the energy efficiency, livability, or public health and safety of affordable housing in underserved communities.

[19.1.10.10 NMAC – N, 5/16/2023]

19.1.10.11 APPLICATION SUBMISSION CYCLE:

Contingent upon availability of funds and state appropriations, the division will request applications on an annual cycle that aligns with the state government's fiscal year. The division will determine and announce the application due date(s) for each application cycle no less than 60 days before each application due date.

[19.1.10.11 NMAC – N, 5/16/2023]

19.1.10.12 TYPE ONE PROJECTS: APPLICATION REQUIREMENTS FOR AN INDIAN NATION, TRIBE, OR PUEBLO; COUNTY; MUNICIPALITY; OR THE NEW MEXICO MORTGAGE FINANCE AUTHORITY:

Applications for CEED Program type one project grant funding shall include the following sections:

A. Applicant contact information. This section identifies the full legal name and address of the applicant entity, and the name, title, telephone number, and e-mail address for the person(s) authorized to negotiate a contract on behalf of the entity. Identify names, titles, telephone numbers, and e-mail addresses of person(s) to be contacted for clarification.

B. Project description. This section of the application shall clearly describe the community energy efficiency project that is being proposed, the selected geographic areas or property addresses where the project will take place, data detailing the

justification for selection, how the project would support infrastructure improvements for affordable housing, and how the project would provide energy efficiency improvements to residential buildings in an underserved community.

C. Community description. This section of the application shall clearly identify the targeted underserved community and describe the energy-related needs of the community and the benefits this community would receive if the proposed project was implemented.

D. Participant eligibility requirements. Applicants shall demonstrate the ability to determine which participant households within the proposed community meet the eligibility criteria. Applicants are responsible for determining if and certifying that a household is eligible for this program. Applicants must certify that the households receiving services have been verified for eligibility prior to the commencement of project work. The division reserves the right to audit project eligibility at the discretion of the division. Eligible households include:

(1) residential housing units occupied by low-income individuals, couples, or families whose annual household adjusted gross income, as defined in section 62 of the federal Internal Revenue Code of 1986, as amended or renumbered, does not exceed two hundred percent of the federal poverty level, within an underserved community; or

(2) residential housing units within an underserved community that otherwise meet the criteria for housing that is affordable to low-income persons,

(3) low income verified by the applicant by any of the following methods:

(a) Direct income verification by the most recent tax returns of the household.

(b) Eligibility is assumed if, within five years of household application:

(i) person(s) within the household receives federal or state disability assistance;

(ii) person(s) within the household receives SNAP food benefits;

(iii) person(s) within the household receives TANF temporary assistance benefits;

(iv) person(s) within the household receives medicaid or children's health insurance program benefits;

(v) person(s) within the household participates in a utility low-to-moderate income program.

(c) Affordable housing verification can be evidenced by the fact that the resident receives low-income housing benefits or by mortgage or rental agreement.

(d) Other methods of eligibility must be approved by the division prior to application submission.

E. Scope of work. Applications shall detail the energy efficiency measures that will be implemented for the targeted households and demonstrate how these measures will address the energy-related needs of those households. This demonstration should include, as appropriate, the estimated reduction of energy use that will come from implementation of these measures, the estimated reduction of energy cost that will come from implementation of these measures, and the estimated reduction in carbon intensity of energy consumption. The description should also include the average impact by household along with the aggregated impact of the project, a timeline for implementation, the approach for maximizing project benefits, and metrics which will determine success in implementation. Metrics proposed in applications may be tailored to the individual project.

F. Partnerships. Applications shall detail the partnerships that the applicant(s) have established to achieve project implementation, including:

(1) one or more service providers, including subcontractors that will use local safety and code standards to implement the energy efficiency measures in targeted households and the experience of the service provider in working with the target underserved community. If the service provider has committed to employ apprentices from a registered apprenticeship program that promotes diversity or provides paid internships to persons from the targeted underserved community, this should be detailed in this section; and

(2) one or more community partners that have identified and worked with targeted households to implement the project and the experience of the community partner in working with the target underserved community. If the community partner has committed to employ apprentices from a registered apprenticeship program that promotes diversity or provides paid internships to persons from the targeted underserved community, this should be detailed in this section.

G. Budget. Applications shall detail the project budget including anticipated expenditures for the entire project and additional funding sources that would complement the CEED program grant, if obtained. The project should strive to maximize benefits in the community to the greatest extent practicable and be reflected in the amount sought per household. The budget should include the total project amount, the average amount per household, administrative costs, partnership expenses, and any other applicable expenses that are being requested.

19.1.10.13 TYPE TWO PROJECTS: APPLICATION REQUIREMENTS FOR THE NEW MEXICO MORTGAGE FINANCE AUTHORITY:

Applications for CEED program type two project grant funding shall include the following sections:

A. Applicant contact information. This section identifies the name, title, telephone number, and e-mail address for the person or persons authorized to negotiate a contract on behalf of the applicant entity. Identify names, titles, telephone numbers, and e-mail addresses of persons to be contacted for clarification.

B. Project description. This section of the application shall clearly describe the community energy efficiency project that is being proposed, the address of the property or properties where the project will take place, how the project would support infrastructure improvements for affordable housing that would complement and not duplicate other energy efficiency programs in the state; and

(1) sets forth the energy efficiency improvements to residential housing units, regardless of whether the residential housing units are located in an underserved community, provided that the residential housing units meet the eligibility criteria established by the MFA; and

(2) describes how energy efficiency improvements to the residential housing units will help to reduce the energy burden of low-income households that may not qualify for other energy efficiency programs in the state.

C. Scope of work. Applications shall detail the energy efficiency measures that will be implemented for the targeted households and demonstrate how these measures will address the energy-related needs of those households. The application should include, as appropriate, the estimated reduction of energy use that will come from implementation of these measures, the estimated reduction of energy cost that will come from implementation of these measures, and the estimated reduction in carbon intensity of energy consumption. The description should also include the average impact by household along with the aggregated impact of the project, a timeline for implementation, the approach for maximizing project benefits, and metrics which will determine success in implementation.

D. Partnerships. Applications shall detail the partnerships that the applicant(s) have established to achieve project implementation, including:

(1) one or more service providers, including subcontractors that will use local safety and code standards to implement the energy efficiency measures in targeted households and the experience of the service provider in working with the target underserved community. If the service provider has committed to employ apprentices from a registered apprenticeship program that promotes diversity or provides paid

internships to persons from the targeted underserved community, this should be detailed in this section; and

(2) one or more community partners that will identify and work with targeted households to implement the project and the experience of the community partner in working with the targeted underserved community. If the community partner has committed to employ apprentices from a registered apprenticeship program that promotes diversity or provides paid internships to persons from the targeted underserved community, this should be detailed in this section.

E. Budget. Applications shall detail the project budget including anticipated expenditures for the entire project and additional funding sources that would complement the CEED program grant, if obtained. The project should strive to maximize benefits in the community to the greatest extent practicable and be reflected in the amount sought per household. The budget should include the total project amount, the average amount per household, administrative costs, partnership expenses, and any other applicable expenses that are being requested.

[19.1.10.13 NMAC – N, 5/16/2023]

19.1.10.14 APPLICATION EVALUATION CRITERIA FOR PROJECTS FROM AN INDIAN NATION, TRIBE, OR PUEBLO; COUNTY; OR MUNICIPALITY:

Applications will be scored by the division based on the following criteria that include but are not limited to:

A. Application completeness. The division will review the entire application to see that it contains all application requirements for the specific project type.

B. Capability to meet the scope of work described. The division will consider the project timeline, appropriateness of energy efficiency measures to be implemented, qualifications of project team members including subcontractors and community partners, and the ability to complete the project financially if the total budget exceeds the amount requested.

C. Budgetary considerations. The division will consider the total proposed budget as well as the average amount requested per household, prioritizing applications which propose to maximize project benefits in the community to the greatest extent feasible. The division may ask the applicant for additional documents to support the proposed budget if deemed necessary.

D. Energy reduction potential. The division will consider the estimated reduction of energy use that will come from implementation of the proposed measures, the estimated reduction of energy cost that will come from implementation of the proposed measures, and the estimated reduction in carbon intensity of energy consumption from implementation of the proposed measures.

E. Geographic diversity. The division will consider the geographic diversity of applications submitted in each application cycle.

F. Partnership experience. The division will consider the experience of each community partner and service provider identified in the application in working with the targeted underserved community.

G. Workforce impact. The division will consider whether the partners identified in the application employ apprentices from a registered apprenticeship program that promotes diversity or if they provide paid internship to persons from the targeted underserved communities.

H. Replicability. The division will consider the value of the project as a demonstration project to provide data for the effectiveness of implementing similar projects elsewhere.

I. Underserved community benefits. The division will consider the degree to which the project benefits an underserved community, including any non-energy benefits and health benefits provided by the project.

J. Additional criteria. If the criteria are published in the project solicitation, the division may also consider:

(1) the degree to which the project will protect public health, including protecting underserved communities from a public health threat;

(2) the degree to which the project will contribute to economic recovery; or

(3) the degree to which the project will reduce economic hardship of individual families due to the coronavirus COVID-19 pandemic.

[19.1.10.14 NMAC – N, 5/16/2023]

19.1.10.15 APPLICATION EVALUATION CRITERIA FOR PROJECTS FROM THE NEW MEXICO MORTGAGE FINANCE AUTHORITY:

Applications will be scored by the division based on the following criteria, that include but are not limited to:

A. Application completeness. The division will review the entire application to see that it contains all application requirements for the specific project type.

B. Capability to meet the scope of work described. The division will consider the project timeline, appropriateness of energy efficiency measures to be implemented, qualifications of project team members including subcontractors and community

partners, and the ability to complete the project financially if the total budget exceeds the amount requested.

C. Budgetary considerations. The division will consider the total proposed budget as well as the average amount requested per household, prioritizing applications which propose to maximize project benefits in the community to the greatest extent feasible. The division may ask the applicant for additional documents to support the proposed budget if deemed necessary.

D. Energy reduction potential. The division will consider the estimated reduction of energy use that will come from implementation of the proposed measures, the estimated reduction of energy cost that will come from implementation of the proposed measures, and the estimated reduction in carbon intensity of energy consumption from implementation of the proposed measures. The division will also consider if the community served would not be likely to otherwise receive energy efficiency improvements through other state programs.

E. Geographic diversity. The division will consider if the application would promote the geographic diversity of the portfolio of community energy efficiency projects.

F. Partnership experience. The division will consider the experience of each community partner and service provider identified in the application in working with the targeted underserved community.

G. Additional criteria. The division will consider if the application would help create a portfolio of community energy efficiency projects that would best meet the goals of the CEED Block Grant Act.

[19.1.10.15 NMAC – N, 5/16/2023]

19.1.10.16 FINAL APPROVAL OF APPLICATIONS:

A. Indian nation, tribe, or pueblo: If applicable based on statute, prior to the division's final approval of an application, an applicant that is an Indian nation, tribe, or pueblo must provide the division with a copy of a resolution enacted by the Indian nation, tribe, or pueblo that provides approval for a specific CEED program grant and must include in the resolution the terms and conditions of the grant approved by the division. If such a resolution is not supplied to the division, final approval of the application shall not be issued.

B. County or municipality: If applicable based on statute, prior to the division's final approval of an application, an applicant that is a county or municipality must provide a copy of the ordinance enacted by the county or municipality that provides the county's or municipality's formal approval for a specific CEED program grant and must include in the ordinance the terms and conditions of the grant approved by the division.

If such a resolution is not supplied to the division, final approval of the application shall not be issued.

C. New Mexico Mortgage Finance Authority:

(1) Required grant of authority. If applicable based on statute, prior to the division's final approval of an application from the MFA for a CEED program grant, the MFA shall provide the division with formal approval of the MFA to accept a specific CEED program grant. If this is not supplied to the division, final approval of the application shall not be issued.

(2) Project coordination. The division and the MFA shall coordinate the work done pursuant to CEED Program grants in the state to implement energy efficiency measures.

D. Contracts: For selected project applications, the division will approve and enter into contracts with grantees to implement selected community energy efficiency projects. All contracts shall have project performance measures, penalties, or other provisions that ensure the successful completion of the projects and shall require reporting on project performance, energy savings, and non-energy benefits resulting from the energy efficiency measures.

[19.1.10.16 NMAC – N, 5/16/2023]

19.1.10.17 FUNDING:

Funding for CEED program projects may come from state, federal, other eligible funding sources, or a combination thereof.

A. If the funding source requires a set-aside allotment, entity categories shall have a percentage allotment of available funding reserved in any given fiscal year. If an allotment is not reached in any given entity category, the division will decide how to leverage the remaining funds against eligible projects.

B. If a set budgetary amount is identified in the application instructions, projects exceeding that amount which have provided justification and demonstrated need for the additional cost may request consideration for the increased amount, to be approved at the discretion of the division director.

[19.1.10.17 NMAC – N, 5/16/2023]

19.1.10.18 RECORD KEEPING AND REPORTING:

Successful applicants receiving CEED program grants shall submit progress and expenditure reports, including a final report, in accordance with the requirements of their respective contract or agreement. Reporting requirements may be on a project-specific

basis. The division will process reimbursements for costs that are incurred no more than once per month. The division will notify applicants as necessary of the funding source(s) applied to their projects and any associated reporting and compliance requirements associated with the funding. Applicants shall be responsible for satisfying any such requirements associated with an identified funding source as part of the grant solicitation or award in addition to the requirements of this part.

[19.1.10.18 NMAC – N, 5/16/2023]

19.1.10.19 ADMINISTRATIVE AND LEGAL REQUIREMENTS:

A. Environmental and cultural resources compliance for projects anticipating ground disturbance. Successful applicants receiving CEED program funding shall provide a statement to demonstrate acknowledgement of compliance with all applicable federal, state, and local environmental and cultural resources laws.

B. Administrative compliance. Successful applicants receiving CEED program funding shall adhere to all applicable federal and state fiscal or procurement laws and any other applicable procurement procedures established by the division, in order to ensure that grant funds are expended in accordance with state and federal law including rules and regulations.

C. Program oversight. Successful applicants receiving CEED program funding shall be subject to periodic monitoring by the division to ensure compliance with applicable laws, rules, and regulations; the grant contract or agreement; and the program guidelines.

(1) Entities must cooperate fully with such evaluations, including, but not limited to, making all financial and program records available for inspection and personnel available for interview.

(2) If an entity materially fails to comply with the CEED program terms and conditions, whether stated in a law, statute, rule, regulation, assurance, application, or notice of award, the division director may take one or more enforcement actions, including terminating the grant, imposing specific conditions upon the award, or other remedies that may be legally available.

[19.1.10.19 NMAC – N, 5/16/2023]

19.1.10.20 VARIANCES:

Written requests for a variance from any of the provisions of this rule shall:

A. state the reasons for the variance request;

B. identify each of the sections of this rule for which a variance is requested;

C. describe the effect the variance will have, if granted, on compliance with this rule;

D. describe how granting the variance will not compromise, or will further, the purposes of this rule; and

E. indicate why the proposed variance is a reasonable alternative to the requirements of this rule.

[19.1.10.20 NMAC – N, 5/16/2023]

19.1.10.21 MAINTENANCE AND INSPECTION OF PUBLIC RECORDS ACT/CONFIDENTIAL INFORMATION:

All information obtained regarding the project, including pre-applications, applications for funding, and reports are subject to disclosure, in response to requests received under provisions of the New Mexico Inspection of Public Records Act, Sections 14-2-1 to 14-2-12 NMSA 1978. Information that could reasonably be considered to be proprietary, privileged or confidential commercial or financial information must be identified as such by the applicant. The division will maintain the confidentiality of that information only to the extent permitted by law.

[19.1.10.21 NMAC – N, 5/16/2023]

CHAPTER 2: STATE TRUST LANDS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: LEASING FOR GENERAL MINING

19.2.2.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501.

[9.2.2.1 NMAC - N, 03/14/2001]

19.2.2.2 SCOPE:

Pursuant to Article XIII, Section 2, of the New Mexico State Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to the state of New Mexico under the New Mexico Enabling Act. This rule, 19.2.2 NMAC, governs the exploration for and development of minerals, as defined herein, within the commissioner's constitutional jurisdiction. This rule also governs reclamation of trust lands affected by mining. This rule does not apply to mining activity authorized and carried out pursuant to other rules of the commissioner of public lands.

[19.2.2.2 NMAC - N, 03/14/2001]

19.2.2.3 STATUTORY AUTHORITY:

N.M. Const. Art. XIII; Section 19-1-1 *et seq.* NMSA 1978; Section 19-6-1 *et seq.* NMSA 1978; Section 19-7-1 *et seq.* NMSA 1978; Section 19-8-1 *et seq.* NMSA 1978; Section 19-14-1 *et seq.* NMSA 1978.

[19.2.2.3 NMAC - N, 03/14/2001]

19.2.2.4 DURATION:

Permanent.

[19.2.2.4 NMAC - N, 03/14/2001]

19.2.2.5 EFFECTIVE DATE:

March 14, 2001, unless a later date is cited at the end of a section.

[19.2.2.5 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.6 OBJECTIVE:

The objectives of 19.2.2 NMAC are to obtain revenues from production of minerals; to assure protection and maintenance of trust surface estate and minerals; to provide standard lease terms and conditions; and to provide an efficient process for mineral leasing.

[19.2.2.6 NMAC - N, 03/14/2001]

19.2.2.7 DEFINITIONS:

As used in 19.2.2 NMAC, the following terms have the meaning set forth in this section unless otherwise indicated in the text of this rule.

A. "Arm's-length sales price" means the sales price resulting from a good faith sale of minerals between an unaffiliated seller and buyer who have comparable negotiating power, the seller being under no obligation to sell and the buyer being under no obligation to purchase. Where minerals are not actually sold in an arm's-length transaction, the arm's-length sales price shall be estimated by the lessee, using methods approved by the commissioner, in accordance with Sections 55-2-723 & 724, NMSA 1978 of the New Mexico Uniform Commercial Code or other comparable method.

B. "Commissioner" means the commissioner of public lands. The commissioner is the executive officer of the NMSLO and may delegate to NMSLO staff the performance of duties required of the commissioner under this rule.

C. "Comparable law" means a federal, state or local regulatory program that the commissioner determines, in writing, is applicable to mining activity and which will, as a practical matter, assure reclamation of trust surface estate to substantially the same standard required under the New Mexico Mining Act. The issue of whether a given regulatory program constitutes comparable law will arise only where the mining activity in question is not regulated under the New Mexico Mining Act.

D. "Contiguous" means adjoining and having at least one common side or boundary.

E. "Financial assurance" means a bond, surety, letter of credit, certificate of deposit or other instrument obtained for the purpose of guarantying performance of an obligation.

F. "Lease or mineral lease" means a lease issued under this 19.2.2 NMAC that must be obtained prior to exploring for, extracting or producing minerals.

G. "Legal subdivision" means legal subdivision as used and recognized by the federal bureau of land management and the NMSLO, ordinarily consisting of forty acres, more or less, or one sixteenth part of a standard section, including lots as designated by the U.S. survey plats.

H. "Lessee" means the persons who, according to the records of the NMSLO, are contractually obligated to the commissioner under a mineral lease. "Lessee" includes the lessee's successors in interest and approved assignees of the lease.

I. "Mine development plan" means a written plan that provides for the efficient and orderly development of mineral reserves and prevention of waste of surface and subsurface resources within the commissioner's jurisdiction.

J. "Minerals" means all natural substances within the commissioner's jurisdiction that can be extracted, taken or otherwise derived from the earth, except as expressly excluded hereunder. **Exclusions:** For purposes of 19.2.2 NMAC, "mineral" does not include potassium, sodium, sulfur, phosphorus, common salt, oil and gas, coal, shale, clay, gravel, building stone, and building materials, including gypsum, timber or any material leased or disposed of under another rule issued by the commissioner.

K. "Mining activity" means, except as excluded hereunder, any activity that satisfies the following two-part test. First, the activity physically or chemically disturbs or alters lands, minerals or other resources within the commissioner's jurisdiction. Second, the purpose of the activity is to explore for, extract and/or produce minerals, or the activity is incidental to or related to such exploration, extraction and/or production.

Exclusions: "mining activity" does not include any activity authorized and carried out pursuant to other rules issued by the commissioner.

L. "Mining and minerals division or MMD" means the mining and minerals division of the New Mexico department of energy, minerals and natural resources, or any successor agency that may become responsible for enforcing the New Mexico Mining Act.

M. "New Mexico Mining Act or Mining Act" means the New Mexico Mining Act, Section 69-36-1 *et seq.* NMSA 1978.

N. "NMSLO" means the state land office created by Section 19-1-1 NMSA 1978, the executive officer of which is the commissioner.

O. "Paying quantities" means the quantity of minerals that must be produced from the premises and sold in a given lease year to carry on a profitable mining operation on the premises. For purposes of this rule, "paying quantities" does **not** include minerals extracted from outside the premises, even though such lands may comprise part of the same overall mining operation.

P. "Permitting agency" means MMD or, if the New Mexico Mining Act is not applicable to the mine site at issue, the government agency or agencies responsible for enforcing comparable law, if any.

Q. "Premises" means the lands encumbered by the mineral lease as originally issued and described therein.

R. "Production" means any extraction of minerals by any means whatsoever, except as expressly excluded hereunder. **Exclusions:** "production" does not include: (1) the extraction of minerals for the purpose of exploring, testing or sampling, unless these minerals are beneficially used or sold or otherwise disposed of for value; or (2) the removal of overburden, waste rock, matrix or host rock, soil or the like, unless minerals derived from these materials are beneficially used, sold or otherwise disposed of for value.

S. "Reclamation plan" means a written document approved by the commissioner that consists of: (1) the mining permit(s) issued by the permitting agency, and (2) any additional requirements deemed necessary by the commissioner. As used herein, "reclamation plan" includes the original reclamation plan and any additional plans approved by the commissioner.

T. "Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

U. "Special minerals" means rare earth minerals, precious and semi-precious stones, uranium, thorium or any other minerals which have been or may hereafter be determined to be essential to the production of fissionable materials.

V. "Trust" means the trust created by congress under the New Mexico Enabling Act of June 20, 1910, and accepted by the state of New Mexico under Articles XIII and XIV of the New Mexico Constitution.

W. "Trust surface estate" means "public lands of the state," as identified in Article XIII, Section 1 of the New Mexico Constitution, in which the state holds legal title to the surface estate. "Trust surface estate" includes "public lands of the state" that are subject to a purchase contract until the commissioner issues the patent conveying the state's legal interest therein to the contract purchaser.

[19.2.2.7 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.8 PROHIBITIONS:

A. No person shall explore for, extract or produce minerals unless authorized by a mineral lease issued under this rule.

B. Notwithstanding the issuance of a mineral lease or special use permit, no person shall conduct any mining activity unless such activity is authorized under a permit or other authorization issued pursuant to the New Mexico Mining Act or comparable law.

[19.2.2.8 NMAC - N, 03/14/2001]

19.2.2.9 THE NMSLO IS A LAND MANAGEMENT AGENCY:

The NMSLO constitutes a "land management agency" within the meaning of the regulations promulgated under the New Mexico Mining Act by the mining and minerals division.

[19.2.2.9 NMAC - N, 03/14/2001]

19.2.2.10 RECREATION PERMITS:

The premises shall not be open to recreational access under Title 19 Chapter 2 Part 19, *Relating to Recreational Access to State Trust Lands*.

[19.2.2.10 NMAC - N, 03/14/2001]

19.2.2.11 GENERAL PROCESS FOR OBTAINING A MINERAL LEASE:

The general process for obtaining a mineral lease is as follows: First, the area where the minerals are located is shown as open to general mining on the tract books of the

NMSLO (see 19.2.2.12 NMAC). Second, the commissioner, after determining that development of minerals in the area appears to be in the best interest of the trust, publishes notice of a mineral lease sale (see 19.2.2.14 NMAC). Third, the commissioner conducts a public auction at which bidders compete for a mineral lease by seeking to offer the highest bonus (see 19.2.2.15 NMAC, 19.2.2.16 NMAC and 19.2.2.17 NMAC). The bonus is the amount the bidder offers to pay the trust in return for obtaining a mineral lease and is in addition to other payments that may be required under the mineral lease or this rule, such as royalties, rents and fees. Fourth, the highest bidder (the one offering the highest bonus) submits a disclosure statement to the commissioner (see 19.2.2.19 NMAC, 19.2.2.20 NMAC and 19.2.2.21 NMAC). Fifth, unless the commissioner declares the sale void or withdraws the subject area from general mining, the commissioner and the highest bidder will enter into a mineral lease (see 19.2.2.22 NMAC and 19.2.2.23 NMAC).

[19.2.2.11 NMAC - N, 03/14/2001]

19.2.2.12 LANDS OPEN TO GENERAL MINING:

Mineral leasing under 19.2.2 NMAC will be considered only in areas shown as open for general mining upon the tract books of the NMSLO. The commissioner may designate areas for mineral leasing based upon the recommendations of the commissioner's staff or upon nomination submitted to the commissioner.

[19.2.2.12 NMAC - N, 3/14/2001; A, 6/11/2019]

19.2.2.13 COMMISSIONER MAY WITHHOLD LANDS:

Notwithstanding any other provision of 19.2.2 NMAC, and at any time prior to execution of a mineral lease, the commissioner may, at the commissioner's discretion, withhold from mineral leasing any area subject to the commissioner's jurisdiction.

[19.2.2.13 NMAC - N, 03/14/2001]

19.2.2.14 NOTICE OF SALE:

Prior to holding a competitive bid sale for mineral leasing under 19.2.2 NMAC, the commissioner will provide notice to the public. The notice will set forth the place, date and time of the sale. The notice will describe the area to be covered by the mineral lease and the royalty amount and provide any other necessary details of the sale, including whether there shall be a minimum bid and whether the sale shall be by sealed or oral bid. At least ten days prior to the date of sale, NMSLO will post the notice in a conspicuous place in the New Mexico state land office building in Santa Fe, New Mexico, publish it in a paper of local circulation where the minerals are located and mail it to all persons who have requested such notice in writing.

[19.2.2.14 NMAC - N, 03/14/2001]

19.2.2.15 APPLICATION AND BIDDING PROCESS:

When the commissioner decides to offer a mineral lease for sale, the commissioner will auction the lease by requesting sealed or oral bids in accordance with the notice of sale. Persons shall bid by offering to pay a bonus for the mineral lease. Unless the commissioner declares the sale void or withholds the subject area from general mining, the commissioner and the highest bidder will enter into a mineral lease after payment in full of the bonus and first-year's rent. (The "highest bidder" is the person who offers the highest bonus.)

[19.2.2.15 NMAC - N, 03/14/2001]

19.2.2.16 SEALED BIDS:

If the commissioner decides to conduct the public auction by sealed bid, this section shall govern the bidding process.

A. Bidders shall submit their bid to the commissioner in a sealed envelope pursuant to the instructions provided in the notice of sale. The sealed envelope shall include a completed mineral lease application, which shall be in a form prescribed by the commissioner; and payment of the non-refundable application fee as set forth in the schedule of fees. Bidders shall offer and set out the amount of their bid on the mineral lease application.

B. Bids shall be received up to the hour set in the notice of sale, and all bids will be opened at the appointed hour.

C. The bidder offering the highest bonus shall be deemed the highest bidder.

D. Subject to 19.2.2.13 NMAC and 19.2.2.22 NMAC, the commissioner shall enter into a mineral lease with the highest bidder pursuant to 19.2.2.23 NMAC.

[19.2.2.16 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.17 ORAL BIDS:

If the commissioner decides to conduct the public auction by oral bid, this section shall govern the bidding process.

A. Bidders shall register with NMSLO and obtain an identification number pursuant to the instructions in the notice of sale.

B. Bidders shall make their bids orally at the time and place specified in the notice of sale.

C. The bidder offering the highest bonus shall be deemed the highest bidder. Provided, however, that before close of business on the day of the auction, the highest bidder must submit a completed mineral lease application to the commissioner and pay the non-refundable application fee as set forth in the schedule of fees.

D. Subject to 19.2.2.13 NMAC and 19.2.2.22 NMAC, the commissioner shall enter into a mineral lease with the highest bidder pursuant to 19.2.2.23 NMAC.

[19.2.2.17 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.18 TIE BIDS:

In the event the sale is by sealed bids and two or more bidders submit the highest bonus, then the commissioner may provide written notice of a tie to all bidders for the tract. Such notice may request the bidders to offer an additional bonus in the manner specified in the notification letter. Alternatively, the commissioner may declare the sale void.

[19.2.2.18 NMAC - N, 03/14/2001]

19.2.2.19 DISCLOSURE STATEMENT REQUIRED:

A. Within fifteen days of being notified that it is the highest bidder, the highest bidder shall either submit a new disclosure statement to NMSLO or supplement an active disclosure statement previously submitted to NMSLO under 19.2.2.21 NMAC.

B. A person with personal knowledge of the information supplied shall sign and acknowledge the disclosure statement under oath.

C. The highest bidder shall assure that its disclosure statement is correct, accurate and complete. Before issuing a mineral lease, the commissioner may require the highest bidder to provide additional information or clarification. The highest bidder may be disqualified if the commissioner determines that the disclosure statement substantially misrepresents the highest bidder's qualifications or environmental compliance history. If such misrepresentation is discovered after the lease is executed, then the commissioner may cancel the lease and the lessee shall forfeit all rent, bonus and all other sums paid on account of the lease. However, in determining the correctness, accuracy and completeness of the disclosure statement, the commissioner will not consider new or changed circumstances occurring after the mineral lease is issued.

D. Pursuant to Section 19-1-2.1 NMSA 1978, the commissioner shall hold confidential "any confidential contract, reserve data or other confidential information" in the disclosure statement that is clearly marked as "confidential". Only information that is actually covered under Section 19-1-2.1 NMSA 1978 will be held as confidential.

[19.2.2.19 NMAC -N, 03/14/2001]

19.2.2.20 CONTENTS OF DISCLOSURE STATEMENT:

The highest bidder shall provide the following information in its disclosure statement:

- A.** identity of the highest bidder's predecessor and parent organizations and affiliates, if any;
- B.** description of the highest bidder's previous mining experience, including a list of mines currently or previously operated by the highest bidder;
- C.** list of any and all financial assurances designed to assure performance of an obligation that the highest bidder has forfeited in the past ten years; (If the highest bidder is a corporation, partnership, limited liability company or the like, include in the list all forfeitures of entities identified in Subsection A);
- D.** list of any and all penalties and fines in excess of five hundred dollars that the highest bidder has paid in the past ten years for violating or allegedly violating any permit or law whose primary purpose is to protect or assure reclamation of the environment;
- E.** list of all persons who could exercise management control over how the highest bidder conducts mining activity;
- F.** type of minerals (if known) and basis for believing a successful mine can be established in the area of interest;
- G.** proposed methods of exploration and extraction (if known);
- H.** descriptions of any mitigating circumstances that may help explain negative information (such as payment of penalties, etc); and
- I.** other information requested by the commissioner that is pertinent to assessing the highest bidder's qualifications, environmental track record and intentions regarding the area to be covered by the mineral lease.

[19.2.2.20 NMAC - N, 03/14/2001]

19.2.2.21 PRE-QUALIFICATION:

Any person may apply to become pre-qualified to be eligible to obtain a mineral lease by submitting a disclosure statement to the commissioner. Unless submitted for the purpose of obtaining the commissioner's approval for assignment of a particular lease, the disclosure statement need not reference any particular sale, tract or proposed mining project. The commissioner shall evaluate the disclosure statement as soon as

practicable and notify the person, in writing, whether or not the person would be considered a qualified potential lessee. Pre-qualification under this section shall lapse automatically two years after it is submitted, at which time another disclosure statement may be submitted. Notwithstanding a person's pre-qualification under this section, the commissioner reserves the right to require submission of additional information.

[19.2.2.21 NMAC - N, 03/14/2001]

19.2.2.22 COMMISSIONER'S RIGHT TO DECLARE SALE VOID:

Prior to execution of a lease, the commissioner may determine that the mineral sale is not in the best interest of the trust and declare the sale void. The commissioner may declare a sale void if the commissioner determines that the bids are too low, not in accordance with law or otherwise not in the best interest of the trust. The commissioner may declare a sale void based on the disclosure statement or other information available to the commissioner. Prior to declaring a sale void under this section, the commissioner may provide the highest bidder with an opportunity to submit additional or new information, explanation or argument as to why the sale should not be declared void.

[19.2.2.22 NMAC - N, 03/14/2001]

19.2.2.23 MINERAL LEASE:

A. Unless the commissioner declares the sale void or withholds the lands from mining, the commissioner and the highest bidder shall enter into a mineral lease. The commissioner shall prepare a proposed mineral lease in accordance with this rule, in triplicate, and mail all three originals to the highest bidder. If the highest bidder agrees to all terms and conditions of the proposed mineral lease, the highest bidder shall sign the originals and return all three to the commissioner, together with a certified check or money order covering the offered bonus and first-year's rent. The commissioner shall thereafter sign the mineral lease and return one fully executed original to the highest bidder.

B. Mineral leases are to be made upon forms prescribed and furnished by the commissioner and shall, in addition to the terms set out in this rule, contain such terms as the commissioner deems necessary.

C. Leases issued under 19.2.2 NMAC shall cover a specified area conforming to a legal subdivision or subdivisions. The area covered shall not exceed sixteen subdivisions, being six hundred and forty acres more or less, all of which shall be contiguous. Provided, however, that leases issued in exchange for existing permits as provided by Section 19-8-17 NMSA 1978 need not be contiguous if all legal subdivisions are located within the same township and range.

D. The commissioner will not issue a mineral lease in the name of more than two persons. The commissioner will recognize only those persons named on the lease, or an approved assignment of a lease, as the lessee of record. In the case of a trust, the trust must be express and in writing, and a copy of the declaration of trust must be filed with the commissioner. If more than two trustees are named, the lease shall be granted in the names of no more than two trustees acting as attorneys-in-fact for all trustees.

[19.2.2.23 NMAC - N, 03/14/2001]

19.2.2.24 RECLAMATION PLAN REQUIRED:

Notwithstanding the issuance of a mineral lease, no mining activity shall be conducted on trust surface estate except in accordance with a written reclamation plan approved by the commissioner. Reclamation plans consist of the mining permit or other authorizations issued by the permitting agency and any supplemental requirements deemed necessary by the commissioner to assure adequate protection and reclamation of trust surface estate. Upon approval by the commissioner, the reclamation plan shall automatically be incorporated into the mineral lease without the necessity of further agreement between the lessee and the commissioner. A violation of the reclamation plan shall constitute a violation of the mineral lease.

[19.2.2.24 NMAC - N, 03/14/2001]

19.2.2.25 OBTAINING PERMIT FROM THE PERMITTING AGENCY:

A. The lessee shall apply for a permit from the permitting agency in accordance with the New Mexico Mining Act or comparable law, whichever applies. The lessee shall submit copies of its permit application and all supporting documents to the commissioner at the same time that it submits these materials to the permitting agency. The lessee shall also promptly submit copies to the commissioner of all correspondence, reports and other documents regarding the lessee's permit application.

B. The lessee's permit application and supporting documents shall fully disclose the intended mining activity to the permitting agency and the commissioner. The commissioner will review the lessee's application and supporting documents and participate in the permitting process.

C. If the permitting agency requires the land management agency or landowner to approve a proposed permit prior to issuance, the commissioner may withhold such approval if the commissioner determines that a proposed mining activity is not in the best interest of the trust. At the written request of the commissioner, the lessee shall withdraw any such proposed mining activities from its permit application.

[19.2.2.25 NMAC - N, 03/14/2001]

19.2.2.26 SUPPLEMENTAL REQUIREMENTS:

A. After the lessee obtains the permit or other final authorization from the permitting agency in accordance with 19.2.2.25 NMAC, the lessee shall submit a complete and accurate copy of the permit or other authorization to the commissioner. The commissioner will review the permit or other authorization to determine whether to include any supplemental requirements in the reclamation plan.

B. If the commissioner determines that supplemental requirements are needed, the commissioner will notify the lessee of the specific areas of concern, and the lessee shall thereafter propose supplemental requirements to address these concerns. The commissioner will review the lessee's proposal and notify the lessee of any deficiencies, which the lessee shall address in a subsequent submittal. The process of submittal and review shall be repeated until the commissioner approves the lessee's proposed supplemental requirements.

[19.2.2.26 NMAC - N, 03/14/2001]

19.2.2.27 ISSUANCE OF RECLAMATION PLAN:

After the permitting agency issues the mining permit or other authorization and commissioner reviews the permit and approves any supplemental requirements, the commissioner will prepare a reclamation plan. The reclamation plan will consist of the permit or other authorization issued by the permitting agency, incorporated by reference, and any supplemental requirements imposed by the commissioner. The lessee shall sign and acknowledge the plan, in triplicate, and return all three originals to the commissioner. The commissioner shall thereafter approve the reclamation plan by signing the plan, in triplicate, and returning one fully executed original to the lessee.

[19.2.2.27 NMAC - N, 03/14/2001]

19.2.2.28 STRICT COMPLIANCE WITH RECLAMATION PLAN:

The lessee shall conduct mining activity in strict compliance with an approved reclamation plan. The reclamation plan in effect at any given time authorizes only such mining activity as is authorized under the permit or other authorization issued by the permitting agency and expressly incorporated by reference into the plan.

[19.2.2.28 NMAC - N, 03/14/2001]

19.2.2.29 ADDITIONAL RECLAMATION PLANS:

The lessee shall obtain an additional reclamation plan before conducting any mining activity that is not authorized under its existing reclamation plan. The lessee shall obtain the additional reclamation plan to cover the new mining activity by following the procedure set out in 19.2.2.25 NMAC through 19.2.2.27 NMAC. The original and all additional reclamation plans approved by the commissioner shall remain in full force and effect unless otherwise provided in the latest plan approved by the commissioner.

In the event of a direct conflict between the most current reclamation plan and any earlier plan, the most current plan shall govern.

[19.2.2.29 NMAC - N, 03/14/2001]

19.2.2.30 SURVIVAL OF RECLAMATION PLAN REQUIREMENTS:

The lessee's obligation to reclaim the trust surface estate in accordance with the reclamation plan in effect at the time the mineral lease is suspended, relinquished or otherwise terminated for any reason shall survive such suspension, relinquishment or termination and continue so long thereafter as lessee's liability under the Mining Act or comparable law continues. In the event of such suspension, relinquishment or termination of the mineral lease, the commissioner will provide the lessee with written authorization to enter the premises to carry out the reclamation plan.

[19.2.2.30 NMAC - N, 03/14/2001]

19.2.2.31 MINE DEVELOPMENT PLAN REQUIRED:

No minerals shall be produced except in substantial compliance with a written mine development plan approved by the commissioner. The mine development plan shall provide for efficient and orderly development of mineral reserves and prevention of waste. The mine development plan shall be consistent with the lessee's obligation to reclaim the premises. The requirements of the mine development plan shall, upon approval by the commissioner, be incorporated automatically into the mineral lease without the necessity of further agreement between the lessee and the commissioner. Failure to substantially comply with the mine development plan shall constitute a violation of the mineral lease.

[19.2.2.31 NMAC - N, 03/14/2001]

19.2.2.32 OBTAINING A MINE DEVELOPMENT PLAN:

The lessee shall submit a proposed mine development plan to the commissioner, who shall review the plan and thereafter notify the lessee, in writing, of any deficiencies. The lessee shall then submit a modified proposal addressing the deficiencies and any other issues raised by the commissioner. This process of submittal and review shall be repeated until the commissioner and lessee reach agreement on the plan. Once agreement is reached, the lessee shall sign and acknowledge the mine development plan, in triplicate, and return all originals to the commissioner. The commissioner shall thereafter approve the plan by signing all three originals and returning one original to the lessee.

[19.2.2.32 NMAC - N, 03/14/2001]

19.2.2.33 MODIFICATION OF MINE DEVELOPMENT PLAN:

If the lessee determines that it is no longer feasible or economically prudent to follow the approved mine development plan, the lessee shall submit a proposed modification of the plan to the commissioner, together with the reasons that modification is required. The lessee shall seek the commissioner's approval for the modification by following the procedure set out in 19.2.2.32 NMAC. The lessee shall continue to comply with the existing mine development plan until the commissioner approves the modification. The commissioner may refuse to approve any modification that the commissioner determines is not in the best interest of the trust.

[19.2.2.33 NMAC - N, 03/14/2001]

19.2.2.34 RESTRICTION ON PERMANENT PITS, PILES AND IMPOUNDMENTS:

No permanent pit, pile, impoundment or any other permanent manmade feature or improvement shall be placed on trust surface estate unless specifically approved by the commissioner. The commissioner may refuse to approve any such permanent feature or improvement that would prevent productive post-mining use of the affected land, as determined by the commissioner, unless the lessee fully compensates the trust for the loss of such land through purchase or other arrangement approved by the commissioner.

[19.2.2.34 NMAC - N, 03/14/2001]

19.2.2.35 NO PROCESSING OR STOCKPILING OF OFF-LEASE MATERIALS:

A mineral lease issued under this rule grants the lessee the right to enter the premises for mining purposes, together with the right to use and occupy so much of the premises as may be necessary or convenient to carry out such mining purposes. A mineral lease does not authorize the lessee to process or stockpile minerals, waste rock, ore, overburden or other materials obtained from off-lease sources. Therefore, unless authorized under a separate commercial lease issued by the commissioner, no minerals, waste rock, ore, overburden or other materials obtained from off-lease sources shall be processed or stockpiled on the trust surface estate covered by a mineral lease.

[19.2.2.35 NMAC - N, 03/14/2001]

19.2.2.36 FINANCIAL ASSURANCE FOR ROYALTIES:

Unless waived by the commissioner in writing, and before the commencement of mining activity, the lessee shall provide financial assurance to guarantee payment of royalties and to comply with the terms and conditions of the mineral lease other than reclamation, which is covered under 19.2.2.39 NMAC. The commissioner will determine the amount of financial assurance required.

[19.2.2.36 NMAC - N, 03/14/2001]

19.2.2.37 FINANCIAL ASSURANCE FOR SURFACE IMPROVEMENTS:

Before commencement of mining activity, the lessee shall execute and provide financial assurance to secure payment for potential injuries to tangible improvements upon the trust surface estate covered by a mineral lease that may result from the lessee's mining activity. The commissioner shall fix financial assurance under this section in an amount not less than five thousand dollars. The financial assurance shall be in favor of the state of New Mexico, but held for the benefit of the state's contract purchasers, patentees and surface lessees with pre-existing rights to the trust surface estate. Provided that, in lieu of said financial assurance, the commissioner may accept a waiver of financial assurance, duly executed or acknowledged by the owners of the improvements.

[19.2.2.37 NMAC - N, 03/14/2001]

19.2.2.38 CONSOLIDATION OF FINANCIAL ASSURANCE FOR MULTIPLE LEASES:

Lessees having multiple leases with the commissioner may, with the approval of the commissioner, provide one instrument to fulfill their total financial assurance obligations under all such leases regarding the protection of tangible surface improvements. The commissioner shall fix the amount of the lessee's consolidated financial assurance obligation, which amount shall not be less than twenty-five thousand dollars. The lessee's obligation to provide financial assurance for payment of royalties and reclamation of trust surface estate is not eligible for coverage under this section.

[19.2.2.38 NMAC - N, 03/14/2001]

19.2.2.39 FINANCIAL ASSURANCE FOR RECLAMATION:

The financial assurance required under 19.2.2.36 NMAC, 19.2.2.37 NMAC and 19.2.2.38 NMAC is in addition to that which the permitting agency may require pursuant the New Mexico Mining Act or comparable law, whichever applies. If the commissioner determines that the amount or coverage of financial assurance required by the permitting agency is insufficient to adequately protect and reclaim trust surface estate, the commissioner may require the lessee to provide additional financial assurance as a supplemental requirement under 19.2.2.26 NMAC.

[19.2.2.39 NMAC - N, 03/14/2001]

19.2.2.40 FORM OF FINANCIAL ASSURANCE:

Forms for all financial assurance instruments required by the commissioner shall either be prescribed by the commissioner or be in a form approved by the commissioner. In addition, the permitting agency must approve the form of financial assurance required for reclamation in accordance with that agency's governing law and regulations.

[19.2.2.40 NMAC - N, 03/14/2001]

19.2.2.41 INSPECTIONS:

A. The commissioner has the right to inspect all records and books of account pertaining to the operations under a mineral lease, including records and books relating to mining, production, extraction, processing, transportation, reduction, returns and reclamation. At the request of the commissioner, the lessee shall furnish such reports, books, records, samples, logs, assays or cores, as the commissioner deems reasonably necessary to the proper administration of the lease.

B. The commissioner has the right to enter the premises and the facilities located thereon to inspect operations thereon, to conduct a field audit and to inspect the records and books referred to in Subsection A of this section. To facilitate field audits and inspections under this subsection, the lessee shall keep originals or true and accurate copies of all of the foregoing records, books, documents and sample materials on the premises unless otherwise approved by the commissioner in writing.

C. The lessee shall allow the permitting agency, the New Mexico environment department, and any government agency to enter the premises and the facilities located thereon to conduct activities or inspection consistent with such agencies' regulatory jurisdiction over lessee's operations or mining activity.

D. No prior notice is required under this section. Failure to timely comply with this section by the lessee, and failure to correct violations noted as a result of site inspections provided hereunder, shall constitute a breach subjecting the lease to cancellation.

[19.2.2.41 NMAC - N, 03/14/2001]

19.2.2.42 STATUTORY COVENANTS:

All mineral leases made under 19.2.2 NMAC shall include and be subject to the statutory covenants to operate and develop the premises and minerals under lease in a workmanlike manner, as set forth at Section 19-8-13 NMSA 1978 and to market and develop, as set forth at Section 19-8-23 NMSA 1978. These covenants are in addition to those that may be implied under the common law.

[19.2.2.42 NMAC - N, 03/14/2001]

19.2.2.43 COMPLIANCE WITH LAWS:

The lessee shall be responsible for compliance with all laws, regulations, rules, ordinances, permits, licenses and other requirements applicable to the leasehold estate and the operations thereon. Upon receiving notice from a government agency of an actual, potential or alleged violation of law, the lessee shall promptly notify the

commissioner of the alleged violation and provide copies of all related documents to the commissioner.

[19.2.2.43 NMAC - N, 03/14/2001]

19.2.2.44 PRIMARY TERM OF MINERAL LEASE:

A. All mineral leases shall be for a primary term of three years and so long thereafter as minerals are produced or mined in paying quantities.

B. Annual rent during the primary term shall be one dollar per acre, which amount shall be paid in advance each year.

[19.2.2.44 NMAC - N, 03/14/2001]

19.2.2.45 SECONDARY TERM OF MINERAL LEASE:

A. If minerals are not produced or mined in paying quantities during the primary term, then the lessee may continue the lease in full force and effect through a secondary term. The secondary term shall be two years and so long thereafter as minerals are produced or mined in paying quantities.

B. Annual rent during the secondary term shall be ten dollars per acre, which amount shall be paid each year in advance.

[19.2.2.45 NMAC - N, 03/14/2001]

19.2.2.46 TERTIARY TERM OF MINERAL LEASE:

A. If minerals are not produced or mined in paying quantities during the primary or secondary term, then the lease may be continued into the tertiary term. The tertiary term shall be five years and so long thereafter as minerals are produced or mined in paying quantities.

B. Annual rent during the tertiary term shall be three dollars per acre, which amount shall be paid each year in advance.

[19.2.2.46 NMAC - N, 03/14/2001]

19.2.2.47 QUATERNARY TERM OF MINERAL LEASE:

A. If minerals are not produced or mined in paying quantities during the primary, secondary or tertiary term, then the lease may be continued into the quaternary term. The quaternary term shall be five years and so long thereafter as minerals are produced or mined in paying quantities.

B. Annual rent during the quaternary term shall be ten dollars per acre, which amount shall be paid each year in advance.

[19.2.2.47 NMAC - N, 03/14/2001]

19.2.2.48 ADVANCE ROYALTY DURING QUATERNARY TERM:

A. In the eleventh year of the lease, the lessee shall pay, in addition to rent, ten dollars per acre as an advance royalty.

B. In the twelfth year of the lease, the lessee shall pay, in addition to rent, twenty dollars per acre as an advance royalty.

C. In the thirteenth year of the lease, the lessee shall pay, in addition to rent, thirty dollars per acre as an advance royalty.

D. In the fourteenth year of the lease, the lessee shall pay, in addition to rent, forty dollars per acre as an advance royalty.

E. In the fifteenth year of the lease, the lessee shall pay, in addition to rent, fifty dollars per acre as an advance royalty.

[19.2.2.48 NMAC - N, 03/14/2001]

19.2.2.49 CREDIT FOR ADVANCE ROYALTIES:

Upon the commencement of production of minerals in paying quantities, the principal sum paid as an advance royalty for the year in which such production commences, and the principal sums so paid for the two previous years, shall be credited against the royalty otherwise payable to the commissioner.

[19.2.2.49 NMAC - N, 03/14/2001]

19.2.2.50 CESSATION OF PRODUCTION BEFORE EXPIRATION OF SET TERMS:

If production in paying quantities commences during the primary or any subsequent term and thereafter ceases before the quaternary term would have expired had there been no such production, then the lease shall be deemed a "non-producing" lease on the date that production in paying quantities ceases. Notwithstanding such cessation of production in paying quantities, a non-producing lease shall not expire if the lessee continues to pay rent and, if the lease is in its quaternary term, advanced royalties. The lessee may maintain the mineral lease in effect under this section until the end of the quaternary term and so long thereafter as minerals are produced in paying quantities.

[19.2.2.50 NMAC - N, 03/14/2001]

19.2.2.51 CESSATION OF PRODUCTION AFTER EXPIRATION OF SET TERMS:

If for any reason beyond the lessee's control, production in paying quantities ceases after the quaternary term would have expired, then the lessee may, with the written approval of the commissioner, continue the lease from year to year for an additional period not to exceed three years. The lessee shall continue to pay in advance the annual rental at the rate provided in the quaternary term and an advance royalty of sixty dollars per acre per each year of the extended term.

[19.2.2.51 NMAC - N, 03/14/2001]

19.2.2.52 SUSPENSION OF MINERAL LEASE:

After notice and hearing, the commissioner shall suspend a mineral lease for a period not exceeding five years if the commissioner finds:

- A.** the lessee is not in default;
- B.** suspension of the lease will not affect compliance with safety, reclamation or environmental requirements;
- C.** the lessee submitted a written request for suspension to the commissioner prior to expiration of the lease;
- D.** the lessee submitted adequate evidence, as determined by the commissioner, to prove that the discovery on the premises of an ore body containing valuable mineral deposits in merchantable quality and quantity; and
- E.** temporary conditions beyond the lessee's control have precluded mining on the premises except at an economic loss or at an unreasonable threat to safety.

[19.2.2.52 NMAC - N, 03/14/2001]

19.2.2.53 LESSEE'S OBLIGATIONS DURING SUSPENSION OF MINERAL LEASE:

All lease obligations, including the obligation to pay rent and royalties, shall be suspended during the period the mineral lease is suspended. Provided, however, that the lessee shall pay the annual rental required in Section 19-8-19.1 NMSA 1978 for each year of suspension. Suspension of a mineral lease shall not operate to relieve the lessee from its obligations under the New Mexico Mining Act.

[19.2.2.53 NMAC - N, 03/14/2001; A, 06/30/2016]

19.2.2.54 NOTICE OF COMMENCEMENT OF PRODUCTION:

Within five days after commencing production, the lessee shall notify the commissioner of such production in writing, giving the date that production commenced, and stating specifically the legal subdivision, section, township and range where production occurred. The lessee shall provide the same notice where production re-commences after a period of cessation lasting three consecutive months or longer.

[19.2.2.54 NMAC - N, 03/14/2001]

19.2.2.55 AMOUNT OF ROYALTY:

In addition to annual rentals, the lessee shall pay royalty on production as determined by the commissioner and as specified in the notice of sale and the lease. For all minerals except special minerals, the royalty shall be no less than two percent of the gross returns less the actual and reasonable transportation and smelting or reduction costs up to fifty percent of the gross returns. Gross returns shall be based on the arm's-length sales price of the produced minerals and shall include, if applicable, all premiums, bonuses and other consideration of any kind received by the lessee for the minerals produced from the premises. The lessee shall calculate royalty for special minerals in exactly the same manner as for other minerals, except that the royalty percentage shall be no less than five percent of the gross returns.

[19.2.2.55 NMAC - N, 03/14/2001]

19.2.2.56 PAYMENT OF ROYALTY AND ACCOUNTING:

The lessee shall pay the correct amount of royalty to NMSLO on the twentieth day of the month following the month of use, sale or other disposal of minerals. On the same day, the lessee shall submit to NMSLO a production and royalty statement, accounting for the production and royalty for the previous calendar month. Such statements shall be prepared upon forms prescribed and furnished by the commissioner and in accordance with instructions accompanying the forms.

[19.2.2.56 NMAC - N, 03/14/2001]

19.2.2.57 LEASE ASSIGNMENTS MUST BE APPROVED BY COMMISSIONER:

The lessee may assign a mineral lease, in whole or in part, only if the commissioner approves the assignment. No purported assignment will bind the state of New Mexico, or change the lessee of record, unless approved in writing by the commissioner. Provided, however, that a mere change in the name of the mineral lessee will not constitute an assignment requiring approval by the commissioner. The lessee shall promptly notify the commissioner, in writing, of any change in name or mailing address.

[19.2.2.57 NMAC - N, 03/14/2001]

19.2.2.58 APPROVAL OF LEASE ASSIGNMENTS:

The commissioner will approve an assignment of mineral lease, in whole or in part, if the commissioner finds:

- A. the assignment does not create an undivided interest in the lease or any part thereof;
- B. the assigned portion of the premises is not less than a legal subdivision;
- C. the assignment is executed in the proper form and by the proper person;
- D. the lease is in good standing as to the assigned portion of the premises;
- E. no litigation is pending that could affect the lease or the interest of any person therein;
- F. the assignee has been pre-qualified pursuant to 19.2.2.21 NMAC; and
- G. the assignment will not adversely affect the interests of the trust.

[19.2.2.58 NMAC - N, 03/14/2001]

19.2.2.59 FORM OF ASSIGNMENTS:

Assignments of mineral leases shall be upon forms prescribed and furnished by the commissioner. The commissioner's approval of an assignment shall be noted on all copies of the assignment. Assignments shall be executed and acknowledged in the same manner prescribed for conveyance of real estate and shall be filed in triplicate with the commissioner. One original shall be recorded permanently, the second filed and the third returned to the assignee.

[19.2.2.59 NMAC - N, 03/14/2001]

19.2.2.60 ASSIGNMENT FEE:

The non-refundable fee for filing an assignment of a mineral lease shall be set forth in the schedule of fees.

[19.2.2.60 NMAC - N, 03/14/2001]

19.2.2.61 EFFECT OF ASSIGNMENT:

Upon approval by the commissioner of a valid mineral lease assignment, the assignor shall stand relieved from all lease obligations to the commissioner with respect to the state trust resources embraced in the assignment. The state shall likewise be relieved from all obligations to the assignor as to such resources. Upon assignment, the assignee shall succeed to all of the rights and privileges of the assignor with respect to

the assigned lease and shall, upon assignment, be liable for all obligations of the assignor as to the commissioner. Nothing in this section shall relieve any person from liability under the New Mexico Mining Act, comparable law, or any permit or authorization issued thereunder.

[19.2.2.61 NMAC - N, 03/14/2001]

19.2.2.62 PRODUCTION IN PAYING QUANTITIES HOLDS LEASE AND ALL ASSIGNMENTS:

Production of minerals in paying quantities from anywhere on the premises, as defined by the original lease, will continue the term of the lease and all assignments thereof.

[19.2.2.62 NMAC - N, 03/14/2001]

19.2.2.63 SUBLEASING PROHIBITED:

The lessee shall not sublease the mineral lease.

[19.2.2.63 NMAC - N, 03/14/2001]

19.2.2.64 SIDE AGREEMENTS

Notwithstanding any other provision herein, side agreements that do not constitute assignments but which define or set out the various interests of other parties in a mineral lease may be filed with the commissioner as miscellaneous instruments upon payment of the filing fee set out in the schedule of fees. Such filing shall constitute constructive notice to the world of the existence and the contents thereof. Side agreements are not binding upon the commissioner and do not change the lessee's obligations under any mineral lease. The lessee of record shall remain responsible for compliance with the terms and conditions of the mineral lease.

[19.2.2.64 NMAC - N, 03/14/2001]

19.2.2.65 TRANSFER OF RESIDENT DECEDENT'S LEASE:

To transfer an interest in a lease owned by a deceased resident of New Mexico to the decedent's heirs or devisees, proper probate proceedings must be held in accordance with the New Mexico Probate Code. Certified copies of such proceedings showing proper legal authority to transfer shall be filed with the commissioner. Provided, however, that where lawful transfer occurs outside of probate, the purported transferee shall file with the commissioner the death certificate of the lessee and all instruments effecting transfer of the lease.

[19.2.2.65 NMAC - N, 03/14/2001]

19.2.2.66 TRANSFER OF NON-RESIDENT DECEDENT'S LEASE:

To transfer an interest in a lease owned by a nonresident decedent (a person who was not a resident of New Mexico at the time of the person's death) to the decedent's heirs or devisees, the decedent's estate must be probated in the state of such decedent's residence and ancillary proceedings conducted in the proper New Mexico court. Certified copies of the proceedings showing proper legal authority to transfer shall be filed with the commissioner. Provided, however, that where lawful transfer occurs outside of probate, the purported transferee shall file with the commissioner the death certificate of the lessee and all instruments effecting transfer of the lease.

[19.2.2.66 NMAC - N, 3/14/2001; A, 6/11/2019]

19.2.2.67 CANCELLATION OF MINERAL LEASE AND OPPORTUNITY TO CURE:

The commissioner may cancel any mineral lease for non-payment of rentals, non-payment (or underpayment) of royalties and for violation of any of the terms, covenants or conditions of the mineral lease. However, before any such cancellation shall be made, the commissioner shall mail a thirty-day notice of cancellation to the lessee, by registered or certified mail, at the address of the lessee shown by the records of the NMSLO. The thirty-day notice shall specify the default for which the lease is subject to cancellation. If the default is not cured within thirty days after the commissioner mails the notice, then the commissioner may enter cancellation. No proof of receipt of such notice is necessary for cancellation. The lessee shall be liable for all reasonable attorneys fees and costs incurred by the commissioner in enforcing the terms of the lease, including fees and costs incurred in regaining possession of and reclaiming the premises.

[19.2.2.67 NMAC - N, 03/14/2001]

19.2.2.68 RELINQUISHMENT OF MINERAL LEASE:

With the consent of the commissioner, a mineral lease in good standing may be relinquished, in whole or in part, upon approval of the commissioner and payment of the non-refundable filing fee in accordance with the schedule of fees. However, the commissioner will not approve relinquishment of an undivided interest in a lease or less than a legal subdivision. Relinquishment does not relieve the lessee from its obligation to reclaim the trust surface estate.

[19.2.2.68 NMAC - N, 03/14/2001]

19.2.2.69 RESERVATIONS:

All rights not expressly granted under the mineral lease are reserved to the commissioner. Notwithstanding the issuance of a mineral lease, the commissioner specifically reserves the right to:

- A.** lease the premises for grazing, agricultural or commercial purposes;
- B.** lease the premises for oil and gas exploration and extraction;
- C.** lease the premises for the development of geothermal resources;
- D.** sell the premises subject to the mineral lease, reserving all minerals of whatsoever kind to the state of New Mexico; and
- E.** issue rights of way and easements over, upon or across trust surface estate for any purpose, including but not limited to, public highways, railroads, tramways, telegraph, telephone and power lines, pipelines, irrigation works, mining, logging and for exploration and development of geothermal resources.

[19.2.2.69 NMAC - N, 03/14/2001]

19.2.2.70 WAIVER OF RESERVATIONS:

The commissioner may, at the commissioner's discretion, agree not to exercise one or more of the rights reserved under 19.2.2.69 NMAC upon payment of additional consideration determined by the commissioner.

[19.2.2.70 NMAC - N, 03/14/2001]

19.2.2.71 COMMISSIONER'S STATUTORY RIGHT TO PURCHASE PRODUCTION:

The commissioner has the right to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the minerals that may be produced from the premises. (The commissioner may waive this reservation by following the procedure set out in Section 19-14-2 NMSA 1978.)

[19.2.2.71 NMAC - N, 03/14/2001]

19.2.2.72 ROAD DEVELOPMENT:

Lessees shall comply with the requirements for development and closure of roads set forth in 19.2.20 NMAC.

[19.2.2.72 NMAC - N, 03/14/2001]

19.2.2.73 TRESPASS AND PREVENTION OF WASTE:

Lessees shall protect the premises and mineral estate from waste or trespass in accordance with Sections 19-6-1 *et seq.* NMSA 1978.

[19.2.2.73 NMAC - N, 03/14/2001]

19.2.2.74 WATER RIGHTS:

The lessee shall obtain and exercise water rights on the premises only as approved in writing by the commissioner, in a manner consistent with the mineral lease, the rules issued by the commissioner and New Mexico water law.

[19.2.2.74 NMAC - N, 03/14/2001]

19.2.2.75 VENUE AND APPLICABLE LAW:

All legal actions regarding mineral leases issued under 19.2.2 NMAC shall be brought in the First Judicial District, Santa Fe, New Mexico. New Mexico law shall govern.

[19.2.2.75 NMAC - N, 03/14/2001]

19.2.2.76 JOINT AND SEVERAL LIABILITY:

Where two persons are both lessees under the same mineral lease, they shall be jointly and severally liable for all obligations imposed by such lease.

[19.2.2.76 NMAC - N, 03/14/2001]

19.2.2.77 NO WAIVER:

The delay of the commissioner in asserting any right of the state under the mineral lease shall under no circumstances constitute a waiver of such right.

[19.2.2.77 NMAC - N, 03/14/2001]

19.2.2.78 INTEREST ON LATE PAYMENTS:

Lessee shall pay interest at the rate of one percent per month on any late payment of rents, royalties or other payments required under the mineral lease. If the lessee fails to pay the entire amount owed, then interest shall accrue on the unpaid portion. Interest shall begin to accrue on the day the payment becomes due and continue to accrue daily until payment is made.

[19.2.2.78 NMAC - N, 03/14/2001]

19.2.2.79 REMOVAL OF IMPROVEMENTS:

Upon termination of the mineral lease by reason of forfeiture, surrender, expiration of term or for any other reason, lessee may, pursuant to Section 19-8-29, remove all improvements and equipment as can be removed without material injury to the premises; provided, however, that all rents and royalties have been paid and that such removal is accomplished within two years from the termination date or before such earlier date as the commissioner may set upon thirty (30) days' written notice to the lessee. All improvements and equipment remaining upon the premises after the removal date as set in accordance with this section shall be forfeited to the state of New Mexico without compensation, unless such forfeiture is disclaimed by the commissioner. Notwithstanding the foregoing, the commissioner may require the lessee to remove any and all improvements from the premises and to reclaim any surface disturbance caused by such removal in accordance with its reclamation plan.

[19.2.2.79 NMAC - N, 03/14/2001]

19.2.2.80 ADDITIONAL TERMS AND CONDITIONS:

The commissioner may include in any mineral lease additional terms and conditions not set out in this rule, as the commissioner deems appropriate.

[19.2.2.80 NMAC - N, 03/14/2001]

PART 3: LEASING OF POTASSIUM, SULPHUR, SODIUM, PHOSPHORUS, AND SIMILAR MINERALS, AND THEIR SALTS AND COMPOUNDS EXCEPT SODIUM CHLORIDE

19.2.3.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.3.1 NMAC - Rn, 19 NMAC 3. SLO 3.1, 9/30/2002]

19.2.3.2 SCOPE:

This rule pertains to all potassium, sulphur, sodium, phosphorus, and similar minerals, and their salts and compounds except sodium chloride on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This rule governs lessees of trust lands entered into subsequent to the date of this rule.

[12/31/1999; 19.2.3.2 NMAC - Rn, 19 NMAC 3. SLO 3.2, 09/30/2002]

19.2.3.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands is found in N.M. Const., art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.3.3 NMAC - Rn, 19 NMAC 3. SLO 3.3, 9/30/2002]

19.2.3.4 DURATION:

Permanent.

[12/31/1999; 19.2.3.4 NMAC - Rn, 19 NMAC 3. SLO 3.4, 9/30/2002]

19.2.3.5 EFFECTIVE DATE:

March 1, 1984, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.3.5 NMAC - Rn, 19 NMAC 3. SLO 3.5, 9/30/2002; A, 6/30/2016]

19.2.3.6 OBJECTIVE:

The objective of 19.2.3 NMAC is to provide for the orderly and lawful administration, and the appropriate development of those minerals covered by this rule on trust lands.

[12/31/1999; 19.2.3.6 NMAC - Rn, 19 NMAC 3. SLO 3.6, 09/30/2002]

19.2.3.7 DEFINITIONS:

"**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.3.7 NMAC - Rn, 19 NMAC 3. SLO 3.7, 9/30/2002; A, 6/30/2016]

19.2.3.8 LANDS SUBJECT TO LEASE:

Applications to lease will be considered only for such lands as may be shown to be open for leasing upon the tract books of the New Mexico state land office and, although priority in time of filing ordinarily will determine the preference right to lease, the commissioner reserves the right to reject all applications, at any time before lease issues, and to withhold from leasing or to offer the lease to the highest bidder therefor. Leases may not exceed two thousand five hundred sixty (2,560) acres.

[12/31/1999; 19.2.3.8 NMAC - Rn, 19 NMAC 3. SLO 3.8, 9/30/2002]

19.2.3.9 APPLICATIONS:

Each application for lease shall be made with ink or with typewriter, in duplicate, upon forms to be prescribed and furnished by the commissioner, which application shall be acknowledged, shall be accompanied by an application fee as set forth in the schedule of fees, and shall be accompanied by the first (1st) year's rental. In addition, it shall be accompanied by an appraisal, under oath, of the lands and minerals made by some disinterested party upon forms furnished by the New Mexico state land office.

[12/31/1999; 19.2.3.9 NMAC - Rn, 19 NMAC 3. SLO 3.9, 9/30/2002; A, 6/30/2016]

19.2.3.10 TERM:

Leases will be made upon forms prescribed and furnished by the commissioner and ordinarily will be for a term of 10 years and so long thereafter as said minerals or any of them are produced in paying quantities from the lands. The commissioner reserves the right to issue leases for a lesser primary or fixed term than 10 years when under the circumstances the commissioner deems a shorter term to be in the best interests of the trust. (See 19.2.3.14 NMAC for extension of term by suspension of production).

[12/31/1999; 19.2.3.10 NMAC - Rn, 19 NMAC 3. SLO 3.10, 9/30/2002; A, 6/11/2019]

19.2.3.11 RENTAL:

he rental charge for such leases will be negotiated but shall in no event be less than ten cents (\$.10) per acre, or fraction thereof, payable annually in advance, but the minimum first (1st) year's rental will be one hundred dollars (\$100.00) in any event as provided by Section 19-8-4 NMSA 1978.

[12/31/1999; 19.2.3.11 NMAC - Rn, 19 NMAC 3. SLO 3.11, 9/30/2002]

19.2.3.12 ROYALTIES; REDUCTION IN MINIMUM ROYALTIES:

A. Royalties will be established by the commissioner on a negotiated basis and such royalty shall be computed on the gross value of the product after processing, without deductions of any kind, regardless of the place of sale. The minimum royalty rates for potassium chlorides and sulphates shall be as follows:

(1) POTASSIUM CHLORIDES* ROYALTY RATE

(Grade of Ore Mined)

10.00% K20 or less 2.00%

**

**

17.09% K20 or more 5.00%

*(Mined by conventional methods and based on the K20 grade, as sylvite.)

**Intervening ore grade increments are to be proportioned to the foregoing royalty rate limits and royalty rate to be computed according to the formula:

Royalty rate = 2.00% + [(% K2O grade mined - 10.00% K2O) x 0.423077], the K2O grade mined and royalty rate to be determined to the nearest 0.00 percent.

(2) SULPHATES ROYALTY RATE

Langbeinite 2.50%

B. At the discretion of the commissioner and upon the showing of good cause, the royalties set out above in subsection A of 19.2.3.12 NMAC may be reduced. The lessee must submit a written request to the commissioner outlining the expenses and costs of operating the entire lease, the income from the sale of any leased products and all facts tending to show whether the mines can be successfully operated upon the royalty fixed in the lease.

[12/31/1999; 19.2.3.12 NMAC - Rn, 19 NMAC 3. SLO 3.12, 9/30/2002]

19.2.3.13 OPERATIONS BEFORE DISCOVERY:

A. Leases will require the lessee, within twelve (12) months from date of lease, unless extension be granted, to begin actual drilling upon the leased lands with machinery and equipment suitable for taking and preserving a core and to prosecute such drilling with reasonable diligence to a prescribed depth or to a depth as may be necessary to penetrate the formations containing the minerals for which the lease has been issued.

B. Upon completion of the first (1st) test bore, it will be required that an additional test bore shall be drilled each year thereafter until the number of bores completed shall equal the number of sections of land contained in the lease. Should fractions of sections be involved, a minor fraction of a section shall be disregarded and a major fraction shall be treated as a full section.

C. Leases shall provide, however, that where the deposits of the minerals are so situated that prospecting work may effectually be carried on by shafts, tunnels, open cuts or in any manner other than by drilling testbores, such prospecting work may be accepted in lieu of drilling.

D. In cases where there has been discovery of minerals in commercial quantities on the lands, or any production of any such minerals on such state land on a commercial basis has begun, any lease may provide for a specified minimum annual production of such minerals in lieu of the requirements of this rule.

[12/31/1999; 19.2.3.13 NMAC - Rn, 19 NMAC 3. SLO 3.13, 9/30/2002]

19.2.3.14 OPERATIONS AFTER DISCOVERY:

If minerals in commercial quantities shall be discovered on the leased lands, the lessee shall be required to develop and produce the same in commercial quantities with reasonable diligence; provided, however, the commissioner may, after hearing, authorize the suspension of production on such lease or leases for a period not to exceed five (5) years at any one (1) time and in no event shall any suspension be for more than ten (10) years from the date on which the term of the lease would have expired in the absence of suspension of production. Suspensions under this Rule will not be granted unless the commissioner finds:

A. temporary conditions exist, with regard to the leased land being mined, which would operate to prevent the mining of the maximum mineable ore in keeping with safe mining practices;

B. separate parts of the lands covered by the lease are so situated with respect to other lands owned or leased by the lessee that lessee should be allowed a reasonable time to reach and mine the various parts of the lands covered by the lease in keeping with an orderly mining program and with a view to the proper development and mining of the entire area of which various parts of the lands covered by the lease and other lands are an integral part; or

C. temporary marketing conditions are such that the lease cannot be mined and operated except at a loss. Suspensions hereunder extend the term of the lease to coincide with the term of the suspension.

[12/31/1999; 19.2.3.14 NMAC - Rn, 19 NMAC 3. SLO 3.14, 9/30/2002]

19.2.3.15 SPECIAL AREA REQUIREMENTS:

The following requirements, applicable only to the area hereinafter named, shall be in addition to, and not in exclusion of, any other rule.

A. Mining of minerals held in solution in the natural brines shall be permitted within the area west of the Pecos river south of the south boundary of township 20 south, east of the east boundary of range 21 east, and north of the state line.

B. Any wells drilled upon leases issued pursuant to the rules herein, which wells lie within any declared underground water basin, shall, in addition to said rules, conform to the requirements of the state engineer.

C. Location, drilling and well record reports will be required to be submitted to the New Mexico state land office on all wells drilled. The standard forms of the New Mexico oil conservation commission shall be used in submitting these reports.

D. An analysis of the brine, or solution, found in each well must be submitted upon completion of the well, and annually on the anniversary date of the lease thereafter;

provided, however, that such an analysis may be required to be submitted more often if deemed necessary by the commissioner.

E. Production reports showing the number of gallons of solution produced by each well in each month shall be submitted monthly in connection with royalty reports showing mineral production, amount sold and the sale price. Such reports shall be submitted no later than the twentieth (20th) day of the next succeeding month.

F. In all cases, there shall be reserved to the state a royalty of not less than five percent (5%) of the amount of value of the minerals produced, such royalty to be computed upon the value of said minerals delivered at the nearest or most accessible railroad shipping point. After the primary term of the lease, royalty shall be at the rate of eight percent (8%) of the next sale price, computed as above.

G. The minimum rental charge for leases will be ten cents (\$.10) per acre, payable annually in advance, but the minimum rental shall be no less than one hundred dollars (\$100.00) in any event. An application fee as set forth in the schedule of fees will be charged in addition thereto for each application.

H. A good and sufficient bond as provided in 19.2.3.17 NMAC shall be filed before a lease may be issued; provided, however, that such bond shall be conditioned to conform with all the provisions of the lease including but not limited to drilling and plugging requirements.

I. A lease that includes land held under purchase contract(s), or previously patented with reservation of the minerals to the State, shall comply with additional bond requirements as provided by law.

J. A minimum of one (1) well must be drilled for each three hundred twenty (320) acres or fraction thereof encompassed in the lease, must be drilled at the rate of one (1) well the first (1st) year, two (2) the second (2nd) year, and four (4) per year thereafter until the minimum number of wells shall have been drilled. A well, in order to be included in the calculation of minimum requirements, shall be drilled to a depth of seven hundred fifty (750) feet, or through the brine horizon.

K. The term of the lease contemplated herein shall be for a five (5) year definite term, and so long thereafter as said minerals or any of them, in paying quantities, are produced by the lessee from the lands embraced in such lease, subject to all of their terms and conditions as set forth in such lease.

[12/31/1999; 19.2.3.15 NMAC - Rn, 19 NMAC 3. SLO 3.15, 09/30/02; A, 6/30/2016]

19.2.3.16 REPORTS AND INSPECTION:

Monthly reports of operations, production and sale of minerals or materials will be required of lessee to be filed with the commissioner on or before the 20th day of the

month following the end of the calendar month of production upon forms prescribed and furnished by the commissioner. The records, books of account and operations pertaining to the mining, extraction, transportation, production, returns, and sales of all ores or minerals taken from the leased lands shall be open and available for field audit and for inspection by the commissioner or the commissioner's authorized agents at all reasonable times.

[12/31/1999; 19.2.3.16 NMAC - Rn, 19 NMAC 3. SLO 3.16, 9/30/2002; A, 6/11/2019]

19.2.3.17 SURETY:

A. A corporate surety lease performance and surface users improvement damage bond or other surety shall be filed with the commissioner before a lease shall be issued. Such bond shall be in the amount of not less than five hundred dollars (\$500.00) for each section or fraction thereof under lease to the same lessee. Under this rule, 16 legal subdivisions, whether or not included in the same numbered lease, shall be considered a section. Standard bond forms will be furnished by the commissioner upon request.

B. Once production is had upon any land leased to a lessee, whether upon one or more leases, such lessee shall file with the commissioner either a new lease performance bond or other surety or shall increase the lessee's existing bond or surety to the sum of ten thousand dollars (\$10,000.00). Provided, however, the commissioner from time to time, for good cause shown, may increase the amount of such lease performance bond to an amount which the commissioner deems necessary to protect the interests of the trust.

C. With the approval of the commissioner, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources, or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

[12/31/1999; 19.2.3.17 NMAC - Rn, 19 NMAC 3. SLO 3.17, 09/30/02; A, 6/11/2019]

19.2.3.18 ASSIGNMENT AND RELINQUISHMENT:

No assignment of a lease or any portion thereof will be made except with the approval of the commissioner upon such terms and conditions as the commissioner may require. All assignments shall be upon forms prescribed and furnished by the commissioner,

which shall recite, among other things, the consideration received for the assignment. In the event a lessee desires to transfer a portion of the lease, the lessee may do so with the approval of the commissioner by relinquishing that portion to the commissioner in order that a new and separate lease may be issued to the third party. Any lease in good standing may, with the approval of the commissioner and the payment of a fee as set forth in the schedule of fees, be relinquished to the state of New Mexico.

[12/31/1999; 19.2.3.18 NMAC - Rn, 19 NMAC 3. SLO 3.18, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.3.19 CANCELLATION:

Leases may be canceled for breach or violation of any of the terms or conditions of the lease or of these rules and regulations; provided, however, that before any such cancellation shall be made, the commissioner shall mail to the lessee, by registered mail addressed to the post office address of such lessee as shown by the records, a thirty (30) day notice of intention to cancel said lease, specifying the default for which the lease is subject to cancellation. Thirty (30) days after such mailing the commissioner may enter cancellation unless the lessee shall have sooner remedied the default to the satisfaction of the commissioner.

[12/31/1999; 19.2.3.19 NMAC - Rn, 19 NMAC 3. SLO 3.19, 9/30/2002]

19.2.3.20 RESERVATION OF RIGHT TO PURCHASE PRODUCTION:

The commissioner reserves a continuing option to purchase at any time, and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the minerals that may be produced from the lands embraced in all leases issued on or after June 11, 1973. The commissioner may waive this reservation by following the statutory procedure set out in Section 19-14-2 NMSA 1978.

[12/31/1999; 19.2.3.20 NMAC - Rn, 19 NMAC 3. SLO 3.20, 9/30/2002]

19.2.3.21 [RESERVED]

[12/31/1999; 19.2.3.21 NMAC - Rn, 19 NMAC 3. SLO 3.21, 9/30/2002; Repealed, 6/30/2016]

PART 4: RELATING TO LEASING OF STATE LANDS FOR SODIUM CHLORIDE OR COMMON SALT

19.2.4.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.4.1 NMAC - Rn, 19 NMAC 3. SLO 4.1, 9/30/2002]

19.2.4.2 SCOPE:

This rule pertains to all sodium chloride or common salt on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This Rule governs the lessees of such trust lands entered into subsequent to the date of this rule.

[12/31/1999; 19.2.4.2 NMAC - Rn, 19 NMAC 3. SLO 4.2, 9/30/2002]

19.2.4.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands is found in N.M. Const., art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.4.3 NMAC - Rn, 19 NMAC 3. SLO 4.3, 9/30/2002]

19.2.4.4 DURATION:

Permanent.

[12/31/1999; 19.2.4.4 NMAC - Rn, 19 NMAC 3. SLO 4.4, 9/30/2002]

19.2.4.5 EFFECTIVE DATE:

January 20, 1984, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.4.5 NMAC - Rn, 19 NMAC 3. SLO 4.5, 9/30/2002; A, 6/30/2016]

19.2.4.6 OBJECTIVE:

The objective 19.2.4 NMAC is to provide for the orderly and lawful administration, and the appropriate development of sodium chloride or common salt resources on trust lands.

[12/31/1999; 19.2.4.6 NMAC - Rn, 19 NMAC 3. SLO 4.6, 9/30/2002]

19.2.4.7 DEFINITIONS:

"Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.4.7 NMAC - Rn, 19 NMAC 3. SLO 4.7, 9/30/2002; A, 6/30/2016]

19.2.4.8 LANDS SUBJECT TO LEASE:

Application to lease will be considered only for such lands as may be shown to be open for leasing upon the tract books of the New Mexico state land office and, although priority in time of filing ordinarily will determine the preference right to lease, the commissioner reserves the right to reject all applications at any time before lease issues, and to withhold from leasing or to offer the lease to the highest bidder therefor.

[12/31/1999; 19.2.4.8 NMAC - Rn, 19 NMAC 3. SLO 4.8, 9/30/2002]

19.2.4.9 APPLICATIONS:

Each application for lease shall be made with ink, or with typewriter, in duplicate, upon forms to be prescribed and furnished by the commissioner. The application shall be acknowledged, shall be accompanied by the fee as set forth in the schedule of fees (nonrefundable), and shall be accompanied by the first (1st) year's rental as prescribed by 19.2.4.12 NMAC. In addition, the application shall be accompanied by an appraisal of the land and minerals made under oath by some disinterested party familiar with the land upon forms prescribed and furnished by the New Mexico state land office.

[12/31/1999; 19.2.4.9 NMAC - Rn, 19 NMAC 3. SLO 4.9, 9/30/2002; A, 6/30/2016]

19.2.4.10 TERM:

Leases will be made upon forms prescribed and furnished by the commissioner and ordinarily will be for a term of 10 years and as long thereafter as salt in paying quantities shall be produced from the leased land. The commissioner reserves the right to issue leases for a primary or fixed term less than 10 years when under the circumstances the commissioner deems a shorter term to be in the best interest of the trust.

[12/31/1999; 19.2.4.10 NMAC - Rn, 19 NMAC 3. SLO 4.10, 9/30/2002; A, 6/11/2019]

19.2.4.11 ROYALTY:

Royalties shall be determined through negotiation, but shall not be less than ten (10) percent of the actual sale price of the salt at the place of extraction. The royalty shall be paid quarterly and the commissioner may prescribe advance royalty to be paid annually on or before the anniversary date of the lease in such sums as the commissioner may determine in each case before issuance of the lease. Royalty accruing for the lease year for which such advance royalty payments are made will be credited against the advance royalty payment made for that year.

[12/31/1999; 19.2.4.11 NMAC - Rn, 19 NMAC 3. SLO 4.11, 9/30/2002]

19.2.4.12 RENTAL:

In lieu of advance royalty as provided in 19.2.4.11 NMAC, the lease may provide for payment of an annual payment at a negotiated rate, but not less than twenty-five dollars (\$25.00) for each legal subdivision of forty (40) acres, more or less.

[12/31/1999; 19.2.4.12 NMAC - Rn, 19 NMAC 3. SLO 4.12, 9/30/2002]

19.2.4.13 REPORTS AND INSPECTION:

Quarterly reports of operation, production and sale of salt shall be filed by the lessee on or before the 20th day of the month following the last day of the reporting quarter. Such reports shall be upon forms prescribed and furnished by the commissioner. The records, books of account, and operations pertaining to mining, extraction, transportation, production, returns and sales of all salt shall be open and available for field audit and inspection by the commissioner or the commissioner's authorized agents at all reasonable times.

[12/31/1999; 19.2.4.13 NMAC - Rn, 19 NMAC 3. SLO 4.13, 9/30/2002; A, 6/11/2019]

19.2.4.14 SURETY:

A. A corporate surety, performance and improvement damage bond in such sum as the commissioner in each case may prescribe (minimum of five hundred dollars \$500.00 for a single lease bond and one thousand dollars \$1,000.00 for a multiple lease or blanket bond) executed by the lessee with satisfactory surety shall be executed by the lessee before a lease is issued.

B. With the approval of the commissioner, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee under one (1) or more state leases or permits for minerals, oil and gas, coal or geothermal resources or as holder under one (1) or more state rights of way or easements which the lessee or its successors or assigns has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal, or geothermal resources and of all state rights of way and easements executed with the commissioner including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

[12/31/1999; 19.2.4.14 NMAC - Rn, 19 NMAC 3. SLO 4.14, 9/30/2002]

19.2.4.15 ASSIGNMENT AND RELINQUISHMENT:

No lease may be assigned or relinquished without the written approval of the commissioner upon such terms and conditions as the commissioner may require and

the payment of the fee as set forth in the schedule of fees. All assignments shall be upon forms prescribed by the commissioner and shall recite, among other things, the consideration received for the assignment.

[12/31/1999; 19.2.4.15 NMAC - Rn, 19 NMAC 3. SLO 4.15, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.4.16 CANCELLATION:

Leases may be canceled for breach or violation of any of the terms or conditions of the lease or of these rules; provided, however, that before any such cancellation shall be made, the commissioner shall mail to the lessee, by registered mail, addressed to the post office address of such lessee as shown by the New Mexico state land office records, a thirty (30) day notice of intention to cancel said lease, specifying the default for which the lease is subject to cancellation. Thirty (30) days after such mailing, the commissioner may enter cancellation unless the lessee shall have sooner remedied the default to the satisfaction of the commissioner.

[12/31/1999; 19.2.4.16 NMAC - Rn, 19 NMAC 3. SLO 4.16, 9/30/2002]

19.2.4.17 RESERVATION OF RIGHT TO PURCHASE PRODUCTION:

The commissioner reserves a continuing option to purchase at any time, and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the minerals that may be produced from the lands embraced in all leases issued on or after June 11, 1973. The commissioner may waive this reservation by following the statutory procedure set out in Section 19-14-2 NMSA 1978.

[12/31/1999; 19.2.4.17 NMAC - Rn, 19 NMAC 3. SLO 4.17, 9/30/2002]

19.2.4.18 [RESERVED]

[12/31/1999; 19.2.4.18 NMAC - Rn, 19 NMAC 3. SLO 4.18, 9/30/2002; Repealed, 6/30/2016]

PART 5: RELATING TO LEASES AND PERMITS FOR CALICHE, GYPSUM, CLAY, SAND, GRAVEL, STONE, SHALE, PERLITE, VOLCANIC DEPOSITS, AND BORROW DIRT

19.2.5.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, Santa Fe, New Mexico 87501.

[5/14/1999; 19.2.5.1 NMAC - Rn, 19 NMAC 3. SLO 5.1, 9/30/2002]

19.2.5.2 SCOPE:

Current and future lessees of state trust lands.

[5/14/1999; 19.2.5.2 NMAC - Rn, 19 NMAC 3. SLO 5.2, 9/30/2002]

19.2.5.3 STATUTORY AUTHORITY:

NMSA sections 1978 19-1-23 and 19-8-12.

[5/14/1999; 19.2.5.3 NMAC - Rn, 19 NMAC 3. SLO 5.3, 9/30/2002]

19.2.5.4 DURATION:

Permanent.

[5/14/1999; 19.2.5.4 NMAC - Rn, 19 NMAC 3. SLO 5.4, 9/30/2002]

19.2.5.5 EFFECTIVE DATE:

May 14, 1999, unless a later date is cited at the end of a section.

[5/14/1999; 19.2.5.5 NMAC - Rn, 19 NMAC 3. SLO 5.5, 9/30/2002; A, 6/30/2016]

19.2.5.6 OBJECTIVE:

To provide the general terms and conditions for the mining of caliche, gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits and borrow dirt on trust lands. Mining for caliche may be by short-term permit or long-term lease.

[5/14/1999; 19.2.5.6 NMAC - Rn, 19 NMAC 3. SLO 5.6, 9/30/2002]

19.2.5.7 DEFINITIONS:

"Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[5/14/1999; 19.2.5.7 NMAC - Rn, 19 NMAC 3. SLO 5.7, 9/30/2002; A, 6/30/2016]

19.2.5.8 LANDS AND MINERALS SUBJECT TO LEASE OR PERMIT:

A. Leases may be issued for the extraction of caliche, gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits, and borrow dirt only for those lands shown to be open for leasing of that mineral by the tract books of the state land office.

B. The commissioner may issue permits, which are expected to last no more than fifteen (15) days, for removal of caliche on lands with existing pit sites ("community pit") and for the removal of other minerals listed in this rule.

C. An oil and gas lessee may use caliche necessarily disturbed from acreage under the oil and gas lease only pursuant to 19.2.5.11 NMAC or may obtain a lease for caliche.

[5/14/1999; 19.2.5.8 NMAC - Rn, 19 NMAC 3. SLO 5.8, 9/30/2002]

19.2.5.9 LEASES:

A. Application to lease.

(1) Applications for lease shall be submitted in duplicate upon forms prescribed by the commissioner and shall contain the following:

(a) a nonrefundable application fee in the amount set forth in the schedule of fees;

(b) a legal description of the location of the lands to be leased;

(c) an approximation of the amount of material to be removed during the term of the lease;

(d) the necessary surety;

(e) the required rental payment as set forth in the rent schedule;

(f) a signed and completed environmental questionnaire; and

(g) a plat (prepared by the applicant or designated agents) which is drawn to scale showing the location of the area of the pit site or the area to be mined, if requested by the commissioner.

(2) When the estimated amount of material to be removed is in excess of 40,000 cubic yards, or upon the discretion of the commissioner, such lease may be issued by competitive bid upon the following procedure:

(a) Advertisement. The commissioner shall advertise the sale through publication in a newspaper of general circulation in the area where the material is located, on the same day, once a week, for two consecutive weeks.

(b) Notice. The notice of the sale by competitive bid shall also be posted in a conspicuous place at the state land office.

B. Mine operation plan and mine reclamation plan for a lease.

(1) For any lease where it is anticipated that the total surface area disturbed will exceed one acre, the lessee shall submit a mine operation plan and a mine reclamation plan to be approved by the commissioner prior to lease issuance.

(2) The operation plan shall include, but is not limited to, a plan for the orderly development of the reserves. The operation plan shall specify, if applicable, locations and methods of topsoil and overburden stockpiles, tailings disposal, dams or impoundments, slope stabilization methods, runoff diversions, solid and liquid waste disposal, spill reporting and cleanup, sediment control, security and access control, blasting, archaeological, and endangered species clearances, and other applicable information specific to the mining operation, including a list of all required federal and state permits. If the total area to be disturbed is greater than 10 acres, the mine operation plan shall be prepared by a registered professional engineer.

(3) The commissioner may require a hydrologic demonstration that groundwater will not be adversely impacted. The demonstration may include, if applicable, a plat and topographic map showing the location of the lease area in relation to governmental surveys, highways or roads giving access to the mine site, and watercourses, water wells and dwellings within one-half mile of the lease area; and geological/hydrologic evidence demonstrating that surface or subsurface activity will not degrade or otherwise impact ground or surface water. This evidence may include a geological/hydrological discussion of the area and the uppermost aquifer.

(4) The reclamation plan shall address reclamation of all areas disturbed by operations conducted on the lease. The reclamation plan shall consist of reclamation specifics and shall set out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, contouring, water and sediment control, cleanup and reseeding. Reclamation shall be performed contemporaneously with mining wherever possible.

(5) Upon approval, the mine operation plan and the mine reclamation plan shall be incorporated in the lease by reference and the provisions of the approved plans shall be enforceable in the same manner as any other covenant of the lease.

C. Lease rental. An annual rental rate for leases shall be set according to the rent schedule for each 40 acre tract or subdivision under lease, or any portion thereof.

D. Payment for minerals under lease.

(1) The purchase price to be assessed on mineral leases shall be based on market value, but, except as provided in Paragraphs (2) and (3) of Subsection D of 19.2.5.9 NMAC, shall be no less than those on the following schedule:

(a) Gypsum, clay, sand, gravel, stone, shale, perlite, volcanic deposits

Amount	Minimum purchase price
No Limit	\$.55/loose cu. yd.

(b) Borrow dirt

Amount	Minumum purchase price
No Limit	\$.40/loose cu. yd.

(2) For all leases for which the mineral extraction is projected to exceed 5000 cubic yards per year, the commissioner may require the lessee to install and utilize a scale, which has a valid certification from the New Mexico department of agriculture, to measure the amount of minerals mined. For such leases, the purchase price, by weight, shall not be less than the purchase price, by volume, specified in Paragraph (1) of Subsection D of 19.2.5.9 NMAC converted to purchase price, by weight. Factors used to convert volume to weight shall be specified by the commissioner and based on actual density measurements, if available, or, if such measurements are not available, on generally accepted scientific formulas.

(3) Upon the approval of the commissioner, any lessee not required to calculate purchase price by weight under Paragraph (2) of Subsection D of 19.2.5.9 NMAC may use such method to calculate purchase price.

(4) Purchase payments for mineral extraction on leases are to be made by the 20th day of each month following extraction.

E. Term of lease.

(1) The term of each lease shall be determined by the commissioner based upon such considerations as the length of time required by the applicant, the demand for the pit site, as well as other relevant factors. However, except as provided in Paragraph (2) of Subsection E of 19.2.5.9 NMAC, no lease shall be issued for longer than five years.

(2) Upon a showing by an applicant that a term greater than five years is necessary, the commissioner, in the commissioner's discretion, may issue a lease for a term of five years and so long thereafter as annual production purchases or annual minimum production payments paid in lieu of actual production purchases exceed a minimum amount specified in the lease (but not less than fifty dollars (\$50.00) per acre

of the leased premises). The applicant must demonstrate that capital expenditures, both on and off the leased premises, needed to commence and sustain mine development, production and reclamation and/or processing plants or manufacturing facilities are so great that they cannot be recouped within five years with a reasonable and prudent mine production rate. In any lease issued under this paragraph, the commissioner shall include such rental, reclamation, and any other provisions as the commissioner deems are in the best interest of the trust, and shall specify the period of nonproduction which constitutes abandonment of the lease. Any lease issued under this paragraph shall contain a provision for redetermination of the purchase price and the amount of minimum production payments. The redetermination of the purchase price shall occur annually after the first year of the lease and the redetermination of the amount of minimum production payments shall occur annually after the 15th year of the lease. The redetermined purchase price and amount of minimum production payments shall equal the initial purchase price and amount of minimum production payments, respectively, multiplied by a fraction, the denominator of which is the published, *producer price index for commodities, commodity category 13, non-metallic mineral products*, existing on the date that the lease is issued and the numerator of which is the same index existing on the date of the redetermination.

F. Assignment, subleasing, and relinquishment of a lease.

(1) Except as provided in Paragraph (2) of Subsection F of 19.2.5.9 NMAC, no lease under this rule may be assigned or subleased. A lease in good standing may, with the approval of the commissioner and the payment of a fee set forth in the schedule of fees, be relinquished to the state of New Mexico. Relinquishment does not relieve the lessee of any obligations regarding reclamation, unless the commissioner determines that reclamation is not necessary or the duty to reclaim has been assigned and approved by the commissioner.

(2) Any lease issued under Paragraph (2) of Subsection E of 19.2.5.9 NMAC, and in good standing, may, with the written approval of the commissioner, upon such terms and conditions as may be required, and payment of a fee set forth in the schedule of fees, be assigned or sublet to third persons. However, no assignment of an undivided interest or any assignment or sublease of less than a legal subdivision shall be recognized or approved. Provided further, however, the record owner of any such lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom. It shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner; but nothing herein shall relieve the record owner of such lease from complying with any of the terms or provisions thereof. All assignments shall be formally executed by the proper parties upon forms prescribed and furnished by the commissioner and shall recite, among other things, the consideration received for the assignment. Assignments shall be filed in triplicate in the office of the commissioner. The original copy of each assignment will be recorded and filed as a public record in the

state land office and one copy will be returned to the assignee. Ordinarily, leases shall be transferred or assigned in the names of no more than two persons or legal entities.

G. Cancellation, revocation of a lease. Leases may be cancelled for breach or violation of any of the terms or covenants of the lease or of these rules and regulations. Before any such cancellation shall be made, the commissioner shall mail the lessee, by registered or certified mail, sent to the address of such lessee as shown by the records, a 30 - day notice of intention to cancel said lease, specifying the breach or violation for which the lease is subject to cancellation. Thirty days after such mailing, cancellation of the lease may be made unless the lessee shall have sooner remedied the breach or violation to the satisfaction of the commissioner. No cancellation shall be made if the breach or violation is such that it cannot be remedied within 30 days, if the lessee has commenced action to remedy the breach or violation within the 30 days, and if the lessee diligently proceeds with the remedial action until the breach or violation is finally remedied to the satisfaction of the commissioner.

H. Reservation of right to purchase production from a lease. The commissioner reserves a continuing option to purchase at any time and, from time to time, at the market price prevailing in the area on the date of the purchase, all or part of the minerals that may be produced from the lands embraced in all leases. The commissioner may waive this reservation by following the statutory procedure set out in Section 19-14-2 NMSA 1978, as amended.

[5/14/1999; 19.2.5.9 NMAC - Rn, 19 NMAC 3. SLO 5.9, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.5.10 PERMITS:

A. Application for community caliche pit permit.

(1) Application for community caliche pit permits may be obtained either by directly contacting the oil, gas and minerals division of the state land office in Santa Fe or by filing an application with the Hobbs field office for sites in Roosevelt, Chaves, Eddy, and Lea counties. All payments made at the Hobbs field office shall be by check or money order, including application and permit fees, purchase payment, rentals and sureties.

(2) Each application for a community caliche pit permit must contain the following:

(a) a nonrefundable application fee set forth in the schedule of fees;

(b) a legal description of the location of the land to be mined or the pit site number (if known);

(c) the necessary surety required by Paragraph (2) of Subsection B of 19.2.5.12 NMAC; and

(d) either an advance payment or performance bond, as follows:

(i) advance payment of ten percent of market value, as determined by the commissioner, if the total amount due under Subsection C of 19.2.5.10 NMAC will exceed two thousand dollars (\$2,000.00) with the remaining amount due upon completion of the project; or

(ii) a performance bond in the amount of two thousand dollars (\$2,000.00);

(e) once the application is completed and the availability of the pit site is confirmed, the permit shall be issued by the Hobbs field office or by the Santa Fe office; the permit must be in the possession of the permittee at all times at the pit site location and while the extractions are taking place or the permittee may be subject to payment of double the amount due.

B. Application for mineral permit, other than caliche. Application for permits for extraction of minerals covered under this rule, other than caliche, shall be on forms approved by the commissioner and subject to specific terms at the discretion of the commissioner.

C. Payment for caliche under a community caliche pit permit.

(1) The purchase price to be assessed on the community caliche pit permits shall be negotiated and based on market value as determined by the commissioner, but, shall be no less than those on the following schedule: caliche:

(a) southern Lea county (township 16 south through 20 south, range 32 east through 39 east; and township 21 south through 26 south, range 32 east through 38 east.):

Amount	Minimum purchase price
first 7,000 cu. yds.	\$1.45/loose cu. yd.
next 3,000 cu. yds.	\$1.00/loose cu. yd.
amounts over 10,000 cu. yds.	\$.55/loose cu. yd.

(b) all other areas:

Amount	Minimum purchase price
--------	------------------------

first 7,000 cu. yds. \$.85/loose cu. yd.

amounts over 7,000 cu. yds. \$.55/loose cu. yd.

(2) The payment due on permits shall be made within 30 days after expiration of the permit.

D. Term of community caliche pit permit and other mineral permits.

(1) The term of each permit shall be determined by the commissioner based upon such considerations as the length of time required by the applicant, the demand for the pit site, as well as other relevant factors; provided, however, that, except as provided in Paragraph (2) of Subsection D of 19.2.5.10 NMAC, no permit shall be issued for longer than 15 days.

(2) If delays beyond the control of the permittee are incurred in the removal of the minerals, or if the permittee can show that the permittee will diligently mine the mineral for a longer period, then the commissioner may, in the commissioner's discretion, extend a permit period beyond 15 days.

E. Assignment, subleasing of community caliche pit and other mineral permits. No community caliche pit permit or other mineral permit under this rule may be assigned or subleased.

F. Cancellation, revocation of a community caliche pit and other mineral permits. A permit may be cancelled or revoked at any time by the commissioner for breach or violation of the terms or covenants of the permit or these rules and regulations. A cancellation or revocation does not relieve the permittee of any reclamation duties.

[5/14/1999; 19.2.5.10 NMAC - Rn, 19 NMAC 3. SLO 5.10, 9/30/2002; A, 6/11/2019]

19.2.5.11 USE OF NECESSARILY DISTURBED CALICHE FROM OIL AND GAS LEASE ACREAGE:

The commissioner shall make no charge for caliche necessarily moved within the roadbed or within the perimeter of a specific well pad while in the process of developing oil and natural gas under a state oil and gas lease, subject to the following conditions.

A. Only caliche derived from the cellar and reserve pit or cut and fill, which is necessarily disturbed in the process of building an access road and/or that oil and gas well location, may be used without charge.

B. Caliche necessarily disturbed during construction must remain within the boundaries of the oil and gas lease. If excess caliche exists from a necessary disturbance, that caliche may only be moved from that location to another well site

within the lease once an operator or lessee of record obtains a permit and compensates the commissioner pursuant to the terms of a community caliche pit permit.

C. Only caliche excavated during cut and fill construction of a well pad or roads built to 19.2.20 NMAC standards will be considered necessarily disturbed.

[5/14/1999; 19.2.5.11 NMAC - Rn, 19 NMAC 3. SLO 5.11, 9/30/2002]

19.2.5.12 GENERAL TERMS FOR ALL LEASES AND PERMITS:

A. Performance reports, reclamation and inspection for leases, community caliche pit and other mineral permits.

(1) Upon termination of a lease or permit, the lessee or permittee shall submit a final report, on the forms prescribed by the commissioner, which shall specify the amount produced under the lease or permit and other information on the operations required by the commissioner. These forms shall be returned to the commissioner along with the final purchase payment.

(2) For areas disturbed by mineral operations, reclamation will be required; however, the commissioner may waive such requirements if it is determined to be in the best interest of the trust to keep the pit open.

(3) The records, books of account and operations pertaining to mining, extraction, transportation, production and sales of minerals taken from leased and permitted lands shall be open and available for inspection or field audit by the commissioner or the commissioner's authorized agents at all reasonable times.

B. Surety for leases, community caliche pit and other mineral permits.

(1) Leases: The following bonds are required for each lease issued under this rule

(a) a performance bond or other surety in an amount set by the commissioner; and

(b) a minimum damage bond or other surety of at least five thousand dollars (\$5,000.00).

(2) Community caliche pit and other mineral permits. A permittee under this rule must submit the following bonds:

(a) a minimum damage bond or other surety of at least five thousand dollars (\$5,000.00); and

(b) when the estimated purchase price exceeds two thousand dollars (\$2,000.00), and the permittee did not pay ten percent of market value upon application for a permit, the permittee must provide a performance bond in the amount of two thousand dollars (\$2,000.00); the commissioner or the commissioner's authorized agent may, in the commissioner's discretion, waive the requirement for surety upon a showing by the applicant that the permit will be used for the removal of a small, incidental amount of materials.

(3) The required sureties shall be filed at the time of execution of the permit or lease unless a different filing date is allowed by the commissioner.

(4) A surety for damage on purchase contract or patented surface land shall not be less than five thousand dollars (\$5,000.00) for a single lease or not less than ten thousand dollars (\$10,000.00) for multiple leases.

(5) Sureties shall be either bonds issued by a bonding company acceptable to the commissioner or letters of credit or other surety acceptable to the commissioner.

(6) Megabond. With the approval of the commissioner, in lieu of the separate surface improvement damage and performance bonds or other surety, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources, or as holder under one or more state rights of way or easements which the lessee or its successors or assigns has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases or permits for minerals, oil and gas, coal or geothermal resources and of all state rights of way or easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

C. Surface operations and reclamation for leases, community caliche pit and other mineral permits. Surface trash and waste disposal:

(1) Lessees and permittees shall remove all surface trash and debris caused by their operations from the lease and permit area and shall keep the lease and permit premises free and clear of trash and debris. The commissioner may require the lessee or permittee to fence the lease or permit area.

(2) Hazardous or toxic wastes or petroleum products may not be disposed of on the lease or permit premises, and all such materials used in the operations must be removed from the lease area immediately upon termination of the lease or permit. Due care shall be used to prevent leaks and spills of such materials; clean up of any spills and reclamation of the area shall be performed in consultation with the commissioner.

[5/14/1999; 19.2.5.12 NMAC - Rn, 19 NMAC 3. SLO 5.12, 9/30/2002; A, 6/11/2019]

PART 6: RELATING TO COAL LEASES ON STATE LAND

19.2.6.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.6.1 NMAC - Rn, 19 NMAC 3. SLO 6.1, 9/30/2002]

19.2.6.2 SCOPE:

This rule pertains to all coal resources on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This rule governs lessees of such trust lands entered into subsequent to the date of this rule.

[12/31/1999; 19.2.6.2 NMAC - Rn, 19 NMAC 3. SLO 6.2, 9/30/2002]

19.2.6.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands is found in N.M., Const. art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.6.3 NMAC - Rn, 19 NMAC 3. SLO 6.3, 9/30/2002]

19.2.6.4 DURATION:

Permanent.

[12/31/1999; 19.2.6.4 NMAC - Rn, 19 NMAC 3. SLO 6.4, 9/30/2002]

19.2.6.5 EFFECTIVE DATE:

August 23, 1989, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.6.5 NMAC - Rn, 19 NMAC 3. SLO 6.5, 9/30/2002; A, 6/30/2016]

19.2.6.6 OBJECTIVE:

The objective of 19.2.6 NMAC is to provide for the orderly and lawful administration, and the appropriate development of coal resources on trust lands by implementing House Bill 433 of the first session of the thirty-ninth legislature (Laws 1989, Chapter 200) and to specify, by regulation, provisions to be included in all coal leases issued by the commissioner of public lands after the effective date of this rule.

[12/31/1999; 19.2.6.6 NMAC - Rn, 19 NMAC 3. SLO 6.6, 9/30/2002]

19.2.6.7 DEFINITIONS:

As used in 19.2.6 NMAC and state coal leases:

A. "Logical mining unit" - means an area under the effective control of a single operator, which is capable of being developed and operated in an efficient, economical and orderly manner as a single operation;

B. "Market value" - means the amount a knowledgeable and willing buyer would pay a knowledgeable and willing seller for equivalent coal FOB at the minemouth under an arm's-length sales contract. Market value can be determined by examining comparable arm's-length sales in the same coal field, by examining arm's-length sales of coal in other fields and making adjustments for differences, or by determining a downstream value for the subject coal or coal product and netting back actual and reasonable costs to arrive at a FOB minemouth value;

C. "Mine plan" - means a brief summary of how and when the leased lands will be developed. The plan should include anticipated dates for obtaining the necessary permits, commencing mining operations, and completing operations; should state anticipated annual production levels from the opening of the mine until its closing; should identify anticipated markets; and should show the planned progression and time frames for mining and reclaiming each tract within the logical mining unit;

D. "Proceeds" - means the total consideration accruing to the coal seller, without deduction of any kind. It includes but is not limited to: reimbursements, payments or credits for advanced prepaid reserve payments subject to recoupment through reduced prices in later sales; advanced exploration or mine development costs that are subject to recoupment through reduced prices in later sales; any other consideration given to the seller or any action taken or not taken in exchange for reduced prices; take-or-pay payments; and tax reimbursements. It is the intent of this Rule that lessees act as prudent operators in obtaining the maximum possible prices. Therefore, "proceeds" shall equal the highest price a prudent operator may receive under its contract. Also, if the operator fails to take proper or timely action to receive price increases to which it is entitled, and which action would have been taken by a prudent operator, then "proceeds" shall equal that obtainable price; and

E. "Recoverable reserves" - means the commercially mineable reserve base excluding all coal that will be left such as in pillars, fenders and property barriers. Generally, recoverable reserves will be based on quantities identified in the mine plan; however, with the concurrence of the commissioner, the amount of recoverable reserves may be changed as new information is developed.

F. "Schedule of fees" - means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state

land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.6.7 NMAC - Rn, 19 NMAC 3. SLO 6.7, 9/30/2002; A, 6/30/2016]

19.2.6.8 LANDS SUBJECT TO LEASE-COMPETITIVE BID:

Coal mining leases may be issued upon acreage shown to be open upon the New Mexico state land office tract books. Leases shall be issued only to the highest bidder either by sealed bid or at public auction; provided, however, the commissioner may in the commissioner's discretion withhold any tract from leasing and may reject all bids offered for any tract, if the commissioner determines that withholding or rejection is in the best interests of the trust.

[12/31/1999; 19.2.6.8 NMAC - Rn, 19 NMAC 3. SLO 6.8, 9/30/2002; A, 6/11/2019]

19.2.6.9 APPLICATIONS:

Applications for coal leases shall be made in ink or typewritten, in duplicate, upon forms to be prescribed by the commissioner. The application shall be acknowledged and shall be accompanied by a minimum initial charge of five hundred dollars (\$500.00) or the first (1st) year rental, whichever is greater, plus a nonrefundable application fee as set forth in the schedule of fees.

[12/31/1999; 19.2.6.9 NMAC - Rn, 19 NMAC 3. SLO 6.9, 9/30/2002; A, 6/30/2016]

19.2.6.10 NOTICE OF SALE:

On or before twenty (20) days prior to the date of any coal lease sale, notice of the sale shall be posted in a conspicuous place in the New Mexico state land office in Santa Fe specifying the place, date, and hour of sale and containing a description of the lands to be offered for lease, with a statement of the minimum bid which will be accepted and whether the lands will be offered by sealed bid or by public auction. In addition, the notice shall be mailed by regular mail to all persons requesting notice of coal lease sales.

[12/31/1999; 19.2.6.10 NMAC - Rn, 19 NMAC 3. SLO 6.10, 9/30/2002]

19.2.6.11 ACCEPTANCE OF BIDS:

Up to the hour set for such sale, the commissioner will receive sealed bids for a coal lease upon any tract of land described in the posted notice. All sealed bids submitted will be opened at the hour mentioned in the notice and, if the tract is designated in the notice of sale as being offered for sealed bid, then the lease will be awarded to the highest and best sealed bid. If the tract is designated in the notice of sale as being

offered for sale at public auction, then any sealed bid received will be considered as the first (1st) oral bid for the subject tract.

[12/31/1999; 19.2.6.11 NMAC - Rn, 19 NMAC 3. SLO 6.11, 9/30/2002]

19.2.6.12 TIE BIDS:

When two or more sealed highest and best bids received for the same tract of land are equal and if such highest and best bidders are present and cannot agree, by stipulation in writing, on how the tract shall be awarded, the commissioner or the commissioner's designee shall call such equal highest and best bidders before the commissioner on the same day the bids are opened, and again offer such tract at auction to such bidders only, and grant such lease to the highest and best bidder. If such bidders are not present when the bids are opened, then the commissioner will notify the bidders to submit sealed proposals within 10 days next following the date of the sale.

[12/31/1999; 19.2.6.12 NMAC - Rn, 19 NMAC 3. SLO 6.12, 9/30/2002; A, 6/11/2019]

19.2.6.13 LIMITATIONS TO NOT MORE THAN TWO (2) PERSONS OR LEGAL ENTITIES -- WAIVER:

As a matter of administration and without affecting property rights in coal leases, whenever more than two (2) persons or legal entities apply for the issuance of a coal lease, the commissioner shall grant the lease in the names of no more than two (2) persons acting as attorneys-in-fact for all potential interest owners. In the case of a trust, the trust must be express and a copy of the creating document filed with the commissioner. If more than two (2) trustees are named, a lease shall be granted in the names of no more than two (2) trustees acting as attorneys-in-fact for all trustees. The limitations in this Rule may be waived by the commissioner for good cause.

[12/31/1999; 19.2.6.13 NMAC - Rn, 19 NMAC 3. SLO 6.13, 9/30/2002]

19.2.6.14 TERM OF LEASE:

State coal leases shall be issued for the following terms:

A. A primary of five (5) years;

B. If, at the end of the primary term, the lessee has submitted a mine plan, which is not subsequently disapproved by the commissioner within three (3) months after submission, and the lessee has either incorporated the leased land with adjacent land (if necessary) into a logical mining unit or has shown to the satisfaction of the commissioner that adjacent land, needed to form the logical mining unit, is federal land which has not been available for coal leasing but that the lessee has incurred substantial costs in developing the leased land, then the coal lease shall not expire at

the end of the primary term but shall continue for a secondary term of an additional five (5) years; and

C. If, at the end of the secondary term, the lessee is producing coal at an average annual rate of either one percent (1%) of the estimated recoverable reserves from the leased lands or one percent (1%) of the estimated recoverable reserves from the logical mining unit, then the lease shall not expire but shall continue as long as the one percent (1%) production is maintained. Provided, that, for purposes of determining if the one percent (1%) annual production has been maintained during any year after the end of the second (2nd) year following the beginning of production, the annual production, averaged over the previous three (3) years, shall be used. For purposes of this provision, annual rates of production shall be measured from lease anniversary date to lease anniversary date.

[12/31/1999; 19.2.6.14 NMAC - Rn, 19 NMAC 3. SLO 6.14, 9/30/2002]

19.2.6.15 PRODUCTION ROYALTIES:

State coal leases shall provide for a royalty of twelve and one-half percent (12 1/2%) of the proceeds received from the sale of all surface-mined coal or, at the option of the commissioner, the market value of the surface-mined coal, and eight percent (8%) of the proceeds received from the sale of all underground-mined coal or, at the option of the commissioner, the market value of the underground-mined coal. The royalty rate may be reduced by the commissioner upon a showing that the leases for the non-state lands in the same logical mining unit provide for a lower rate or that the leased lands will be bypassed and not mined without a rate reduction.

[12/31/1999; 19.2.6.15 NMAC - Rn, 19 NMAC 3. SLO 6.15, 9/30/2002]

19.2.6.16 ADVANCE ROYALTIES:

In lieu of the actual production requirement, expiration of a lease may be prevented by the timely payment of an advance royalty equal to the estimated royalty obligation which would be due if one percent (1%) of the recoverable reserves of the leased land were produced. Payment of the advance royalty on or before a lease anniversary date will act to extend the lease until the next ensuing anniversary date; provided, however, that the lease shall not be extended for more than ten (10) years by payment of advance royalties. Any credit later taken for advance royalties against actual production royalties due shall not exceed fifty percent (50%) of the total royalty due for any single reporting period.

[12/31/1999; 19.2.6.16 NMAC - Rn, 19 NMAC 3. SLO 6.16, 9/30/2002]

19.2.6.17 EXPLORATION SURETY:

Before the issuance of a state coal lease, the lessee shall execute and file with the commissioner a good and sufficient exploration bond or other appropriate surety in an amount equal to fifteen dollars (\$15.00) for each acre of the leased premises to ensure compensation for damage to the surface or surface improvements caused by exploration activities on the leased lands. Any surety filed with the commissioner pursuant to the provisions of this rule, shall be released by the commissioner either upon the acceptance of a development bond or surety pursuant to 19.2.6.18 NMAC or upon the termination of the lease and a showing that compensation has been paid for any damage to the surface or surface improvements caused by exploration activities. The commissioner, in the commissioner's discretion, may allow an exploration bond filed with the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act to satisfy the requirement of this rule.

[12/31/1999; 19.2.6.17 NMAC - Rn, 19 NMAC 3. SLO 6.17, 9/30/2002; A, 6/11/2019]

19.2.6.18 DEVELOPMENT SURETY:

A. Before commencing excavation operations or development upon leased lands, a lessee shall execute and file with the commissioner a good and sufficient bond or other appropriate surety in an amount to be fixed by the commissioner and based upon the approved mine plan to:

(1) guarantee the performance of all covenants and obligations under the coal lease, including the obligation to pay royalties;

(2) ensure that all aspects of mining operations and reclamation operations are conducted in conformity with the mine permit issued by the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act;

(3) ensure compensation for damage to the surface or surface improvements in the absence of an agreement between the coal lessee and any surface owner.

B. A bond filed with the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act will satisfy the requirements in Subsection B of 19.2.6.18 NMAC unless the commissioner, in the commissioner's discretion, determines that the bond filed with the mining and minerals division is insufficient. Any bond or surety filed with the commissioner pursuant to the provisions of this Rule shall be released by the commissioner upon a showing that the lessee has complied with the obligations as specified in Subsections A, B and C of 19.2.6.18 NMAC.

C. With the approval of the commissioner, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee under one or more state leases or permits for

minerals, oil and gas, coal or geothermal resources, or as holder under one or more state rights of way or easements which the lessee or its successors or assigns has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal, or geothermal resources and of all state rights of way and easements executed with the commissioner including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

[12/31/1999; 19.2.6.18 NMAC - Rn, 19 NMAC 3. SLO 6.18, 9/30/2002; A, 6/11/2019]

19.2.6.19 ASSIGNMENTS:

Any lease in good standing may, with the written approval of the commissioner, upon such terms and conditions as the commissioner may require, and payment of the fee as set forth in the schedule of fees, be assigned or sublet to third persons; provided, however, no assignment of an undivided interest nor any assignment or sublease of less than a legal subdivision shall be recognized or approved. Provided further, however, the record owner of any coal lease may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner; but nothing herein shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof. All assignments shall be formally executed by the proper parties upon forms prescribed and furnished by the commissioner and shall recite, among other things, the consideration received for the assignment. Assignments shall be filed in triplicate in the New Mexico state land office in Santa Fe. The original copy of each assignment will be recorded and filed as a public record in the New Mexico state land office and one copy will be returned to the person entitled to the same. Ordinarily, leases shall be transferred or assigned in the names of no more than two persons or legal entities as provided in 19.2.6.13 NMAC.

[12/31/1999; 19.2.6.19 NMAC - Rn, 19 NMAC 3. SLO 6.19, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.6.20 ASSIGNMENT BY CONSOLIDATION:

In cases where corporations consolidate, transfer of coal interest to the newly created corporation shall be accomplished pursuant to 19.2.6.19 NMAC.

[12/31/1999; 19.2.6.20 NMAC - Rn, 19 NMAC 3. SLO 6.20, 9/30/2002]

19.2.6.21 ASSIGNMENT BY MERGER:

In cases where two (2) or more corporations merge, transfer of coal interests to the surviving corporation shall be accomplished by filing with the commissioner a copy of the merger agreement or certificate of merger. Thereafter, the coal lease shall be transferred on the books of the New Mexico state land office in the name of the surviving corporation.

[12/31/1999; 19.2.6.21 NMAC - Rn, 19 NMAC 3. SLO 6.21, 9/30/2002]

19.2.6.22 ASSIGNMENT BY REORGANIZATION:

Where the assets of any corporation are taken over under court order by a corporation, the procedure will follow the provisions of the court order, which should direct separate assignments to be executed and filed for approval in the New Mexico state land office.

[12/31/1999; 19.2.6.22 NMAC - Rn, 19 NMAC 3. SLO 6.22, 9/30/2002]

19.2.6.23 [RESERVED]

[12/31/1999; 19.2.6.23 NMAC - Rn, 19 NMAC 3. SLO 6.23, 9/30/2002; Repealed, 6/30/2016]

19.2.6.24 LEASES ISSUED PRIOR TO JULY 1, 1989:

The owner of any coal lease issued prior to July 1, 1989, and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations may, upon the expiration thereof, obtain a new lease for the leased lands, without having to submit a competitive bid, by filing an application therefor with the commissioner and paying the application fee as set forth in the schedule of fees. The form of the new lease shall be as prescribed in 19.2.6.26 NMAC.

[12/31/1999; 19.2.6.24 NMAC - Rn, 19 NMAC 3. SLO 6.24, 9/30/2002; A, 6/30/2016]

19.2.6.25 EFFECTIVE DATE:

The provisions of 19.2.6 NMAC shall apply to all coal leases issued by the commissioner on or after July 1, 1989.

[12/31/1999; 19.2.6.25 - Rn, 19 NMAC 3. SLO 6.25, 9/30/2002]

19.2.6.26 FORM OF LEASE:

Coal leases shall be of the following form and shall contain the following provisions:

(SAMPLE ONLY)

NEW MEXICO STATE LAND OFFICE

COAL MINING LEASE

APPLICATION NO. _____ LEASE NO. _____

THIS AGREEMENT, dated this _____ day
of _____, _____, made and entered into
between the STATE OF NEW MEXICO, acting by and through the undersigned, its
COMMISSIONER OF PUBLIC LANDS, hereinafter called the "lessor",
and _____,

hereinafter called the "lessee".

WITNESSETH:

WHEREAS, lessee has filed in the New Mexico State Land Office an application
for a coal lease for the purpose of exploring for, mining, developing, and producing coal
upon the lands hereinafter described, and has tendered
_____ (\$ _____), for the first annual
rental payment, together with the application fee as set forth in the schedule of fees,
and _____ (\$ _____), for a bonus;

NOW THEREFORE, in consideration of the above tender, receipt of which is
acknowledged, and the COVENANTS herein, lessor hereby grants, and leases to
lessee, exclusively, for the sole and only purpose of exploring for, mining, developing,
producing, and removing coal in, upon or under the following described lands in
_____ County, New Mexico:

together with the right to use so much of the surface as is reasonably necessary to
explore for, mine, develop, produce, and remove the coal.

TO HAVE AND TO HOLD the said lands and privileges granted hereunder for a
primary term of five (5) years.

IN CONSIDERATION OF THE PREMISES, THE PARTIES COVENANT AND
AGREE AS FOLLOWS:

1. As royalty, lessee shall pay to lessor twelve and one-half percent (12 1/2%) of
the proceeds received from the sale of all surface-mined coal or, at the option of the
lessor, the market value thereof, and eight percent (8%) of the proceeds received from
the sale of all underground-mined coal or, at the option of the lessor, the market value
thereof. The royalty rate may be reduced by the lessor upon a showing by the lessee
that the leases for non-state coal in the same logical mining unit provide for a lower rate
or that the lands leased hereunder will be bypassed and not mined without a rate

reduction. Such royalty is due in full on the last day of the month following the calendar month of sale and shall be reported to the lessor, together with such other information as may be required by the lessor, upon forms prescribed by the lessor. In the event of a dispute as to the amount of royalty due, the lessee shall assume the burden of proof in any court action arising out of such dispute.

2. As rental, lessee shall pay to lessor annually on or before each anniversary date of this lease the sum of five dollars (\$5.00) per acre or fraction thereof, such rental payments to continue so long as this lease shall remain in force.

3. Lessee agrees to pay interest on delinquent royalty and rental payments at the rate of one percent (1%) per month, or fraction thereof, accruing from the date said payment becomes due.

4. If, at the end of the primary term, the lessee has submitted a mine plan, which is not subsequently disapproved by the lessor within three (3) months after submission, and the lessee has either incorporated the land leased hereunder with adjacent land into a logical mining unit or has shown to the satisfaction of the lessor that the adjacent land is federal land which has not been available for coal leasing but that the lessee has incurred substantial costs in developing the leased land, then this lease shall not expire at the end of the primary term but shall continue for a secondary term of an additional five (5) years.

5. If, at the end of the secondary term, the lessee is producing coal at an average annual rate of either one percent (1%) of the estimated recoverable reserves from the leased lands or one percent (1%) of the estimated recoverable reserves from the logical mining unit, then this lease shall not expire but shall continue as long as the one percent (1%) production is maintained. Provided, that, for purposes of determining if the one percent (1%) annual production has been maintained during any year after the end of the second (2nd) year following the beginning of production, the annual production averaged over the previous three (3) years, shall be used. For purposes of this paragraph, annual rates of production shall be measured from lease anniversary date to lease anniversary date.

6. In lieu of actual production at or after the end of the secondary term hereof, lessee may prevent the expiration of this lease by the timely payment of an advance royalty equal to the estimated royalty obligation which would be due if one percent (1%) of the recoverable reserves in the lands leased hereunder were produced. Payment of such advance royalty on or before a lease anniversary date will act to prevent the expiration of this lease until the next ensuing lease anniversary date; provided, that this lease shall not be extended for more than ten (10) years by payment of advance royalties. Any credit later taken in any month for advance royalties shall not exceed fifty percent (50%) of the actual production royalty due for that month.

7. The lessee, with the written approval of the lessor, may assign or sublet this lease in whole or in part; provided, however, that no assignment of an undivided interest

nor any assignment or sublease of less than a legal subdivision shall be recognized or approved by the lessor. Provided further, however, the lessee may enter into any contract for the development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements, or other instruments to be approved by the lessor; but nothing herein contained shall relieve the lessee from complying with any of the terms or provisions hereof.

8. Lessee, including lessee's heirs, assigns, agents, and contractors shall at lessee's own expense fully comply with and conform to accepted operational standards and practices in general use in the industry and all laws, regulations, rules, ordinances, and requirements of the city, county, state, federal authorities and agencies, in all matters and things affecting the premises and operations thereon which may be enacted or promulgated under the governmental police powers pertaining to the public health and welfare, including but not limited to conservation, reclamation, sanitation, aesthetics, pollution, cultural properties, fire, and ecology. Such agencies are not to be deemed third (3rd) party beneficiaries hereunder; however, this clause is enforceable by the lessor in the same manner as other covenants of this lease.

9. The lessor or lessor's authorized representative shall have the right to enter the leased lands for the purpose of measuring the cubical contents of every opening from which coal has been extracted and to otherwise inspect the leased lands to ensure that proper royalties have been paid. The lessor or lessor's representative shall have the right to inspect all records, books, or accounts pertaining to the mining, extraction, transportation, and marketing of coal produced from the leased lands and, at the request of the lessor, the lessee shall furnish contracts, reports, samples, logs, assays, or cores within reasonable bounds as the lessor may determine to be necessary to the proper administration of the leased lands and this lease. In addition, lessee shall furnish annually and at such other times as the lessor may require, plats, maps, or tracings, clearly and accurately showing all development work upon the leased lands, and other related information, with a report as to all buildings, structures, or other work placed in or upon the leased lands, and a statement as to the amount and grade of coal produced and sold.

10. The value of any unpaid royalty shall become a prior lien upon the production from the leased lands and the improvements situated thereon.

11. Before commencing excavation operations or development upon the leased lands, the lessee shall execute and file with the lessor a good and sufficient bond or other appropriate surety in an amount to be fixed at that time by the lessor and based upon the approved mine plan to:

A. Guarantee the performance of all covenants and obligations under this lease, including the obligation to pay royalties;

B. Ensure that all aspects of mining operations and reclamation operations are conducted in conformity with the mine permit issued by the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department pursuant to the Surface Mining Act; and

C. Ensure compensation for damage to the surface or surface improvements in the absence of an agreement between the lessee and any surface owner.

A bond filed with the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department pursuant to the Surface Mining Act will satisfy the requirements of Subsection B of this Paragraph unless the lessor, in the lessor's discretion, determines that the bond filed with the Mining and Minerals Division is insufficient. Any bond, filed with the lessor pursuant to the provisions of this Paragraph, shall be released by the lessor upon a showing that lessee has complied with the obligations as specified in Subsections A, B, and C of this Paragraph.

12. Lessor may cancel this lease for nonpayment of rentals, nonpayment of royalties, or violation of any of the terms or covenants thereof; provided, however, that before any such cancellation shall be made, lessor, must mail to lessee, by registered or certified mail addressed to the post office address of the lessee shown by the lease, or by specific written notice of change of address furnished by lessee, a thirty (30) day notice of intention to cancel this lease, specifying the default for which the lease is subject to cancellation. No proof or receipt of notice shall be necessary and thirty (30) days after such mailing, lessor may enter cancellation unless lessee shall have sooner remedied the default; provided, that if the violation cannot be remedied within the thirty (30) day period and the lessee shall have commenced operations to substantially remedy the violation within such period, the lease shall not be canceled as long as lessee diligently pursues actions necessary to remedy the violation.

13. With the consent of the lessor this lease may be relinquished in whole or in part; provided, that the lessor will not approve any relinquishment of an undivided interest nor less than a legal subdivision. When filed and approved, such relinquishment shall be effective from the date of filing. Upon relinquishment of the lease, lessee shall be relieved from further obligations and liabilities hereunder as to the lands surrendered subject, however, to the continued obligations to: make payment of all accrued rentals and royalties; protect or restore the surface and surface resources consistent with the mine permit issued by the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department; and to otherwise perform other obligations accrued under the lease.

14. Coalbed methane gas is specifically excluded and reserved from this lease, except for small incidental quantities which may have to be vented or flared to achieve access to coal. Although lessee may engage in insitu coal gasification in order to remove coal, such gasification shall not disturb or diminish commercial quantities of coalbed methane gas.

15. Lessee may make or place such improvements and equipment upon the leased land as may be reasonably necessary to explore for, mine and remove coal, and upon termination of this lease for any reason, lessee may remove such improvements and equipment as can be removed without material injury to the premises; provided, however, that all rentals and royalties have been paid and that such removal is accomplished within one hundred eighty (180) days of the termination date. All improvements and equipment remaining upon the premises after the removal date, as set forth in accordance with this Paragraph, shall be forfeited to lessor without compensation.

16. Lessee shall not mortgage any improvements placed upon the land.

17. The State has a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or any part of the coal that will be produced from the lands covered by this lease.

18. All the obligations, covenants, agreements, rights, and privileges of this lease shall extend to and be binding and inure to the benefit of the lawful and recognized assigns or successors in interest of the parties hereto.

19. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands leased and the right to continue existing uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder or the approval of easements or rights of way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of lessee as may be consistent with concepts of multiple use and multiple mineral development.

20. Lessee shall be liable and agree to pay for all damage to livestock, growing crops, water, or other tangible improvements on the leased lands as may be suffered by reason of development, use, and occupation of the lands by lessee.

21. Any and all water rights developed on the leased lands by lessee shall be developed in the name of lessor. Lessee, at its own expense, shall comply with all regulations of, and obtain all necessary permits from, the office of the State Engineer. Lessee shall have the full and free use of such water rights for lease operations during the term of the lease. Upon expiration or termination of the lease, such water rights shall be retained by lessor. During the term of the lease, lessee shall preserve, protect, and defend such water rights.

22. Lessee shall save and hold harmless, indemnify, and defend the State of New Mexico, the commissioner of Public Lands, and the commissioner's agents in their official and individual capacities, of and from any and all liability claims, losses, or damages arising out of or alleged to arise out of or indirectly connected with the operations of lessee hereunder, off or on the leased lands, or the presence on said lands of any agent, contractor, or subcontractor of lessee. All terms and provisions of this instrument shall be binding upon the contractors and subcontractors of lessee in

like manner as the same are binding upon lessee, and all acts and doings of said contractors and subcontractors shall be deemed and treated as the same and held responsible by lessee.

23. Lessee shall exercise reasonable diligence, care, and skill in the operating of the leased lands in accordance with standard and approved mining methods and practices. Lessee shall conduct all exploration, development, and mining operations in a good workmanlike manner having due regard to the health and safety of employees, the prevention of waste, and the preservation of the property for further productive operations. All mining and related productive operations are to be subject to inspection by lessor or lessor's duly authorized agent.

24. See attached stipulations, if any, hereby made part of this lease.

IN WITNESS WHEREOF, the State of New Mexico has hereunto signed and caused its name to be signed by its commissioner of Public Lands thereunto duly authorized, with the seal of the commissioner's office affixed, and the lessee has signed this agreement to be effective the day and year above written.

STATE OF NEW MEXICO

BY: _____

COMMISSIONER OF PUBLIC LANDS

LESSEE

(PERSONAL ACKNOWLEDGMENT)

STATE OF _____)

)ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day
of _____, by

_____.

My Commission Expires:

NOTARY PUBLIC

(ACKNOWLEDGMENT BY CORPORATION)

STATE OF _____)

)ss

COUNTY OF _____)

The foregoing instrument was acknowledged before me on this _____ day of _____,

_____, by _____,
_____,

(Name)

(Title)

of _____ a

(Corporation)

(State or County)

corporation, on behalf of said corporation.

My Commission Expires:

NOTARY PUBLIC

[12/31/1999; 19.2.6.26 NMAC - Rn, 19 NMAC 3. SLO 6.26, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

PART 7: RELATING TO GEOTHERMAL RESOURCES LEASES

19.2.7.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.7.1 NMAC - Rn, 19 NMAC 3. SLO 7.1, 9/30/2002]

19.2.7.2 SCOPE:

This rule pertains to all geothermal resources on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This rule governs the lessees of such trust lands entered into subsequent to the date of this rule.

[12/31/1999; 19.2.7.2 NMAC - Rn, 19 NMAC 3. SLO 7.2, 9/30/2002]

19.2.7.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands is found in N.M. Const., Art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.7.3 NMAC - Rn, 19 NMAC 3. SLO 7.3, 9/30/2002]

19.2.7.4 DURATION:

Permanent.

[12/31/1999; 19.2.7.4 NMAC - Rn, 19 NMAC 3. SLO 7.4, 9/30/2002]

19.2.7.5 EFFECTIVE DATE:

January 20, 1984, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.7.5 NMAC - Rn, 19 NMAC 3. SLO 7.5, 9/30/2002; A, 6/30/2016]

19.2.7.6 OBJECTIVE:

The objective of 19.2.7 NMAC is to provide for the orderly and lawful administration and the appropriate development of geothermal resources on trust lands.

[12/31/1999; 19.2.7.6 NMAC - Rn, 19 NMAC 3. SLO 7.6, 9/30/2002]

19.2.7.7 DEFINITIONS:

The following terms as used in this rule shall have the meaning here indicated, unless otherwise clearly stated in the text:

A. "Geothermal resources" - The natural heat of the earth or the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from this natural heat and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gasses, and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances.

B. "Lessee" - The original geothermal lessee and the assignee of an assignment duly approved and recognized by the commissioner pursuant to 19.2.7.29 NMAC through 19.2.7.36 NMAC.

C. "Land" - Includes all land owned by the state, all land owned by school districts, beds of navigable rivers and lakes, submerged lands, and lands in which mineral rights have been reserved to the state.

D. "Legal subdivision" – Legal subdivision as used and recognized by the general land office of the United States and the New Mexico state land office, ordinarily consisting of forty (40) acres, more or less, or one- sixteenth (1/16) part of a standard section, including lots as designated by the U.S. survey plats.

E. "Contiguous" - Adjoining and having at least one (1) common side or boundary.

F. "Tract books" - That set of tract books kept and maintained at the New Mexico state land office.

G. "Person" - Individual or corporation, but does not include partnership or any other unincorporated association.

H. "Lease" - A lease for the extraction and removal of geothermal resources from state trust lands.

I. "Well" - Any well for the discovery of geothermal resources, or any well on lands producing geothermal resources or reasonably presumed to contain geothermal resources.

J. "Schedule of fees" - A list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.7.7 NMAC - Rn, 19 NMAC 3. SLO 7.7, 9/30/2002; A, 6/30/2016]

19.2.7.8 APPLICATION FOR LEASE:

State trust lands may be leased only upon application made to the commissioner in a manner prescribed in these rules and under the Geothermal Resources Act of 1967.

[12/31/1999; 19.2.7.8 NMAC - Rn, 19 NMAC 3. SLO 7.8, 9/30/2002]

19.2.7.9 LANDS SUBJECT TO LEASE:

Application to lease will be considered only for such lands as may be shown to be open upon the tract books of the New Mexico state land office or for those for which existing leases have been officially canceled or have expired and such action noted on the mineral tract books of the New Mexico state land office. Lands of other school districts or state agencies shall be available for leasing only after written request by the governing board of public officials having ordinary jurisdiction of such lands.

[12/31/1999; 19.2.7.9 NMAC - Rn, 19 NMAC 3. SLO 7.9, 9/30/2002]

19.2.7.10 FORMAL REQUIREMENTS FOR APPLICATIONS:

A. Each application for lease shall be made with ink, or with typewriter using a record ribbon, in duplicate, upon forms to be prescribed by the commissioner, which application shall be acknowledged before an officer authorized to administer oaths, shall be accompanied by the application fee as set forth in the schedule of fees, which fee shall not be refunded, and shall be accompanied by the amount of the first (1st) year's rental and bonus offered, if any such bonus is offered, together with an appraisal of the value of the land for geothermal lease purposes made under oath by some disinterested party who is familiar therewith.

B. A separate check or other remittance covering the fee, rentals and bonus, if any, shall be submitted with each separate application to which applicable; however, the commissioner may waive this requirement when extreme hardship to the applicant would otherwise result.

[12/31/1999; 19.2.7.10 NMAC - Rn, 19 NMAC 3. SLO 7.10, 9/30/2002; A, 6/30/2016]

19.2.7.11 APPLICATIONS WITHOUT DEPOSIT REJECTED:

Applications not accompanied by the proper fees, money or deposit, shall immediately be stamped "Rejected, No Deposit" and shall not be deemed a proper application. In computing proper rental to be due in this connection, the acreage as shown on the New Mexico state land office tract books shall be the basis. Rentals for application purposes are to be computed at the minimum rate of one dollar (\$1.00) per acre or fraction thereof, unless otherwise specified by the commissioner.

[12/31/1999; 19.2.7.11 NMAC - Rn, 19 NMAC 3. SLO 7.11, 9/30/2002]

19.2.7.12 SEPARATE APPLICATIONS:

Separate applications shall be made for each lease and application shall be deemed for all acreage listed thereon or for that part thereof as may be available for leasing. If an application covers more than two thousand five hundred sixty (2,560) acres, or if all legal subdivisions applied for are not contiguous, the application shall be rejected; provided, however, if an application covers less than six hundred forty (640) acres, or if all legal subdivisions are not contiguous, the application shall be rejected; provided,

however, a lease, or leases, may be issued covering less than six hundred forty (640) acres if the subdivision or parcel is isolated from and not contiguous with other parcels available for lease. An application which covers less than a legal subdivision or less than an entire parcel in the case of a navigable river or lake bed shall be rejected.

[12/31/1999; 19.2.7.12 NMAC - Rn, 19 NMAC 3. SLO 7.12, 9/30/2002]

19.2.7.13 MISCELLANEOUS LANDS:

Lands of other state agencies or school districts (other than state trust lands or escheat lands under the direct control of the commissioner) shall be leased only after the agency or body controlling same has made request in writing to the commissioner to make same available for leasing and after such lands have been posted to the mineral tract books as herein provided. Premature applications covering such lands shall be rejected. Lands sold prior to July 17, 1967, with minerals reserved, shall be leased only after consultation with the surface patentee or contract purchaser. In addition, in the event the lessee's operation will involve appropriation of water, which is under the jurisdiction of the state engineer, written permission of the state engineer will be required before operations can commence. A copy of the written authorization of the state engineer to appropriate water shall be filed with the commissioner before water is appropriated.

[12/31/1999; 19.2.7.13 NMAC - Rn, 19 NMAC 3. SLO 7.13, 9/30/2002]

19.2.7.14 ONE (1) APPLICANT:

If more than one (1) person shall sign an application, the first (1st) name appearing thereon shall be considered as the bona fide applicant and the lease shall issue only in the name first listed. Such person only will be recognized by the commissioner as the lessee and sole record holder. This Rule specifically applies to cases of partnerships and other unincorporated associations; however, said agreements defining and setting out the various interests of other parties in the lease may be filed with the commissioner as miscellaneous instruments, and when so filed shall constitute constructive notice to the world of the existence and the contents thereof; provided, however, that the commissioner shall look solely and only to the lessee record holder for compliance with the terms and conditions of the lease, and the commissioner shall not be a necessary party to any dispute or controversy arising out of or because of such side agreement. Notices hereunder and under the Geothermal Resources Act required to be given to the lessee by the commissioner shall be sufficient if mailed to the record lessee.

[12/31/1999; 19.2.7.14 NMAC - Rn, 19 NMAC 3. SLO 7.14, 9/30/2002]

19.2.7.15 PRIORITY OF APPLICANTS - LIMITATIONS:

A prior application, if submitted in accordance with these rules and if in proper form, shall ordinarily be given a preference right to lease; provided, however, that neither this provision nor any other provision or combination of provisions contained in these rules

shall ever be construed to limit the power of the commissioner to withhold at any time any tract or tracts from leasing for geothermal resources purposes, if in the commissioner's opinion the best interests of the trust, or the state agency involved would be served by so doing, and no such provision or provisions shall ever be construed so as to prohibit the commissioner from rejecting any application at any time prior to approval and issuance of lease, and to offer said tract or tracts for lease at public auction as provided in 19.2.7.21 NMAC through 19.2.7.26 NMAC, inclusive.

[12/31/1999; 19.2.7.15 NMAC - Rn, 19 NMAC 3. SLO 7.15, 9/30/2002; A, 6/11/2019]

19.2.7.16 APPLICATION BY MAIL - SIMULTANEOUS APPLICANTS:

A. Applications received in the same delivery of open mail shall be deemed to have been filed simultaneously and shall be stamped as of the date and hour delivery was made to the New Mexico state land office.

B. When newly acquired acreage is posted to the tract books, or when open acreage is designated upon the tract books to be open acreage after having been previously leased or withdrawn from leasing by the commissioner, all applications for lease filed thereon within three (3) New Mexico state land office work days after such posting or designating, shall be considered as simultaneous applications.

C. In computing the time, the day of relinquishment, expiration, posting or designation shall be disregarded.

[12/31/1999; 19.2.7.16 NMAC - Rn, 19 NMAC 3. SLO 7.16, 9/30/2002]

19.2.7.17 DISPOSAL OF SIMULTANEOUS APPLICATIONS:

When simultaneous applications for lease are filed for the same lands, they may be disposed of in either of the following methods, as the commissioner may decide:

A. by submission of amended applications by the applicant in which case preference will be given to the applicant offering the highest bonus; or

B. by rejecting all applications and offering the lands for lease at public auction in the manner provided in 19.2.7.21 NMAC through 19.2.7.26 NMAC, inclusive.

[12/31/1999; 19.2.7.17 NMAC - Rn, 19 NMAC 3. SLO 7.17, 9/30/2002]

19.2.7.18 COMMISSIONER MAY WITHHOLD LAND FROM LEASING - POSTING TO TRACT BOOK:

The commissioner, at the commissioner's discretion, may at any time either before or after application is made, withhold any tract, subdivision or parcel of land from leasing, if in the commissioner's opinion the best interest of the trust would be served.

Immediately after making determination to withhold any tract or tracts, the commissioner shall reject any and all pending applications and enter a proper notation upon the tract books, indicating the action taken and the date thereof. If and when thereafter the commissioner shall determine said lands again to be open for leasing, the commissioner shall enter a notation on the tract books to that effect, and the provisions of 19.2.7.16 NMAC (three day rule) shall apply from the date of said notation. Provided, further, that should the commissioner so determine said lands again to be open for leasing within six months from the date of withdrawal, the commissioner shall give 15 days advance written notice to all previously rejected applicants, if any.

[12/31/1999; 19.2.7.18 NMAC - Rn, 19 NMAC 3. SLO 7.18, 9/30/2002; A, 6/11/2019]

19.2.7.19 APPLICANTS REJECTED - LEASE AUCTIONED:

The commissioner may, at the commissioner's discretion, reject any pending application for lease and offer the acreage embraced therein for lease upon competitive bidding by sealed bids or at public auction to the bidder offering the highest bonus in addition to the minimum annual rentals as set by the commissioner.

[12/31/1999; 19.2.7.19 NMAC - Rn, 19 NMAC 3. SLO 7.19, 9/30/2002; A, 6/11/2019]

19.2.7.20 KNOWN GEOTHERMAL FIELDS:

Lands classified as "known geothermal fields" as provided in Section 6 of the Geothermal Resources Act (Section 19-13-6 NMSA 1978) shall be withdrawn, such withdrawal posted to the tract books, and such lands shall be leased at public auction only as provided in 19.2.7.18 NMAC, 19.2.7.19 NMAC, and 19.2.7.21 NMAC through 19.2.7.26 NMAC, inclusive.

[12/31/1999; 19.2.7.20 NMAC - Rn, 19 NMAC 3. SLO 7.20, 9/30/2002]

19.2.7.21 PUBLIC AUCTION SALE DATE:

Regular lease sales will ordinarily be held on the third (3rd) Thursday of each month, or on the next business day following where the third (3rd) Thursday falls on a holiday. Special sales may also be held on other dates at the discretion of the commissioner.

[12/31/1999; 19.2.7.21 NMAC - Rn, 19 NMAC 3. SLO 7.21, 9/30/2002]

19.2.7.22 NOTICE OF SALE POSTED - SEALED OR ORAL BIDS:

Before any regular or special sale shall be held, the commissioner shall post in a conspicuous place in the New Mexico state land office, not less than ten (10) days before the date of the sale, a notice of same, specifying the place, date and hour of the sale, and containing a description of the lands to be offered for lease and indicating whether the sale is to be by sealed bids or at oral public auction.

[12/31/1999; 19.2.7.22 NMAC - Rn, 19 NMAC 3. SLO 7.22, 9/30/2002]

19.2.7.23 SEALED BIDS PROCEDURE:

In the event the sale is to be by sealed bids, bids will be received up to the hour set in the notice of sale, and all bids submitted will be opened at the appointed hour, and the lease will be awarded to the highest bidder, subject to the right of the commissioner to reject all bids if the commissioner shall deem the bids too low or shall deem it in the best interest of the trust to do so. In the event of such rejection, the action taken, the date and hour thereof, and reason therefor, shall be indicated on the tract books, in the same manner as provided in 19.2.7.18 NMAC. Sealed bids will be accompanied by remittance covering application fee, first year's rental and bonus offered.

[12/31/1999; 19.2.7.23 NMAC - Rn, 19 NMAC 3. SLO 7.23, 9/30/2002; A, 6/11/2019]

19.2.7.24 ORAL BIDS - PROCEDURE:

In the event sale is by public auction, the successful bidder will be required to pay the filing fee as set forth in the schedule of fees, the first (1st) year's rental and bonus offered on or before close of business on the date of sale.

[12/31/1999; 19.2.7.24 NMAC - Rn, 19 NMAC 3. SLO 7.24, 9/30/2002; A, 6/30/2016]

19.2.7.25 WHERE NO BIDS RECEIVED:

If no bids are received for any tract described in the notice, said tract shall be considered as withdrawn until further notice and proper notations made upon the mineral tract books.

[12/31/1999; 19.2.7.25 NMAC - Rn, 19 NMAC 3. SLO 7.25, 9/30/2002]

19.2.7.26 TIE BIDS:

In the event the sale is by sealed bid and in the event two (2) or more highest bids are received for the same tract, offering the same bonus, the lease shall be disposed of by submission of amended applications by the applicants, in which case preference will be given to the applicant offering the higher bonus.

[12/31/1999; 19.2.7.26 NMAC - Rn, 19 NMAC 3. SLO 7.26, 9/30/2002]

19.2.7.27 FORMS:

Leases are to be made upon forms prescribed and furnished by the commissioner.

[12/31/1999; 19.2.7.27 NMAC - Rn, 19 NMAC 3. SLO 7.27, 9/30/2002]

19.2.7.28 LIMITATIONS OF ACREAGE:

No person, association or corporation shall take, hold, own or control any interest, direct or indirect, in state geothermal resources leases exceeding fifty-one thousand two hundred (51,200) acres.

[12/31/1999; 19.2.7.28 NMAC - Rn, 19 NMAC 3. SLO 7.28, 9/30/2002]

19.2.7.29 LIMITATIONS ON ASSIGNMENTS - MANNER OF EXECUTION:

Subject to such conditions as the commissioner may require, leases may be assigned in whole or in part; however, no assignment of an undivided interest in a lease or any part thereof, or any assignment of less than a legal subdivision or tract shall be recognized or approved by the commissioner. Such assignments shall be executed and acknowledged in the same manner prescribed for conveyance of real estate and shall be filed in triplicate with the commissioner. One (1) copy shall be recorded permanently, another filed, and the third (3rd) copy returned to the assignee. The approval of the commissioner shall be noted upon all copies.

[12/31/1999; 19.2.7.29 NMAC - Rn, 19 NMAC 3. SLO 7.29, 9/30/2002]

19.2.7.30 FORMS AND FEE:

All assignments shall be upon forms prescribed and furnished by the commissioner which shall recite, among other things, the consideration paid for the assignment. The fee for filing shall be as set forth in the schedule of fees.

[12/31/1999; 19.2.7.30 NMAC - Rn, 19 NMAC 3. SLO 7.30, 9/30/2002; A, 6/30/2016]

19.2.7.31 REFUSAL AND CONDITIONS:

The commissioner may refuse to approve any assignment and may condition the commissioner's approval on such additional terms and compensation as the commissioner may deem in the best interests of the trust.

[12/31/1999; 19.2.7.31 NMAC - Rn, 19 NMAC 3. SLO 7.31, 9/30/2002; A, 6/11/2019]

19.2.7.32 EFFECT OF COMMISSIONER'S APPROVAL - MISCELLANEOUS INSTRUMENTS:

Upon approval of the commissioner, the assignor shall be relieved from all obligations owing to the state of New Mexico with respect to the lands embraced in the assignment, and the state shall likewise be relieved from all obligations to the assignor as to the said lands, and the assignee shall succeed to all the rights and privileges of the assignor and assumes all of the duties and obligations of the assignor as to the said lands; provided, however, any record owner of any lease may enter into any contract for the

development of the leasehold premises or any portion thereof, or may create overriding royalties or obligations payable out of production, or enter into any agreements with respect to the development or operation of the leasehold premises. It shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner, but nothing contained in these rules shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments, the commissioner shall not be a necessary party. All such contracts, agreements and other instruments may be filed either in the office of the commissioner or recorded in the office of the county clerk wherein the lands are situated, and the filing and recording thereof shall constitute notice to the world of the existence and the contents thereof, except as to the commissioner. The fee for filing such miscellaneous instruments with the commissioner shall be as set forth in the schedule of fees.

[12/31/1999; 19.2.7.32 NMAC - Rn, 19 NMAC 3. SLO 7.32, 9/30/2002; A, 6/30/2016]

19.2.7.33 EFFECT OF ASSIGNMENT ON PRODUCTION:

When any assignment of a portion of the lease shall be approved by the commissioner, the assigned and the retained portions of the lease shall be treated and considered as separate leases for the purpose of determining whether the lessee or lessees have a right of renewal for succeeding five (5) year terms, and also for the purpose of bonding as provided in 19.2.7.37 NMAC, 19.2.7.38 NMAC, and 19.2.7.39 NMAC.

[12/31/1999; 19.2.7.33 NMAC - Rn, 19 NMAC 3. SLO 7.33, 9/30/2002]

19.2.7.34 ASSIGNMENTS TO BE RECORDED IN NEW MEXICO STATE LAND OFFICE:

Assignments must be accompanied by the filing fee as set forth in the schedule of fees and filed with the commissioner within one hundred (100) days after having been signed by the assignor as shown upon the face of the instrument and not from the date of acknowledgment. Those presented after expiration of that time shall not be approved unless it can be shown to the satisfaction of the commissioner that extreme hardship will result to one (1) or more of the parties and that no prejudice to the rights of the state of New Mexico will occur. An additional fee as set forth in the schedule of fees will be charged for each such assignment (or each group of assignments, if the same basic facts are involved) to cover expense of investigation and records search.

[12/31/1999; 19.2.7.34 NMAC - Rn, 19 NMAC 3. SLO 7.34, 9/30/2002; A, 6/30/2016]

19.2.7.35 RESIDENT DECEDENT'S LEASE:

To effect transfer of an interest in a lease owned by a deceased resident of New Mexico, proper probate proceedings must be had in accordance with the New Mexico

Probate Code, and certified copies of such proceedings showing proper legal authority to transfer must be filed with the commissioner.

[12/31/1999; 19.2.7.35 NMAC - Rn, 19 NMAC 3. SLO 7.35, 9/30/2002]

19.2.7.36 FOREIGN DECEDENT:

In the event a decedent owner of a lease was a resident of a state other than New Mexico, the estate must be probated in the state of such residence and ancillary proceedings conducted in the proper New Mexico court, and certified copies of such proceedings showing proper legal authority to transfer must be filed with the commissioner. Provided, however, where the decedent died on or after July 1, 1976, the lease may be transferred upon the foreign personal representative's compliance with the provisions of the New Mexico Probate Code.

[12/31/1999; 19.2.7.36 NMAC - Rn, 19 NMAC 3. SLO 7.36, 9/30/2002]

19.2.7.37 SURETY TO PROTECT SURFACE LESSEE WAIVERS:

A. Before any lessee shall commence development or operations, including any and all prospecting activities upon the lands, such lessee shall execute and file with the commissioner a sufficient bond or other surety, in an amount to be fixed by the commissioner, but not less than five thousand dollars (\$5,000.00), in favor of the state of New Mexico, for the benefit of the state, its contract purchaser, patentee, or surface lessee, to secure payment for any damages to the leased land or tangible improvements upon the leased land as may be suffered by reason of development and operations upon the land by the lessee.

B. The bond may be either a corporate or individual surety bond and such sureties may be required to furnish proof that their net worth free and clear of all indebtedness or claims equals or exceeds the amount of the obligation. In lieu of said bond, with the commissioner's consent, the lessee may file with the commissioner a waiver of bond or other surety duly executed and acknowledged by the applicable surface owner or holders owning improvements.

[12/31/1999; 19.2.7.37 NMAC - Rn, 19 NMAC 3. SLO 7.37, 9/30/2002]

19.2.7.38 PERFORMANCE SURETY:

Before a lease shall issue, the lessee shall file with the commissioner a bond or other surety in an amount to be set by the commissioner which the commissioner deems necessary to guarantee payment of royalties to become due the state of New Mexico. With the approval of the commissioner, in lieu of separate surface improvement damage and performance bonds, a twenty-five thousand dollar (\$25,000.00) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee as lessee

under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources, or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources, and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

[12/31/1999; 19.2.7.38 NMAC - Rn, 19 NMAC 3. SLO 7.38, 9/30/2002; A, 6/11/2019]

19.2.7.39 FORMS:

Forms for all bonds are prescribed and furnished by the commissioner.

[12/31/1999; 19.2.7.39 NMAC - Rn, 19 NMAC 3. SLO 7.39, 9/30/2002]

19.2.7.40 ROYALTY REPORTS:

Lessees shall file royalty reports as such times and upon forms as may be prescribed by the commissioner.

[12/31/1999; 19.2.7.40 NMAC - Rn, 19 NMAC 3. SLO 7.40, 9/30/2002]

19.2.7.41 [RESERVED]

[12/31/1999; 19.2.7.41 NMAC - Rn, 19 NMAC 3. SLO 7.41, 9/30/2002]

19.2.7.42 COLLATERAL ASSIGNMENTS OF LEASES:

Collateral assignments of leases shall be filed in duplicate upon forms provided by the commissioner together with the filing fee as set forth in the schedule of fees.

[12/31/1999; 19.2.7.42 NMAC - Rn, 19 NMAC 3. SLO 7.42, 9/30/2002; A, 6/30/2016]

19.2.7.43 CO-OPERATIVE OR UNITIZED DEVELOPMENT FOR OPERATION OF LEASES:

The commissioner may, after public hearing, approve cooperative or unit development for operation of leases under the provisions of Section 14 of the Geothermal Resources Act (Section 19-13-14 NMSA 1978) upon the commissioner's determining that such will be in the interest of conservation of geothermal resources and where the commissioner finds such would be to the best interests of the trust or the agency with jurisdiction over the lands involved.

[12/31/1999; 19.2.7.43 NMAC - Rn, 19 NMAC 3. SLO 7.43, 9/30/2002; A, 6/11/2019]

19.2.7.44 [RESERVED]

[12/31/1999; 19.2.7.44 NMAC - Rn, 19 NMAC 3. SLO 7.44, 9/30/2002; Repealed, 6/30/2016]

PART 8: RELATING TO AGRICULTURAL LEASES

19.2.8.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[6/29/96; 19.2.8.1 NMAC - Rn, 19 NMAC 3 SLO 8.1, 09/30/02]

19.2.8.2 SCOPE:

Current and future lessees of state trust lands.

[6/29/96; 19.2.8.2 NMAC - Rn, 19 NMAC 3 SLO 8.2, 09/30/02]

19.2.8.3 STATUTORY AUTHORITY:

Section 19-1-23 NMSA 1978.

[6/29/96; 19.2.8.3 NMAC - Rn, 19 NMAC 3 SLO 8.3, 09/30/02]

19.2.8.4 DURATION:

Permanent.

[6/29/96; 19.2.8.4 NMAC - Rn, 19 NMAC 3 SLO 8.4, 09/30/02]

19.2.8.5 EFFECTIVE DATE:

June 29, 1996, unless a later date is cited at the end of a section.

[6/29/96; 19.2.8.5 NMAC - Rn, 19 NMAC 3 SLO 8.5, 09/30/02; A, 06/30/16]

19.2.8.6 OBJECTIVE:

To clarify the definition of an agricultural lease, add specific guidelines for conducting appraisals of improvements located on state trust lands, update and clarify the procedures for documenting a lessee's improvements, delete the provision allowing applications to lease a part of the state trust lands held under an existing lease, require a lessee to fence land held under an agricultural lease unless the land is managed in conjunction with adjoining land, add language clarifying when a sublease is created,

clarify aspects of processing multiple applications ("competitive bids") to lease the same trust land, and address other aspects of leasing lands under an agricultural lease of state trust lands.

[6/29/96; 19.2.8.6 NMAC - Rn, 19 NMAC 3 SLO 8.6, 09/30/02]

19.2.8.7 DEFINITIONS:

The following terms as used in this rule shall have the meaning indicated unless otherwise clearly stated in the text:

A. "Agricultural lease" - The commissioner's conveyance, in writing, of the right to use and possess the surface of specified state land for the production of crops and other products of the soil, animal husbandry or for other related uses. An agricultural lease may be subject to such other rights and uses on the same land as the commissioner may authorize in writing. The lease instrument shall be in a form and contain such provisions as may be prescribed by the commissioner, which provisions shall be deemed to include all pertinent statutes and state land office Rules in effect at lease issuance or as thereafter amended or promulgated.

B. "Agricultural sublease" - A transaction or arrangement whereby a lessee grants to another rights or interests conveyed to the lessee by an agricultural lease. A sublease is created when the lessee transfers to another either the possession of the leased premises, or a portion thereof, or the management and control of crops and other products of the soil, animals, or other permitted uses located on the leased premises. A sublease is not created when the lessee retains possession of the leased premises and manages and controls crops and other products of the soil or animals located on the leased premises but not owned by the lessee.

C. "Authorized improvements" - Improvements placed, made or developed on state lands by a lessee with the express written consent of the commissioner; improvements placed, made or developed on state lands by a lessee that are valued within the limitations prescribed by Section 19-7-51 NMSA 1978; improvements placed, made or developed on state lands prior to March 1, 1955; and, improvements placed, made or developed on state lands after March 1, 1955, but prior to March 1, 1975, provided such improvements are approved in writing by the commissioner on or before October 31, 1993.

D. "Cultivated land" - State trust land suitable for the production of crops or other products of the soil. Cultivated land may be dry cropland, irrigated cropland, orchards or regularly irrigated pasture.

E. "Dry cropland" - Cultivated land for which rainfall is the only source of water to produce crops.

F. "Grazing land" - State trust land suitable for the production and utilization of native forage and on which the ecological plant community is suitable for animal husbandry.

G. "Irrigated cropland" - Cultivated land for which the primary supply of water to produce crops is from a man-made diversion of ground water or surface water.

H. "Lessee" - The party of record at the state land office who leases state trust land from the commissioner under an agricultural lease.

I. "Open acreage" - State trust land which is not leased and has not been withdrawn from leasing by the commissioner as shown on the state land office departmental tract books.

J. "Replacement cost less physical deterioration or functional obsolescence" - The cost of replacing the improvements, at current prices, with improvements having the same utility equivalent, less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvement.

K. "Schedule of fees" - A list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

L. "Simultaneous applications" - Two or more valid agricultural lease applications that apply to lease the same land and that are received at the state land office on the same regular work day.

M. "State trust land" - Land depicted as within the care, custody and control of the commissioner of public lands by the state land office master title tract books.

N. "Unauthorized improvements" - Improvements other than authorized improvements placed, made or developed on state trust lands.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.7 NMAC - Rn, 19 NMAC 3 SLO 8.7, 09/30/02; A, 04/15/10; A, 06/30/16]

19.2.8.8 AGRICULTURAL LEASES:

A. The commissioner may lease state trust land for agricultural purposes in such manner and upon such terms as the commissioner determines to be in the best interests of the trust for which the lands are held by the state.

B. Each agricultural lessee shall protect the leased state trust lands from waste and trespass.

C. One who leases state trust lands shall fence the lands leased, unless such lands shall be used and managed in conjunction with adjacent land, or are subject to an exchange of use agreement.

D. Agricultural leases shall be issued for animal husbandry, cultivated land or both, or for other related uses.

E. The commissioner may, at any time, withhold state trust land from agricultural leasing or reject applications to lease, whether such applications are to lease open acreage, to renew an existing lease, or to lease land already under lease to another, if the commissioner determines such action is in the best interests of the trust for which the land is held.

F. All agricultural leases shall be upon forms prescribed by the commissioner and shall contain such terms and conditions as are required by law or as are deemed appropriate by the commissioner. Each lease shall have only one (1) mailing address of record at the state land office regardless of the number of lessees under the lease, and the commissioner shall mail all lease notices to such address of record and no other.

G. Agricultural leases with terms of five (5) years or less may be issued by the commissioner without advertisement or public auction. All such leases shall commence on October 1st and expire on September 30th; provided, however, leases on open acreage issued after October 1st shall bear the actual date of execution and shall be issued for the balance of that lease year plus no more than four (4) additional years.

H. Outstanding agricultural leases and permits on lands acquired by the state of New Mexico from the United States shall be honored until their expiration. The lessees under such leases shall have the right as provided by law to match competitive lease bids and obtain new leases.

[12/1/92, 6/29/96; 19.2.8.8 NMAC - Rn, 19 NMAC 3 SLO 8.8, 09/30/02; A, 04/15/10]

19.2.8.9 APPLICATIONS TO LEASE:

A. Requirements for all applications. Applications for agricultural leases may be filed for state trust lands shown on the state land office departmental tract books as either open acreage or land under lease at the time an application is submitted. The commissioner shall reject any application to lease state trust lands, whether held under an existing lease or not under lease at the time application is made, if the commissioner determines that the award of a lease to the applicant would not be in the best interests of the trust.

(1) A single application shall not be accepted for lands held under more than one existing lease or for both open acreage and lands held by an existing lease.

(2) All agricultural lease applications shall be made under oath on forms prescribed by the commissioner.

(3) All agricultural lease applications for open acreage or competitive bid shall include a sworn appraisal of the land applied for, and all improvements located thereon, made by a disinterested party who has personal knowledge and ability to provide a true and accurate assessment of the value of the land and the improvements. An existing lessee applying for a new lease on trust land which the lessee currently leases, in lieu of an appraisal of the improvements, shall submit a listing of all improvements located on the land, but need not submit an appraisal of the land.

(a) All appraisals of improvements made for the purposes of this rule shall be made on the basis of replacement cost less a deduction for the total loss in value arising from the physical deterioration or functional obsolescence of the improvements, and a value shall be listed separately for each improvement.

(b) The inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not be interpreted as approval of those improvements by the commissioner. Improvements shall be approved only as provided under 19.2.8.17 NMAC "agricultural improvements" below.

B. Application requirements for open acreage. In addition to the requirements set forth in Subsection A above, agricultural lease applications for open acreage shall be accompanied by:

(1) the lease application filing fee as set forth in the schedule of fees;

(2) the deposit of a sum equal to the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees, or if fewer than 12 months remain in the period between the date of lease application and the following September 30th, the deposit of an amount equal to the first year's offered rental reduced on a pro rata basis by month; and,

(3) the deposit of a sum equal to the appraised value of the authorized improvements on the land applied for or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

C. Simultaneous applications for open acreage. Upon receipt of simultaneous applications for open acreage, the lease shall be awarded to the applicant offering the highest annual rental or, at the commissioner's discretion, the applications may be rejected; and

(1) the applicants permitted to submit confidential sealed lease bids on forms and pursuant to procedures prescribed by the commissioner with the lease awarded to the applicant who by the date and time specified by the commissioner submits the highest sealed bid, if to anyone; or

(2) the open acreage leased by advertised, competitive bid to the bidder offering the highest annual rental, if to anyone.

D. Application requirements for renewal. In addition to the requirements set forth in Subsection A above, agricultural lease applications for a new lease on lands held by the applicant under an existing lease shall:

(1) be accompanied by the lease application filing fee as set forth in the schedule of fees;

(2) be accompanied by the first year's offered rental, which shall in no case be less than the minimum rent in the schedule of fees; and

(3) be filed with the commissioner on or before August 1st of the year in which the existing lease is to expire; the failure to submit the application on or before August 1st shall result in the forfeiture of the lessee's right to obtain the lease by matching the highest annual rental offered by other applicants to lease the same land.

E. Application requirements for competitive bids. In addition to the requirements set forth in Subsection A above, agricultural lease applications to lease lands leased to another under an existing lease shall be made for the entire acreage under lease. Such applications shall be made on or before September 1st in the year in which the existing lease is to expire, and shall be accompanied by:

(1) the lease application filing fee as set forth in the schedule of fees;

(2) the deposit of a sum equal to the first year's offered rental which shall in no case be less than the minimum rent in the schedule of fees; and

(3) the deposit by money order, cashier's check or certified check of a sum equal to the appraised value of the authorized improvements on the land applied for, or a bill of sale or waiver of payment signed by the holder of the right to compensation for such improvements.

F. Determination of competitive bids. In the event more than one application is filed to lease lands held by an existing agricultural lease, the lease shall be awarded to the applicant offering the highest annual rental, provided that such award is in the best interest of the trust. If, however, the lease is not in default and one of the applicants is the lessee under the existing lease who correctly applied for the new lease prior to August 1st, the commissioner shall notify the lessee in writing of the amount of the highest annual rental offered by another applicant for the lease and the name and address of the applicant offering the highest annual rental. If the lessee matches such offer on or before September 30th, the new lease shall be awarded to the lessee, if to anyone. If the lessee does not apply to lease the land on or before August 1st, and more than one lease application is made on the leased land on or before September 1st, the commissioner, in the commissioner's discretion, may award the lease to the

applicant offering the highest annual rental, provided that such award is in the best interest of the trust. Alternatively, the commissioner may implement the procedures applicable in instances of simultaneous application set out in Subsection C above.

G. Improvement value disputes. The value of the improvements, if in dispute, shall be determined by the commissioner's appraisal. If there is a dispute over the value of the improvements as determined by the commissioner, the disputing party must file a contest to determine such value. The parties to such a contest shall be the existing lessee and the competitive bidder.

H. Sealed bids. A lessee or applicant submitting a sealed bid in response to the commissioner's request for sealed bids, shall not be permitted to change or supplement that bid after it has been submitted.

I. Non-conforming applications. Any lease application which does not comply with the requirements of this Section 19.2.8.9 NMAC shall be subject to rejection.

(1) If the rejected application is to renew a lease, and such application is not corrected in time, the applicant shall fail to retain the right to match a competitive bid set out in Section 19-7-49 NMSA 1978.

(2) In the commissioner's discretion, but only in cases where there is no competitive bid, the commissioner may, pursuant to Section 19-7-4 NMSA 1978, grant additional time to correct minor errors or omissions in an application.

[3/11/1981, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.9 NMAC - Rn, 19 NMAC 3 SLO 8.9, 9/30/2002; A, 4/15/2010; A, 6/30/2016; A, 6/11/2019]

19.2.8.10 WITHDRAWAL:

A. The commissioner may withdraw from an agricultural lease during its term up to one-half the leased acreage not to exceed six hundred and forty (640) acres provided that:

(1) the commissioner has received a bona fide offer to lease or purchase the lands proposed for withdrawal for uses other than agricultural uses and the offered rental or purchase price indicates the land has a current higher and better value for uses other than agricultural uses;

(2) the commissioner makes a written determination that such withdrawal is in the best interests of the trust for which the land is held and that the land to be withdrawn has a current higher and better value for uses other than agricultural uses; and

(3) the commissioner mails notice of the withdrawal to the lessee by certified mail at least ninety (90) days prior to the date the withdrawal is to be effective and includes with the notice:

(a) a copy of the written determination described in Paragraph (2) of Subsection A of 19.2.8.10 NMAC;

(b) a description of the land to be withdrawn sufficiently detailed to permit identification and location of the land with reasonable accuracy;

(c) the appraised value for uses other than agricultural uses, of the land to be withdrawn; and

(d) a notice to vacate that sets forth the date the withdrawal is to be effective.

B. The commissioner shall not withdraw a portion of the leased lands pursuant to this rule if such withdrawal would adversely affect the lessee's use of water on the remaining portion of the leased lands, unless the lessee has a reasonable alternative to mitigate the adverse effect.

C. The commissioner shall refund to the lessee on a pro rata basis rentals paid in advance on the withdrawn lands for the period of time between the effective withdrawal date and the next following rental payment due date.

D. Upon the sale or lease of the withdrawn land, the owner or subsequent lessee shall fence the withdrawn land from adjoining land that is under agricultural lease.

E. A lessee from whom leased lands are withdrawn, who is entitled to compensation for improvements on lands withdrawn, shall receive such compensation from the subsequent lessee or purchaser of the lands withdrawn, as provided by statute and this rule.

[12/1/92, 6/29/96; 19.2.8.10 NMAC - Rn, 19 NMAC 3 SLO 8.10, 09/30/02]

19.2.8.11 RENTAL:

A. In the absence of a competitive bid, the annual rental for grazing land leased under an agricultural lease shall be determined by the following formula:

Annual rental = \$0.0474 (Base Value) x Carrying Capacity (CC) x Acreage x Economic Variable Index (EVI).

(1) The EVI in any year (t), October 1st through September 30th, is the ratio of the value of a state land office adjustment factor for that year (SLOAF_t) to the value of that same adjustment factor calculated for the base year 1987 (SLOAF₈₇), i.e., SLOAF_t : SLOAF₈₇, or SLOAF_t divided by SLOAF₈₇ (1987 base = 135).

(2) To determine the SLOAF for each year (t+1), the commissioner shall use the following formula, in which the three indices (the western states forage value index (FVI), beef cattle price index (BCPI), and the prices paid index (PPI)) correspond to the

United States department of agriculture's annually published indices for the immediately preceding year (t): $SLOAF_{t+1} = -14.92 + (1.57 \times FV_{It}) + (0.26 \times BCPI_{It}) - (0.67 \times PPI_{It})$.

B. The commissioner shall determine the carrying capacity for grazing land in accordance with Section 19-7-29 NMSA 1978, which may be redetermined. A lessee seeking a reevaluation and redetermination of the carrying capacity shall submit such forms as may be prescribed by the commissioner.

C. Notwithstanding the application of the formula to determine lease rentals for grazing land, the annual rental shall not be less than the minimum rent set forth in the schedule of fees nor shall it be decreased or increased by more than thirty-three and one-third percent of the preceding year's rental for the same land.

D. The rental for cultivated land or land leased under an agricultural lease for other uses shall be determined by the commissioner.

E. In computing rental on leases issued after October 1st, the rental for a part of a month shall be the same as the rental for a full month.

[3/11/1981, 4/28/1982, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.11 NMAC - Rn, 19 NMAC 3 SLO 8.11, 9/30/2002; A, 6/11/2019]

19.2.8.12 SUBLEASING:

A. The sublease of an agricultural lease or any portion thereof may be made only with the prior written consent of the commissioner.

(1) A sublease without the written consent of the commissioner prior to such use or occupancy commencing shall be in violation of Sections 19-6-3 and 5 NMSA 1978.

(2) Sublease applications not submitted to the commissioner for approval within thirty (30) days of their actual execution shall be rejected.

B. Applications to sublease shall be made under oath, on forms prescribed by the commissioner and shall be accompanied by the first year's sublease payment.

C. The sublease payment shall be made by the lessee, in advance, in addition to the annual lease rental, in an amount equal to twenty percent (.20) of the current annual lease rental, but in no instance less than the minimum rent in the schedule of fees for each year or any portion of a year in the sublease term.

(1) Sublease payments shall be computed on an annual basis from October 1st of each year to the following September 30th, and shall be due on the date of sublease application and thereafter, following sublease approval, on the date the annual lease rental is due.

(2) Sublease payment for a portion of a year shall not be prorated but shall be in the same amount as the sublease payment for a full year.

D. No sublease term shall extend beyond the term of its base lease and lease assignment shall result in the automatic termination of any sublease.

[3/11/81, 1/20/84, 9/30/85, 4/8/87, 12/1/92, 6/29/96; 19.2.8.12 NMAC - Rn, 19 NMAC 3 SLO 8.12, 09/30/02; A, 04/15/10]

19.2.8.13 RELINQUISHMENT:

A. With the prior written consent of the commissioner, the release of all outstanding collateral assignments, and the payment to the commissioner of the relinquishment filing fee as set forth in the schedule of fees, any lessee may relinquish to the state a lease that is not in default and the lease shall be cancelled.

(1) The relinquishment filing fee shall be waived if the relinquishment is at the request of the commissioner.

(2) Relinquishments shall be made on forms and in the manner prescribed by the commissioner.

B. A relinquishment without the written consent of the commissioner shall be null and void.

[3/11/81, 1/20/84, 9/30/85, 12/1/92; 19.2.8.13 NMAC - Rn, 19 NMAC 3 SLO 8.13, 09/30/02; A, 06/30/16]

19.2.8.14 ASSIGNMENTS:

A. With the written consent of the commissioner and the payment to the commissioner of the assignment filing fee as set forth in the schedule of fees, a lessee may assign the lease or the lease rights to any part of the land held thereunder for the remainder of the lease term, provided the lease is not in default and any outstanding collateral lease assignments have either been released or the prospective lease assignee has agreed in writing to assume or take the lease subject to the rights of the collateral assignees. Lease assignments shall be made under oath, upon forms prescribed by the commissioner and shall be accompanied by the lease assignment filing fee.

B. Upon the commissioner's approval in writing of the lease assignment, the assignment form shall become the leasing instrument.

C. An assignment without the written consent of the commissioner shall be null and void.

D. The assignment of an agricultural lease does not assign the appurtenant water rights. The transfer of water rights to an assignee requires the use of the transfer of ownership form provided by the office of the state engineer.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.14 NMAC - Rn, 19 NMAC 3 SLO 8.14, 09/30/02; A, 04/15/10; A, 06/30/16]

19.2.8.15 COLLATERAL ASSIGNMENTS:

A. With the prior written consent of the commissioner and the payment to the commissioner of the collateral assignment fee as set forth in the schedule of fees, a lessee may assign as collateral security a lease that is not in default; provided, however, that the collateral assignment of more than one (1) lease to secure the same indebtedness shall be made by separate assigning instruments. The collateral assignment of a lease shall not prevent its cancellation by the commissioner.

B. Collateral assignments shall be made upon forms prescribed by the commissioner and shall be accompanied by the collateral assignment fee as set forth in the schedule of fees.

C. The foreclosure of collateral assignments shall be accomplished in the manner provided by law for the foreclosure of chattel mortgages. Upon the filing with the commissioner of documentation proving the bona fide foreclosure and purchase of the lease and the cure of any lease defaults, completed assignment forms, and the required fee, the lease shall be assigned to the purchaser at the foreclosure sale, if such purchaser is otherwise qualified to lease state trust lands.

D. The release of collateral assignments shall be accomplished by the collateral assignee's executing and filing with the commissioner a release upon a form prescribed by the commissioner and accompanied by the release of collateral assignment fee as set forth in the schedule of fees.

(1) The failure of a collateral assignee to execute and file with the commissioner the release of a collateral assignment upon the satisfaction of the debt secured by the assignment shall subject the assignee to the risk of criminal penalties and civil liabilities as provided by law.

(2) The personal representative in the probate of a deceased collateral assignee's estate may release collateral assignments by executing and filing with the commissioner the release and certified copies of such other documents as the commissioner may require.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.15 NMAC - Rn, 19 NMAC 3 SLO 8.15, 09/30/02; A, 06/30/16]

19.2.8.16 TRANSFER OF LEASE UPON LESSEE'S DEATH:

A. Certified copies of letters testamentary and the final order in probate or the final order determining heirship, together with the miscellaneous instruments, filing fee and such other documents as the commissioner may require shall be filed with the commissioner in order to transfer a deceased lessee's interest in an agricultural lease. The agricultural lease may be carried on the records of the state land office in the name of the estate until probate or a judicial proceeding determining heirship has been completed.

B. The personal representative of the estate, subject to the normal approval processes of the commissioner, may assign the lease by:

(1) filing with the commissioner certified copies of the death certificate and letters testamentary;

(2) executing the necessary assignment forms;

(3) paying to the commissioner the lease assignment filing fee as set forth in the schedule of fees; and

(4) filing with the commissioner such other documents as the commissioner may require.

C. Except for leases executed by two (2) or more lessees designated as joint tenants with the right of survivorship, in the absence of probate, the lease interest of a deceased lessee shall be transferred on the records of the state land office during the term of the lease only by filing with the commissioner a certified copy of the certificate of death, the affidavits of the legal heirs as to their claims and the absence of conflicting claims, and such other documentation as the commissioner may require together with the miscellaneous instruments filing fee as set forth in the schedule of fees.

D. If a lease is executed by two (2) or more lessees designated as joint tenants with the right of survivorship, the interest of a deceased lessee may be transferred to the surviving lessees on the records of the state land office by filing with the commissioner the certificate of death together with the miscellaneous instruments filing fee.

E. If the heirs of a deceased lessee include minor children, a certified copy of the proceedings of the appointment of a guardian, conservator or guardian ad litem, together with such other documents as the commissioner may require and the miscellaneous instruments filing fee shall be filed with the commissioner to transfer the deceased lessee's interest in the lease.

F. The lease interest of a non-resident deceased lessee may be transferred by complying with Sections 45-4-101 to -401 NMSA 1978 and any successor provisions and by filing with the commissioner such documents as the commissioner may require together with the miscellaneous instruments filing fee.

[3/11/81, 1/20/84, 9/30/85, 12/1/92, 6/29/96; 19.2.8.16 NMAC - Rn, 19 NMAC 3 SLO 8.16, 09/30/02; A, 06/30/16]

19.2.8.17 AGRICULTURAL IMPROVEMENTS:

A. Improvements shall not be placed, made or developed on state trust land without the express written consent of the commissioner unless the cost of the improvement and its placement is within the cost limitations prescribed by Section 19-7-51 NMSA 1978. Improvements shall be placed, made or developed on state trust land only by the lessee of the land on which the improvements are to be located.

B. Applications to place, make or develop improvements on state trust lands held by an agricultural lease shall be made by the lessee upon forms and in the manner prescribed by the commissioner prior to initiation of placement or construction. Each application to place improvements shall:

- (1)** set forth the type and kind of improvements to be placed, made or developed and their estimated cost;
- (2)** specify the legal subdivisions on which the improvements are to be located; and
- (3)** be accompanied by the filing fee specified in the schedule of fees.

C. Inclusion of unauthorized improvements on any appraisal or listing of improvements submitted to the commissioner for any purpose shall not serve as an application to make, place or develop improvements on state trust lands or be construed as approval of those improvements by the commissioner.

D. Upon completion of an authorized improvement, the lessee shall, by sworn affidavit, notify the commissioner of the improvement's actual cost of acquisition, construction or placement.

E. Removal:

(1) All authorized improvements other than fences and growing crops shall be deemed permanent improvements and shall be removed only upon those terms and conditions to which the commissioner has agreed in writing prior to removal.

(2) All unauthorized improvements placed, made or developed on state trust lands by one acting in the capacity of the lessee of the land on which they are located shall be removed unless the lessee applies for, and the commissioner grants, approval of the improvements. The removal of such unauthorized improvements shall be pursuant to terms and conditions established by the commissioner and shall be solely at the expense of the lessee.

(3) Unauthorized improvements placed, made or developed on state trust land by one not acting in the capacity of the lessee of the lands on which the improvements are located shall be subject to removal, sale or other disposition at the commissioner's discretion.

F. Compensation: A purchaser or lessee of state trust lands on which authorized improvements are located shall provide to the commissioner:

(1) a bill of sale or waiver of payment signed by the holder of the right to improvement compensation; or

(2) payment of the value of such improvements as determined by the commissioner's appraisal. Payment of the value of authorized improvements received by the commissioner shall be remitted to the holder of the right to improvement compensation.

(3) Except as provided below, the commissioner shall recognize the compensability at one hundred (1.00) percent of value for authorized improvements.

(4) The commissioner shall recognize the compensability of all or any of the unauthorized improvements placed on state trust lands by one acting in the capacity of the lessee at any percentage of value, including zero (0.00) percent, but in no case more than seventy-five (.75) percent of value.

(5) The compensability of unauthorized improvements placed, made or developed on state trust lands by one not acting in the capacity of the lessee of the lands on which the improvements are located may be recognized at any percentage of value by the commissioner, including zero percent of value.

(6) In any instance when a lessee's improvements have been cost-shared with a government entity or through a grant, the lessee's compensation shall be equal to the percent, if any, of the original cost paid by the lessee, which percent shall be applied to the value described in Subsection F of 19.2.8.17 NMAC above.

[3/11/81, 1/20/84, 9/30/85, 11/4/88, 8/8/89, 12/1/92, 6/29/96; 19.2.8.17 NMAC - Rn, 19 NMAC 3 SLO 8.17, 09/30/02; A, 04/15/10]

19.2.8.18 CANCELLATION:

A. The commissioner may cancel any agricultural lease:

(1) obtained by fraud;

(2) executed through mistake or without authority of law;

(3) that is in default for violation of any of the lease terms, covenants or conditions, which include these rules and applicable statutes, including nonpayment of rentals; or

(4) that is in default for the lessee's failure to protect the leased lands from trespass or waste.

B. The commissioner may enter lease cancellation thirty (30) days after providing the lessee and any collateral assignees with notice of default by certified mail.

(1) Lease cancellation shall not be made if, within such thirty (30) day period, the lessee shall either comply with the commissioner's demands for cure, or appear before the commissioner and show good cause, as determined by the commissioner, why the lease should not be cancelled.

(2) The commissioner may at any time enforce the lien against improvements to satisfy delinquent rentals.

[3/11/81, 9/30/85, 12/1/92, 6/29/96; 19.2.8.18 NMAC - Rn, 19 NMAC 3 SLO 8.18, 09/30/02]

19.2.8.19 CONVERSION:

A. Land held under an agricultural lease may be reclassified from grazing land to cultivated land or from cultivated land to grazing land and the lease amended to permit such use after conversion upon application to the commissioner and receipt of the commissioner's written consent to convert the use of the land.

B. Applications to convert shall be made under oath on forms prescribed by the commissioner and accompanied by:

(1) the conversion application filing fee as set forth in the schedule of fees; and

(2) a reclamation plan to be implemented in the event the commissioner determines the conversion has been unsuccessful and the converted land should revert to its prior use.

C. The commissioner's approval of the application to convert and the issuance of an amended lease may be conditioned upon the lessee's obtaining sufficient surety for the benefit of the state of New Mexico to guarantee the land's restoration in the event of lease default, cancellation, relinquishment or termination for any reason, or the reversion of the land to its prior use.

D. Upon conversion, the lessee shall pay to the commissioner an amount equal to the difference between the grazing land rental and the cultivated land rental as

determined by the commissioner for the period between the date of conversion and the first following rental payment due date.

E. In the event converted land reverts to its prior use, the lessee, at the lessee's own expense, shall restore the land to a stabilized condition through reclamation and revegetation implemented pursuant to the reclamation plan submitted with the application to convert. No reduction in rentals due to the reversion shall be effective until such plan has been implemented to the commissioner's satisfaction.

[3/11/1981, 4/28/1982, 1/20/1984, 9/30/1985, 12/1/1992, 6/29/1996; 19.2.8.19 NMAC - Rn, 19 NMAC 3 SLO 8.19, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.8.20 RANGE STEWARDSHIP INCENTIVE PROGRAM:

A. Agricultural lessees who have leased state trust lands for grazing purposes for at least five years may apply for a twenty-five percent reduction in agricultural lease rentals by demonstrating through the range stewardship incentive program that they have been good stewards of their leased state trust land. Only state trust lands leased for grazing purposes and not subject to a sublease shall be eligible for participation in the range stewardship incentive program.

B. State trust lands included in the range stewardship incentive program shall be evaluated and classified by the commissioner according to the range condition and trend.

(1) The commissioner's evaluation and classification shall be based on the commissioner's verification of a sworn range condition and trend analysis and classification recommendation by a disinterested party with training or experience in rangeland evaluation. Said party shall certify that said party personally inspected the lands evaluated, that said party has no interest in or claim against the lands evaluated and that any fee charged for such evaluation is not related to the classification recommendation.

(2) Range condition shall be rated as either excellent, good, fair, or poor depending on the degree of difference between the range site's state of vegetation and the highest natural development of the plant community that could sustain itself under the prevailing climatic and soil conditions for the site.

(3) Range trend shall be rated as either improving, static, or declining depending on the direction of change in range condition over time.

C. Upon request, the commissioner shall provide to interested parties information explaining the range stewardship incentive program, instructions for applying to participate in the program, a description of the procedures necessary to collect the range data required for the commissioner's evaluation and classification of the leased lands, and a list of names and addresses of those who have successfully completed a

course in rangeland evaluation offered regularly by New Mexico state university and the state land office and who have made their names and addresses available to the commissioner for distribution to the public.

(1) Applications to participate in the range stewardship incentive program shall be made in the form prescribed by the commissioner, shall contain such information as the commissioner may require, and shall include a sworn range condition and trend analysis and classification recommendation by a disinterested party with experience or training in rangeland evaluation. The analysis and recommendation shall cover all state trust lands leased to the applicant for grazing purposes. No application fee shall apply.

(2) Only lessees of state grazing land under an existing lease may participate in the range stewardship incentive program. Only state lessees who participate in the program, who have leased state trust lands for grazing purposes for at least the immediately preceding five years, and whose leased lands include acreage classified by the commissioner as excellent-improving, excellent-static, good-improving or good-static shall pay the reduced rental.

D. All state trust land leased to the applicant for grazing purposes shall be included in the range stewardship incentive program upon completion of the commissioner's evaluation and classification of the acreage.

(1) Acreage that is classified by the commissioner as either excellent-improving, excellent-static, good-improving or good-static shall qualify for the rental reduction on a per acre basis.

(2) Acreage that is classified by the commissioner as either fair or poor condition or declining trend shall not qualify for the rental reduction but shall be included in the range stewardship incentive program.

E. In order to continue to participate in the range stewardship incentive program and to enjoy any applicable rental reduction, the participating lessee shall provide to the commissioner, no earlier than November 1st and no later than February 1st in the lease year immediately preceding the final year in the lease term, a sworn range condition and trend analysis and classification recommendation on the leased acreage by a disinterested party with training or experience in rangeland evaluation. The commissioner's verification of such analysis and recommendation shall provide the basis for the commissioner's reevaluation and any reclassification of the leased acreage.

(1) The lessee's failure to timely submit such range condition and trend analysis and classification recommendation shall terminate the lessee's participation in the program. Upon the lessee's reapplication and the commissioner's reevaluation and reclassification of the leased grazing lands, however, participation in the program shall again commence.

(2) Upon the lessee's continued participation in the program and the commissioner's reevaluation and reclassification of acreage from fair or poor condition or declining trend to excellent-improving, excellent-static, good-improving or good-static, the rental reduction shall apply to such reclassified acreage on a per acre basis.

(3) Upon the termination of the lessee's participation in the program any rental reduction shall cease to apply. Upon the commissioner's reevaluation and reclassification of excellent-improving, excellent-static, good-improving or good-static acreage to fair or poor condition or declining trend, the rental reduction shall cease to apply to such reclassified acreage.

(4) Upon the transfer or granting of a lease containing reduced rental acreage to one who is not qualified to pay the reduced rental, participation in the range stewardship incentive program may continue but any rental reduction shall cease to apply.

(5) Program participation shall continue and rental reduction shall continue or commence in those instances in which a participating lessee who is qualified to pay the reduced rental obtains a lease on lands included in the range stewardship incentive program that are classified as excellent-improving, excellent-static, good-improving or good-static, including those instances in which the lease is obtained by the lessee's exercise of the preference right or by the lessee's competitive bid.

[12/1/1992, 6/29/1996; 19.2.8.20 NMAC - Rn, 19 NMAC 3 SLO 8.20, 9/30/2002; A, 6/11/2019]

19.2.8.21 SURFACE DAMAGES:

A. If lessee is involved in litigation with any other persons or entities for damages connected with their leased trust land, lessee must notify the commissioner as soon as practicable. This notice requirement does not apply to any litigation involving only the lessee's personal or real property.

B. The notice must be in writing, describe the litigation, and give the case name and court docket number; and the notice must be mailed by certified mail to the Commissioner of Public Lands, Office of General Counsel, P.O. Box 1148, Santa Fe, New Mexico 87504.

C. The commissioner will decide within thirty (30) days after receiving the notice whether to participate in the litigation. If the commissioner decides to participate, lessee will not oppose the commissioner's participation in the litigation; but lessee can choose to oppose or support the commissioner's claims in the litigation. No response from the commissioner within thirty (30) days shall be deemed a decision not to participate. The commissioner's non-participation shall not be a waiver of any claim regarding damages to the trust lands.

[3/11/81, 1/20/84, 9/30/85, 10/4/88, 12/1/92, 6/29/96; 19.2.8.21 NMAC - Rn, 19 NMAC 3 SLO 8.21, 09/30/02; 19.2.8.21 NMAC - N, 04/15/10]

19.2.8.22 [RESERVED]

[19.2.8.22 NMAC - Rn, 19.2.8.21 NMAC, 04/15/10; Repealed, 06/30/16]

PART 9: BUSINESS LEASING

19.2.9.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501.

[19.2.9.1 NMAC - N, 5/15/2001]

19.2.9.2 SCOPE:

Pursuant to Article XIII, Section 2, of the New Mexico State Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.9 NMAC, governs the granting of business leases for commercial and business leasehold uses, as well as surface uses that are not otherwise provided for under other state land office rules, on those lands within the commissioner's constitutional jurisdiction.

[19.2.9.2 NMAC - N, 5/15/2001]

19.2.9.3 STATUTORY AUTHORITY:

N.M. Const. Art. XIII; Section 19-1-1 *et seq.* NMSA 1978; Section 19-7-1 *et seq.* NMSA 1978.

[19.2.9.3 NMAC - N, 5/15/2001]

19.2.9.4 DURATION:

Permanent.

[19.2.9.4 NMAC - N, 5/15/2001]

19.2.9.5 EFFECTIVE DATE:

May 15, 2001, unless a later date is cited at the end of a section.

[19.2.9.5 NMAC - N, 5/15/2001; A, 6/30/2016]

19.2.9.6 OBJECTIVE:

The objectives of 19.2.9 NMAC are to obtain revenues from business leasing; to assure protection and maintenance of trust lands; to provide standard lease terms and conditions; and to provide an efficient process for business leasing.

[19.2.9.6 NMAC - N, 5/15/2001]

19.2.9.7 DEFINITIONS:

As used in 19.2.9 NMAC, the following terms have the meaning set forth in this section. A business lease may add detail to a definition to accommodate lease specific issues.

A. "Approval" means written approval and includes only that which has been expressly approved and nothing further which might be implied.

B. "Assignment" means any direct or indirect transfer of a lessee's interest in a business lease or improvements, including, but not limited to, any conditional transfer or transfer by operation of law.

C. "Authorized improvements" means improvements which have the approval of the commissioner prior to being placed, developed, created, or constructed on, or obtained or developed for the benefit of, or made appurtenant to trust lands, or which have subsequently received that approval.

D. "Bid lease" means a business lease entered into by the commissioner after the public advertisement and public auction required by the Enabling Act.

E. "Business lease" means a written lease of trust lands issued under this rule, 19.2.9 NMAC, for business, commercial, residential, industrial, or real estate planning and development purposes, or for surface uses that are not otherwise provided for under other state land office rules. The commissioner, in the commissioner's discretion, shall resolve any uncertainty about whether a lease is a business lease.

F. "Collateral assignment" means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements.

G. "Commissioner" means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

H. "Improvements" means any of the following:

(1) any item of tangible property developed, placed, created or constructed on trust lands including, but not limited to, buildings, roadways, equipment and fixtures;

(2) water rights appurtenant to trust lands, including without limitation any water rights developed or used on trust land for the benefit of the trust land; and,

(3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, trust lands that are designated as improvements in a business lease.

I. **"Improvement value credit"** means a credit granted by the commissioner for permanent improvements which entitles the holder of the credit to certain rights upon the subsequent lease or sale of trust lands as provided in this rule and in a business lease.

J. **"Lessee"** means the party of record at the state land office, who leases trust land from the commissioner under a business lease.

K. **"Mortgage"** means the mortgage to a creditor as security for a debt of a lessee's personal property interest in a business lease or improvements.

L. **"Non-bid lease"** means a business lease entered into by the commissioner without public advertisement and public auction for a term not to exceed five years, or for a term not to exceed twenty-five years pursuant to Section 19-7-54 or 19-7-55 NMSA 1978.

M. **"Permanent improvements"** means those authorized improvements that a business lease specifies shall not be removed upon the termination of the lease. "Permanent improvements" shall include water rights appurtenant to trust land and equipment and fixtures necessary for the development of the water.

N. **"Removable improvements"** means authorized improvements that are not permanent improvements.

O. **"Rent"** means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a business lease.

P. **"Rent adjustment"** means a periodic increase of any rent amount.

Q. **"Schedule of fees"** means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

R. **"State land office"** means the New Mexico state land office.

S. "Sublease" means a transaction or arrangement whereby a business lessee transfers to another either the use or possession of all or part of leased trust land, or the management and control of all or part of the improvements located on leased trust land.

T. "Termination" means the end of a business lease whether by cancellation, relinquishment or the expiration of the lease term.

U. "Trust" means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust's assets, which are administered through the state land office by the commissioner.

V. "Trust land" means all land owned by the trust.

W. "Unauthorized improvements" means improvements that have not received the commissioner's approval.

[19.2.9.7 NMAC - N, 5/15/2001; A, 6/30/2016; A, 6/11/2019]

19.2.9.8 LEASING STANDARDS:

A. The surface estate of any trust land may be leased under a business lease at the discretion of the commissioner. A business lease may include more than one use, and may encompass more than one parcel of trust land. For lands already under any surface lease, the applicant shall comply with the procedures in 19.2.9.21 NMAC.

B. After receipt of an application as provided in 19.2.9.9 NMAC, the commissioner may request additional information from the applicant, as provided in 19.2.9.10 NMAC, and may enter into negotiations for a non-bid lease.

C. After receipt of an application as provided in 19.2.9.9 NMAC, or on the commissioner's own initiative, the commissioner may offer to lease trust land under a bid lease as provided in 19.2.9.11 NMAC.

D. Any applicant may withdraw an application for a business lease at any time.

E. Notwithstanding any other provision of 19.2.9 NMAC, and at any time before the execution of a business lease, the commissioner may, at the commissioner's discretion, reject any application or bid submitted under 19.2.9 NMAC and may withhold from business leasing any trust land subject to the commissioner's jurisdiction.

[19.2.9.8 NMAC - N, 5/15/2001; A, 6/11/2019]

19.2.9.9 APPLICATION TO LEASE:

Any person may propose that the commissioner enter into a business lease by submitting an application on forms prescribed by the commissioner.

A. The application shall, at minimum, be made under oath and shall identify the applicant, the trust land proposed for leasing and the proposed uses of the trust land, including any proposed improvements.

B. The application shall include a written appraisal of the trust land proposed for lease made under oath by a disinterested and credible person. All statements contained in such appraisements, except as to the true value of the land appraised, must be based upon personal knowledge and not upon information and belief. No such appraisal shall be conclusive upon the commissioner.

C. The application shall include a nonrefundable application fee in the amount established in the schedule of fees.

[19.2.9.9 NMAC - N, 5/15/2001]

19.2.9.10 SUPPLEMENTAL INFORMATION:

After review of an application and before entering into a business lease, the commissioner may require additional information and documentation from an applicant, including, but not limited to, an appraisal of the trust land proposed for lease, a survey of the land, a detailed development plan of the land, environmental analyses of the land, and cultural or biological resource investigations of the land.

[19.2.9.10 NMAC - N, 5/15/2001]

19.2.9.11 BID LEASE:

The commissioner may, under the following procedures, offer a bid lease to the highest and best bidder at a public auction held at the county seat of the county where the offered trust land, or the major portion of the offered land, is located.

A. Appraisal. After a preliminary determination that a bid lease might be advantageous to the trust, the commissioner will cause an appraisal to be made. The appraisal will cover the trust land proposed for lease and any permanent improvements on, appurtenant to, or obtained or developed for the benefit of, the land. Thereafter, if the commissioner determines to offer the land for bid lease, a copy of the appraisal will be furnished to the applicant, if any, and to the holder of the improvement value credit as well as to any other interested parties. Prior to the advertisement of the lease sale, the commissioner shall determine that the terms of the bid lease being offered provide a return to the trust over the duration of the bid lease that is a fair rental value based on the appraisal.

B. Advertisement. A notice of the lease sale shall be published once each week for ten (10) consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land.

C. Notice. The notice of lease sale shall contain:

- (1) The date, time and place of the auction;
- (2) A description of the trust land offered for lease, and any limitations on the uses of the land including any local land use restrictions, covenants, master plans or any restrictions established by the commissioner;
- (3) A summary of the basic provisions of the bid lease, including the term (and any extension periods), the rent (if fixed and not based on the highest bid) and the allowable uses of the trust land offered for lease;
- (4) Any requirements or qualifications for bidders;
- (5) The amounts that a bidder must deposit to pay the costs of the lease sale, the first rental payment and any improvement value credits;
- (6) A brief description of how the commissioner will determine the highest and best bidder; and
- (7) The name of a person to contact at the state land office for additional information on the auction and the trust land offered for lease.

D. Deposit. To qualify as a bidder, the prospective bidder shall deposit with the commissioner before the auction or at such other time provided in the notice of lease sale, the following amounts which shall be listed in the notice:

- (1) The costs of the lease sale. The successful bidder shall pay the reasonable costs and expenses related to the lease sale, whether incurred by the state land office or by another entity at the request of the state land office. Such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning and brokerage or other real estate fees;
- (2) The first rental payment under the bid lease; and
- (3) If the offered trust land includes permanent improvements, either a sum equal to the improvement value credit attributable to the permanent improvements or a bill of sale or a waiver of payment signed by the holder of the improvement value credit or a bond sufficient to cover the value of the improvements if an appeal of the appraised value is to be taken, unless the prospective bidder is the holder of the improvement value credit. The improvement value credit shall be calculated and paid as provided in 19.2.9.18 NMAC. Upon completion of the lease sale, the commissioner shall return any deposits from unsuccessful bidders.

E. Qualification of bidders. The commissioner may establish additional qualifications for bidders based on the nature of the bid lease and the proposed uses of the offered trust land.

F. Due diligence. All bidders must undertake their own due diligence in preparation for the lease sale, including, but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering on trust land. The notice of lease sale may provide that additional information concerning the offered trust land is available at the state land office for viewing by any interested parties. The additional information may include, without limitation, a draft bid lease or a summary of bid lease provisions.

G. Auction. The auction may be conducted by oral auction or by the acceptance of sealed bids or proposals at the time of the auction. If awarded at all, the bid lease shall be awarded to the highest and best bidder.

H. Highest and best bidder. In determining the highest and best bidder, the commissioner shall establish criteria that will be described in the notice of lease sale. The criteria shall enable the commissioner to select the bid that is in the best interests of the trust considering the requirements of the bid lease and the proposed uses of the offered trust land. In addition to any offered bonus or rental amounts, the commissioner may, as appropriate, consider the qualifications of the bidders to develop the land or to construct the improvements contemplated by the proposed bid lease, and to provide the trust with sustainable long-term returns. The commissioner may divide the bid process into stages, and review the qualifications of bidders prior to, or in addition to, reviewing any financial proposals.

I. Execution of bid lease. The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within thirty days after the auction, enter into the bid lease. The commissioner may extend the period for entering into a bid lease to no greater than one hundred twenty days after the auction. The final bid lease shall not contain any provisions that vary from those described in the notice of lease sale. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the bid lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the highest and best, or terminate the lease sale.

[19.2.9.11 NMAC - N, 5/15/2001]

19.2.9.12 BUSINESS LEASE:

A. Prerequisites. Before taking possession of the leased trust land, the lessee must provide the commissioner with a legal description and a survey plat showing the exact location of the land.

(1) A legal description must be given in aliquot parts of at least forty (40) acres, or in some other form as may be required by the commissioner such as survey metes and bounds. The description shall include a reference to all encumbrances, easements, or other servitudes burdening or benefiting the trust land.

(2) The commissioner may provide specific instructions on the requirements for a survey plat.

B. Leases. All business leases shall be in a form and contain such provisions as may be prescribed by the commissioner from time to time, which provisions shall be deemed to include all pertinent statutes and state land office rules in effect at the time of lease issuance.

C. Conditions. The commissioner shall establish conditions in a business lease necessary for providing a secure return to the trust, managing the trust land in a commercially reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a business lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

D. Uses. A business lease shall designate the allowable uses of the leased trust land. A business lease may be issued for any use of the surface estate not otherwise provided for under other state land office rules.

(1) The commissioner may establish restrictions on the uses of the trust land, including restrictions contained in local land use rules, covenants or land use plans.

(2) A business lease may be issued to authorize the planning of trust land or the development of trust land pursuant to an approved plan. The lease may require that the lessee obtain local government approvals of the land use plan prior to development. The lease may provide for development to occur in phases, which phases may require further leases or sales of trust land.

E. Rent. Unless otherwise provided in a lease, rent shall be paid in advance in annual installments.

(1) If a business lease has a term of more than five years, the lease shall provide for a rent adjustment of any fixed periodic rent to occur no less often than every five years.

(2) As provided in Section 19-7-34 NMSA 1978, the commissioner shall have a first lien on any improvements on the leased trust land, prior and superior to any other lien or encumbrance, whether created with or without notice of the lien, for rental due or to become due. When any rental is due and unpaid the commissioner may attach all improvements or a portion of the improvements sufficient to pay the unpaid rental together with all costs incurred in the enforcement of the lien.

(3) The commissioner may, upon request and upon provision of adequate security as determined by the commissioner, agree to withhold enforcement of the rental lien. Adequate security may include prepayment of lease rent or some other acceptable form of financial assurance.

F. Mineral reservation. Each business lease shall reserve the mineral estate of the trust land to the commissioner and shall reserve the right to lease the mineral estate, or any portion of the mineral estate, for exploration, development, conservation and production of the mineral resources, including oil and natural gas. The reservation shall include all rights of access over, through or across trust lands necessary for a mineral lease. The commissioner may, in a business lease, agree, upon payment of an additional annual rent, not to exercise the right to lease the trust's mineral rights during the term of the lease. The additional rent shall be sufficient to compensate the trust based on the commissioner's evaluation of the potential mineral value associated with the leased trust land.

G. Easements and right of way. Each business lease shall reserve to the commissioner the right to grant easements and right of way across trust land for any legal purpose. A business lease may provide that any easements or right of way granted across leased trust land shall be located to avoid unreasonable interference with the uses allowed under the lease. A business lease may require that the lessee acquire from the commissioner easements or right of way necessary for the development of the trust lands and may also require or allow the lessee to assign or dedicate its interest in easements or right of way to a public entity.

[19.2.9.12 NMAC - N, 5/15/2001]

19.2.9.13 LEASE EXTENSION AND NEW LEASE:

A. Bid lease. The term of a bid lease may not be extended except as provided in the notice of lease sale and the original bid lease.

B. Non-bid lease. The term of a non-bid lease may not be extended. If, prior to the expiration of a non-bid lease, the lessee wants a new non-bid lease, for the same trust land and the same use, that will commence at the expiration of the current lease, and if the lessee has complied with all the terms of its lease, the lessee shall submit a sworn application, on such forms as the commissioner may require or provide, for a new lease. The commissioner may establish, in a business lease, additional requirements for applying for a new lease.

C. Discretion. Nothing in this rule shall limit the discretion of the commissioner, at the expiration of a business lease, to determine whether it is in the best interests of the trust to reject all applications to lease, or to offer a new non-bid lease on such terms as the commissioner determines or to sell or lease the trust land through a bid process.

[19.2.9.13 NMAC - N, 5/15/2001]

19.2.9.14 SUBLEASE AND ASSIGNMENT:

A. Any assignment or sublease for use of trust lands is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such terms or requirements as are deemed to be in the best interests of the trust. The commissioner may, in a lease, pre-approve certain assignments or subleases that the commissioner deems to be in the best interests of the trust.

(1) No assignment or sublease of trust lands under a business lease shall be approved unless the lessee is in compliance with the terms of the lease.

(2) The commissioner's approval of a sublease or assignment shall not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease shall not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.

(3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.

B. Applications to sublease or assign shall be made by the current lessee under oath, on forms prescribed by the commissioner, and shall be accompanied by the fees shown on the schedule of fees.

C. No assignment or sublease shall extend the term of a business lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's business lease.

D. The termination of a business lease shall automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner.

E. A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.

[19.2.9.14 NMAC - N, 5/15/2001; A, 6/11/2019]

19.2.9.15 COLLATERAL ASSIGNMENTS AND MORTGAGES:

A. Unless otherwise provided in a business lease, and subject to the prior approval of the commissioner, a lessee's interest in a business lease or improvements may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall have a lien on the lessee's interest in the lease, as well as any improvements covered by the collateral assignment or mortgage, but shall not have a lien on the commissioner's interest in the lease and any improvements, or in the commissioner's reversionary interest in the real and personal property subject to the

lease. Any attempt to collaterally assign or mortgage a lessee's interest in a business lease, or in any improvements, without the approval of the commissioner, shall be void and shall not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or improvements.

(1) A lessee shall apply to the commissioner to collaterally assign or mortgage the lessee's interest in a business lease or any improvements in writing, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment agreement or mortgage and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment or mortgage subject to such terms and conditions which the commissioner deems to be in the best interests of the trust.

B. If the commissioner gives written notice to a business lessee of a breach of the lease by the lessee, the commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the business lessee. Such notice shall be sent by certified mail to the most current name and address of the collateral assignee or mortgagee provided to the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee shall be required.

C. An approved collateral assignee or mortgagee shall have the right to cure a lessee's breach within the time periods provided to the lessee under the lease. A business lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the business lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment or mortgage of improvements does not change the status of any improvements as authorized, unauthorized, removable or permanent improvements.

D. A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee or mortgagee upon making a collateral assignment or mortgage.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment or mortgage.

(2) Any successor in interest to a lessee's interest in a business lease, or in any improvements, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, shall be deemed to be an assignee under section 19.2.9.14 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless

arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.9.15 NMAC - N, 5/15/2001; A, 6/11/2019]

19.2.9.16 APPROVAL OF IMPROVEMENTS:

No improvements shall be placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without the prior approval of the commissioner. Such approval may be conditioned upon certain requirements imposed by the commissioner which may include, without limitation, the provision of a bond or other adequate security to assure proper removal of improvements from trust land and the restoration of trust land.

A. A request for the commissioner's approval shall be made in writing on such forms and in such manner as may be required by the commissioner, and shall be accompanied by the fee set forth in the schedule of fees. The commissioner shall not be obligated to approve any improvements.

B. A business lease may identify existing and proposed improvements that are approved by the commissioner when the commissioner determines it is in the best interests of the trust.

C. If the commissioner does not grant prior approval for improvements, the commissioner may, in the best interests of the trust, approve improvements after the improvements have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land.

[19.2.9.16 NMAC - N, 5/15/2001; A, 6/11/2019]

19.2.9.17 REMOVAL OF IMPROVEMENTS:

A. Upon the termination of a business lease, all removable or unauthorized improvements shall be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No improvement may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unauthorized improvements be left in place. Such improvements shall become the property of the commissioner and no person shall be entitled to any improvement value credit for such improvements.

(3) Any improvements left on trust lands without the commissioner's approval shall remain the property and liability of the lessee and shall constitute a nuisance until removed or abandoned. The commissioner may elect to either take any necessary action to abate such nuisance, with all costs and fees incurred in so doing to be additional rent due from the lessee under the lease, or to declare that the improvements are abandoned and have become the property of the commissioner.

B. In all cases where improvements are removed from trust land, the lessee shall be solely liable for the restoration of the trust land to its condition prior to the placement of such improvements. The lessee's obligation to remove improvements and to restore the trust land shall survive the termination of the lease.

C. All costs, fines and fees incurred by the commissioner as a result of improvements left on trust lands without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust lands and their improvements during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust lands, shall remain the sole liability of the lessee and shall be deemed additional rent due at the time incurred.

[19.2.9.17 NMAC - N, 5/15/2001]

19.2.9.18 IMPROVEMENT VALUE CREDIT:

A. Personal property. Unless otherwise provided in a business lease or in this rule, improvements shall be the property of the lessee. The interest of a lessee in a business lease and in the improvements is a personal property interest. Unless otherwise provided in a business lease, improvement value credit is only granted for permanent improvements and is not granted for removable or unauthorized improvements. Water rights that are appurtenant to trust land shall be developed and held in the name of the commissioner.

B. When payable. When trust lands are sold or leased to a person other than the holder of any improvement value credit, the successor in interest shall pay to the commissioner the amount of the improvement value credit, if any. The commissioner shall pay to the holder of the improvement value credit the amount paid by the successor in interest, less any rent, costs or damages owed to the commissioner.

(1) In lieu of such payment, a successor in interest may file with the commissioner a bill of sale or waiver of payment signed by the holder of the improvement value credit or, if an appeal of the appraised value is taken, a bond sufficient to cover the value of the improvements as determined by the commissioner.

(2) Except for the transfer of funds for improvement value credit paid by a successor in interest as provided in this subsection, the commissioner shall not be liable for the payment of any improvement value credits. The commissioner may require a release or indemnity from the party receiving payment of the improvement value credit.

(3) The holder of the improvement value credit must be identified in the records of the state land office. Unless otherwise provided in a lease or in an assignment, collateral assignment or mortgage of improvements approved by the commissioner and filed with the state land office, the commissioner shall treat the former lessee as the holder of the improvement value credit and the party entitled to payment of any improvement value credit.

C. Calculation of improvement value credit. Unless otherwise provided in a lease, the holder of the credit is entitled to all of the improvement value credit attributable to the permanent improvement.

(1) A business lease may provide that the commissioner shall receive a specified portion of the improvement value credit attributable to a permanent improvement.

(2) Unless otherwise provided in a lease or in a statute, the improvement value credit will be the amount, if any, which the permanent improvement adds to the value of the trust land. The added value shall be determined, at the expense of the lessee or the holder of the credit, by an appraisal conducted by a certified real estate appraiser. The appraisal shall be submitted to the commissioner for review and approval. The commissioner may obtain further appraisals to ascertain the improvement value. The commissioner may require a successor in interest to reimburse the costs of appraising the improvements.

(3) The commissioner shall determine the value of the improvements and the commissioner's determination shall be final unless the holder of the improvement value credit initiates a contest as provided under Section 19-7-64 NMSA 1978.

(4) A business lease may provide that an improvement value credit may be lost or depreciated if, after termination of the business lease, there is no successor in interest other than the commissioner.

[19.2.9.18 NMAC - N, 5/15/2001; A, 6/11/2019]

19.2.9.19 RELINQUISHMENT:

A. A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a business lease. The commissioner may, in a business lease, establish conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

B. A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and,

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

C. A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

D. A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

E. Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.9.19 NMAC - N, 5/15/2001]

19.2.9.20 DEFAULT; REMEDIES:

Unless otherwise provided in a business lease, a lessee shall be in default under a business lease if a breach of the lease is not cured within thirty days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

A. Notice. Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

B. Remedies. On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the business lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.9.20 NMAC - N, 5/15/2001]

19.2.9.21 EXISTING LEASES:

Except as provided in this section, the commissioner may not lease under a business lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes the existing lessee's interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed business lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new business lease in compliance with the following requirements.

A. The new business lease shall identify the existing lease, shall state that the new business lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new business lessee will not interfere with the uses permitted under the existing lease.

B. The existing lessee must consent in writing to the new business lease.

[19.2.9.21 NMAC - N, 5/15/2001; A, 6/11/2019]

PART 10: EASEMENTS AND RIGHTS-OF WAY

19.2.10.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office.

[19.2.10.1 NMAC - Rp, 19.2.10.1 NMAC, 6/30/2004]

19.2.10.2 SCOPE:

This part covers all easements and rights of way granted over, upon, through, or across, trust lands for pipelines, public highways, railroads, tramways, telegraph, fiber optic, telephone and power lines, irrigation works, mining, logging, and for other purposes, except easements or rights of way granted in a lease, or salt water disposal easements covered by 19.2.11 NMAC, or water easements covered by 19.2.12 NMAC.

[19.2.10.2 NMAC - Rp, 19.2.10.2 NMAC, 6/30/2004]

19.2.10.3 STATUTORY AUTHORITY:

N.M. Const., Art. XIII; NMSA 1978 Sections 19-1-1 and 19-7-57. The authority to promulgate this part is found in Section 19-1-2 NMSA 1978.

[19.2.10.3 NMAC - Rp, 19.2.10.3 NMAC, 6/30/2004]

19.2.10.4 DURATION:

Permanent, unless otherwise provided in a specific section of this part.

[19.2.10.4 NMAC - Rp, 19.2.10.4 NMAC, 6/30/2004]

19.2.10.5 EFFECTIVE DATE:

June 30, 2004, unless a later date is cited at the end of a section.

[19.2.10.5 NMAC - Rp, 19.2.10.5 NMAC, 6/30/2004]

19.2.10.6 OBJECTIVE:

The objective of this part is to provide for the orderly and lawful administration and the appropriate granting of easements and rights of way on trust lands.

[19.2.10.6 NMAC - Rp, 19.2.10.6 NMAC, 6/30/2004]

19.2.10.7 DEFINITIONS:

A. "Appraisal" means an appraisal as defined in Section 61-30-3A NMSA 1978.

B. "Commissioner" means the New Mexico commissioner of public lands, and the commissioner's appointees under Section 19-1-7 NMSA 1978, acting within the scope of their authority. The commissioner may delegate to state land office staff the performance of functions required of the commissioner under this part.

C. "Easement" means a right or privilege granted by the commissioner, to use a defined area of trust lands for a prescribed purpose and time, which right can be terminated as provided in this part.

D. "Right of way" means a right or privilege granted by the commissioner, to pass over, upon, through, or across, a defined area of trust lands for a prescribed purpose and time, which right can be terminated as provided in this part.

E. "Fair market value" means the value that a willing buyer would pay a willing seller for a right of way or easement in the open market as set forth in a price schedule adopted by the commissioner or as otherwise determined, in the commissioner's discretion, by an appraisal or field inspection.

F. "Field inspection" means an on-site inspection of a right of way or easement, made by authorized state land office personnel, which, if required under the price schedule or otherwise appropriate, may include specialized services such as market analysis or a determination of fair market value.

G. "Price schedule" means a schedule, adopted by the commissioner pursuant to this Part 10, showing the consideration due for the acquisition of an easement or right of

way, which schedule shall be reviewed periodically by the commissioner and revised by the commissioner, when the commissioner deems it necessary, to reflect changes in the fair market value of easements and rights of way. A price schedule may incorporate varying considerations to account for the different uses, sizes, and locations, of easements and rights of way. The adoption of a price schedule and any revision thereof shall be preceded by reasonable public notice and the opportunity for public comment. Public notice shall consist of publication on the state land office website, and such other means as the commissioner may determine are appropriate, including but not limited to direct notification by mailing or electronic means to known interested parties. The time permitted for public comment shall be determined by the commissioner in the commissioner's discretion.

H. "Purchase contract lands" means trust lands being purchased under a contract.

I. "Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

J. "State land office" means the New Mexico state land office.

K. "Trust" means the trust created by the New Mexico Enabling Act and administered by the commissioner.

L. "Trust lands" means those lands, their natural products and all rights, privileges, or assets, which are derived from them, and which are under the care, custody, and control of the commissioner.

[19.2.10.7 NMAC - Rp, 19.2.10.7 NMAC, 6/30/2004; A, 6/30/2016; A, 6/11/2019]

19.2.10.8 NO RIGHTS TO BE OBTAINED BY PRESCRIPTION:

Easements or rights of way on trust lands may be acquired only by application and grant made in compliance with this part and applicable laws. No easement, right of way, or other interest in trust lands may be acquired by prescription, or pursuant to any other legal doctrine, except as provided by statute.

[19.2.10.8 NMAC - Rp, 19.2.10.8 NMAC, 6/30/2004]

19.2.10.9 TRESPASS:

A. Any use of trust lands for right of way or easement purposes prior to the grant of a right of way or easement as provided by this Part 10 shall constitute an unauthorized use of such lands and will be deemed a trespass. The use of trust lands for easement

or right of way purposes, if based upon any approval by any means other than as provided for in this Part 10, will likewise be deemed a trespass. However, in extenuating circumstances and for good cause shown, the commissioner may, in the commissioner's discretion and upon written request, waive the trespass penalties set out below when the trespass consists of an inadvertent failure to obtain or renew an easement or right of way and that failure is promptly corrected when discovered.

B. Upon notification or determination that an unauthorized use exists, the commissioner shall initiate criminal or civil trespass sanctions, or both, against the unauthorized user; provided, however, that prior to the initiation of such action, the commissioner may attempt to remedy the trespass non-judicially by such means as the commissioner deems best including, but not limited to: 1) offering the unauthorized user the opportunity to terminate the unauthorized use, restore the lands to their condition prior to the unauthorized use, and pay the pro-rated fair market value of the unauthorized use through the date of termination; or, 2) offering to ratify the unauthorized use upon receipt of the required consideration plus the applicable trespass penalty set forth in Subsection D of 19.2.10.9 NMAC below. The commissioner shall not initiate or otherwise pursue criminal or civil trespass sanctions against an unauthorized user if that unauthorized user accepts and complies with any non-judicial remedy offered by the commissioner to remedy the unauthorized use.

C. All time limitations imposed upon an unauthorized user by the commissioner when offering non-judicial remedies shall be reasonable, but in no case shall any such limit be less than 10 days nor more than 60 days.

D. Trespass penalties: All trespass penalties are due in addition to the consideration due under 19.2.10.15 NMAC below.

(1) An unauthorized user must pay the following trespass penalty:

(a) for the first occurrence of unauthorized use, one hundred percent of the applicable fair market value;

(b) for the second occurrence, five hundred percent of the applicable fair market value;

(c) for the third occurrence, one thousand percent of the applicable fair market value;

(d) for the fourth and subsequent occurrences, one thousand percent of the applicable fair market value and the grant of easement or right of way is limited to a maximum five-year term at the applicable fair market value for a 35-year term;

(2) Any occurrence of trespass preceded by five years of non-occurrence by the party in trespass will be treated as a first occurrence.

(3) In the commissioner's sole discretion, applicable trespass penalties will be reduced by no more than fifty percent if the trespass is self-reported before the commissioner learns of it from any other source.

(4) The trespass penalties described above apply only to unauthorized uses that commence on or after February 28, 2002. The trespass penalty for an unauthorized use that commenced prior to that date is one hundred percent of the fair market value.

[19.2.10.9 NMAC - Rp, 19.2.10.9 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.10 LANDS SUBJECT TO APPLICATION:

An applicant must review state land office records to determine which rights, if any, have been conveyed to or contracted for by third parties, which would limit or prohibit the commissioner's issuance of additional interests. As to lands under purchase contract, see 19.2.10.29 NMAC.

[19.2.10.10 NMAC - Rp, 19.2.10.10 NMAC, 6/30/2004]

19.2.10.11 SURVEY PERMISSION:

Anyone desiring to apply for an easement or right of way covering trust lands shall, prior to entry for surveying activities, file with the commissioner a written notice of intent to conduct a survey of the proposed location of such easement or right of way.

A. Such written notice, which may be in letter form, shall adequately describe the proposed project, including the purpose and general location (giving section, township and range coordinates).

B. The written notice shall contain the following agreement: "The undersigned applicant indemnifies and holds harmless the commissioner, the commissioner's agents and employees, and any authorized lessees of the state of New Mexico, against any and all liability for loss of life, personal injury and property damage due to survey or related activities of the applicant, or by employees, contractors or subcontractors of the applicant." In lieu of such agreement, the applicant may submit a surety bond in an amount acceptable to the commissioner.

C. Upon receipt of the notice, the commissioner shall first determine whether the requested survey is, in fact, trust lands, and if the notice and agreement are acceptable. If accepted, the applicant and any surface lessees will be notified, and the applicant will be informed of any conditions being imposed on the proposed entry by the commissioner. Failure to comply with such conditions may result in the denial of a subsequent application for a right of way or easement.

[19.2.10.11 NMAC - Rp, 19.2.10.11 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.12 SURVEY PLAT:

A. Unless waived by the commissioner pursuant to 19.2.10.13 NMAC, each application for an easement or right of way shall include a survey plat, which describes the location (by quarter-section parts or lots, township, and range coordinates) of the proposed easement or right of way. The survey plat shall be based upon an actual survey on the ground and shall include a plat prepared in accordance with the Minimum Standards for Surveying in New Mexico as set out by the New Mexico board of registration for professional engineers and surveyors, by a professional surveyor who is registered in New Mexico or exempt from registration under the provisions of the Engineering and Surveying Practice Act, Sections 61-23-I to -32 NMSA 1978, or its successor provisions. The survey plat shall be properly certified showing the surveyor's state of registration and registration number. The survey plat shall show the centerline of the proposed easement or right of way or, if there is no centerline, then the area of the proposed easement or right of way. The survey plat shall identify every point where the proposed easement or right of way enters or leaves state trust land, crosses a section line, fence, road, pipeline, telephone line, irrigation works, or any other visible boundary, use, or easement. The survey plat shall show the location of all improvements in the close proximity of the easement or right of way. The survey plat shall show ties to section and quarter section corners, and measurements shall be to the nearest tenth of a foot with bearings expressed to the nearest minute. In no case shall the smallest unit of angular measurement be more than one minute. Acreage shall be computed to the nearest one hundredth of an acre and the survey plat shall show the number of acres, and the number of rods, included in the proposed easement or right of way in each legal subdivision of 40 acres, more or less.

B. When the requirement to submit a survey plat in accordance with Subsection A of 19.2.10.12 NMAC has been waived pursuant to 19.2.10.13 NMAC, then the applicant must provide to the commissioner a plat (prepared by the applicant, or the applicant's designated agent), drawn to scale, and showing the location of the easement or right of way and indicating the approximate number of acres and rods to be taken, as well as the legal description (by quarter-section parts or lots, township, and range coordinates) of the lands to be burdened by the proposed easement or right of way in the form required by Subsection A of 19.2.10.12 NMAC.

[19.2.10.12 NMAC - Rp, 19.2.10.12 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.13 APPLICATION FORM:

Written application for any grant of an easement or right of way shall be made upon forms prescribed and furnished by the commissioner. Such application shall be made under oath, and contain the following:

A. the application fee as set forth in the schedule of fees;

B. the field inspection fee as set forth in the schedule of fees, which fee may, in the discretion of the commissioner, be waived where the applicant is a governmental body which is prohibited by law from paying fees; and,

C. a legal description of the trust lands to be burdened by the proposed easement or right of way, together with a survey plat as provided under Subsection A of 19.2.10.12 NMAC; provided, however, that the requirement to submit a survey plat in accordance with Subsection A of 19.2.10.12 NMAC may be waived, in the discretion of the commissioner, upon a showing of good cause or undue hardship; all requests for waivers, setting forth the basis of the request, must be submitted in writing to the commissioner; in the event a waiver is granted, the applicant shall comply with the requirements set forth in Subsection B of 19.2.10.12 NMAC.

[19.2.10.13 NMAC - Rp, 19.2.10.13 NMAC, 6/30/2004; A, 6/30/2016]

19.2.10.14 TENURE:

Easements and rights of way granted under this part shall be granted for a term, which the commissioner, in the commissioner's discretion, deems in the best interests of the trust. Under no circumstances will the commissioner grant an easement or right of way for a perpetual term or as a fee simple grant.

[19.2.10.14 NMAC - Rp, 19.2.10.14 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.15 CONSIDERATION:

A. For telecommunications, electric line, and pipeline easements and rights-of-way, consideration for the grant of a right of way or easement shall be in an amount determined by the applicable price schedule unless the commissioner, in the commissioner's discretion, elects to establish the price through separate field inspection or appraisal, and/or subsequent negotiation, taking into account the circumstances and damage to remaining lands; for all others, consideration shall be determined by field inspection or appraisal, and/or subsequent negotiation, or such other method as the commissioner in the commissioner's discretion deems best. In each case however, unless a credit is allowed pursuant to Subsection B of 19.2.10.15 NMAC below, consideration shall not be less than the fair market value of the interest to be granted. This Section 19.2.10.15 applies to all federal, state, county, municipal, or other governmental agencies, as well as quasi-governmental bodies or organizations, as if they were private parties.

B. For gathering pipelines, salt water disposal pipelines and other pipelines not used for main transmission, the commissioner may authorize a credit of up to thirty percent of the fair market value of the interest to be granted if, after a written showing by the applicant, the commissioner, in the commissioner's sole discretion, determines: 1) that the grant of an easement or right of way, with a credit, will enhance oil and gas production from trust lands; 2) that the royalties resulting from the enhanced oil and gas

production will far exceed any benefits derived from receiving fair market value from the grant of easement or right of way; and 3) that granting the credit is in the best interests of the trust. If such a credit is authorized, the grantee shall pay the fair market value less the amount of the credit.

C. An applicant for an easement or right of way may apply to use an existing right of way or easement. The application must be accompanied by: a) the written consent of the existing user for the proposed second use, if different from the applicant; and b) if a discount is being requested, an appraisal, satisfactory to the commissioner, comparing the damage to trust lands that will result from the proposed easement or right of way and the damage that would be caused by that same right of way or easement if located adjacent to the proposed one. Other factors supporting a discount may be included for the commissioner's consideration. In cases where a second use is approved by the commissioner within an existing right-of-way or easement, the commissioner may, based upon the approved appraisal, and if the commissioner deems it in the best interests of the trust, discount the consideration for the second grant by no more than twenty percent.

D. No applicant may have both the Subsection B of 19.2.10.15 credit and the Subsection C of 19.2.10.15 discount above. If both are applied for, the commissioner in the commissioner's discretion will determine which, if any, will be allowed.

[19.2.10.15 NMAC - Rp, 19.2.10.15 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.16 EASEMENT OR RIGHT OF WAY DIMENSIONS:

The commissioner shall determine the minimum dimensions of easements and rights of way, which determinations may be changed from time to time or waived in the commissioner's discretion.

[19.2.10.16 NMAC - Rp, 19.2.10.16 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.17 ACCESS PERMITS:

The rights granted by the commissioner in any right of way or easement shall not include any right of access over, or right to use, trust lands not within the actual dimensions of the right of way or easement. If a right of way or easement is not large enough to permit vehicular or other access necessary for the maintenance, repair, or improvement, of the right of way or easement, or for other permitted activities within the right of way or easement, access in such cases must be obtained by applying for and receiving a temporary access permit from the commissioner using such form or forms, and subject to the payment of such fees and costs, as the commissioner deems in the best interests of the trust and promulgates from time to time. Temporary access permits may also be issued to prospective applicants for rights of way or easements to allow them to conduct pre-application assessments. Each entry upon trust lands without an

access permit as required by 19.2.10.17 NMAC shall be a separate trespass under 19.2.10.9 NMAC above.

[19.2.10.17 NMAC - Rp, 19.2.10.17 NMAC, 6/30/2004]

19.2.10.18 DAMAGE SURETY:

A. The holder of an easement or right of way is required to compensate the state or its lessee, patentee, or purchase contract holder, for the reasonable value of any measurable damage done to improvements or other property, belonging to the person claiming such damages, lawfully upon the trust lands burdened by the easement or right of way. Before an easement or right of way may be issued, the applicant shall file with the commissioner a bond or other surety in an amount determined by the commissioner to be sufficient to cover such damages; provided, however, that the commissioner, in the exercise of the commissioner's discretion, may waive this requirement if the applicant agrees to furnish to the commissioner, upon request, the names and addresses of its construction contractors, and if at least one of the following additional conditions is met:

(1) each lessee, patentee or purchase contract holder of the trust lands burdened by the easement or right of way provides a written waiver of this surety bond requirement; or,

(2) the applicant is a governmental agency which is prohibited by law from posting a surety bond and lawfully assumes sole and complete contractual liability for any damages arising from or in connection with its survey or use of the right of way or easement; or,

(3) the applicant is a governmental agency which is not immune from suit or is otherwise required by law to pay such damages and is thereby its own insurer, and lawfully assumes sole and complete contractual liability for any damages arising from or in connection with its survey or use of the right of way or easement; or,

(4) the commissioner, in the commissioner's discretion, is satisfied that each lessee, patentee or contract holder will be afforded adequate protection other than through the posting of a bond or other surety by the applicant.

B. With the approval of the commissioner, a \$25,000.00 bond, or one in any other amount that is determined by the commissioner from time to time to be in the best interests of the trust, or a different surety acceptable to the commissioner, may be used for more than one easement or right of way which the grantee has executed with the commissioner.

[19.2.10.18 NMAC - Rp, 19.2.10.18 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.19 EXPEDITED APPLICATION:

Upon the request of an applicant, satisfactorily demonstrating an emergency situation, an application for an easement or right of way may be expedited as follows:

A. If the applicant does not already have one, the application may be sent to the applicant by fax or in electronic format.

B. The applicant must complete the application and return it with an offered rental and the appropriate fees.

C. A telephonic inquiry will then be made to the appropriate state land office personnel for verbal recommendations regarding the application and the proper fee per unit to be charged.

D. After evaluating the verbal recommendation from the state land office personnel, an easement or right of way will be prepared along with a request for additional rental if necessary and faxed to the applicant.

E. Upon return of the faxed and signed notarized easement, along with payment of or an acceptable agreement to pay additional rental if requested, the applicant will, within three days of receipt, be given verbal or fax approval.

[19.2.10.19 NMAC - N, 6/30/2004]

[19.2.10.19 NMAC EXPEDITED APPLICATION is a new section added and replaces 19.2.10.19 NMAC CONSTRUCTION REPORTS. The old section headed CONSTRUCTION REPORTS is now 19.2.10.20 NMAC below]

19.2.10.20 CONSTRUCTION REPORTS:

The holder of an easement or right of way shall notify the commissioner immediately when any historic or prehistoric ruin or monument, or any object of historical, archeological, or scientific value is discovered upon or within the easement or right of way. Upon such discovery, the holder of the easement or right of way shall immediately refrain from further use or disturbance of the discovery area, or any related areas where further discoveries are likely, until the commissioner has consented in writing to any further activity upon or use of the easement or right of way and notified such other authorities as the commissioner deems it in the best interests of the trust to notify.

[19.2.10.20 NMAC - Rp, 19.2.10.19 NMAC, 6/30/2004]

19.2.10.21 AFFIDAVIT OF COMPLETION:

Upon the completion of construction of any easement or right of way, the holder of the easement or right of way shall, within 60 days after completion of construction, file with the commissioner an affidavit of completion. Failure to file such affidavit in accordance

with this section shall subject the easement or right of way to termination in accordance with the provisions of this part.

[19.2.10.21 NMAC - Rp, 19.2.10.20 NMAC, 6/30/2004]

19.2.10.22 CONFLICT OF USE:

Unless otherwise authorized in writing by the commissioner, an easement or right of way shall not be used for any other or additional purposes or by any other or additional parties except those expressly identified in the grant of easement or right of way. Unless expressly stated otherwise in the grant of easement or right of way, the commissioner reserves the right to grant easements or rights of way to third parties over, under, upon, through, across or parallel to an existing easement or right of way; provided, however, that the commissioner shall not approve such subsequent easements or rights of way if, in the commissioner's discretion, such co-use would present a safety hazard or otherwise unreasonably interfere with the existing easement or right of way. When a subsequent easement or right of way is permitted, the commissioner will require the subsequent grantee to post a bond or other surety to insure payment of damages, if any, which are done to the prior grantee's improvements and installations unless the prior grantee waives this requirement.

[19.2.10.22 NMAC - Rp, 19.2.10.21 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.23 AMENDMENTS:

Any holder of an existing easement or right of way desiring to change the use, or widen or otherwise alter the easement or right of way shall make application to do so by following the same procedure as is used in making an application for a new easement or right of way. Depending on the scope of the proposed change to the easement or right of way, the commissioner may waive certain application requirements, such as the survey plat or the application fee.

[19.2.10.23 NMAC - Rp 19.2.10.22 NMAC, 6/30/2004]

19.2.10.24 ASSIGNMENT - RELINQUISHMENT:

An easement or right of way may be assigned to third parties or relinquished to the state with the prior written approval of the commissioner and upon such terms and conditions as the commissioner may prescribe, and payment of the fee as set forth in the schedule of fees. The commissioner may waive the relinquishment fee when relinquishment is to accommodate a request or demand of the commissioner.

[19.2.10.24 NMAC - Rp, 19.2.10.23 NMAC, 6/30/2004; A, 6/30/2016; A, 6/11/2019]

19.2.10.25 RENEWAL OF EASEMENT OR RIGHT OF WAY:

Prior to the expiration date of any easement or right of way heretofore or hereafter granted for a limited term of years, an application may be submitted for a renewal of the grant. If the renewal involves no change in the location or status of the original easement or right of way, the applicant may file with the application a statement under oath setting out this fact, and the commissioner, in the commissioner's discretion, may extend the grant for an additional term upon payment of such additional consideration as the commissioner determines is appropriate; provided, however, that in no case shall such consideration be less than the fair market value of the interest granted unless a credit is allowed by this part.

[19.2.10.25 NMAC - Rp, 19.2.10.24 NMAC, 6/30/2004; A, 6/11/2019]

19.2.10.26 TERMINATION OF EASEMENT OR RIGHT OF WAY:

Any easement or right of way granted by the commissioner on trust land may be terminated in whole or in part for failure to comply with any term or condition of the grant or any applicable laws or regulations. Upon determination by the commissioner that an easement or right of way is subject to termination pursuant to the terms or conditions of the grant or applicable laws or regulations, the commissioner shall give the grantee a written 30-day notice at the address shown most recently in the records of the state land office, and if the grantee fails to remedy the problems set out in the notice to the satisfaction of the commissioner, then the commissioner shall issue an appropriate instrument terminating the easement or right of way, which instrument shall be placed in the public records of the state land office with a copy to the former grantee.

[19.2.10.26 NMAC - Rp, 19.2.10.25 NMAC, 6/30/2004]

19.2.10.27 ABANDONMENT:

Abandonment of all or part of an easement or right of way by a grantee shall consist of the non-use of all or part of a granted easement or right of way for the purposes authorized in the granting instrument for a period of one year. Upon discovering evidence of abandonment, the commissioner shall notify the grantee by written notice sent by regular mail to the grantee's last known address as shown in the records of the state land office, giving the grantee 60 days to prove that abandonment did not occur, all to the commissioner's satisfaction. Failure to do so shall result in the termination of the easement or right of way due to the failure of a condition subsequent, and upon such termination the easement or right of way shall automatically vest in the commissioner without further action or notice required. Any non-use of a portion of an easement or right of way for a period of one year shall, at the commissioner's discretion, be deemed an abandonment of that portion so used and subject to termination.

[19.2.10.27 NMAC - Rp, 19.2.10.26 NMAC, 6/30/2004]

19.2.10.28 RECLAMATION AND RESTORATION:

Any person who enters upon trust lands for purposes of surveying or constructing an easement or right of way shall take all steps necessary to preserve and protect the natural environmental conditions of the land, including reclamation of disturbed areas by leveling or terracing and reasonable attempts at re-vegetation where appropriate. Re-vegetation shall include the establishment of suitable grasses and forbs in accordance with applicable state land office rules and policies. The grantee of any right of way or easement shall consult with the commissioner regarding reclamation prior to undertaking reclamation and shall make reasonable attempts at restoration.

[19.2.10.28 NMAC - Rp, 19.2.10.27 NMAC, 6/30/2004]

19.2.10.29 EASEMENTS OR RIGHTS OF WAY OVER PURCHASE CONTRACT LANDS:

A. The commissioner may, on the basis of the state's legal title and subject to the terms and conditions of the applicable purchase contract, approve and record easements and rights of way over, upon, through or across purchase contract lands on the following terms and conditions:

(1) submission of an application by the easement or right of way applicant on the form prescribed by the commissioner accompanied by an original or certified copy of the easement or right of way executed between the applicant and the purchase contract holder;

(2) payment of the administrative fee as set forth in the schedule of fees for the approval and recording of the easement or right of way; and,

(3) submission of a legal description of the property to be burdened by the easement or right of way, together with a survey plat as provided in 19.2.10.12 NMAC.

B. The commissioner shall reject any application and initiate necessary legal proceedings to prevent the construction of any easement or right of way or the use of any easement or right of way that will diminish or impair the state's legal title to the purchase contract lands.

[19.2.10.29 NMAC - Rp, 19.2.10.28 NMAC, 6/30/2004; A, 6/30/2016]

19.2.10.30 INFORMAL RECONSIDERATION:

Any party aggrieved by a decision related to the payment of amounts due for any easement or right of way granted or applied for under this part, may request an informal reconsideration of such decision by written request made to the commissioner. Such request shall describe the decision for which reconsideration is requested, state the grounds for reconsideration and the relief sought, and be submitted to the commissioner within 15 days after the date of the decision for which reconsideration is requested. Any such request will be reviewed and decided by the commissioner in an expeditious

manner, with or without an oral presentation by the aggrieved party. The right to request informal reconsideration shall be in addition to, and not in lieu of, any right of contest available to the aggrieved party, and the filing of a request for informal reconsideration shall not extend any deadline for initiating a contest proceeding.

[19.2.10.30 NMAC - Rp, 19.2.10.29 NMAC, 6/30/2004]

[The old section 19.2.10.30 NMAC PRICE SCHEDULE: TELECOMMUNICATIONS EASEMENTS AND RIGHTS OF WAY is repealed, effective 6/30/2004]

PART 11: RELATING TO SALT WATER DISPOSAL SITE EASEMENTS

19.2.11.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.11.1 NMAC - Rn, 19 NMAC 3. SLO 11.1, 9/30/2002]

19.2.11.2 SCOPE:

This rule pertains to all salt water disposal site easements on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This rule governs the grantees of all salt water disposal site easements on such trust lands entered into subsequent to the date of this rule.

[12/31/1999; 19.2.11.2 NMAC - Rn, 19 NMAC 3. SLO 11.2, 9/30/2002]

19.2.11.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands is found in N.M. Const., Art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.11.3 NMAC - Rn, 19 NMAC 3. SLO 11.3, 9/30/2002]

19.2.11.4 DURATION:

Permanent.

[12/31/1999; 19.2.11.4 NMAC - Rn, 19 NMAC 3. SLO 11.4, 9/30/2002]

19.2.11.5 EFFECTIVE DATE:

January 20, 1984, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.11.5 NMAC - Rn, 19 NMAC 3. SLO 11.5, 9/30/2002; A, 6/30/2016]

19.2.11.6 OBJECTIVE:

The objective of 19.2.11 NMAC is to provide for the orderly and lawful administration, and the appropriate use and development of salt water disposal site easements on trust lands.

[12/31/1999; 19.2.11.6 NMAC - Rn, 19 NMAC 3. SLO 11.6, 9/30/2002]

19.2.11.7 DEFINITIONS:

"Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.11.7 NMAC - Rn, 19 NMAC 3. SLO 11.7, 9/30/2002; A, 6/30/2016]

19.2.11.8 APPLICABILITY OF RULES:

The following rules govern the issuance of easements upon state trust lands for sites for the underground disposal of salt water produced in connection with oil and gas operations. Because an oil and gas lessee is entitled to use so much of the land as is necessary to explore for and remove the oil and gas, the lessee does not need additional permission of the commissioner to dispose of the salt water upon or under the leased land so long as the water being disposed of is produced exclusively from wells upon the state trust land and so long as it is reasonable under the circumstances to do so. Conversely, if any of the salt water to be injected is produced from land not under the applicant's state oil and gas lease, then the applicant, in addition to a disposal site easement, will be required to secure a regular right of way and easement for a pipeline, roadway, or other means of conveyance under the rules pertaining to right of way and easements generally. (See 19.2.10 NMAC "Rules Relating to Easements, and Rights of Way".) Permission to dispose of produced salt water in natural salt lakes, or other surface facilities located upon state trust lands and approved by the New Mexico oil conservation commission, shall be given at the discretion of the commissioner by means of issuance of a "business lease." (See 19.2.9 NMAC "Business Leasing".)

[12/31/1999; 19.2.11.8 NMAC - Rn, 19 NMAC 3. SLO 11.8, 9/30/2002; A, 6/11/2019]

19.2.11.9 LANDS AVAILABLE FOR DISPOSAL SITE EASEMENTS:

A. Subject to the commissioner's right to exercise the commissioner's discretion, all lands listed as state owned on New Mexico state land office tract books are subject to application for salt water disposal easement sites; however, reference must be had to

New Mexico state land office records in each case to determine which prior rights, if any, have been conveyed to or contracted for by third parties which would limit or prohibit the commissioner from issuing a salt water disposal site easement. In any case, such easements are issued subject to prior rights.

B. The commissioner reserves the right to refuse to grant an easement when to do so would be detrimental to the trust. The following are some of the factors which may have bearing on the commissioner's decision:

(1) That an abandoned oil or gas well may have greater value for foreseeable future oil or gas production from a different zone.

(2) That the salt water storage space proposed to be used may be needed for disposal of salt water produced from wells on state trust lands in the foreseeable future.

(3) That disposal of salt water in the particular zone may interfere with development and production of oil and gas or other minerals owned by the state of New Mexico in trust.

C. Although applications will be accepted for filing on disposal sites prior to the approval of the disposal facility or operation by the New Mexico oil conservation division, the commissioner may withhold or deny issuance of the salt water disposal easement pending approval or disapproval by the New Mexico oil conservation division.

[12/31/1999; 19.2.11.9 NMAC - Rn, 19 NMAC 3. SLO 11.9, 9/30/2002; A, 6/11/2019]

19.2.11.10 APPLICATION:

Each application for a salt water disposal easement shall be made in ink or typewritten upon forms prescribed and furnished by the commissioner, under oath, and accompanied by the following:

A. a filing fee as set forth in the schedule of fees;

B. a plat showing disposal well and wells from which produced salt water is to be disposed together with pipelines and haul roads;

C. if the land is under an oil and gas lease, the written consent of the record owner that the easement may be issued, or in the event of the record owner's refusal to consent, then a statement of the reasons, if any, given for the refusal;

D. statement as to the estimated number of barrels of salt water to be disposed; and

E. a written appraisal of the land made under oath by some disinterested and credible person familiar with the land. All easements, except as to the true value of the land, must be based upon personal knowledge and not upon information and belief.

[12/31/1999; 19.2.11.10 NMAC - Rn, 19 NMAC 3. SLO 11.10, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.11.11 TERM AND CONDITIONS:

Salt water disposal site easements shall be issued for five (5) years or less with a preference right of renewal, subject to the commissioner's decision not to continue the easement. The easement shall normally cover not more than two and one half (2 1/2) acres surrounding the proposed injection site. Applicant shall also file an appraisal of the land with regard to the value for water easement purposes made under oath by some disinterested party who is familiar with the land. Such appraisal shall take into account the extent and nature of the use that the application indicates will be made of the surface.

[12/31/1999; 19.2.11.11 NMAC - Rn, 19 NMAC 3. SLO 11.11, 9/30/2002]

19.2.11.12 CONSIDERATION:

Payment for such water disposal easement sites shall be at a negotiated rate but not less than two hundred fifty dollars (\$250.00) annual rental.

[12/31/1999; 19.2.11.12 NMAC - Rn, 19 NMAC 3. SLO 11.12, 9/30/2002]

19.2.11.13 BOND:

Before any disposal site easement is issued, the applicant shall post with the commissioner a sufficient bond or undertaking in an amount to be fixed by the commissioner, in favor of the owner of improvements lawfully located upon the land, to secure payment of damage, if any, done to such improvements by reason of the operations of the applicant. Upon written notice to the holder of a salt water disposal site easement, the commissioner may require such holder to fence the site for the protection of the surface user's livestock.

[12/31/1999; 19.2.11.13 NMAC - Rn, 19 NMAC 3. SLO 11.13, 9/30/2002]

19.2.11.14 ASSIGNMENT - RELINQUISHMENT - CANCELLATION:

A disposal site easement may, with the prior written approval of the commissioner, upon such terms and conditions as the commissioner may require, and payment of the fee as set forth in the schedule of fees, be assigned to third parties or relinquished to the state and the commissioner may cancel such easement for breach or violation of the terms and conditions thereof after thirty days registered notice is given as required by law.

[12/31/1999; 19.2.11.14 NMAC - Rn, 19 NMAC 3. SLO 11.14, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

PART 12: RELATING TO THE APPROPRIATION OF WATER FROM STATE TRUST LANDS

19.2.12.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.12.1 NMAC - Rn, 19 NMAC 2. SLO 12.1, 9/30/2002]

19.2.12.2 SCOPE:

This rule pertains to all water resources on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands), except such water as is used and developed in connection with the development, under lease, of oil and gas resources on such lands. Other rules which should be consulted regarding the development and use of water resources on trust lands are: the rule pertaining to easements and rights of way, the rule pertaining to agricultural leases, and the rule pertaining to commercial leases. This rule governs all persons using state trust lands under lease, easement or right of way entered into subsequent to the date of this rule.

[12/31/1999; 19.2.12.2 NMAC - Rn, 19 NMAC 2. SLO 12.2, 9/30/2002]

19.2.12.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands is found in N.M. Const., Art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.12.3 NMAC - Rn, 19 NMAC 2. SLO 12.3, 9/30/2002]

19.2.12.4 DURATION:

Permanent.

[12/31/1999; 19.2.12.4 NMAC - Rn, 19 NMAC 2. SLO 12.4, 9/30/2002]

19.2.12.5 EFFECTIVE DATE:

January 20, 1984, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.12.5 NMAC - Rn, 19 NMAC 2. SLO 12.5, 9/30/2002; A, 6/30/2016]

19.2.12.6 OBJECTIVE:

The objective of 19.2.12 NMAC is to provide for the interim orderly and lawful administration, and the appropriate development and use of water resources on state trust lands. A permanent rule will be proposed when the commissioner has more clearly defined the proper administration of water resources on state trust lands.

[12/31/1999; 19.2.12.6 NMAC - Rn, 19 NMAC 2. SLO 12.6, 9/30/2002]

19.2.12.7 DEFINITIONS:

"Schedule of fees" means list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.12.7 NMAC - Rn, 19 NMAC 2. SLO 12.7, 9/30/2002; A, 6/30/2016]

19.2.12.8 APPLICABILITY AND PURPOSE:

This rule is intended to assure that the development and use of water and water rights connected with state trust lands occurs in the most beneficial manner to the trust. This rule is further intended to be an interim rule, to be effective while the commissioner is assessing the commissioner's duties with regard to water resources connected with state trust land. A permanent rule will be proposed when those duties have been defined. This rule shall govern in all situations where the law requires the consent of the commissioner, as administrator of the state trust lands, prior to the approval by the state engineer of the appropriation or use of water from state trust lands. 19.2.10 NMAC "Easements and Rights of Way", should be consulted when seeking permission to move water across state trust lands. Rule 8.023 [Rule 8.023 was rescinded on December 1, 1992] governs when the use of water from state lands involves improvements on grazing or agricultural leases.

[12/31/1999; 19.2.12.8 NMAC - Rn, 19 NMAC 2. SLO 12.8, 9/30/2002; A, 6/11/2019]

19.2.12.9 APPLICATION FOR CONSENT FEE:

Application for the commissioner's consent to the appropriation or use of water shall be made upon a form furnished by the commissioner and shall be accompanied by the filing fee as set forth in the schedule of fees. Thereafter, the commissioner shall enter into negotiations with each applicant on an individual basis to arrive at mutually satisfactory terms for the appropriation or use of water from state trust lands.

[12/31/1999; 19.2.12.9 NMAC - Rn, 19 NMAC 2. SLO 12.9, 9/30/2002; A, 6/30/2016]

19.2.12.10 ASSIGNMENTS OF CONSENT - APPLICATION - FEE:

The commissioner's consent to the appropriation or use of water from state trust lands may be assigned with the commissioner's prior approval subject to the terms and conditions of the consent. The application fee for approval of an assignment is as set forth in the schedule of fees.

[12/31/1999; 19.2.12.10 NMAC - Rn, 19 NMAC 2. SLO 2.10, 9/30/2002; A, 6/30/2016]

19.2.12.11 WATER EASEMENTS UNDER PRIOR RULES:

Water easements issued under prior rules of the New Mexico state land office shall be governed by the rules in effect at their issuance until the expiration of their current term, at which time renewal shall be subject to the most recent rules in effect.

[12/31/1999; 19.2.12.11 NMAC - Rn, 19 NMAC 2. SLO 2.11, 9/30/2002]

PART 13: RELATING TO THE SALE OF TIMBER ON STATE LANDS

19.2.13.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.13.1 NMAC - Rn, 19 NMAC 2. SLO 13.1, 9/30/2002]

19.2.13.2 SCOPE:

This rule pertains to all timber and timber products, except dead and down timber, on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). This rule governs harvest and sales of timber and timber products on trust lands subsequent to the date of this rule.

[12/31/1999; 19.2.13.2 NMAC - Rn, 19 NMAC 2. SLO 13.2, 9/30/2002]

19.2.13.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands is found in N.M. Const., Art. XIII, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.13.3 NMAC - Rn, 19 NMAC 2. SLO 13.3, 9/30/2002]

19.2.13.4 DURATION:

Permanent.

[12/31/1999; 19.2.13.4 NMAC - Rn, 19 NMAC 2. SLO 13.4, 9/30/2002]

19.2.13.5 EFFECTIVE DATE:

January 20, 1984, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.13.5 NMAC - Rn, 19 NMAC 2. SLO 13.5, 9/30/2002; A, 6/30/2016]

19.2.13.6 OBJECTIVE:

The objective of 19.2.13 NMAC is to provide for the orderly and lawful administration, and the appropriate harvest and sale of timber and timber resources on trust lands.

[12/31/1999; 19.2.13.6 NMAC - Rn, 19 NMAC 2. SLO 13.6, 9/30/2002]

19.2.13.7 DEFINITIONS:

"**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.13.7 NMAC - Rn, 19 NMAC 2. SLO 13.7, 9/30/2002; A, 6/30/2016]

19.2.13.8 POLICY:

The general policy of the New Mexico state land office is to manage the timber resources of the state on a basis of sustained yield and according to standards that will protect the timber and timber products and the watersheds of the state. Timber contracts in all cases must reflect this policy.

[12/31/1999; 19.2.13.8 NMAC - Rn, 19 NMAC 2. SLO 13.8, 9/30/2002]

19.2.13.9 TIMBER SALES - HOW MADE:

Sales of state timber and timber products may be made only at public auction at the county seat of the county wherein the same are situated, and after advertisement of sale by publication for 10 weeks in a newspaper regularly published in the city of Santa Fe, and concurrently in a newspaper regularly published in the county wherein the lands are situated. Provided, however, that the commissioner may issue permits for the sale of dead and down firewood without advertising such sale. A public auction will not be required on the sale or issuance of permits for dead and down firewood. Ordinarily, timber will be sold upon application by a prospective purchaser (and the commissioner's concurrence) except that the commissioner reserves the right to offer such timber for sale as the commissioner deems to be in the best interest of the trust.

[12/31/1999; 19.2.13.9 NMAC - Rn, 19 NMAC 2. SLO 13.9, 9/30/2002; A, 6/11/2019]

19.2.13.10 TIMBER SALES - APPRAISEMENT AND RECOMMENDATIONS OF THE REPRESENTATIVE OF THE NEW MEXICO STATE LAND OFFICE:

Merchantable timber on state trust land will ordinarily be sold only after appraisal, report and recommendation of a representative of the New Mexico state land office. The representative may be an employee of the New Mexico state land office, of the U. S. forest service or of the New Mexico state forestry division of the natural resources department, by request of the commissioner, under cooperative agreement.

[12/31/1999; 19.2.13.10 NMAC - Rn, 19 NMAC 2. SLO 13.10, 9/30/2002]

19.2.13.11 APPLICATION TO PURCHASE TIMBER:

Each application to purchase timber on state trust land must be accompanied by the application fee as set forth in the schedule of fees and a five hundred dollar (\$500.00) deposit, unless a different deposit sum is required to cover the expenses of appraisal, advertising and sale. The advertisement will specify time, date and place of public sale, together with the description of the lands containing timber to be sold.

[12/31/1999; 19.2.13.11 NMAC - Rn, 19 NMAC 2. SLO 13.11, 9/30/2002; A, 6/30/2016]

19.2.13.12 BIDDERS MUST BE QUALIFIED:

In order to be qualified as a bidder at a public sale of state-owned timber, a person must have complied with and met all conditions and requirements prescribed in the notice of sale, which shall include filing an application to purchase and payment of the application fee in accordance with 19.2.13.11 NMAC, and must have deposited with the commissioner, or the commissioner's agent conducting the sale, an amount as set forth in the notice of sale, in cash or certified check, prior to the opening of the sale. If the applicant or any other qualified bidder is not the successful bidder, the applicant's or any other qualified bidder's deposit will be refunded. If the cost of sale exceeds the deposit, the successful bidder shall pay the difference before receiving the successful bidder's timber contract. If the costs of sale are less than the initial deposit, the successful bidder will be refunded or credited the difference at the successful bidder's option.

[12/31/1999; 19.2.13.12 NMAC - Rn, 19 NMAC 2. SLO 13.12, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.13.13 NO PREFERENCE RIGHTS:

State-owned timber is sold at public auction to the highest and best bidder. There is no preference right of any kind accorded to any person or persons in awarding state timber contracts.

[12/31/1999; 19.2.13.13 NMAC - Rn, 19 NMAC 2. SLO 13.13, 9/30/2002]

19.2.13.14 THE SUCCESSFUL BIDDER - CONTRACT BOND:

The highest and successful bidder shall sign the regular New Mexico state land office timber agreement form, as may be amended or changed in the best interest of the trust. Before the commissioner executes the contract, the successful bidder shall post a corporate surety bond (in such an amount as may be required by the commissioner) countersigned by an authorized New Mexico resident agent of a bonding company authorized to do business in the state of New Mexico. Such bond shall be conditioned upon faithful performance by the purchaser of the terms and provisions of the timber sale contract.

[12/31/1999; 19.2.13.14 NMAC - Rn, 19 NMAC 2. SLO 13.14, 9/30/2002]

19.2.13.15 TIMBER SALE CONTRACTS - PAYMENTS:

Timber contracts may be issued for a period of five (5) years or less unless the same be canceled for cause, unless sooner cut out or unless conditions beyond the control of the purchaser prevent completion within the specified time. Upon proper application and due proof of inability to complete the contract within its term, the commissioner may extend the same for reasonable periods in the best interests of the trust.

[12/31/1999; 19.2.13.15 NMAC - Rn, 19 NMAC 2. SLO 13.15, 9/30/2002]

19.2.13.16 PAYMENT FOR CONTRACTED TIMBER:

No timber will be marked for cutting under the provisions of the contract unless payment therefor shall have been made and credited in the New Mexico state land office, and in no case will cutting be permitted in advance of marking by the New Mexico state land office representative.

[12/31/1999; 19.2.13.16 NMAC - Rn, 19 NMAC 2. SLO 13.16, 9/30/2002]

19.2.13.17 SUPERVISION OF TIMBER CONTRACTS - FORM OF CONTRACT:

Where sales of timber are made, the cutting and logging practices will be supervised by a representative of the New Mexico state land office as indicated in 19.2.13.10 NMAC above, and the timber sale contract will in all cases be the standard form of contract adopted by the commissioner with such amendments as may be necessary in each case.

[12/31/1999; 19.2.13.17 NMAC - Rn, 19 NMAC 2. SLO 13.17, 9/30/2002]

19.2.13.18 YEARLY CUT:

Unless otherwise provided by the timber sale agreement, the yearly cut will be one-fifth (1/5th) of the total estimated merchantable timber board measure specified in the timber sale agreement.

[12/31/1999; 19.2.13.18 NMAC - Rn, 19 NMAC 2. SLO 13.18, 9/30/2002]

19.2.13.19 THE MINIMUM TO BE MARKED FOR CUTTING:

Unless otherwise provided by the timber sale agreement, the minimum merchantable timber to be marked at any one (1) time will be one-fourth (1/4th) of the annual required cut.

[12/31/1999; 19.2.13.19 NMAC - Rn, 19 NMAC 2. SLO 13.19, 9/30/2002]

19.2.13.20 SURVEY OF TIMBER LANDS:

State timber is sold based upon state trust lands described by the United States system of public land surveys by section, subdivision, township and range. Should uncertainties as to exact boundaries of state timber contracts be encountered, then an actual survey may be ordered by the commissioner, the cost of the same to be borne by the applicant or the successful bidder, whichever the case may be.

[12/31/1999; 19.2.13.20 NMAC - Rn, 19 NMAC 2. SLO 13.20, 9/30/2002]

19.2.13.21 BRUSH DISPOSAL BY CONTRACT HOLDER:

The timber sale contract shall contain sufficient, proper and adequate provisions therein requiring the contract holder to dispose of the brush resulting from the sale. The term "brush" as used herein shall mean to include all tops, slash and debris resulting from logging operations, including stems and limbs or portions thereof not exceeding four inches in diameter. The sufficiency of the brush disposal work done by the contract holder shall be subject to the approval of the commissioner, or the commissioner's duly authorized representative. In no instance shall brush disposal be allowed to fall behind cutting, except when the depth of snow or other adequate reason beyond the control of the contract holder makes proper disposal impracticable. In such an event, the disposal of brush may, with the written consent of the representative of the commissioner in charge, be postponed until conditions are more favorable.

[12/31/1999; 19.2.13.21 NMAC - Rn, 19 NMAC 2. SLO 13.21, 9/30/2002; A, 6/11/2019]

19.2.13.22 SUSPENSION OF LOGGING OPERATIONS AND TERMINATION OF THE TIMBER CONTRACT BY THE COMMISSIONER:

The timber contract shall also contain a provision that all operations on the sale area, including the removal of scaled timber, may be suspended by written notice from the commissioner, or the commissioner's duly authorized representative in charge, if the

conditions and requirements contained in the timber sale contract are disregarded by the contract holder, or the contract holder's agents or employees. Such suspension by the representative of the commissioner shall be only upon the approval of the commissioner. The commissioner may cancel any lease, contract or other instrument executed by the commissioner relating to state trust lands for nonpayment of monies due or for violation of any of the terms, covenants or conditions of such lease or instrument, after giving the party or parties in interest 30 days notice by registered mail; provided, however, if within the 30 days, the party or parties in interest shall comply with the demand in the notice, cancellation shall not be made. Provided, further, that in case where monies due are delinquent, the commissioner may, at the commissioner's option, look to the purchaser or the purchaser's sureties and the commissioner's lien upon improvements for payment, rather than cancel the contract.

[12/31/1999; 19.2.13.22 NMAC - Rn, 19 NMAC 2. SLO 13.22, 9/30/2002; A, 6/11/2019]

19.2.13.23 ASSIGNMENT OF STATE TIMBER SALE CONTRACTS:

Subject to the approval of the commissioner, state timber sales contracts may be assigned, provided that the assignee, in the opinion of the commissioner, is able and qualified to fulfill such contract, and provided further that the assignee shall provide a corporate surety bond as required by the said contract and conditioned upon the assignee's faithful performance of the provisions thereof.

[12/31/1999; 19.2.13.23 NMAC - Rn, 19 NMAC 2. SLO 13.23, 9/30/2002; A, 6/11/2019]

19.2.13.24 MODIFICATION OF TIMBER SALES AGREEMENT:

Upon application by the holder of a state timber sale contract for modification of the holder's agreement and good cause being shown, the commissioner may consent to certain changes, in the commissioner's discretion, provided that the applicant for modification shall have first obtained the consent of its surety.

[12/31/1999; 19.2.13.24 NMAC - Rn, 19 NMAC 2. SLO 13.24, 9/30/2002; A, 6/11/2019]

19.2.13.25 [RESERVED]

[12/31/1999; 19.2.13.25 NMAC - Rn, 19 NMAC 2. SLO 13.25, 9/30/2002]

19.2.13.26 CONTRACTOR RESPONSIBILITIES:

Under the general powers of the commissioner and the appropriate provisions in timber contracts, the commissioner will require holders of timber sales contracts to respect forest service fences and the fences of individuals in the timber sale area, and unless state timber operators have made proper arrangements to the contrary, all gates must be closed after passing through the same.

[12/31/1999; 19.2.13.26 NMAC - Rn, 19 NMAC 2. SLO 13.26, 9/30/2002]

19.2.13.27 CANCELLATION OF TIMBER CONTRACT FOR CAUSE:

The commissioner may cancel any lease, contract or other instrument executed by the commissioner, which shall have been obtained by fraud or executed through mistake or without authority of law. In such case, the commissioner shall serve upon the party in interest a 30 day registered notice to show cause before the commissioner upon a date to be fixed in the notice, why such instrument should not be canceled.

[12/31/1999; 19.2.13.27 NMAC - Rn, 19 NMAC 2. SLO 13.27, 9/30/2002; A, 6/11/2019]

PART 14: PERTAINING TO LAND SALES

19.2.14.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/1999; 19.2.14.1 NMAC - Rn, 19 NMAC 3. SLO 14.1, 9/30/2002]

19.2.14.2 SCOPE:

This rule pertains to the sale of lands, resources or other assets held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands). There are certain exceptions to this rule as follows: applications to purchase received between August 1st and September 30th may be rejected summarily as set out in subsection B of 19.2.14.8 NMAC below.

[12/31/1999; 19.2.14.2 NMAC - Rn, 19 NMAC 3. SLO 14.2, 9/30/2002]

19.2.14.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the state trust lands is found in N.M. Const., Art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[12/31/1999; 19.2.14.3 NMAC - Rn, 19 NMAC 3. SLO 14.3, 9/30/2002]

19.2.14.4 DURATION:

Permanent.

[12/31/1999; 19.2.14.4 NMAC - Rn, 19 NMAC 3. SLO 14.4, 9/30/2002]

19.2.14.5 EFFECTIVE DATE:

September 5, 1985, unless a later date is cited at the end of a section.

[12/31/1999; 19.2.14.5 NMAC - Rn, 19 NMAC 3. SLO 14.5, 9/30/2002; A, 6/30/2016]

19.2.14.6 OBJECTIVE:

The objective of 19.2.14 NMAC is to provide for the orderly and lawful sale of state trust lands, assets and resources.

[12/31/1999; 19.2.14.6 NMAC - Rn, 19 NMAC 3. SLO 14.6, 9/30/2002]

19.2.14.7 DEFINITIONS:

"**Schedule of fees**" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[12/31/1999; 19.2.14.7 NMAC - Rn, 19 NMAC 3. SLO 14.7, 9/30/2002; A, 6/30/2016]

19.2.14.8 LAND SUBJECT TO SALE:

All lands, including lands acquired by escheat, shown upon the New Mexico state land office tract books to be open for sale, may be sold at public auction, at the discretion of the commissioner. All minerals of whatsoever kind, including but not limited to oil and gas, coal, sand and gravel, clay, shale, caliche and building stone, will be reserved to the state of New Mexico, together with the right to use so much of the surface as may be reasonably necessary to explore for and remove same. Such rights are subject to the right of the purchaser to be compensated for the purchaser's improvements lawfully placed upon the land. Geothermal resources are reserved under the same terms and conditions as minerals.

A. The beneficiary institution shall be advised of the receipt of any application to purchase.

B. All applications filed between August 1 and September 30 each year will be summarily rejected unless it is determined that they will not interfere with the annual surface lease renewal program.

[12/31/1999; 19.2.14.8 NMAC - Rn, 19 NMAC 3. SLO 14.8, 9/30/2002; A, 6/11/2019]

19.2.14.9 APPLICATION FEES - COST - REQUIREMENTS:

Applications to purchase state trust lands shall be:

A. Made under oath, in ink, or typewritten upon forms prescribed and furnished by the commissioner.

B. Accompanied by the application fee as set forth in the schedule of fees and a deposit against the expense of advertising and sale as set forth in the schedule of fees. The successful bidder shall pay the total cost of advertising, appraising, and sale, and will be billed for any cost in excess of the deposit. The deposit of unsuccessful bidders will be refunded.

C. Accompanied by an appraisal of the land by a disinterested and creditable person familiar with the land, and said appraisal shall be based upon personal knowledge and not information and belief. Such appraisal shall not be binding upon the commissioner.

D. Signed by the original applicant or by the applicant's agent or attorney duly authorized by written power of attorney. Applications not made in conformity with these rules are subject to rejection and in the event any application is withdrawn or rejected, the applicant shall pay the cost incurred up to that time. When special circumstances warrant, the commissioner, upon notice to the applicant, may add additional requirements. Nothing in these rules contained shall be construed as preventing the commissioner on the commissioner's own initiative at any time from offering for sale all or part of any lands of the state when the commissioner determines that such sale is in the best interest of the trust.

[12/31/1999; 19.2.14.9 NMAC - Rn, 19 NMAC 3. SLO 14.9, 9/30/2002; A, 6/30/2016; A, 6/11/2019]

19.2.14.10 APPRAISAL OF LAND AND IMPROVEMENTS:

A. Upon receipt of a proper application to purchase, and upon a preliminary determination that the sale might be advantageous to the trust, the commissioner will cause an appraisal of the land and the authorized improvements to be made. Thereafter, if the commissioner determines to offer the land for sale, a copy of the appraisal will be furnished to the applicant and to the owner of the improvements as well as to any other interested parties requesting same. Any party in interest aggrieved by the decision of the commissioner in setting the value of the improvements may appeal to the district court within 60 days as provided by law.

B. Upon receipt of the appraisal, the applicant shall notify the commissioner in writing as to whether the applicant is agreeable to starting the bidding upon the land at the appraised price. If not, the unused portion of the deposit shall be refunded to the applicant and the application rejected. If the applicant is agreeable with the appraisal of the land and the improvements, the applicant shall file with the commissioner a sum equal to the appraised value of the improvements or a waiver of payment signed by the owner thereof. If the applicant disagrees with the appraisal of the improvements the applicant may post bond with the commissioner to assure payment and appeal the

appraisal as provided by law. Upon payment or posting of the bond the commissioner may proceed to advertise the sale.

C. Authorized improvements shall include water rights and all permanent improvements placed upon the land in compliance with the provisions of Section 19-7-51 NMSA 1978; all improvements placed upon the land prior to March 1, 1955, whether or not prior written permission of the commissioner was obtained; and all improvements approved by the commissioner under the provisions of Section 19-7-51 NMSA 1978.

D. Upon completion of the sale, the commissioner shall pay to the owner of the authorized improvements the value thereof as hereinabove determined; provided, however, in the event the lease provides for removal of improvements, either permanent or removable, the terms of the lease shall take precedence over this Rule.

[12/31/1999; 19.2.14.10 NMAC - Rn, 19 NMAC 3. SLO 14.10, 9/30/2002; A, 6/11/2019]

19.2.14.11 ADVERTISEMENT:

Notice of sale shall be published once each week for ten (10) consecutive weeks in a newspaper of general circulation published locally at the state capital, and a newspaper of like circulation which shall be locally published nearest the lands so offered for sale. Said notice shall set forth the nature, time and specific place of the sale, which place shall be at the county seat wherein the lands or the major portion thereof are located.

[12/31/1999; 19.2.14.11 NMAC - Rn, 19 NMAC 3. SLO 14.11, 9/30/2002]

19.2.14.12 QUALIFICATION OF BIDDERS:

In order to qualify as a bidder, the prospective bidder shall deposit with the commissioner:

A. A deposit to cover the cost of sale, as set forth in the notice of sale.

B. Ten percent of the appraised value of the lands.

C. The appraised value of the improvements, a waiver of payment of such amount signed by the owner of the improvements, or a bond sufficient to cover the appraised value if an appeal is to be taken, unless the prospective bidder is the owner of the improvements.

[12/31/1999; 19.2.14.12 NMAC - Rn, 19 NMAC 3. SLO 14.12, 9/30/2002; A, 6/30/2016]

19.2.14.13 AUCTION SALE TO HIGHEST BIDDER:

No preference right to purchase shall be given to any bidder upon the advertised land. If sold at all, the land shall be sold to the highest and best bidder at public auction. Said

auction may be conducted by oral auction or by the acceptance of sealed bids, which shall be opened at the time of the auction. Should there be identical sealed bids, those submitting them shall be allowed to orally bid until there is a highest and best bidder. Bids must be for all of the land offered in a given tract.

[12/31/1999; 19.2.14.13 NMAC - Rn, 19 NMAC 3. SLO 14.13, 9/30/2002]

19.2.14.14 CONTRACTS AND PATENTS:

A. On the date of sale the successful bidder, if any, shall be required to pay the full amount bid, unless the commissioner has given notice that the commissioner will accept payment by purchase contract. If a purchase contract is permitted, the successful bidder shall be required to pay at least ten percent of the purchase price. Upon making such payment, together with the cost of sale, if any, such purchaser shall be entitled to a 30 year contract whereunder the balance of the principal shall be payable in 30 equal annual installments with interest in advance on the deferred principal balance at a rate set by the commissioner in the notice of auction sale published as required by law. The first principal and interest payment shall be due on or before the date possession of the premises is established. This date shall serve as the anniversary date of the contract on which all successive payments shall be due. Purchaser at purchaser's option may, however, pay cash in full and receive a patent. No extension of the 30 year term of the contract will be granted. In case of death of a contract purchaser, the commissioner may upon written application by an heir, devisee or personal representative of the deceased, defer the due date of the next payment for one year. Deposit of unsuccessful bidders will be refunded. Sample copies of a standard purchase contract agreement and patent will be furnished prospective bidders upon request.

B. Holders of purchase contracts may pay off the contract balance at any time. Interest payments made in advance cannot be refunded. In case of the final discharge of the obligation before maturity date, interest must be paid to the date when the contract is paid in full. No patent covering any portion of state trust land under contract will be issued until the total purchase price of the contract is paid in full regardless of the number of assignments outstanding, except the commissioner will issue patents to separate assignments in instances where the assignments were approved by the commissioner prior to September 4, 1956.

[12/31/1999; 19.2.14.14 NMAC - Rn, 19 NMAC 3. SLO 14.14, 9/30/2002; A, 6/11/2019]

19.2.14.15 ASSIGNMENT OF PURCHASE CONTRACTS:

A. Any purchaser of state trust lands under purchase contract, which contract is in good standing, may assign a part or all of the purchaser's right, title and interest under any such contract, provided that a certified copy of such assignment shall be filed with the commissioner before the same shall become effective. The approval or disapproval by the commissioner of an assignment or a partial assignment of a state contract is not required. The filing of a certified copy of the assignment or partial assignment with the

commissioner completes the assignment, provided, however, if the contract is under collateral assignment the approval of the commissioner is required and such permission shall not be given unless the assignee agrees in writing to assume or take the contract subject to the rights of any collateral assignee. No relinquishment of a purchase contract shall be approved unless the collateral assignee shall join in said relinquishment.

B. No patent shall be issued to any contract holder or assignee thereto until the entire bid price for the entire tract bid upon is paid in full, except for contracts assigned with the approval of the commissioner prior to September 4, 1956.

C. Each assignment shall be accompanied by a fee of sixty dollars (\$60.00).

D. The mailing address of the assignee shall be clearly shown upon the assignment and a copy of the assignor's purchase contract shall accompany the assignment.

E. The assignment must show the marital status of the assignor and, if married, both husband and wife must join in the execution of the assignment which signatures must be acknowledged as in the case of conveyances of other real estate.

[12/31/1999; 19.2.14.15 NMAC - Rn, 19 NMAC 3. SLO 14.15, 9/30/2002; A, 6/11/2019]

19.2.14.16 COLLATERAL ASSIGNMENT (MORTGAGE) OF CONTRACTS:

A. With the consent of the commissioner the owner of a purchase contract may mortgage the owner's interest in the contract together with the improvements upon the land by means of assigning the owner's interest as collateral security to insure the payment of an indebtedness specified in said assignment. Upon approval of such collateral assignment by the commissioner, the assignee shall have a lien upon the said interests of the assignor and thereafter no contract so assigned shall be transferred free and clear except after release of said collateral assignment.

B. Collateral assignments shall be made only upon forms prescribed by the commissioner, which forms shall meet the other specified requirements of law.

C. Collateral assignments may be foreclosed by the assignee in the manner provided by law for the foreclosure of mortgages on real estate and the purchaser at such foreclosure sale shall, if otherwise qualified to purchase state trust land, be entitled to the purchase contract and the improvements located upon the land subject to prior collateral assignments, if any there be.

[12/31/1999; 19.2.14.16 NMAC - Rn, 19 NMAC 3. SLO 14.16, 9/30/2002; A, 6/11/2019]

19.2.14.17 CANCELLATION FOR DEFAULT - RELINQUISHMENT:

A. In the event the purchaser shall fail to comply with the terms and conditions of contract of purchase the commissioner may, at the commissioner's option, declare a forfeiture of such contract after 30 days' notice given as provided under Section 19-7-50 NMSA 1978, unless the purchaser shall comply with the demands made in such notice in which case cancellation shall not be made. A purchaser may consent to the cancellation by waiver of notice of intention to cancel.

B. Late interest payments shall bear interest at the rate of one percent per month until paid.

C. In case of forfeiture all monies theretofore paid under any such contract, together with improvements upon the land, shall remain and become the property of the state of New Mexico.

D. Any contract executed by the commissioner which has been obtained by fraud or executed through mistake, or without authority at law, may be canceled after 30 days' notice by registered mail upon order to show cause as provided by Section 19-7-8 NMSA 1978.

[12/31/1999; 19.2.14.17 NMAC - Rn, 19 NMAC 3. SLO 14.17, 9/30/2002; A, 6/11/2019]

19.2.14.18 COUNTY BOND LANDS:

The rules applicable to the sale of other lands are generally applicable to the sale of county bond lands.

[12/31/1999; 19.2.14.18 NMAC - Rn, 19 NMAC 3. SLO 14.18, 9/30/2002]

19.2.14.19 WATER RIGHTS:

A. Water Pertinent to Irrigated Land. Water used on state trust land and the right to use same upon said land shall never be severed or transferred from the land without the written consent of the commissioner. Because title to lands under purchase contract remains in the state of New Mexico until the land is paid for and a patent is issued, the written permission of the commissioner must be secured in order to transfer or sever water rights from the lands under purchase contract.

B. Permission to Transfer. Any purchase contract holder desiring to apply for permission to change the use of water from state trust lands to other lands, including other state trust lands but not excluding privately owned lands; or to change the method of use of such water; or to change the location of a well; or to change the point of diversion of surface waters from any stream or arroyo shall comply with 19.2.12 NMAC.

[12/31/1999; 19.2.14.19 NMAC - Rn, 19 NMAC 3. SLO 14.19, 9/30/2002]

PART 15: ADMINISTRATIVE PROCEEDINGS BEFORE THE COMMISSIONER OF PUBLIC LANDS

19.2.15.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office.

[19.2.15.1 NMAC - Rp, 19.2.15.1 NMAC, 6/30/2004]

19.2.15.2 SCOPE:

This part pertains to the conduct of all adjudicatory administrative proceedings before the commissioner of public lands arising from agency determinations and show cause orders, as defined herein. Contested matters arising under Section 19-10-24 NMSA 1978, and Sections 19-7-60 and 61 NMSA 1978, and certain other non-adjudicatory hearings shall not be subject to or governed by this part. This part does not enlarge, diminish or in any way alter the constitutional and statutory jurisdiction of the commissioner of public lands or the substantive rights of any person.

[19.2.15.2 NMAC - N, 6/30/2004]

19.2.15.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the trust lands or resources is found in N.M. Const., Art. XIII, 2, and in Section 19-1-1 NMSA 1978. The commissioner's authority relative to contest proceedings is found in Sections 19-7-64 through 68 NMSA 1978 and Section 9-3-1.1 NMSA 1978. The commissioner's authority to promulgate this part is found in Sections 19-1-2 and 19-7-64 NMSA 1978.

[19.2.15.3 NMAC - N, 6/30/2004]

19.2.15.4 DURATION:

Permanent.

[19.2.15.4 NMAC - N, 6/30/2004]

19.2.15.5 EFFECTIVE DATE:

June 30, 2004, unless a later date is cited at the end of a section.

[19.2.15.5 NMAC - Rp, 19.2.15.5 NMAC, 6/30/2004]

19.2.15.6 OBJECTIVE:

The objective of this Part 15 is to provide a clear, mandatory, administrative remedy for persons aggrieved by an agency determination or show cause order, as defined herein, and to provide rules to govern the conduct of the adjudicatory administrative proceedings, all within the scope of this Part 15.

[19.2.15.6 NMAC - N, 6/30/2004]

19.2.15.7 DEFINITIONS:

A. "Agency determination" means a written determination, by the commissioner or the commissioner's designee, regarding a final action or decision taken by the commissioner through a state land office department or division, which action adversely and materially affects a person's right, title, interest or priority of claim in or to trust lands or resources, and which arises from, or in connection with, a lease, contract, easement, right of way, grant, conveyance, or any other instrument executed by the commissioner or the commissioner's designee.

B. "Commissioner" means the commissioner of public lands, or a person fully authorized to act in the commissioner's stead. References to the commissioner as a participant in the contest proceedings shall mean the state land office department or division responsible for the agency determination at issue, or on behalf of which, a show cause order is issued.

C. "Contest" means the administrative hearing at which a decision of the commissioner, as defined herein, is made regarding a show cause notice of the commissioner or a petition contesting an agency determination.

D. "Contest notice" means notification of the occurrence or denial of a contest issued by the commissioner.

E. "Decision of the commissioner" means the final decision rendered by order of the commissioner at the conclusion of a contest pursuant to this Part 15. A decision of the commissioner as such is any "decision" "ruling" or "order" under Chapter 19, NMSA 1978 appealable to a district or higher court, including any such decision of the commissioner so referred to in Sections 19-7-8, 19-7-17, 19-7-67, 19-10-22, and 19-10-23 NMSA 1978. A decision of the commissioner is the "final decision or order of an agency" as used in Rules of Civil Procedure for the District Court, Rule 1-074C NMRA 2004. A decision of the commissioner is a "final decision" as that term is used in Paragraph (2) of Subsection H of 39-3-1.1, NMSA 1978.

F. "Hearing officer" means the person appointed by the commissioner to conduct the contest.

G. "Petitioner" means the person initiating a contest by petition; in the case of a show cause proceeding there will be no petitioner.

H. "Respondent" means any party to a contest initiated by petition, other than the petitioner or the commissioner; in the case of a show cause proceeding the person(s) to whom the show cause order is directed shall be the respondent(s).

I. "Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

J. "Scheduling order" means an order issued by the hearing officer that sets the date, time and place of the contest; establishes the order and timing of all pre-hearing matters, such as discovery and briefing; may establish whether procedures in addition to those provided for in this Part 15 shall be provided; and may provide for such other related matters as the hearing officer deems necessary. Under appropriate circumstances, the scheduling order may be amended by the hearing officer within a reasonable time after issuance.

K. "Show cause order" means an order issued by the commissioner, pursuant to Section 19-7-8 NMSA 1978 or otherwise as may be permitted, directing a party or parties to show cause, if any, why a particular agency action should not be taken or made final. The show cause order will state the place and time of the contest hearing. A show cause order is an agency determination.

L. "Trust lands or resources" means those lands, their natural products or water rights, and other assets derived from them, which are under the care, custody, and control of the commissioner.

[19.2.15.7 NMAC - N, 6/30/2004; A, 6/30/2016; A, 6/11/2019]

19.2.15.8 AGENCY DETERMINATION:

A. A contest will not be initiated by petition without the petitioner first having received an agency determination. In the case of a contest initiated by the commissioner's show cause order, the order itself is the agency determination, and no petition is necessary.

B. An agency determination may be rendered at any time deemed appropriate by the commissioner or the commissioner's designee, or may be rendered, if deemed appropriate by the commissioner, upon request of an interested party.

C. An agency determination will be rendered in writing, shall be dated, and will be provided to the affected party or parties, or to their agent, representative, or successor, in written or electronic format by such means as can reasonably provide verification of receipt. It shall be sufficient if an agency determination is provided to the physical or electronic address most recently shown in the public records of the commissioner.

D. An agency determination will state that it will become non-appealable unless the party to whom it is directed initiates a contest proceeding or responds to the show cause order pursuant to this Part 15 within 30 days of the date of the agency determination, or within such other longer time as fairness and circumstances may, in the commissioner's discretion, require.

E. A demand, offer, or any other agency decision or act, which is still open to negotiation or change by the commissioner, is not an agency determination.

[19.2.15.8 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.9 CONTEST:

A. Right to contest. Subject to Subsection B of 19.2.15.9 NMAC below, any persons or entities aggrieved by an agency determination shall have the right to a contest pursuant to this Part 15. Such proceedings are a mandatory administrative remedy and must be completed before recourse to any court is available.

B. Limitation of right. Unless the commissioner in the commissioner's discretion determines otherwise, a contest shall not involve matters which would not require the presence of the commissioner as a necessary party in a district court proceeding. The right of a party to initiate a contest proceeding is not a waiver of any defense or claim by the commissioner or any other party regarding threshold matters such as jurisdiction, sovereign immunity, standing, ripeness, mootness, failure to state a claim, and the like.

C. Contest participants. In the case of a contest initiated by a show cause order, the participants shall be the commissioner and the respondent. In the case of a contest initiated by petition, the contest participants shall be the commissioner, the petitioner, and any respondents. The hearing officer may, in the hearing officer's discretion, permit third parties to intervene or to participate as *amicus curiae*. All pleadings shall contain a certificate indicating that all other participants have been served with a copy of the pleading by first-class mail or by such other means as the hearing officer may allow.

D. Representation. Contest participants may represent themselves, or may be represented by counsel to the same extent allowed in the district courts of New Mexico. Parties who represent themselves will be held to the same standards of conduct and pleading as if they were represented by counsel.

E. Location. All contests shall, at the sole discretion of the commissioner, be held either at the offices of the New Mexico state land office in Santa Fe, New Mexico, or at any other location deemed most expedient by the commissioner.

[19.2.15.9 NMAC - Rp, 19.2.15.9 NMAC, 6/30/2004; A, 6/11/2019]

19.2.15.10 INITIATING A CONTEST:

A. By written petition. Subject to the hearing officer's ability to allow amendment of the petition for failure to comply with the requirements of form set out below when it appears to the hearing officer that the petition sets out a good faith claim, a contest shall be initiated by written petition, sent by certified or registered mail to the commissioner, which shall contain the following:

(1) As set out in the example (2) below, the caption shall designate the subject matter in reference to the lease, contract, easement, right of way, grant, conveyance, or other instrument which forms the basis of the petitioner's claims.

(2) The caption will also designate the petitioner by full name as such, then the respondent, if any, shall be designated by full name as such. A place should be provided for the proceeding to be numbered. The title shall be bolded and underlined. In the case of a contest over a grazing lease, for example, the caption should appear as follows:

Before the Commissioner of Public Lands

In Re State Land Office Grazing Lease No. GX-0000

Mr. And Mrs. A.B., petitioner

v

Contest No.

X. Corp., respondent

Petition for Contest

(3) the name, mailing and e-mail addresses, telephone and fax numbers of the petitioner and of each respondent in the contest proceeding;

(4) a legible copy of the instrument or instruments which form the basis of the claim in issue;

(5) the aliquot description, by subdivision, section, township and range, of the land or lands in issue;

(6) a concise, complete statement of the claim or claims of the petitioner;

(7) a concise, complete statement of the facts giving rise to the claim or claims in issue;

(8) a statement of the relief being requested as to each claim; and

(9) a sworn statement that a copy of the "foregoing petition" has been sent to the commissioner

and to all respondents by registered or certified mail, and the date when sent.

B. By show cause order. A contest may be initiated by the commissioner's show cause order sent by certified or registered mail. The show cause order shall contain the following:

(1) As set out in the example (2) below, the caption shall designate the subject matter in reference to the lease, contract, easement, right of way, grant, conveyance, or other instrument which forms the basis of the commissioner's claims.

(2) The caption will also designate the respondent by full name as such. The title shall be bolded and underlined. A place should be provided for the proceeding to be numbered. In the case of a show cause order issued in connection with a business lease for example, the caption should appear as follows:

Before the Commissioner of Public Lands

In Re State Land Office Business lease No. BL-0000

Contest No.

X Corp., respondent

Show Cause Order

To Mr. A.B., for X Corporation, respondent;

(3) the name, mailing and e-mail addresses, telephone and fax numbers of the respondent;

(4) a legible copy of the instrument or instruments which form the basis of the show cause order;

(5) the aliquot description, by section, township and range, of the land or lands in issue;

(6) a concise, complete statement of the basis of the show cause order;

(7) a concise, complete statement of the facts giving rise to the show cause order;

(8) a statement of the final decision proposed by the commissioner; and

(9) a statement that a copy of the show cause order has been sent to the respondent by registered or certified mail, and the date when sent.

C. In the case of a contest initiated by a petition, within 10 days of the receipt of a contest petition, the commissioner will give, to the petitioner and any identified respondents, a contest notice stating whether the petition sets out sufficient cause for contest within the scope of this Part 15. The commissioner may reject a contest petition because the requisite agency determination has not been obtained, because the petition states a clearly spurious claim, because the petition is filed as an abuse of process, or because the matters alleged are too complex for an administrative determination or involve too many or unrelated parties. An adverse contest notice, one denying the petition, is an appealable decision of the commissioner. In the case of a contest initiated by show cause order, the show cause order itself shall be the contest notice.

D. Within 30 days of the date of the written notice in Subsection C of 19.2.15.10 NMAC above, each respondent shall submit to the commissioner, also by certified mail, a response, in the form provided for in Paragraph (2) of Subsection A or Paragraph (2) of Subsection B of 19.2.15.10 NMAC above, which shall set forth:

(1) the name, mailing and e-mail addresses, and telephone and fax numbers of each person or entity whom it is believed should be included in the contest, if not already named, and a statement of the basis for such belief;

(2) legible copies of any other instruments that are thought to be relevant to the contest;

(3) a concise, complete statement of the defenses to the claim, of what it is believed should be the disposition of the petitioner's claim, and of any additional cross-claim or counter-claim to be made in connection with the same issues and the relief being requested;

(4) a concise, complete statement of any relevant, additional facts not offered by the petitioner(s) in their petition or not offered by the commissioner in the show cause order; and

(5) a summary of the arguments and authorities supporting the defenses or claims.

E. Subject to the hearing officer's ability to allow amendment of the response for failure to comply with the requirements of form set out above when it appears to the hearing officer that the response is made in good faith, failure to respond, within the time and in the form required in Subsection D of 19.2.15.10 NMAC above, without having first obtained an extension of time to do so by written request directed to and granted by the commissioner, will be deemed a default, and will result in the issuance of a decision of the commissioner.

F. Upon concurrence of the parties, or upon the commissioner's own determination that circumstances require it, the commissioner may shorten or lengthen the times allowed.

[19.2.15.10 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.11 HEARING OFFICER:

A. Following receipt of the acceptable contest petition, the commissioner shall, by order, appoint a hearing officer to preside over the administrative hearing. As soon as practicable, the hearing officer shall issue a scheduling order. In the commissioner's discretion, the commissioner may appoint a designated person from within the state land office who has not participated in the agency determination.

B. The commissioner's appointment of a hearing officer shall constitute a delegation of the commissioner's statutory powers under Section 19-7-65 NMSA 1978 and of the commissioner's constitutional and inherent power to control the conduct of administrative proceedings under the commissioner's jurisdiction.

C. *Ex parte* communication with the hearing officer is strictly prohibited.

[19.2.15.11 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.12 PRE-HEARING DISCOVERY, CONFERENCES, AND MOTION PRACTICE:

A. Pursuant to the scheduling order, the parties to the contest and the commissioner shall provide one another and the hearing officer with a written summary of their arguments and authorities, as well as complete lists of all witnesses (including a summary of their testimony) and all exhibits (including a brief summary of what each exhibit will be offered to prove, and a summary of its contents). Such lists shall be promptly updated as evidence and witnesses are added or deleted. Each party and the commissioner shall within 45 days after the receipt of the petition by the commissioner, or upon such longer period as the hearing officer may allow, produce to all parties and the commissioner all documents related to the matters in controversy, or that are reasonably calculated to lead to the discovery of relevant and material evidence, or that the party intends to offer at the hearing. All parties and the commissioner shall supplement their production within 10 days of discovering documents that meet the foregoing criteria. The scheduling order or other order of the hearing officer may provide such additional discovery as the hearing officer deems fair and appropriate. It is expected that all such discovery shall proceed without the necessity of any request being made to the hearing officer. The hearing officer shall have the right to preclude any testimony or other evidence which, in the hearing officer's opinion, has not been fairly and reasonably disclosed before the hearing.

(1) Any party or the commissioner, if dissatisfied with discovery, may request, in writing, that the hearing officer order another party to provide better or additional discovery. The opposing party shall respond within such time as the hearing officer establishes. The hearing officer may, in the hearing officer's discretion, allow oral argument on discovery disputes.

(2) Discovery orders of the hearing officer are not appealable, but may form the basis of an appeal of the decision of the commissioner in the matter.

B. Upon the hearing officer's own initiative, or at the request of the commissioner, or a petitioner or respondent, the hearing officer may, in the hearing officer's discretion, require scheduling, settlement, or such other conferences at the principal offices of the state land office, or at any other location deemed best by the hearing officer.

C. Pursuant to the scheduling order, the hearing officer may permit or limit such motions, responses, and replies as are normally permitted in the state district courts of New Mexico. Except as set out herein, any procedures regarding such motion practice shall be established by the hearing officer on the hearing officer's own or at the request of the commissioner or the parties. As to motions which dispose of all or part of the merits of any claim at issue, the hearing officer shall make a recommendation by written report to the commissioner who shall make a final determination. Except in rare cases and for good cause shown, the disposition of any motion is not subject to interlocutory appeal; the disposition of any motion is appealable only when the contest is concluded by a decision of the commissioner.

[19.2.15.12 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.13 WITNESSES:

A. Within such time as the hearing officer establishes in the scheduling order, each party may obtain from the hearing officer a subpoena for the attendance of all material witnesses at depositions or hearings. Consistent with applicable law or court rules, the hearing officer may charge a fee for the issuance of each such subpoena, and may establish fees for the attendance of witnesses.

B. The hearing officer may, on the hearing officer's own or at the request of any party or the commissioner, exclude witnesses for the hearing during the testimony of other witnesses or at any other time deemed proper or expedient.

C. All witnesses shall testify under oath.

D. The hearing shall proceed as scheduled without the attendance of a witness or a party if no prior notification of absence and request for an extension of time was received.

E. The testimony of a witness or party unable to attend may be preserved by deposition. The hearing officer may, if the hearing officer deems it helpful, accept affidavits of witnesses unable to attend, but will weigh their probative value as such.

[19.2.15.13 NMAC - Rp, 19.2.15.14 NMAC, 6/30/2004; A, 6/11/2019]

19.2.15.14 HEARING PROCEDURE:

A. In conducting the hearing, the hearing officer shall refer to, but shall not be bound by, the then current district court rules regarding procedure and evidence. Evidence not admissible under those rules may be admitted by the hearing officer if the hearing officer reasonably believes such admission will help in providing or clarifying relevant facts without substantially prejudicing the rights of any party. In particular, hearsay evidence may be admitted by the hearing officer, but shall not form the sole basis for the hearing officer's recommendations. The hearing officer may require any evidence to be submitted in writing. Decisions of the hearing officer regarding matters of evidence or procedure are not, in themselves, final or appealable decisions, but may form the basis for appealing a decision of the commissioner.

B. There shall be a formal written record of a contest. The commissioner shall, at the time of appointment of a hearing officer, appoint a state land office employee to act as the hearing officer's clerk, who shall receive and file all elements of the record. The hearing officer shall designate a court reporter to record the hearing.

C. Unless otherwise indicated by the hearing officer, the order of proceedings shall be as follows:

(1) In a case initiated by a show cause order, the commissioner shall present the commissioner's case first: opening statements by the commissioner, the respondent(s), and any intervenors, in that order; presentation of evidence by the commissioner in support of the validity of the proposed action or actions forming the basis of the show cause order; presentation of evidence by the respondent(s) in support of the status quo; and presentation of evidence by any intervenors in support of their position, in that order; and closing arguments by the commissioner, the respondent, and any intervenors, in that order.

(2) In a contest initiated by petition, the petitioner shall present the petitioner's case first: opening statements by the petitioner, the respondent, any intervenors, and the commissioner, in that order; presentation of evidence in support of any defense, claim, or counterclaim and any rebuttal evidence by the petitioner, the respondent, any intervenors, and the commissioner, in that order; and closing arguments by the petitioner, respondent, any intervenors, and the commissioner, in that order.

D. At any point in the contest hearing, the hearing officer may initiate questions, may request that the commissioner, petitioner(s) or respondent(s) provide briefing on an

issue or take any other action deemed necessary to expedite the proceeding and to obtain a full understanding of the facts and the issues.

E. In a contest initiated by a show cause order, there shall be no initial burden of proof, and the recommendation of the hearing officer shall be based on a preponderance of the evidence supporting either the action or actions proposed to be taken by the commissioner, or supporting the status quo prior to the issues raised in the show cause order. In a contest initiated by petition, the burden of proof shall be upon any party asserting a claim, cross claim, or counterclaim, and the recommendation of the hearing officer shall be based upon a preponderance of the evidence offered in support or rebuttal of any such claim, cross claim, or counterclaim.

[19.2.15.14 NMAC - N, 6/30/2004; A, 6/11/2019]

19.2.15.15 COSTS AND FEES:

A. Each participant in a contest proceeding, excluding the commissioner, shall be required, upon their first filing, to pay a non-refundable filing and processing fee as set forth in the schedule of fees.

B. At the earliest practicable date, the hearing officer shall obtain from each participant in the contest an estimate of time needed to present their part of the proceeding. Based on such estimates, the hearing officer will determine the cost of producing a record of the proceedings, and, if applicable, the fee or salary for the hearing officer's time to conduct the proceeding. At any time prior to or following the hearing, the hearing officer may determine that additional costs are necessary if it becomes evident that more time has been, or will be required to conclude the proceeding. Each party except the state land office will be required to pay, as a deposit, the amount of all costs assessed by the hearing officer in order to attend the proceeding and to have their arguments and evidence considered.

(1) A party who prevails upon all issues shall be entitled to the return of their full deposit. If they prevail in part, their deposit shall be returned in proportion to the number of claims, counterclaims, and cross claims upon which they prevailed.

(2) The deposit amount remaining after a return of funds to the prevailing party, or parties, shall be first applied to all applicable costs, with the balance of each deposit returned to each losing party in proportion to the number of claims, counterclaims or cross claims upon which they did not prevail.

(3) The determination of the proportions set out in paragraphs one (1) and two (2) above shall be discretionary with the hearing officer.

C. The hearing officer may, upon a satisfactory showing of inability to pay on the record, permit that party to proceed with reduced or no costs, and absorb those unpaid costs, to the extent not covered by a retained deposit, as an administrative expense.

D. Each party shall bear their own costs and fees in bringing or defending a contest.

[19.2.15.15 NMAC - N, 6/30/2004; A, 6/30/2016]

19.2.15.16 ALTERNATIVE DISPUTE RESOLUTION:

At any time during the pendency of a contest proceeding, the parties or the commissioner may, by agreement, and upon providing written notice of the agreement to the hearing officer, elect to use any form of alternative dispute resolution. Upon receipt of such notice, the hearing officer will, as required by the agreement of the parties, terminate or stay any further actions or proceedings. Any final result achieved through alternative dispute resolution shall, if agreed to by the parties and the commissioner, be made binding on all by a decision of the commissioner and shall be non-appealable except as otherwise provided by law.

[19.2.15.16 NMAC - N, 6/30/2004]

19.2.15.17 DECISION OF THE COMMISSIONER:

A. At the conclusion of the hearing, all parties and the commissioner shall leave with the hearing officer such items of evidence as the hearing officer requires.

B. At the conclusion of the hearing, the hearing officer may require such post-hearing pleadings and submissions as the hearing officer deems appropriate.

C. At the conclusion of the hearing, the hearing officer shall indicate the time within which a final report shall be made.

D. The hearing officer's final report shall be provided to all parties and to the commissioner.

E. Upon receipt of the hearing officer's final report, the commissioner shall, within a reasonable time, issue an order adopting, modifying, or rejecting that report. This order shall be the decision of the commissioner, and as such, it shall contain a grant or denial of the relief requested and a statement of the legal and factual basis for the order.

F. The decision of the commissioner will be filed in the lease file or other pertinent official record of the New Mexico state land office.

G. Each party, and each other person who has requested a copy, shall, after the decision of the commissioner is filed, be provided with a copy of the decision of the commissioner along with a statement of the requirements for appealing the order.

[19.2.15.17 NMAC - Rp, 19.2.15.15 NMAC, 6/30/2004; A, 6/11/2019]

19.2.15.18 APPEAL:

A. Appeal of the commissioner's decision in a contest shall be as provided in Section 39-3-1.1 NMSA 1978. In such an appeal, the appealing party shall be named as appellant, and the commissioner and other parties shall be named as appellees. The style of such appeal shall be, for example in the case of a contest over a grazing lease, *In Re State Land Office Grazing Lease GX-0000*.

B. Failure to perfect an appeal of a decision of the commissioner within the time allowed by and pursuant to Section 39-3-1.1 NMSA 1978 results in that decision becoming final, binding and non-appealable.

[19.2.15.18 NMAC - Rp, 19.2.15.16 NMAC, 6/30/2004]

PART 16: RULEMAKING PROCEDURES

19.2.16.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501.

[19.2.16.1 NMAC - Rp 19 NMAC 2. SLO 16.1, 7/31/2002]

19.2.16.2 SCOPE:

This rule governs the promulgation, amendment, and repeal of rules for the administration of the lands, resources, and assets held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation. If any provision of this rule is inconsistent with any specific statutory procedures that govern rulemakings conducted by the commissioner, the specific statutory procedures shall apply.

[19.2.16.2 NMAC - Rp 19 NMAC 2. SLO 16.2, 7/31/2002]

19.2.16.3 STATUTORY AUTHORITY:

N.M. Const., art. XIII, section 2, and in Section 19-1-1 *et seq.* NMSA 1978.

[19.2.16.3 NMAC - Rp 19 NMAC 2. SLO 16.3, 7/31/2002]

19.2.16.4 DURATION:

Permanent.

[19.2.16.4 NMAC - Rp 19 NMAC 2. SLO 16.4, 7/31/2002]

19.2.16.5 EFFECTIVE DATE:

July 31, 2002.

[19.2.16.5 NMAC - Rp 19 NMAC 2. SLO 16.5, 7/31/2002]

19.2.16.6 OBJECTIVE:

The objective of this rule is to provide for the orderly and lawful promulgation, amendment, and repeal of rules for the administration of state trust lands.

[19.2.16.6 NMAC - Rp 19 NMAC 2. SLO 16.6, 7/31/2002]

19.2.16.7 DEFINITIONS:

As used in this rule:

A. "commissioner" means the commissioner of public lands; the commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule;

B. "rule" means any written rule, regulation or standard, and any written amendment or repeal of a rule, regulation or standard, issued or promulgated by the commissioner and binding persons other than the commissioner or the employees of the state land office, but does not include:

(1) statements, policies, procedures, or directives concerning only internal management of the state land office and not binding lessees, applicants, or the public generally;

(2) rulings or decisions of the commissioner in proceedings authorized by law regarding individual leases;

(3) actions of the commissioner in regard to individual leases, contracts, grants, or other instruments executed by the commissioner; and

(4) any applications, forms, schedules of fees or any guidance documents issued by the commissioner to implement the rules of the commissioner unless such documents are required by law to be included in a rule;

C. "rulemaking record" means all materials received or generated by the commissioner during a rulemaking proceeding, including but not limited to:

(1) the public notice and any documents related to the publication or posting of the public notice;

(2) the proposed rule or rule change;

- (3) any written comments submitted during the comment period;
- (4) any record (audio tape, video tape or stenographic) of the public hearing, if any, on the proposed rule;
- (5) any reports or other documents prepared or submitted by state land office staff regarding the proposed rule; and
- (6) the commissioner's order promulgating the rule;

D. "state land office" means the New Mexico state land office; and

E. "State Rules Act" means the State Rules Act codified at Chapter 14, Article 4 NMSA 1978, and any amendments thereof, and any rules adopted pursuant to that act.

[19.2.16.7 NMAC - Rp 19 NMAC 2. SLO 16.7, 7/31/2002]

19.2.16.8 PUBLIC REQUESTS FOR RULEMAKING:

Any interested person may request in writing that the commissioner promulgate, amend, or repeal a rule. Within 120 days of receipt of the written request, the commissioner shall either initiate formal proceedings to consider the proposed rule or issue to the individual making the request, a written statement of the commissioner's reasons for denial of the request.

[19.2.16.8 NMAC - Rp 19 NMAC 2. SLO 16.14, 7/31/2002; A, 6/11/2019]

19.2.16.9 COMMENT PERIOD:

No rule shall be adopted by the commissioner until after the commissioner provides public notice and a period for public comment of not less than thirty days, except as provided in this rule for emergency rules.

[19.2.16.9 NMAC - Rp 19 NMAC 2. SLO 16.9, 7/31/2002]

19.2.16.10 NOTICE OF RULEMAKING:

Notice that the commissioner intends to promulgate, amend, or repeal a rule shall be given by publication in the New Mexico register, by publication in at least one newspaper of general circulation in the state, and by posting on a website controlled or authorized by the commissioner. The notice shall state generally the subject of the proposed rulemaking, the manner in which interested persons may submit written comments and, if appropriate, the time and place of any public hearing. The notice may allow comments to be submitted by electronic mail. The notice shall also state where copies of the proposed rule may be obtained by interested persons. Individual notice of

rulemaking to all state lessees, contract holders, or grantees shall not be necessary, unless as may be otherwise required by law.

[19.2.16.10 NMAC - Rp 19 NMAC 2. SLO 16.10, 7/31/2002]

19.2.16.11 RULEMAKING HEARINGS:

In the commissioner's discretion or as may be required by law, the commissioner may set a public hearing to allow comments on a proposed rule. Notice of such hearing shall be made as provided in 19.2.16.10 NMAC and shall be published and posted no less than 30 days prior to the date of the hearing. At such hearing the commissioner shall allow all interested persons, or groups of persons, reasonable opportunity to present written materials, present oral comments on the proposed rule, present questions, and to examine witnesses. State land office staff may appear at the hearing and present testimony and answer questions from the public. If the commissioner determines that oral presentation or the examination of witnesses is unnecessary or impractical, the commissioner may require that the presentation be submitted in writing and establish limitations on the examination of witnesses. At the hearing, all interested persons shall have the opportunity to review all documents or other pertinent information prepared in advance of the hearing. The commissioner may designate a hearing officer to conduct the public hearing. In the commissioner's discretion, the commissioner may keep the rulemaking record open for a reasonable period of time after the hearing to receive further written materials.

[19.2.16.11 NMAC - Rp 19 NMAC 2. SLO 16.11, 7/31/2002; A, 6/11/2019]

19.2.16.12 CONSIDERATION OF THE RECORD; ORDER PROMULGATING RULE:

After the close of the comment period, the commissioner shall consider the contents of the rulemaking record. If the commissioner adopts a rule, the commissioner shall, prior to the effective date of the rule, enter an order. The order shall include a concise statement of the commissioner's principal reasons for promulgating the rule and a statement of the major comments adopted or rejected in promulgating the rule and the reasons for their adoption or rejection. A copy of the commissioner's order shall be sent to all persons who submitted written comments and provided an address, and if a public hearing was held, all persons who were present at the hearing, as reflected on the attendance list. Individual notice of the order to state lessees, contract holders, or grantees shall not be necessary unless otherwise provided by law.

[19.2.16.12 NMAC - Rp 19 NMAC 2. SLO 16.15, 7/31/2002]

19.2.16.13 EFFECTIVE DATE OF RULES:

Upon promulgation of a rule by the commissioner, the rule shall be posted in the state land office for the period required by law, if any, and filed as required by the State Rules

Act. A rule shall be effective upon publication in the New Mexico register, unless a later date is specified by the commissioner.

[19.2.16.13 NMAC - Rp 19 NMAC 2. SLO 16.12, 7/31/2002]

19.2.16.14 EMERGENCY RULES:

If the commissioner determines that an emergency exists which requires immediate action, the commissioner may promulgate, amend, or repeal a rule and post the rule in the state land office for any minimum statutory period and thereafter file the rule as required by the State Rules Act. The rule shall be effective immediately upon filing. An emergency rule shall be designated as such in the text of the rule and shall include a statement of the necessity for the emergency need for the rule. No emergency rule shall continue in effect longer than 30 days unless within that time period the rule is published in the New Mexico register and the commissioner commences proceedings to adopt the rule under the general provisions of this rule. If the commissioner commences such proceedings the emergency rule shall remain in effect until a permanent rule takes effect or until the proceedings are otherwise complete. In no event shall an emergency rule remain in effect for more than 120 days.

[19.2.16.14 NMAC - Rp 19 NMAC 2. SLO 16.13, 7/31/2002; A, 6/11/2019]

PART 17: GEOPHYSICAL EXPLORATION ON UNLEASED STATE TRUST LANDS

19.2.17.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501.

[19.2.17.1 NMAC - N, 9/14/2000]

19.2.17.2 SCOPE:

Future geophysical exploration permits of state trust lands, excluding exploration for minerals which may be leased under 19.2.17 NMAC. This part does not apply to geophysical exploration related to oil and gas operations on trust lands that are currently under an oil and gas lease in good standing; any geophysical exploration on those lands shall be conducted under the terms of the existing oil and gas lease.

[19.2.17.2 NMAC - N, 9/14/2000]

19.2.17.3 STATUTORY AUTHORITY:

N.M. Const. Art. XIII; NMSA 1978 Section 19-10-1.

[19.2.17.3 NMAC - N, 9/14/2000]

19.2.17.4 DURATION:

Permanent.

[19.2.17.4 NMAC - N, 9/14/2000]

19.2.17.5 EFFECTIVE DATE:

September 14, 2000, unless a later date is cited at the end of a section.

[19.2.17.5 NMAC - N, 9/14/2000; A, 6/30/2016]

19.2.17.6 OBJECTIVE:

The objective of this part is to provide the general terms and conditions for the geophysical exploration of state trust lands.

[19.2.17.6 NMAC - N, 9/14/2000]

19.2.17.7 DEFINITIONS:

A. "Commissioner" means the New Mexico commissioner of public lands, and the commissioner's appointees under Section 19-1-7 NMSA 1978 acting within the scope of their authority. Except for the decision to cancel or otherwise terminate a lease, the commissioner may delegate to state land office staff the performance of functions required of the commissioner under this part.

B. "Geophysical exploration" means the quantitative physical study of the earth by reflection and refraction seismic (including dynamite sources), gravity, magnetic, electrical, electromagnetic or radiation methods.

C. "Geophysical exploration permit" or "permit" means a permit approved by the commissioner for geophysical exploration of trust lands.

D. "Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

E. "State land office" means the New Mexico state land office.

F. "Trust" means the trust created by congress under the New Mexico Enabling Act of June 20, 1910, and accepted by the state of New Mexico under Articles XIII and XIV of the New Mexico constitution.

G. "Trust lands" means those lands, their natural products and all assets derived from them, which are under the care, custody and control of the commissioner.

[19.2.17.7 NMAC - N, 9/14/2000; A, 6/30/2016; A, 6/11/2019]

19.2.17.8 PROHIBITION:

Notwithstanding the issuance of a geophysical exploration permit, no person shall conduct any geophysical activity or associated surveys on trust lands unless the activity is conducted in conformity with all applicable local, state, and federal laws and regulations, and all necessary permits have been obtained.

[19.2.17.8 NMAC - N, 9/14/2000]

19.2.17.9 LANDS SUBJECT TO A GEOPHYSICAL EXPLORATION PERMIT:

Geophysical exploration permits are required on all trust lands on which there is no valid existing oil and gas lease, specifically:

A. On all trust lands in which both the surface and mineral estate are held in trust, even if other surface leases are in existence.

B. On all trust lands in which only the mineral estate is held in trust. Such permit will allow the permittee to conduct geophysical investigations throughout the mineral estate; however, any access to the surface estate will be coordinated between the permittee and the surface owner.

C. On all trust lands in which only the surface estate is held in trust, even if other surface leases are in existence. Such permit will allow the permittee physical access to the surface for the purpose of conducting geophysical investigations; however, any access to the mineral estate shall be coordinated between the permittee and the mineral estate owner.

[19.2.17.9 NMAC - N, 9/14/2000]

19.2.17.10 APPLICATION FOR A PERMIT:

A. Applicants for a geophysical exploration permit must contact the oil, gas and minerals division of the state land office in Santa Fe to verify that the trust lands of interest are available to permit. Interested applicants shall then submit a complete application for permit on forms prescribed and furnished by the commissioner, and shall include, without limitation, the following:

(1) A check made payable to the commissioner for the appropriate fees in accordance with the schedule of fees adopted by the commissioner. Fees will be assessed for each individual or portion of a geophysical exploration line considered as a single entry, and will reflect rates according to trust surface and mineral ownership and locations within restricted districts or unrestricted areas as determined by the commissioner;

(2) A topographic map of suitable scale, identified by county, township, range and section, showing the approximate location of all survey lines which are proposed to cross the applicable trust lands. The map shall be verified as to correctness by the applicant or the applicant's duly authorized representative; and,

(3) A proposed survey operations plan which shall include, without limitation, a description of the methods to be used in conducting the survey, a description of equipment to be used, a description of ingress and egress locations and a spill prevention and control plan.

B. When the proposed survey method will include the use of explosives, the application for a geophysical exploration permit shall also include the following:

(1) A topographic map showing shot hole patterns, depth of shot hole, size of charge and location in relation to buildings, wells, roads, pipelines, power lines, drainages and any other cultural feature; and

(2) Contingency plans for control and mitigation of blowouts and unexploded shot holes.

[19.2.17.10 NMAC - N, 9/14/2000; A, 6/11/2019]

19.2.17.11 PERMIT ISSUANCE:

A. If the commissioner approves an application and determines that a permit will be in the best interest of the trust, a geophysical exploration permit will be issued. The application documents will be incorporated into the permit by reference and the provisions of the approved application documents will be enforceable in the same manner as any other condition of the permit. Any changes to operations approved under a permit must be approved in advance in writing by the commissioner.

B. Following approval of an application, the commissioner shall prepare a geophysical exploration permit in accordance with this part, in duplicate, and mail the two originals to the applicant. If the applicant agrees to all terms and conditions of the proposed permit, the applicant shall sign the originals before a notary public and return both originals to the commissioner. The commissioner shall thereafter approve and execute the geophysical exploration permit and return one fully executed original to the permittee.

19.2.17.12 PERMIT TERMS AND CONDITIONS:

A. The permit shall be valid for 90 days from the date of its approval by the commissioner; provided, that an extension may be approved by the commissioner upon a showing by the permittee that reasonable work delays occurred because of conditions beyond the permittee's control.

B. No later than 150 calendar days after the expiration date of a permit, the permittee shall furnish to the commissioner, a map of suitable scale, identified by county, township, range and section, showing the location and depth of shot holes or station points on the permitted land. This map shall include the locations of source (vibrator) lines and receiver lines. The map shall be of a quality sufficient to enable visual inspection of the permitted lands after the project is completed. The map shall be verified as to correctness by the permittee or the permittee's duly authorized representative.

C. Source lines and receiver lines shall be no greater than 100 feet in width.

D. Motorized vehicles are not allowed off established ranch roads or off the permitted and surveyed source and receiver lines. The commissioner will allow limited and reasonable drive-arounds when justified and located on submitted updated maps. Areas between the permitted survey lines are not permitted and entry thereon will be considered trespass, which may result in cancellation of a permit.

E. The permittee shall at all times keep the permit area free and clear of trash and debris resulting from the permittee's occupation of the lands. Hazardous or toxic wastes or petroleum products may not be disposed of on the permit premises, and all such materials used in the operations must be removed from the permitted land prior to expiration of the permit. Due care shall be used to prevent leaks and spills of such materials; the clean-up of any spills and reclamation of the area shall be performed in consultation with the commissioner.

F. Unless authorized by the commissioner in writing, a permit does not authorize the use of trust lands for operation staging areas or for vehicle maintenance yards.

G. No access is granted to trust lands for any purpose without valid permits or agreements. Copies of permits and agreements must be in the possession of any representatives or subcontractors of geophysical permittees at all times when on trust lands. State land office representatives may order an immediate shut-down of operations until proof of a valid permit or agreement is on site.

H. Permits may contain specific requirements for reclamation, such as bank stabilization for watercourses and road repair.

I. The permittee shall comply with all applicable laws, regulations, rules, ordinances and requirements of city, county, state and federal authorities and agencies, in all matters and things affecting the permit area and operations, including but not limited to conservation, sanitation, aesthetics, pollution, cultural properties, fire and ecology.

[19.2.17.12 NMAC - N, 9/14/2000; A, 6/11/2019]

19.2.17.13 RECLAMATION AND RESTORATION:

Any person who enters upon trust lands for purposes of geophysical exploration shall take all steps necessary to preserve and protect the natural environmental conditions of such lands. The permittee shall remove all stakes, markers, cables, ropes, wires or debris from disturbed areas, and shall restore and reclaim all areas disturbed by the permittee's operations at the conclusion of the operations, in accordance with the approved permit and standards established by the commissioner.

[19.2.17.13 NMAC - N, 9/14/2000; A, 6/11/2019]

19.2.17.14 FINANCIAL ASSURANCE:

A. Improvements; Waivers. Before commencement of geophysical exploration activity, the permittee shall execute and provide financial assurance to secure payment for potential injuries to tangible improvements upon the permitted area that may result from a permittee's activity. The commissioner shall fix the amount of such financial assurance in an amount not less than five thousand dollars (\$5,000.00) for each section or portion of a section of trust lands covered by the permit. The financial assurance instrument shall be in favor of the state, but held for the benefit of the state's contract purchasers, patentees, and surface lessees with pre-existing rights within the permitted area. Provided that, in lieu of said financial assurance, the commissioner may accept a waiver of financial assurance, duly executed or acknowledged by the owners of all improvements in the permitted land.

B. Blanket Bonds. The permittee may, with the approval of the commissioner, provide one instrument ("megabond") to cover financial assurance requirements under multiple permits or other instruments that authorize the permittee to enter trust lands. The commissioner shall fix the amount of the megabond, which shall be no less than twenty-five thousand dollars (\$25,000.00).

C. Reclamation Bonds. Notwithstanding the provision of financial assurance under this part, the commissioner may require a permittee to provide for additional financial assurance to guarantee performance of reclamation requirements promulgated under state land office rules.

D. Form of Financial Assurance Instruments. Forms for all financial assurance instruments shall either be prescribed and furnished by the commissioner, or be in a form approved by the commissioner. Self-insurance, in any form, shall not be allowed.

[19.2.17.14 NMAC - N, 9/14/2000]

19.2.17.15 SURFACE LESSEES:

A. Fees paid to the commissioner pursuant to this part for permits to conduct geophysical exploration on lands in which the surface is held in trust are consideration for access to use the surface for reasonable geophysical activity. State land office surface lessees are not entitled to compensation from permittees for access across trust land.

B. Permittees must settle with and compensate state land office surface lessees for actual damage to or loss of livestock, authorized improvements, range, crops, and other valid existing rights recognized by law.

[19.2.17.15 NMAC - N, 9/14/2000]

PART 18: RELATING TO STATE LAND TRUSTS ADVISORY BOARD

19.2.18.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[19.2.18.1 NMAC - Rp, 19.2.18.1 NMAC, 06/30/16]

19.2.18.2 SCOPE:

This rule pertains to the working relationship between the commissioner of public lands and the state land trusts advisory board.

[19.2.18.2 NMAC - Rp, 19.2.18.2 NMAC, 06/30/16]

19.2.18.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the state trust lands is found in Article 13, Section 2 of the constitution of New Mexico, and in 19-1-1 NMSA 1978. The authority to promulgate this rule is found in 19-1-2 NMSA 1978. Provisions authorizing the state land trust advisory board are found in 19-1-1.1 through 19-1-1.4 NMSA 1978.

[19.2.18.3 NMAC - Rp, 19.2.18.3 NMAC, 06/30/16]

19.2.18.4 DURATION:

Permanent.

[19.2.18.4 NMAC - Rp, 19.2.18.4 NMAC, 06/30/16]

19.2.18.5 EFFECTIVE DATE:

June 30, 2016, unless a later date is cited at the end of a section.

[19.2.18.5 NMAC - Rp, 19.2.18.5 NMAC, 06/30/16]

19.2.18.6 OBJECTIVE:

The objective of 19.2.18 NMAC is to provide for the orderly and productive working relationship between the commissioner of public lands and the state land trusts advisory board.

[19.2.18.6 NMAC - Rp, 19.2.18.6 NMAC, 06/30/16]

19.2.18.7 DEFINITIONS:

[RESERVED]

[19.2.18.7 NMAC - Rp, 19.2.18.7 NMAC, 06/30/16]

19.2.18.8 POLICY AND MEETINGS:

It is the policy of the commissioner of public lands to provide the state land trusts advisory board with all information requested by the board regarding the policies and procedures, rules, and financial information of the New Mexico state land office. The commissioner shall cooperate with the board, which shall provide advice and assistance to the commissioner in protecting and maintaining the assets and resources of the state trust lands, and in maximizing the income from trust assets, as mandated by the constitution of New Mexico, the Enabling Act, and by state statute.

A. The commissioner and staff shall hold at least one meeting per year jointly with the state land trusts advisory board and the administrative head or designee of the beneficiary institutions. At this annual meeting, the commissioner shall inform and discuss the plans, goals, objectives, budget, revenue projections, asset management issues, and all other pertinent information regarding the state land trusts.

B. At least two times per year (in addition to the annual joint meeting with the state land trusts advisory board and beneficiaries), the commissioner shall meet with the board. The non-beneficiary board meetings shall be held when called by the chairman of the board, a majority of board members, or at the request of the commissioner. Board members may choose to participate in properly noticed meetings by telephone or other similar communications equipment, but only when attendance in person is difficult or impossible. Each board member participating by telephone or other similar equipment must be identified when speaking, all board members must be able to hear each other at the same time and hear any speaker, and members of the public attending the meeting must be able to hear any board member.

C. No action of the board is binding on the commissioner, who alone has the constitutional and fiduciary responsibility as trustee for the trusts.

[19.2.18.8 NMAC - Rp, 19.2.18.8 NMAC, 06/30/16]

19.2.18.9 REPORTS:

Upon the call of a meeting with the board, the commissioner shall appear before the board to review and report on the policies and practices of the commissioner, which may include proposed land exchanges, fee setting matters, proposed land sales, litigation, rules, or other matters, at the commissioner's discretion.

[19.2.18.9 NMAC - Rp, 19.2.18.9 NMAC, 06/30/16]

19.2.18.10 ADMINISTRATIVE SUPPORT:

A. The commissioner shall assist the board with a secretary. The secretary shall keep minutes of all board meetings, retain custody of board records, and carry out such further duties customary of the office of secretary.

B. The commissioner shall provide written notice of regular meetings to board members at least three weeks prior to the meeting. A final written agenda prepared by the commissioner shall be available on the commissioner's webpage and posted in the commissioner's office at least 72 hours prior to the meeting.

[19.2.18.10 NMAC - Rp, 19.2.18.10 NMAC, 06/30/16]

PART 19: RELATING TO RECREATIONAL AND EDUCATIONAL ACCESS TO STATE TRUST LANDS

19.2.19.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, Santa Fe, New Mexico 87501; or, P.O. Box 1148, Santa Fe, New Mexico 87504-1148, Phone: (505) 827-5713.

[19.2.19.1 NMAC – Rp, 19.2.19.1 NMAC, 12/13/13]

19.2.19.2 SCOPE:

This rule governs recreational and educational access to state trust lands open to such access and assures that recreational and educational access are conducted in a manner consistent with the purposes of the trust.

[19.2.19.2 NMAC – Rp, 19.2.19.2 NMAC, 12/13/13]

19.2.19.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the state trust lands is found in N.M. Const., Art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[19.2.19.3 NMAC – Rp, 19.2.19.3 NMAC, 12/13/13]

19.2.19.4 DURATION:

Permanent.

[19.2.19.4 NMAC – Rp, 19.2.19.4 NMAC, 12/13/13]

19.2.19.5 EFFECTIVE DATE:

December 13, 2013 unless a later date is cited at the end of a section.

[19.2.19.5 NMAC – Rp, 19.2.19.5 NMAC, 12/13/13]

19.2.19.6 OBJECTIVE:

The objective of 19.2.19 NMAC is to provide for the orderly and lawful use of state trust lands open to recreational and educational access.

[19.2.19.6 NMAC – Rp, 19.2.19.6 NMAC, 12/13/13]

19.2.19.7 DEFINITIONS:

As used in this rule, the following terms shall have the meaning here indicated:

A. "Commissioner" - the commissioner of public lands or any agent or employee of the commissioner who is authorized to act in the commissioner's stead.

B. "Recreational access" - access to state trust lands open to recreational and educational access described in Subsection D of 19.2.19.7 NMAC for the purpose of conducting non-commercial permitted activities thereon.

C. "Permitted activities" - those activities on lands open to recreational access that are authorized by the issuance of a recreational access permit and are not prohibited under 19.2.19.18 NMAC. Permitted activities include, but are not limited to, such activities as hiking, sightseeing, picnicking, observing wildlife, non-commercial pinon nut gathering, photographing, and cross country skiing.

D. "Lands open to recreational access" - those lands, other than lands leased under a New Mexico state land office business lease, that are identified by the surface tract

books of the New Mexico state land office as in the care, custody, and control of the commissioner, that have not been withdrawn from recreational access by the commissioner, and on which no oil and gas operations or mining operations are being conducted.

E. "Recreational access permit" - an instrument issued by the commissioner that authorizes recreational access by the recreational access permittee and a certain number of persons accompanying the permittee. A recreational access permit shall be valid only in the possession of the recreational access permittee and shall be rendered invalid by its transfer to another. Recreational access permits shall be of two types:

(1) "Individual/family permit" - a recreational access permit issued to a recreational access permittee that authorizes recreational access by the permittee and all family members (not to exceed 10 other persons) in the company of the permittee. The permit shall be valid for one year from the date of issuance, such term to apply retroactively to any individual/family permit issued during the 12-month period prior to the effective date of this rule.

(2) "School/educational permit" - a recreational access permit issued to a recreational access permittee who is the teacher, leader, or sponsor of a school class or educational group, that authorizes recreational access by the permittee and no more than 50 members of the permittee's school class or educational group for up to three days. The permit shall be valid from sunrise to sunset for one to three consecutive calendar days.

F. "Recreational access permittee" - any person 18 years old or older to whom or in whose name a recreational access permit is issued.

G. "Established road" - A road built or maintained by equipment, and which shows no evidence of being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades, or posted closures. In addition, this includes observable two-track roads. A two-track road is one which shows use for purposes such as recreation, mining, logging, or ranching, and which shows no evidence of being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades, or posted closures.

[19.2.19.7 NMAC – Rp, 19.2.19.7 NMAC, 12/13/13]

19.2.19.8 WITHDRAWAL OF LANDS FROM RECREATIONAL ACCESS:

The commissioner, in the commissioner's sole discretion, may at any time withdraw any state trust lands from recreational access if the commissioner determines that such withdrawal is in the best interests of the trust. Any lands so withdrawn shall remain unavailable for recreational access until the commissioner, in the commissioner's sole discretion, determines that the availability of the lands for recreational access is in the best interests of the trust.

[19.2.19.8 NMAC - Rp, 19.2.19.8 NMAC, 12/13/13; A, 6/11/19]

19.2.19.9 RECREATIONAL ACCESS PROHIBITED WITHOUT A PERMIT:

Recreational access to state trust lands is prohibited in the absence of a recreational access permit issued pursuant to this rule or other express, written authorization from the commissioner. Access in accordance with an easement issued to the New Mexico state game commission does not require an additional recreational access permit or other express, written authorization. A person engaged in recreational access in accordance with this rule shall, upon request by a state land office employee or lessee, present the person's written authorization for inspection.

[19.2.19.9 NMAC – N, 12/13/2013; A, 6/11/2019]

19.2.19.10 INTERFERENCE WITH LAWFUL RECREATIONAL ACCESS:

No lessee or other person shall interfere with lawful recreational access permitted in accordance with this rule. The lessee of the subject state trust lands may, without such interference, make inquiry concerning the status of those using state lands.

[19.2.19.10 NMAC – N, 12/13/13]

19.2.19.11 PERMIT APPLICATION AND FEES:

Applications for recreational access permits shall be written in ink upon forms prescribed by the commissioner and shall contain information the commissioner deems appropriate, or applications shall be submitted electronically if allowed by the commissioner's web site. Each application shall be accompanied by the appropriate fees as posted on the web site from time to time, which shall be non-refundable, and which are subject to change without notice. The commissioner reserves the right to reject any and all applications if the commissioner determines such rejection is in the best interests of the trust.

[19.2.19.11 NMAC – Rp, 19.2.19.9 NMAC, 12/13/13]

19.2.19.12 PERMIT APPLICATION AVAILABILITY:

Applications for recreational access permits may be obtained: 1) by mailing a written request to the commissioner of public lands, New Mexico state land office, P. O. Box 1148, Santa Fe, New Mexico 87504-1148; 2) by telephone, 505-827-5724; 3) on the web site, nmstatelands.org; or, 4) in person at the New Mexico state land office, 310 Old Santa Fe Trail, Santa Fe, New Mexico 87501.

[19.2.19.12 NMAC – Rp, 19.2.19.10 NMAC, 12/13/13]

19.2.19.13 IDENTIFICATION AND LOCATION OF RECREATIONAL ACCESS LANDS:

Recreational access permittees are solely responsible for correctly identifying and locating the lands they seek to visit pursuant to a recreational access permit. Maps are available at the New Mexico state land office at a nominal fee, or they may be obtained from the web site, nmstatelands.org.

[19.2.19.13 NMAC – Rp, 19.2.19.11 NMAC, 12/13/13]

19.2.19.14 TRAVEL:

A recreational access permit does not grant a right to enter upon or cross lands not under the control of the commissioner. Also, a recreational access permit does not grant a right to access lands by motorized vehicle. The use of motorized vehicles or any mechanical form of transportation for recreational access is restricted to public highways and roads, as defined by Section 67-2-1 NMSA 1978, and to established roads that cross the lands to which access is granted under the recreational access permit. When lands open to recreational access are fenced, vehicle access is allowed only where there is an unlocked gate that can be accessed from an immediately adjacent public highway or road, or from an immediately adjacent established road that crosses the lands to which access is granted. When a recreational access permittee opens an unlocked gate to gain access to lands by motorized vehicle, the permittee must close the gate after passing through. Where there is no such access through an unlocked gate in the fence, recreational access beyond the fence shall be limited to travel by foot.

[19.2.19.14 NMAC – Rp, 19.2.19.12 NMAC, 12/13/13]

19.2.19.15 TRESPASS AND WASTE:

Prohibited activities as described in 19.2.19.18 NMAC, on lands open to recreational access are deemed to be in trespass, waste, or both.

[19.2.19.15 NMAC – Rp, 19.2.19.13 NMAC, 12/13/13]

19.2.19.16 LIABILITY:

Each recreational access permittee shall agree, as a condition of permit issuance, to assume all liability for claims, losses or damages arising out of, alleged to arise out of, or indirectly connected with activities conducted during recreational access by the permittee and any and all individuals accompanying the permittee. Each recreational access permittee shall further agree to save, hold harmless, indemnify, and defend from all such liability, claims, losses, or damages lessees of state trust land, the commissioner, and the commissioner's agents and employees in their official and individual capacities.

[19.2.19.16 NMAC – Rp, 19.2.19.14 NMAC, 12/13/13]

19.2.19.17 CANCELLATION:

The commissioner may cancel any recreational access permit by providing oral notice of cancellation to the permittee or by mailing written notice of cancellation to the permittee.

[19.2.19.17 NMAC – Rp, 19.2.19.15 NMAC, 12/13/13]

19.2.19.18 PROHIBITED ACTIVITIES:

A. Those activities that are not allowed on lands open to recreational access include, but are not limited to:

- (1)** disturbing, harassing, injuring, destroying or removing wildlife, livestock, or any other animal life;
- (2)** disturbing, dislodging, damaging, destroying or removing native plants, standing timber, wood products, flowers, growing crops, or any other plant life other than pinon nuts gathered non-commercially;
- (3)** disturbing, dislodging, damaging, defacing, destroying or removing historical, archaeological, paleontological or cultural sites, or artifacts;
- (4)** disturbing, dislodging, defacing, damaging or destroying any improvement, fixture, item, object, or thing placed or located in, under, or upon the land;
- (5)** crossing lands not open to recreational access under this rule, without permission, to gain access to state trust lands that are open to recreational access;
- (6)** conducting off-road vehicle activities;
- (7)** bringing unrestrained (unleashed) animals to state trust lands;
- (8)** discarding refuse, waste, or litter of any kind;
- (9)** building open fires, igniting fireworks, or conducting any other activity that increases the risk of range, brush, or forest fires;
- (10)** conducting any type of commercial operation;
- (11)** discharging firearms, camping overnight, opening (without closing) gates;
- (12)** bringing onto state trust lands or consuming thereon any type of alcoholic beverage;

(13) violating any applicable law, statute, regulation, ordinance, or rule enacted by a governmental entity;

(14) fishing, trapping, or hunting without a valid New Mexico license;

(15) mineral exploration, development, or mining, or collecting valuable rocks or minerals;

(16) interfering with the authorized activities of other land users; or,

(17) entering, climbing, or accessing in any way structures, buildings, fixtures, or improvements other than fences located on state trust lands.

B. Recreational access shall not be exercised in a manner that materially interferes with other authorized uses of state trust lands or valid existing rights, such as agricultural leases or rights-of-way, or in a manner that prevents or limits the commissioner's exercise of the commissioner's constitutional, statutory, or regulatory responsibilities.

C. The commission of a prohibited activity by one who gained access to state trust lands pursuant to a recreational access permit shall render the permit invalid, and shall constitute grounds for the commissioner to deny recreational access to, and to reject permit applications by, any person who gained recreational access pursuant to the invalid permit.

[19.2.19.18 NMAC - Rp, 19.2.19.16 NMAC, 12/13/13; A, 6/11/19]

PART 20: RELATING TO CONSTRUCTION, MAINTENANCE AND RECLAMATION OF ROADS

19.2.20.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501, Phone: (505) 827-5713.

[12/31/99; 19.2.20.1 NMAC – Rn, 19 NMAC 2. SLO 20.1, 09/30/02]

19.2.20.2 SCOPE:

This Rule pertains to the construction, maintenance and reclamation of roads on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation. There are certain exceptions to this Rule as follows: certain new temporary roads are exempted as set out below in Subsection A of 19.2.20.9 NMAC.

[12/31/99; 19.2.20.2 NMAC – Rn, 19 NMAC 2. SLO 20.2, 09/30/02]

19.2.20.3 STATUTORY AUTHORITY:

The commissioner's authority to manage the state trust lands is found in N.M. Const., art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The authority to promulgate this Rule is found in Section 19-1-2 NMSA 1978.

[12/31/99; 19.2.20.3 NMAC – Rn, 19 NMAC 2. SLO 20.3, 09/30/02]

19.2.20.4 DURATION:

Permanent.

[12/31/99; 19.2.20.4 NMAC – Rn, 19 NMAC 2. SLO 20.4, 09/30/02]

19.2.20.5 EFFECTIVE DATE:

November 19, 1990, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective December 31, 1999.

[12/31/99; 19.2.20.5 NMAC – Rn, 19 NMAC 2. SLO 20.5, 09/30/02]

19.2.20.6 OBJECTIVE:

The objective of 19.2.20 NMAC is to provide for the orderly and lawful construction, maintenance and reclamation of roads on state trust lands.

[12/31/99; 19.2.20.6 NMAC – Rn, 19 NMAC 2. SLO 20.6, 09/30/02]

19.2.20.7 DEFINITIONS:

[RESERVED]

[12/31/99; 19.2.20.7 NMAC – Rn, 19 NMAC 2. SLO 20.7, 09/30/02]

19.2.20.8 PURPOSE AND APPLICATION OF RULE:

This Rule shall apply to all roads constructed on state trust lands administered by the commissioner of public lands (commissioner), and will be effective on the date of its filing with the state records center. This Rule is issued to implement minimum standards for road construction, maintenance, and rehabilitation so as to minimize the impact of roads on the various vegetational ecosystems involved.

[12/31/99; 19.2.20.8 NMAC – Rn, 19 NMAC 2. SLO 20.8, 09/30/02]

19.2.20.9 RULE REQUIREMENTS:

A. All roads constructed on state trust lands administered by the New Mexico state land office shall be constructed and maintained in accordance with this Rule. Roads built on state trust land that will cross adjacent land administered by the bureau of land management (BLM) will be constructed and maintained in concert with the BLM new road policy effective January 1, 1988. Roads built on state trust land only shall be constructed in accordance with the minimum standards described in 19.2.20.10 NMAC and maintained in accordance with the standards described in 19.2.20.11 NMAC, unless local conditions warrant exceptions. Such exceptions shall be approved by the state land office district land use specialist (SLO LUS).

B. Certain new temporary roads are exempted from the construction requirements of this Rule. The roads exempted are those that will provide access for a seasonal or temporary activity and/or for a temporary business use. However, these types of roads are subject to maintenance and/or rehabilitation requirements required by the SLO LUS.

C. Roads built on state trust lands shall be constructed and maintained by a right-of-way grantee in accordance with the requirements set forth in the right-of-way grant if those requirements are different than the requirements of this Rule. Construction and maintenance of these roads will be done in a manner that insures that authorized traffic remains within the right-of-way and erosion damage is mitigated.

D. When roads built on state trust lands are no longer needed, as determined by the lessee or right of way grantee and by the commissioner, they will be abandoned and rehabilitated according to 19.2.20.12 NMAC. However, the New Mexico state land office may determine that such a road is still needed for other purposes, and if so, it shall notify the lessee or grantee in writing of this determination, at which time the lessee or grantee shall be released from all responsibility for maintenance and rehabilitation.

[12/31/99; 19.2.20.9 NMAC – Rn, 19 NMAC 2. SLO 20.9, 09/30/02]

19.2.20.10 ROAD CONSTRUCTION STANDARDS:

A. Width. The preferred minimum standard for roads built on state trust lands is a fourteen (14) -foot width for single-lane roads and a twenty (20) -foot width for double-lane roads, provided that the local situation doesn't dictate that it be wider. The maximum allowable grade without an engineering design is ten percent (10%).

B. Drainage. Drainage control shall be ensured through the use of drainage dips, outsloping, insloping, natural rolling topography, ditch turnouts, or culverts. Spacing of dips, broad-based drainage dips, culverts and turnout ditches will depend on cross slope, road grade and soil type. Drainages will be constructed in such frequency necessary to prevent headcuts or other forms of accelerated erosion or damage on adjacent areas.

C. Culverts. Culvert pipes shall be used for cross drains on grades in excess of ten percent (10%) gradient and on all major drainages. Roadbed culverts shall be used to

drain road ditches when drainage dips are not feasible. All culvert sizing must be in accordance with accepted engineering practices (i.e., Talbot chart, etc.). The minimum size culverts in any installation is eighteen (18) inches.

D. Road Surfacing:

(1) Surfacing (i.e. caliche, gravel, soil stabilizer, sand, cinders, etc.) shall be required on all roads built on state trust lands where all weather access is needed, if the natural soil does not have the bearing capacity for heavy vehicles in both wet and dry weather and if these materials are economically available.

(2) The roadbed should be reasonably smooth, free of ruts, chuckholes, rocks, slides, washboards, dust pockets, soft spots or other driving hazards or nuisances.

E. Cattleguards and Fencing. Cattleguards are required for all fence lines crossing roads built on state trust lands, unless a wire or metal gate is approved by the SLO LUS and surface lessee.

(1) All cattleguard grid designs and foundation designs shall meet AASTHO load rating H-20, although AASTHO U-80 is required where heavy loads exceeding H-20 loading are anticipated.

(2) All cattleguard grids shall meet or exceed the road width, but shall not be less than fourteen (14) feet wide.

(3) Approach ramps (if needed) shall not be less than fifty (50) feet on each side of cattle guards and shall provide smooth transitions.

(4) Gates shall be installed on one (1) side of cattleguards. Gate construction will conform to the specifics set out in 19.2.20.11 NMAC.

(5) Fencing, if required, is to be a four (4) strand barbwire fence with twelve (12) inch spacing between strands.

F. Vegetation. All vegetation removed from roadbeds as a result of construction shall be disposed of by the grantee or lessee, by a method approved by the SLO LUS. Road standards may be modified to meet local conditions. Suggested reference material for road construction and maintenance practices is "Reducing Erosion from Unpaved Rural Roads in New Mexico," published by the New Mexico energy, minerals and natural resources department soil and water conservation bureau.

[12/31/99; 19.2.20.10 NMAC – Rn, 19 NMAC 2. SLO 20.10, 09/30/02]

19.2.20.11 ROAD MAINTENANCE STANDARDS:

"Maintenance" is the upkeep necessary for the safe and efficient utilization of roads on state trust lands. Right-of-way grantees and lessees shall be responsible for preventative and/or corrective road maintenance of the relevant road until assignment or abandonment and rehabilitation of the road. This maintenance may include, but not be limited to, the items listed below:

A. Roadbed.

(1) Roadbeds shall be reasonably smooth and reasonably free of ruts, dust pockets, soft spots, chuckholes, rocks, slides and washboards.

(2) No berms shall be permitted along shoulders.

(3) The integrity of the surfacing material shall be maintained.

(4) Roadbed width shall be kept to the approximate original dimensions.

B. Shoulders. Road shoulders shall be straight and present a uniform line with the surface free from large rocks, limbs or stumps.

C. Ditches, Culverts and Drainage Dips.

(1) Original cross section of roads shall be maintained. Drainage area shall be kept clear of rocks, slides and sediments.

(2) Vegetation or sedimentation shall not restrict ditch or culvert flow or reduce the waterway area.

(3) Ditch bottoms shall be stable and not excessively eroded.

(4) Back-sloped areas above ditches shall be stable terrain.

(5) Drainage dips shall be maintained to constructed design.

D. Other Related Road Features. Right of ways shall be free of excessive or objectional litter, signs, etc. as determined by the SLO LUS in concert with the grantee.

E. Fences, Gates and Cattleguards.

(1) Posts are to be sound, plumb and secure.

(2) Wire shall be tight and securely fastened to the posts.

(3) Stays shall be uniformly spaced and vertical between posts and affixed to keep the strands properly spaced.

(4) Rock deadmen shall be properly secured to the fence.

(5) Gates shall be adequate to turn the class of livestock in the pasture at the time the road was first constructed and easily opened and closed.

(6) Cattleguard pits shall be clean and functional. End wings shall be securely fastened and serviceable. Guards and bases must be maintained in serviceable condition.

(7) Cattleguard approaches shall be maintained to provide a smooth transition.

F. Ford and Low Crossings.

(1) There shall be a smooth transition between roads and fords.

(2) No excessive erosion adjacent to fords shall be allowed.

(3) The surface of fords shall be clear of debris, brush, rocks and sediment.

(4) Bottoms of ford crossings shall be level with the stream bottoms.

G. Safety and Hazard Control.

(1) Travel way and ditches shall be kept free of shrubs, trees and other obstacles and shall be free of overhanging trees and limbs. No down trees or branches shall be in the ditch area.

(2) Unstable material above roadways shall be removed or stabilized.

[12/31/99; 19.2.20.11 NMAC – Rn, 19 NMAC 2. SLO 20.11, 09/30/02]

19.2.20.12 ROAD ABANDONMENT AND RECLAMATION:

All roads no longer needed, as determined by the grantee or lessee and the commissioner, shall be reclaimed to approximate natural contours, unless, as provided herein, the New Mexico state land office elects to allow a road to remain based on recommendations from the SLO LUS. Upon reclamation all road improvements and debris shall be removed, unless approved otherwise by the SLO LUS. Reclaimed roads will have the roadbeds ripped, scarified and otherwise roughened as directed by the SLO LUS to ensure increased water infiltration and a properly prepared seedbed; and then reseeded. Parallel-road berms are to be removed and recontoured. Berms or gates will be used to block access to the reclaimed road. Water bars will be used on sloping surfaces and spaced so as to minimize erosion and control surface runoff. For reseeding, the New Mexico state land office will approve seeding rates and seed mixtures or approve site-specific recommendations. When possible, the New Mexico

state land office will recommend such approved rates and mixtures, but will not require seed varieties in its mixtures which are not in common use in the area. Reseeding shall be planned and completed with a goal of revegetation consistent with local natural vegetation density. After a failed attempt to revegetate an area, a second reseeded may be required by the New Mexico state land office, but in no event shall such second reseeded be required more than two (2) years after the initial one. Reclamation responsibility of a grantee or lessee terminates upon acceptance of the reclamation of a site by the SLO LUS.

[12/31/99; 19.2.20.12 NMAC – Rn, 19 NMAC 2. SLO 20.12, 09/30/02]

PART 21: LAND EXCHANGES

19.2.21.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office.

[19.2.21.1 NMAC - Rp, 19.2.21.1 NMAC, 6/29/2012]

19.2.21.2 SCOPE:

This part pertains to all exchanges of lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation. This rule does not apply to exchanges with the United States department of the interior or to governmental entities except to the extent that the commissioner decides to apply any portion of this rule to a specific exchange to ensure substantial conformity with the requirements of the Enabling Act.

[19.2.21.2 NMAC - Rp, 19.2.21.2 NMAC, 6/29/2012]

19.2.21.3 STATUTORY AUTHORITY:

The commissioner's authority to manage and dispose of trust lands is found in N.M. Const. Art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The authority to promulgate this part is found in Section 19-1-2 NMSA 1978.

[19.2.21.3 NMAC - Rp, 19.2.21.3 NMAC, 6/29/2012]

19.2.21.4 DURATION:

Permanent.

[19.2.21.4 NMAC - Rp, 19.2.21.4 NMAC, 6/29/2012]

19.2.21.5 EFFECTIVE DATE:

June 29, 2012, unless a later date is cited at the end of a section.

[19.2.21.5 NMAC - Rp, 19.2.21.5 NMAC, 6/29/2012]

19.2.21.6 OBJECTIVE:

The objective of this part is to provide for the orderly and lawful exchange of trust lands when such exchanges will result in a financial benefit to the trust, and when the exchange of such trust lands would benefit the trust more than their retention.

[19.2.21.6 NMAC - Rp, 19.2.21.6 NMAC, 6/29/2012]

19.2.21.7 DEFINITIONS:

The following terms are used in this part as defined below:

A. "beneficiary institutions" means those institutions or other entities specified in Section 19-1-17 NMSA 1978, as amended, or other provisions of statute for whose benefit trust lands are held;

B. "commissioner" means the New Mexico commissioner of public lands or the commissioner's agents or employees who are authorized to act in the commissioner's stead in a particular transaction;

C. "cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance and included on or eligible for inclusion on either the New Mexico register of cultural properties pursuant to the New Mexico Cultural Properties Act, NMSA 1978, Sections 18-6-1 through 18-6-17, or listed on or eligible for listing on the national register of historic places pursuant to the National Historic Preservation Act, 16 U.S.C. Section 470;

D. "description" when used in connection with describing lands, means a description given in meets and bounds when appropriate, or in aliquot parts in such a way as to delineate each full or partial quarter quarter section and each full or partial lot and the acreage of each, or a description in some other form approved by the commissioner; a description shall include a description of all encumbrances and of all easements or other servitudes burdening or benefiting the property except to the extent that this requirement is waived by the commissioner;

E. "exchange" means a sale of trust lands wherein payment will be accepted by in-kind payment in the form of a conveyance of certain non-trust lands in exchange for a conveyance of certain trust lands, by monetary payment or by any combination thereof;

F. "exchange agreement" means a formal, written agreement entered into between the commissioner and an exchange party for an exchange of trust lands for non-trust lands plus any monetary payment;

G. "exchange applicant" means a governmental entity, or a private entity, that has filed an exchange application or who has qualified to bid on an exchange, under this rule;

H. "exchange party" means an exchange applicant whose exchange proposal has been accepted by the commissioner and who has entered into an exchange agreement with the commissioner;

I. "exchange proposal" means a proposal for an exchange submitted to the commissioner by an exchange applicant in conformance with the requirements of this rule and the provisions of any published request for exchange proposals;

J. "governmental entity" means the state of New Mexico, its agencies or political subdivisions, Indian tribes and pueblos, or federal government agencies other than the department of interior;

K. "hazardous materials" means any substance or material that is governed or regulated by any statute, regulation, rule, order, finding or directive promulgated, issued or enacted by a federal, state or local governmental entity and that relates to industrial hygiene or environmental protection, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. Sections 9601-9675 and any successor provisions, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6901-6992 and any successor provisions;

L. "improvements" means any of the following:

(1) any item of tangible property developed, placed, created or constructed on the lands involved including, but not limited to, buildings, equipment and fixtures;

(2) water rights appurtenant to the lands involved, including without limitation any water rights developed or used on the land involved for the benefit of that land; and

(3) any tangible or intangible property, rights, approvals or privileges obtained or developed for the benefit of, or made appurtenant to, the lands involved that are designated as improvements by the commissioner;

M. "improvement value" means the value of improvements placed on trust lands, which value is finally determined or accepted by the commissioner;

N. "non-trust lands" means lands other than trust lands, located in New Mexico;

O. "qualified appraiser" means a state licensed or certified real estate appraiser as set forth in Section 61-30-3, 61-30-11 and 61-30-12 NMSA 1978 or any successor provisions of law;

P. "raw land value" means the value of land that may be accepted by the commissioner for purposes of in-kind payment after the value of depreciable improvements (if any) have been excluded or reduced from the full appraised value;

Q. "schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable;

R. "state" means the state of New Mexico;

S. "state land office" means the New Mexico state land office;

T. "true value" means fair market value as determined by any objective, reliable and commercially acceptable method including but not necessarily limited to appraisal by an appraiser;

U. "trust" means the trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust's assets, which are administered through the state land office by the commissioner;

V. "trust lands" means all lands with all appurtenant rights and privileges, owned by the trust as shown in the state land office master title tract books or other records of the state land office; and

W. "working day" means any day other than a Saturday, a Sunday or a day on which the state land office is required to be closed.

[19.2.21.7 NMAC - Rp, 19.2.21.7 NMAC, 6/29/2012; A, 6/30/2016]

19.2.21.8 EXCHANGE STANDARDS:

A. The commissioner may enter into an exchange when the commissioner determines that the exchange will result in a financial benefit to the trust.

B. When lands are placed for public auction under this rule, the commissioner will accept payment for such lands in the form of in-kind payment through an exchange of non-trust lands for trust lands, monetary payment, or any combination thereof that results in the greatest financial benefit to the trust.

C. Trust lands may be exchanged for non-trust lands owned in fee simple absolute by a governmental entity or by a private entity or entities. The commissioner cannot accept in an exchange any lands subject to a mortgage, lien or other encumbrance.

D. In any exchange, the trust must receive at least true value for the trust lands that are conveyed to an exchange party. To meet this requirement, the commissioner shall require appraisals of the trust lands and the non-trust lands proposed to be exchanged at their true value and can only proceed with an exchange after first determining that the value of the non-trust lands to be received by the state, plus any monetary payment offered, are of equal or greater financial value to the trust. Each appraisal must: (1) be conducted, by a qualified appraiser (the commissioner may require that the appraisals be performed by the land office staff appraiser, or that the appraiser be selected and approved in advance); (2) conform to the uniform standards of professional appraisal practice and any other reasonable standards set by the commissioner; (3) be reviewed by a state land office staff qualified appraiser or a different qualified appraiser and approved by the commissioner, and (4) whenever possible, utilize an appraisal approach that allows the commissioner to identify raw land value as separate from the value of any improvements. This provision shall not be construed as prohibiting the use of a running exchange account as provided in Subsection G of this section. Appraisals conducted or received by the commissioner in connection with an exchange or proposed exchange under this rule, as well as the commissioner's review of any such appraisal, shall be considered confidential information and not public information until the commissioner has selected an exchange proposal as provided in 19.2.21.12 NMAC. The commissioner may waive confidentiality in the case of any appraisal or any review of an appraisal if the commissioner determines that it is in the best interest of the trust to do so.

E. The non-trust lands, monetary payment or any combination thereof received by the commissioner in an exchange, and any proceeds therefrom, shall be applied to and become a part of the trust for which the trust lands exchanged by the commissioner were originally granted.

F. A single exchange transaction may involve more than one exchange party and may involve trust lands held in trust for the benefit of more than one beneficiary institution. When the exchange involves the commissioner conveying lands held in trust for more than one beneficiary institution, the non-trust lands and any monetary payment received by the commissioner in the exchange shall be apportioned to the different beneficiary institutions in such a way that the value of each beneficiary institution's interest in the newly acquired land and any monetary payment is proportional to its interest in the trust lands conveyed.

G. When the commissioner determines that the best interests of the trust will be promoted thereby, the commissioner may, in the commissioner's discretion, enter into an agreement with a governmental entity, to engage in a series of exchanges over a period of time. Such an agreement will provide for a running exchange account in which both agencies will, among other things:

- (1) account for the value of all properties exchanged;

(2) make provision for differences in the property values of one exchange to be offset against property values in subsequent exchanges;

(3) provide for methods of discharge and reduction of account balances;

(4) may, subject to agreement by the parties, provide for interest on account exchange balances which remain un-discharged for over one year;

(5) provide for interagency annual reconciliation of account balance figures; and

(6) provide for termination of the agreement and a method for final resolution of outstanding account balances.

H. The commissioner shall convey the trust lands being exchanged using such instruments of conveyance that are in the best interest of trust, which instruments shall contain such reservations to the trust as are required by law and as are deemed appropriate by the commissioner. Conveyances of trust lands shall be subject to all valid existing rights at the date of conveyance.

(1) A conveyance document by which the commissioner conveys trust lands shall be similar in content to a state land office patent and may be entitled "exchange patent."

(2) A conveyance document by which the commissioner conveys trust land shall reflect any existing oil, gas, mineral or geothermal leases on the property being conveyed by the commissioner.

I. In any exchange, the commissioner shall receive conveyances of non-trust lands by instruments containing acceptable guarantees of title such as patent, government deed or warranty deed, accompanied by such other documents evidencing marketable and unencumbered title as are deemed appropriate by the commissioner, including, if not waived by the commissioner, policies of title insurance.

(1) Such instruments shall contain language stating that the conveyance is made for and in consideration of the exchange of trust lands.

(2) An instrument of conveyance executed by individual exchange parties shall disclose the marital status of the exchange party and shall also be executed by the spouse of a married exchange party.

(3) Instruments of conveyance received by the commissioner in exchanges shall be executed, acknowledged and filed of record with the state land office and, if appropriate, with the counties in which the non-trust lands conveyed by such instruments are located, and the exchange party shall pay all costs and fees associated with such filing.

J. Exchange parties shall deposit with the commissioner, for the benefit of the owner of improvements located on the trust lands proposed for exchange, the improvement value as determined by an appraisal made or approved by the commissioner. This requirement does not apply where the exchange party is the owner of the improvements. The provisions of this subsection also shall not apply to improvements placed on trust lands for the exploration, development or production of oil and gas, geothermal resources, sand, gravel, coal, shale, clay, building stone or materials, potassium, sodium, phosphorus, salt or any other minerals or natural deposits of whatsoever kind located in, under or upon the trust lands proposed for exchange where only the surface of the trust lands is proposed for exchange.

(1) In lieu of payment of improvement value, an exchange party may file with the commissioner a bill of sale from, or a waiver of payment signed by, the owner of the improvements.

(2) The commissioner may require the costs of improvement appraisal to be paid by the exchange applicant or exchange party.

(3) For purposes of compensation, improvements shall include:

(a) those placed, created, developed or moved upon the trust lands that were approved by the commissioner or otherwise in compliance with Section 19-7-51 NMSA 1978;

(b) those placed, created, developed or moved upon the trust lands prior to March 1, 1955, whether or not their values exceed the amounts prescribed by Section 19-7-51 NMSA 1978; and

(c) those placed, created, developed or moved upon the trust lands on or after March 1, 1955, but prior to March 1, 1975, and subsequently approved in writing by the commissioner.

(4) Property placed, created, developed or moved upon leased trust lands on or after March 1, 1955, by a lessee in violation of Section 19-7-51 NMSA 1978 and not subsequently approved by the commissioner, may be approved as an improvement by the commissioner if the commissioner determines it benefits the trust lands on which it is located for purposes of a proposed exchange. For purposes of compensation paid to the owner of such improvements, however, an undivided twenty-five percent of the value of all such permanent improvements that are valued in excess of the amounts specified in Section 19-7-51 NMSA 1978 shall be and remain a part of the trust lands offered for exchange.

(5) Property placed, created, developed or moved on trust lands by mistake on or after March 1, 1975, by one not acting in the capacity of a lessee shall not be recognized as an improvement by the commissioner for purposes of compensation paid to the owner of the property unless:

(a) the commissioner determines the property was placed on the trust land in the good faith, non-negligent belief it was being located on adjacent non-trust land; and

(b) the property enhances the value of the trust land for purposes of the proposed exchange.

K. Exchange applicants or exchange parties shall pay all costs of exchanges, including but not necessarily limited to costs of publication, land appraisal, appraisal of improvements, surveying and recording, unless such requirement is waived by the commissioner. The commissioner may require an exchange applicant or exchange party either to pay such costs to the commissioner for payment to service providers or to pay such costs directly to the providers.

[19.2.21.8 NMAC - Rp, 19.2.21.8 NMAC, 6/29/2012; A, 6/11/2019]

19.2.21.9 EXCHANGE PROPOSALS AND PROCEDURES:

A. A proposed exchange may be initiated either by an applicant or by the commissioner.

B. Exchange procedure initiated by applicant:

(1) A party interested in exchanging non-trust land may initiate an exchange procedure by filing with the commissioner an initial application to exchange land on a form prescribed by the commissioner, accompanied by a non-refundable application fee as set forth in the schedule of fees. The initial application shall include the identity and address of the applicant; a legal description of the non-trust lands proposed to be exchanged; the estimated market value of the non-trust lands; the current uses of the non-trust lands; ownership of the non-trust lands; a description of any known environmental or cultural properties issues related to the non-trust lands; a legal description of the trust lands that the applicant seeks to acquire; an estimate of the value of such trust lands; a deposit in an amount determined by the commissioner as sufficient to pay the costs of appraisal of the trust lands and non-trust lands (unless the commissioner has agreed to accept an appraisal or appraisals previously performed or to be performed at the applicant's expense); and such other information as the commissioner may request in writing. The commissioner shall advise the relevant beneficiary institution(s) through written correspondence that an exchange application was received.

(2) Following submission of an initial application, the commissioner will make a determination as to whether further investigation of the suggested exchange is warranted and shall so inform the exchange applicant. If the commissioner determines that the suggested exchange does not offer sufficient potential benefit to the trust, the application will be rejected and the exchange process will terminate.

C. Exchange procedure initiated by the commissioner. The commissioner may make the commissioner's own preliminary determination that an exchange of certain trust lands would result in a financial benefit to the trust. In that case, the commissioner may initiate an exchange process by publishing a request for exchange proposals in accordance with 19.2.21.10 NMAC below.

[19.2.21.9 NMAC - Rp, 19.2.21.9 NMAC, 6/29/2012; A, 6/30/2016; A, 6/11/2019]

19.2.21.10 PUBLIC NOTICE OF A PROPOSED EXCHANGE:

A. Notice of a proposed exchange shall be published once each week for not less than ten (10) consecutive weeks in a newspaper of general circulation published locally at the state capital, and a newspaper of like circulation which shall be locally published nearest the lands so offered for exchange. Said notice will also be posted on the state land office website. Said notice shall set forth the nature, time and specific place of the auction, which place shall be at the county seat wherein the lands or the major portion thereof are located. Said notice shall also state that the commissioner will accept bids offering in-kind payment in the form of non-trust lands to be exchanged for trust lands, monetary payment or any combination thereof.

B. The notice shall include a description or a statement of the location of the trust lands offered for exchange and their total acreage; a description of leases, rights of way, easements or other uses, if any, to which the trust lands are subject as indicated by the records of the state land office; a general description of reservations to be included in the conveying instrument; the types of improvements located on the trust lands to be exchanged and their estimated values; the estimated publication and other costs to be deposited by each prospective bidder and paid by the successful bidder; the address and telephone number from which any interested person may obtain additional information, the form of conveyance instrument required to be used for in-kind payment, the deadline, form, and substantive requirements that must be satisfied in order to qualify to bid, the location where exchange proposals must be submitted; and any other information the commissioner deems pertinent.

C. In each case of a proposed exchange with another governmental entity, the commissioner shall determine what notice, if any, is required.

D. The form of instrument to be used in an exchange to convey the trust lands involved shall be available for inspection by prospective exchange applicants.

E. Non-trust lands proposed for exchange shall be open to the commissioner for inspection and appraisal. Trust lands for which the commissioner has published a request for exchange proposals shall be open to prospective exchange applicants for inspection and appraisal by obtaining permission from the state land office.

[19.2.21.10 NMAC - Rp, 19.2.21.9 NMAC, 6/29/2012]

19.2.21.11 QUALIFICATION OF BIDDERS:

In order to qualify to bid, each prospective bidder in an exchange must submit a bid qualification packet satisfying the following criteria the qualification deadline set forth in the public notice:

A. Each prospective bidder must deposit with the commissioner a non-refundable application fee, the publication costs described in the public notice, and cost of appraisal(s) as described in the public notice. Publication and appraisal cost deposits may be refunded to all prospective bidders except for the successful bidder.

B. Each prospective bidder must deposit with the commissioner the appraised value of the improvements on the trust land as determined by the commissioner, a waiver of payment of such amount signed by the owner of the improvements, or a bond sufficient to cover the appraised value if an appeal is to be taken, unless the prospective bidder is the owner of the improvements. Improvement value deposits will be refunded to all prospective bidders except for the successful bidder.

C. Prospective bidders proposing to offer in-kind payment for all or part of the bid must submit the following for the land or lands so offered subject to approval by the commissioner:

(1) a survey plat and legal description of the non-trust lands performed by a licensed professional surveyor in the state of New Mexico;

(2) an appraisal performed by a qualified appraiser conforming to the uniform standards of professional appraisal practice; the commissioner may require specific appraisal instructions and require that the appraiser be approved in advance; whenever possible, the appraiser must utilize an appraisal approach that allows the commissioner to identify raw land value as separate from the value of any improvements; the commissioner may exclude the value of improvements in order to determine the value of the land that may be used as in-kind payment; to the extent the commissioner considers the value of improvements for purposes of in-kind payment, their value will be separately evaluated by land office staff; the commissioner reserves the right to reject any appraisal;

(3) a title commitment for the non-trust with common details and any additional specific details as required by the commissioner in the public notice;

(4) a description of any water rights on the non-trust lands including documentation of the declaration or adjudication of such rights;

(5) a complete listing of cultural properties located on the non-trust lands and documentation thereof;

(6) a complete listing of hazardous materials or threatened or endangered species located on or in close proximity to the non-trust lands and documentation thereof; and

(7) a list of existing leases or other encumbrances on the land, if any, not shown in the title commitment.

D. Prospective bidders proposing to offer monetary payment for all or part of the bid must deposit with the commissioner a cash deposit or letter of credit, subject to review and approval by the commissioner, in an amount at least equivalent to either: 1) if no land is offered as partial in-kind payment, the full appraised value of the trust lands offered for exchange, or 2) if land is offered as partial in-kind payment, the difference between full appraised value of the trust lands and full appraised raw land value of the non-trust lands proposed as partial in-kind payment.

E. Prospective bidders may deposit in-kind or monetary payment, or any combination thereof, in excess of the full appraised value of the trust lands and any such amount deposited will set the minimum opening bid at the live public auction. Prospective bidders making deposits in excess of the full appraised value of the trust lands must clearly identify the full amount of their bid as distinguishable from all other required costs and fees.

[19.2.21.11 NMAC - Rp, 19.2.21.9 NMAC, 6/29/2012]

19.2.21.12 PUBLIC AUCTION:

A. Except as provided in Subsection C of 19.2.21.10 NMAC above, if the commissioner determines that an exchange of the trust lands may be in the best interest of the trust, the commissioner will offer the trust lands for exchange by public auction.

B. After the commissioner has reviewed the bid qualifications of all prospective bidders as described in 19.2.21.11 NMAC above and the public notice, the commissioner will send written notice to each indicating at a minimum: 1) whether or not they have qualified to bid at the public auction, 2) the time, date and location of the auction, and 3) the minimum opening bid at the auction. Only qualified bidders may bid at the public auction.

C. No trust lands will be exchanged except to the highest bidder at a live public auction held at the county seat of the county wherein the lands to be exchanged, or a major portion thereof, lie, and only after public notice has been given by advertisement in accordance with this rule and applicable law.

D. The minimum opening bid at auction will be the greater of either: 1) the true value of the subject trust land as determined by appraisal and as described in the public notice; or 2) the highest deposit (excluding required costs and fees) submitted by a

prospective bidder during bidder qualification; bids at the auction in excess of the minimum must be in the form of cash bids only and the winning bidder must deposit such with the commissioner in a form acceptable to the commissioner within five (5) days of the auction.

[19.2.21.12 NMAC - N, 6/29/2012]

19.2.21.13 SELECTION; REJECTION:

A. Within a reasonable time after the published closing date for submission of exchange proposals including any period of time required for requesting, receiving and analyzing any supplemental information or documentation requested by the commissioner, the commissioner may reject all exchange proposals submitted or select the proposal or proposals the commissioner determines to provide the greatest financial benefit to the trust. The commissioner shall notify each exchange applicant whose exchange proposal is rejected. If the commissioner selects more than one proposal, the commissioner shall conduct further review of the proposals so selected, may request supplemental information from the respective applicants, and may conduct a supplemental competitive process among those applicants before making a final selection.

B. The commissioner reserves the right to reject any and all bids, or to cancel an auction, sale, or exchange at any time before closing, and to reinitiate the process of offering the trust lands for long-term lease, sale or exchange on the same or different terms.

[19.2.21.13 NMAC - Rp, 19.2.21.10 NMAC, 6/29/2012; A, 6/11/2019]

19.2.21.14 CLOSING AN EXCHANGE:

A. Closing of the exchange must occur within ninety (90) days of the auction, except that this period may be extended as necessary in the commissioner's sole discretion.

B. On the date of closing, the successful bidder, if any, shall be required to convey the non-trust lands to be used as in-kind payment to commissioner and to otherwise pay the full amount bid through such conveyance, monetary payment or any combination thereof. The exchange of trust lands for non-trust lands shall be consummated in accordance with the exchange agreement by a simultaneous exchange of conveyancing documents and monetary payment, if any, between the commissioner and the exchange party or parties unless the exchange is part of a series of exchanges covered by a running exchange account agreement as provided in Subsection G of 19.2.21.8 NMAC.

C. If the commissioner accepts in-kind payment for all or part of the payment the commissioner and the applicant shall enter into a written exchange agreement. The exchange agreement may include, but shall not necessarily be limited to, legal

descriptions of the trust land and non-trust land to be exchanged; an ALTA survey of the non-trust land unless waived by the commissioner; a statement of the comparative value of the tracts to be exchanged; a closing date; a description of the conveyance documents to be exchanged (which may be accomplished by attaching forms of such documents as exhibits); a listing of all documents to be exchanged at the closing, including conveyance documents and any title insurance policy documents; a statement that the exchange party has complied with applicable legal obligations and requirements with respect to the non-trust lands such as the payment of property taxes, and compliance with environmental, zoning, cultural properties or other applicable laws, as may be appropriate; any applicable escrow provisions; a statement as to when the parties shall be entitled to take possession of the lands being exchanged; a statement regarding notification of the exchange to the beneficiary institutions; a statement regarding the payment of exchange costs and improvement value; a provision for termination of the exchange agreement; standard contractual provisions (such as amendments, entire agreement, governing law); and any other terms or conditions the parties find appropriate.

[19.2.21.14 NMAC - Rp, 19.2.21.12 NMAC, 6/29/2012]

19.2.21.15 NOTICE TO BENEFICIARY INSTITUTIONS:

A. Upon causing a request for exchange proposals to be published as required by 19.2.21.10 NMAC above, the commissioner in the commissioner's discretion may submit to the beneficiary institutions for whose benefit the trust lands proposed to be exchanged are held in trust a copy of the request for exchange proposals and any statement of the commissioner's reasons for believing that such an exchange will be beneficial to the trust and to the beneficiary institutions. Upon entering into an exchange agreement as required by 19.2.21.14 NMAC above, the commissioner in the commissioner's discretion may submit to the beneficiary institutions a copy of the exchange agreement and any explanatory materials the commissioner finds appropriate.

B. Upon consummation of an exchange, the commissioner shall submit a written report to all beneficiary institutions involved setting forth a description of the trust lands and the non-trust lands involved, their appraised values, the commissioner's reason for believing that the exchange will benefit the trust, and any other information the commissioner deems desirable.

[19.2.21.15 NMAC - Rp, 19.2.21.13 NMAC, 6/29/2012; A, 6/11/2019]

19.2.21.16 RECORDING:

The commissioner will cause the conveyancing documents to be recorded and filed with the records division of the state land office. The exchange party will cause the conveyancing documents to be recorded with the appropriate county clerks and will thereafter deliver to the commissioner copies thereof showing such recordation.

[19.2.21.16 NMAC - Rp, 19.2.21.15 NMAC, 6/29/2012]

PART 22: PLANNING AND DEVELOPMENT LEASES

19.2.22.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501.

[19.2.22.1 NMAC - Rp, 19.2.22.1 NMAC, 11/30/2012]

19.2.22.2 SCOPE:

Pursuant to Article XIII, Section 2, of the New Mexico Constitution, the commissioner has jurisdiction over all lands and related resources that the United States granted and confirmed to New Mexico under the New Mexico Enabling Act. This rule, 19.2.22 NMAC, governs the granting of planning and development leases, on those lands within the commissioner's constitutional jurisdiction.

[19.2.22.2 NMAC - Rp, 19.2.22.2 NMAC, 11/30/2012]

19.2.22.3 STATUTORY AUTHORITY:

N.M. Const. Art. XIII; Section 19-1-1 et seq. NMSA 1978; Section 19-7-1 et seq. NMSA 1978.

[19.2.22.3 NMAC - Rp, 19.2.22.3 NMAC, 11/30/2012]

19.2.22.4 DURATION:

Permanent.

[19.2.22.4 NMAC - Rp, 19.2.22.4 NMAC, 11/30/2012]

19.2.22.5 EFFECTIVE DATE:

November 30, 2012, unless a later date is cited at the end of a section.

[19.2.22.5 NMAC - Rp, 19.2.22.5 NMAC, 11/30/2012]

19.2.22.6 OBJECTIVE:

The objectives of 19.2.22 NMAC are to generate value to the trust by planning and development of trust land for future sale, lease, or exchange through the process of obtaining government approvals and the placement of infrastructure pertinent to the planning and development of the land; to assure protection and maintenance of trust

assets and lands; to provide planning and development lease terms and conditions; and to provide an efficient process for such leasing.

[19.2.22.6 NMAC - Rp, 19.2.22.6 NMAC, 11/30/2012]

19.2.22.7 DEFINITIONS:

As used in 19.2.22 NMAC, the following terms have the meaning set forth in this section. A planning and development lease may add detail to a definition to accommodate lease specific issues.

A. "Applicant" means the person or entity first applying to nominate trust land for a planning and development lease.

B. "Approval / approved" means written approval and includes only that which has been expressly approved and nothing further which might be implied.

C. "Assignment" means any direct or indirect transfer or partial transfer of all of a lessee's interest in all or a part of a planning and development lease, including, but not limited to, any conditional transfer or transfer by operation of law, excluding subleases.

D. "Base infrastructure" means tangible improvements consisting of main distribution or arterial-level service lines, or the municipal or local equivalent, including at a minimum, all of the following: water, sanitary sewer, gas, electricity, telecommunications, and roadways or other transportation facilities.

E. "Base value" means the value that results from the base appraisal, as more specifically defined in Paragraph (1) of Subsection A of 19.2.22.17 NMAC below.

F. "Collateral assignment" or "leasehold mortgage" means the conditional assignment to a creditor as security for a debt of a lessee's personal property interest in a planning and development lease, infrastructure, governmental approvals, or improvement value credit.

G. "Commissioner" means the New Mexico commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

H. "Disposition" means a take-out sale, a take-out lease, or a take-out exchange of all or any portion of trust land subject to a planning and development lease.

I. "Disposition parcel" means the portion of the trust land under lease that is subject to disposition.

J. "Government approvals" means legal rights granted by governments or agencies that run with the leased land including but not limited to planning, zoning,

water and sewer service agreements, development agreements, platting, archaeological clearances or mitigation, and such other rights as may be required for the further development, improvement or use of the trust land; any property, rights, approvals, or privileges obtained or developed for the benefit of, or made appurtenant to, trust land and any other rights, permits or privileges obtained or developed in connection with a lessee's use of the leased trust land including, but not limited to, development rights and approvals.

K. "Governmental entity" means the state of New Mexico, its agencies or political subdivisions, Indian tribes and pueblos, or federal government agencies other than the department of interior.

L. "Infrastructure" means any improvements approved through a governmental approval process and necessary to support or enhance future planned development of all or the relevant parts of the leased premises, including but not limited to utilities, erosion control structures and flood control structures, roadways, sanitary sewers, water wells, water reservoirs, and sanitary sewage treatment facilities.

M. "Improvements" means any item of tangible property secured, developed, placed, created or constructed on the leased premises including but not limited to buildings, structures, infrastructure, permanent equipment and fixtures, and water rights developed as appurtenant to the trust land and approved by the commissioner, including any associated and required land use approvals.

N. "Improvement value (IV)" means the increased value of the leased premises attributable to improvements as established by appraisal, as more specifically defined in Subsection C of 19.2.22.17 NMAC below.

O. "Improvement value credit (IVC)" means the lessee percentage multiplied by the improvement value.

P. "Joint planning agreement" means a written agreement or understanding entered between the commissioner and a local government designed to facilitate planned growth of trust lands for the greatest benefit to the trust and the local community.

Q. "Leased premises" means that portion of trust land which is subject to a planning and development lease.

R. "Lessee" means the party of record at the state land office, who leases trust land from the commissioner under a planning and development lease.

S. "Lessee percentage (LP)" means the percentage to be determined through negotiation or bidding, and incorporated into the lease, which sets the lessee's proportional share of IV.

T. "Lessor" means the commissioner acting by and through the state land office.

U. "Natural appreciation (NA)" means any increase in the value of the leased premises not attributable to improvements, as determined by appraisal or by a pre-negotiated annual adjustment factor, as more specifically defined in Paragraph (3) of Subsection A of 19.2.22.17 NMAC below.

V. "Planning and development lease" means a written lease of trust land issued under this part, 19.2.22 NMAC, designed to improve the value of trust land for future sale, lease, or exchange. The commissioner, in the commissioner's discretion, shall determine the development potential of trust land.

W. "Qualified bidder" means a prospective bidder that has satisfied both the qualification deposit and all other bidder qualifications as more specifically described in Subsections A and B of 19.2.22.11 NMAC.

X. "Rent" means the total of estimated rent payments, including all periodic rents with applicable rent adjustments, percentage rents, initial or periodic fees, or any other incentive payment due during the lease term, and any other payments identified as rent in a planning and development lease.

Y. "Rent adjustment" means a periodic increase of any rent amount.

Z. "Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

AA. "State land office" means the New Mexico state land office.

BB. "Sublease" means a transaction or arrangement whereby a planning and development lessee transfers to another anything less than the full interest in the planning and development lease, including but not limited to the rights to use, possess, manage or control all or part of the leased premises.

CC. "Subsequent value (SV)" means the value that results from any subsequent appraisal, as more specifically defined in Paragraph (2) of Subsection A of 19.2.22.17 NMAC below.

DD. "Take-out exchange" means a relinquishment or a conditional relinquishment of all or a portion of the leased premises from the planning and development lease together with, and for the purpose of, an exchange of the same pursuant to 19.2.21 NMAC.

EE. "Take-out lease" means a relinquishment or a conditional relinquishment of all or a portion of the leased premises from a planning and development lease together with, and for the purpose of, a business lease of the same pursuant to 19.2.9 NMAC.

FF. "Take-out sale" means a relinquishment or a conditional relinquishment of all or a portion of the leased premises from a planning and development lease together with, and for the purpose of, a sale of the same pursuant to 19.2.14 NMAC.

GG. "Termination" means the end of a planning and development lease whether by cancellation, relinquishment or the expiration of the lease term.

HH. "Trust" means the land trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310), and that trust's assets, which are administered through the state land office by the commissioner.

II. "Trust land" means all land owned by the trust.

JJ. "Unapproved infrastructure and government approvals" means infrastructure and governmental approvals that have not received the commissioner's approval.

[19.2.22.7 NMAC - Rp, 19.2.22.7 NMAC, 11/30/2012; A, 6/30/2016; A, 6/11/2019]

19.2.22.8 LEASING STANDARDS:

A. The surface estate of any parcel or combination of parcels of trust land may be leased under a planning and development lease at the discretion of the commissioner.

B. A planning and development lease may be initiated only through public notice and a public auction in accordance with this rule and other applicable law, including but not limited to Section 19-7-9(c) NMSA 1978 (2009).

C. In making a determination as to whether to enter a planning and development lease, the commissioner will make a determination as to whether the lease is in the best interest of the trust based on specific considerations including but not limited to:

(1) the present value and estimated future value that will be created for the trust;

(2) the anticipated impact on trust lands adjacent to or near the proposed planning and development lease;

(3) the proposed planning and development lease's conformance with any joint planning agreements or existing land use plans;

- (4) the interests of the local community;
- (5) the feasibility of the proposed development project; and
- (6) the ability of a lessee to execute the proposed development project.

D. Notwithstanding any other provision of 19.2.22 NMAC, and at any time before the execution of a planning and development lease, the commissioner may, at the commissioner's discretion, reject any application or bid submitted under 19.2.22 NMAC.

[19.2.22.8 NMAC - Rp, 19.2.22.8 NMAC, 11/30/2012]

19.2.22.9 INITIATING A LEASE:

A. A planning and development lease may be initiated either by an applicant or by the commissioner.

B. Any person, corporation or other legal entity registered with the New Mexico public regulations commission, or any other legal entity authorized to do business in New Mexico, may apply to lease any trust lands under a planning and development lease by submitting an application on forms prescribed by the commissioner.

C. The application for a planning and development lease must, at a minimum, be made under oath and include the applicant's full name and contact information, a general description of the trust land proposed for leasing including its present use and general location, a general description of the proposed planning and development activities and a statement describing the anticipated benefits to the trust.

D. The application must include a nonrefundable application fee and advertising deposit in the amount established by the commissioner.

E. If, after an initial evaluation of an application, the commissioner determines that proceeding with the proposed planning and development lease may be in the best interest of the trust:

(1) the commissioner shall require that a base appraisal be performed consistent with Paragraph (1) of Subsection A of 19.2.22.17 NMAC below;

(2) the commissioner may also require a survey plat and legal description of the trust lands performed by a licensed professional surveyor in the state of New Mexico; and

(3) the commissioner may require any other supplemental information from the applicant deemed appropriate under the circumstances.

F. An applicant may withdraw an application for a planning and development lease at any time.

G. If the applicant is not the successful bidder and the lease is awarded to another party, the successful bidder shall reimburse the applicant for the cost of the appraisal, survey and additional costs incurred by the applicant related to the auction required by the commissioner and born by the applicant.

[19.2.22.9 NMAC - Rp, 19.2.22.9 NMAC, 11/30/2012]

19.2.22.10 PUBLIC NOTICE OF A PROPOSED PLANNING AND DEVELOPMENT LEASE:

A. Advertisement. A notice of public auction must be published once each week for not less than 10 consecutive weeks in a newspaper of general circulation published in Santa Fe, and in a newspaper of general circulation published nearest the offered land. The notice of lease sale must contain:

- (1) the date, time and place of the auction;
- (2) a description of the trust land offered for lease and any limitations on the uses of the land including any local land use restrictions, covenants, master plans, joint planning agreements or any restrictions established by the commissioner;
- (3) a statement as to whether the lease may be reasonably amended after its execution; and
- (4) the name of the person to contact at the state land office for additional information on the auction and the trust land being offered for lease.

B. Notice at the property. The applicant for the lease shall post notices of the proposed lease on the boundaries of the proposed leased premises adjacent or nearest to public rights of ways, in a similar manner as required by the local government through its land use approval process. Such notice shall be posted and maintained by the applicant for the 10 week public notice period so as to be visible from the public right of way. Notices shall be in the form of a sign identifying that a lease is being requested from the New Mexico state land office, the size of the proposed lease in terms of acreage, the name and contact information of the applicant, and purpose of the lease.

C. Bid information packet. Anyone requesting information on the auction will be provided with a bid information packet which, at a minimum, will include:

- (1) a form planning and development lease;
- (2) a bid proposal form;

- (3) the amount of the qualification deposit;
- (4) a description of the public auction process;
- (5) the base value of the land together with a statement as to whether the commissioner's portion of the IV, if any, will be rolled over into the subsequent lease; and
- (6) a list of qualifications and statement of the criteria established by the commissioner for determining the highest and best bid.

[19.2.22.10 NMAC - N, 11/30/2012]

19.2.22.11 PUBLIC AUCTION:

The commissioner may, under the following procedures, offer a planning and development lease to the highest and best bidder after public notice and a public auction. In order to qualify to bid at a public auction, each prospective bidder must satisfy both a qualification deposit and the bidder qualifications prescribed by the commissioner in accordance with the following.

A. Qualification deposit. Each prospective bidder must deposit with the commissioner the following amounts which are to be specifically described in the public notice:

- (1) the costs of the auction, whether incurred by the state land office or the applicant; such costs and expenses may include, but are not limited to, the costs of appraisals, surveys, advertising, land use planning, and brokerage or other real estate fees;

- (2) the first rental payment under the planning and development lease; and

- (3) if the trust land offered for lease has IV or improvements from a previous lease, all prospective bidders must deposit:

- (a) a sum equal to the value of the IV, the improvements, or both, or a bond or letter of credit sufficient to cover the value of these (the holder of IVC or the owner of improvements need not make this deposit); or

- (b) if the commissioner has agreed that its portion of the IV will be rolled over into the subsequent lease all bidders except for the holder of IVC must deposit:

- (i) a sum equal to the IVC or a bond or letter of credit sufficient to cover the IVC;

- (ii) a bill of sale for the IVC executed by the holder of the IVC; or

- (iii) a waiver of payment signed by the holder of the IVC.

B. Bidder qualifications. In order to ensure the greatest return for the trust, the commissioner will establish the minimum objective criteria that must be satisfied by each prospective bidder in order to qualify to bid based on the nature of the lease and the proposed uses of the trust land. Such requirements may include but are not limited to:

- (1) a preliminary, non-binding pro-forma or similar documentation that identifies a minimum anticipated return rate to the trust and demonstrates that a bid proposal is realistic and achievable;
- (2) a financial statement that demonstrates solvency and resources sufficient to accomplish the proposed development project; and
- (3) some minimum level of experience in land use planning and development.

C. Refunds. Upon completion of the lease auction, the commissioner shall return any deposits to the unsuccessful bidders.

D. Due diligence. All bidders must undertake their own due diligence, including but not limited to, inspecting the offered trust land and reviewing pertinent records and files of the state land office and other public agencies. A prospective bidder must obtain the approval of the commissioner before entering upon trust land.

E. Auction. The auction may be conducted by the acceptance of oral or sealed bids. If awarded at all, the planning and development lease will be awarded to the qualified bidder offering the highest bid as determined by the following: For each auction, the commissioner shall set a specific non-negotiable base rent. The commissioner may accept bids based on the lessee percentage, or set a specific non-negotiable lessee percentage and allow bidding in the form of a cash bonus pursuant to the following:

- (1) if the commissioner sets only a specific non-negotiable base rent, the highest bid will be the bid offering the lowest lessee percentage; or
- (2) if the commissioner sets both a specific non-negotiable base rent and lessee percentage, the highest bid will be the bid offering the highest cash bonus.

F. Bidding IVC. A lessee may bid its accrued IVC attributable to the portion of the leased premises subject to disposition at any public bid for the same disposition parcel.

[19.2.22.11 NMAC - Rp, 19.2.22.11 NMAC, 11/30/2012]

19.2.22.12 PLANNING AND DEVELOPMENT LEASE:

A. Execution of lease. The successful bidder must deposit with the commissioner all amounts due for the lease sale, including any bonus bid, no later than five business days after the auction, and shall, within 30 days after the auction, enter into the lease. The commissioner may extend the period for entering into a lease to no greater than 180 days after the auction. If the successful bidder does not deposit with the commissioner any amounts due, or enter into the lease offered by the commissioner, within the prescribed time periods, the commissioner may reject the bid and either declare another bidder to be the winner, or terminate the lease.

B. Lease terms. All planning and development leases will contain, at a minimum, such provisions as may be prescribed by the commissioner and must comply with all applicable laws in effect at the time of lease execution.

C. Conditions. The commissioner shall establish conditions in a planning and development lease necessary for providing a secure return to the trust, managing the trust land in an economically reasonable manner and protecting the trust land and any natural and cultural resources on the trust land from waste. Each lessee under a planning and development lease shall have an affirmative duty to diligently prevent and protect against trespass and waste on trust land.

D. Uses. A planning and development lease must designate the allowable uses of the leased trust land. The commissioner may establish restrictions on the uses of the trust land, including but not limited to restrictions contained in local land use rules, covenants, or land use plans.

E. Rent. Unless otherwise provided in a lease, rent will be paid in advance in annual installments.

F. Mineral reservation. Each planning and development lease will reserve the mineral estate, geothermal resources, water, and pore spaces for exploration, development, conservation and production and all related rights of access over, through or across trust land. The commissioner may, in a planning and development lease, agree, upon payment of a negotiated fee sufficient to compensate the trust based on the commissioner's evaluation of the potential value of the reserved rights, not to exercise these reserved rights during the term of the lease.

G. Easements and rights of way reservations. Each planning and development lease will reserve to the commissioner the right to grant easements and rights-of-way across trust land for any legal purpose. A planning and development lease may provide that any easements or rights-of-way so granted across leased trust land must be located to avoid, to the extent practicable, unreasonable interference with the uses allowed under the lease and to be consistent with land use and development plans approved by the commissioner.

H. Fish and game easement; recreational access permit. Unless specifically stated otherwise, a planning and development lease will be withdrawn by the

commissioner from public use under a fish and game easement or under recreational access permit.

I. Water rights. Water rights developed on trust land under a planning and development lease must be developed pursuant to a separate agreement with the commissioner.

J. Other terms, rents, fees. The commissioner may require such other terms, rents, or fees not otherwise disallowed by this rule or other applicable law.

[19.2.22.12 NMAC - Rp, 19.2.22.12 NMAC, 11/30/2012]

19.2.22.13 SUBLEASE; ASSIGNMENT OR PARTIAL ASSIGNMENT:

A. Any sublease, assignment or partial assignment for use of trust land is void without the approval of the commissioner. The commissioner's approval may be conditioned upon such terms or requirements as are deemed to be in the best interests of the trust including but not limited to:

- (1) additional consideration to the commissioner;
- (2) disclosure of the value paid to the lessee in consideration of the assignment or sublease; and
- (3) that the sublessee, assignee or partial assignee meets the same or substantially similar minimum qualifications that were required of the lessee at the time of bidder qualification.

B. The commissioner may, in a lease, pre-approve certain assignments or subleases that the commissioner deems to be in the best interests of the trust.

(1) No assignment or sublease of trust land under a planning and development lease will be approved unless the lessee is in compliance with the terms of the lease.

(2) The commissioner's approval of a sublease or assignment does not relieve the lessee from any liability that may have arisen before the sublease or assignment. The commissioner's approval of a sublease does not release the lessee from its continuing and primary liability for performance of all terms and obligations under the lease.

(3) The commissioner's approval of a sublease or assignment will not constitute approval of any subsequent sublease or assignment.

C. Applications to sublease or assign must be made by the current lessee under oath, on forms prescribed by the commissioner, and must be accompanied by the fees shown on the schedule of fees.

D. No assignment or sublease will extend the term of a planning and development lease and the lessee shall inform its sublessee or assignee of the terms and conditions of the lessee's planning and development lease.

E. The termination of a planning and development lease will automatically, and without notice, terminate any sublease, unless otherwise agreed to in writing by the commissioner through an attornment or a similar agreement.

F. A lessee or sublessee may not transfer, change the purpose or use, or move the point of diversion of any water rights that are appurtenant to trust land without the prior approval of the commissioner.

[19.2.22.13 NMAC - Rp, 19.2.22.13 NMAC, 11/30/2012; A, 6/11/2019]

19.2.22.14 COLLATERAL ASSIGNMENTS; LEASEHOLD MORTGAGES:

A. Unless otherwise provided in a planning and development lease, and subject to the prior approval of the commissioner, a lessee's interest in a planning and development lease or infrastructure, inclusive of accrued IVC, may be collaterally assigned or mortgaged by the lessee. An approved collateral assignee or mortgagee shall not have a lien on the commissioner's interest in the trust land, the lease, any infrastructure, or the commissioner's reversionary interest in the real and personal property subject to the lease. Any attempt to collaterally assign or mortgage a lessee's interest in a planning and development lease, or in any infrastructure, without the approval of the commissioner, will be void and will not vest the purported collateral assignee or mortgagee with any right, title, interest, claim or privilege with respect to such lease or infrastructure.

(1) Prior to making any collateral assignment a lessee shall apply to the commissioner, under oath, and on such form as may be prescribed by the commissioner. The lessee shall include a copy of the proposed collateral assignment or leasehold mortgage and pay any applicable fees set out in the schedule of fees.

(2) The commissioner may approve the collateral assignment or leasehold mortgage subject to such terms and conditions that the commissioner deems to be in the best interests of the trust, and may agree to such reasonable amendments to the planning and development lease as may be necessary for the collateral assignment or leasehold mortgage.

B. If the commissioner gives written notice to a planning and development lessee of a breach of the lease by the lessee, the commissioner shall also give written notice of the breach to an approved collateral assignee or mortgagee of the development

planning lessee. Such notice will be sent by certified mail to the most current name and address of the collateral assignee or mortgagee in the official lease file of the commissioner and no proof of receipt of such notice by the collateral assignee or mortgagee will be required.

C. An approved collateral assignee or mortgagee may cure a lessee's breach within the time periods provided to the lessee under the lease. A planning and development lease may provide that a collateral assignee or mortgagee may succeed to the rights and duties of the lessee of the planning and development lease under such conditions as are provided in the lease. The commissioner's approval of a collateral assignment of infrastructure does not change the status of any infrastructure as approved, unapproved, removable or permanent infrastructure.

D. A collateral assignee or mortgagee shall take its interest subject to the following terms and conditions, and the lessee is required to give notice of such terms and conditions to its collateral assignee or mortgagee upon making a collateral assignment or leasehold mortgage.

(1) The commissioner is entitled to notice of all proceedings, judicial or non-judicial, to enforce or foreclose the collateral assignment or leasehold mortgage.

(2) Any successor in interest to a lessee's interest in a planning and development lease, or in any infrastructure, that acquires an interest in such property as the result of the enforcement or foreclosure of a collateral assignment or leasehold mortgage, or an assignment or conveyance in lieu of such enforcement or foreclosure, will be deemed to be an assignee under 19.2.22.13 NMAC, and will be subject to the approval of the commissioner. Such approval will not be unreasonably withheld; but no successor in interest will be approved by the commissioner unless all sums due under the terms of the lease have been paid in full, and all other pending duties discharged, or unless arrangements satisfactory to the commissioner are made to fully pay such sums or discharge such duties.

[19.2.22.14 NMAC - Rp, 19.2.22.14 NMAC, 11/30/2012; A, 6/11/2019]

19.2.22.15 APPROVAL OF GOVERNMENT APPROVALS AND INFRASTRUCTURE:

No government approvals may be secured, or infrastructure placed, developed, created or constructed on trust land, or obtained or developed for the benefit of trust land, or made appurtenant to trust land without prior approval by the commissioner. Such approval will not be unreasonably withheld and may be conditioned upon certain requirements imposed by the commissioner which may include, without limitation, consistency with previous government approvals, and the provision of a bond or other adequate security to assure proper removal of infrastructure (when appropriate) from trust land and the restoration of trust land. Unless otherwise required by the terms of a

lease, all government approvals and infrastructure will remain on the trust land even after cancellation or termination of a lease.

A. A request for the commissioner's approval of improvements, governmental approvals or infrastructure must be made in writing on such forms and in such manner as may be required by the commissioner, and must be accompanied by the fee set forth in the schedule of fees, if any. Once received, the commissioner shall act to approve or reject the proposed improvements or infrastructure within 30 days from the date of receipt. However, the commissioner is not obligated to approve any infrastructure, improvements or government approvals, and failure by the commissioner to act upon such requests within 30 days deems the request denied.

B. The commissioner may preapprove existing and proposed infrastructure or government approvals with the lease when the commissioner determines it is in the best interests of the trust.

C. If the lessee fails to obtain the commissioner's prior approval for infrastructure or government approvals, the commissioner may, for an additional fee, approve such items after they have been placed, developed, created or constructed on, obtained or developed for the benefit of, or made appurtenant to trust land if the commissioner determines that it is in the best interest of the trust to do so.

[19.2.22.15 NMAC - Rp, 19.2.22.15 NMAC, 11/30/2012]

19.2.22.16 REMOVAL OF PROPERTY:

A. Upon the termination of a planning and development lease, all unapproved infrastructure must be removed from the trust land unless otherwise provided in the lease or in writing by the commissioner.

(1) No item of infrastructure may be removed without the commissioner's approval if a lessee owes rent or any other sums to the commissioner or if any material duties required under the lease remain unperformed.

(2) The commissioner may require, in writing, that designated unapproved infrastructure be left in place. Such infrastructure will become the property of the commissioner and no person will be entitled to any IVC for such infrastructure, and the lessee will be deemed to have waived any claim of government taking or other damages.

(3) Any unapproved infrastructure left on trust land without the commissioner's approval will remain the liability of the lessee. The commissioner may elect to take any necessary action to remove such infrastructure and all costs and fees incurred will constitute additional rent due from the lessee under the lease. Alternatively, the commissioner may declare the property abandoned and ownership transferred to

the commissioner and the lessee will be deemed to have waived any claim of government taking or other damages.

B. In all cases where infrastructure is removed from trust land, the lessee is solely liable for the restoration of the trust land to its condition prior to the placement of such infrastructure. The lessee's obligation to remove infrastructure and to restore the trust land survives the termination of the lease.

C. All costs, fines and fees incurred by the commissioner as a result of infrastructure left on trust land without the commissioner's approval, and all costs, fines and fees incurred as a result of damage or waste to trust land during the term of the lease, or arising from or in connection with the lessee's use and occupancy of the trust land, remains the sole liability of the lessee and will be deemed additional rent due at the time incurred.

[19.2.22.16 NMAC - Rp, 19.2.22.16 NMAC, 11/30/2012]

19.2.22.17 IMPROVEMENT VALUE; IMPROVEMENT VALUE CREDIT:

A. IV, when calculated. Improvement value (IV) must be calculated when a planning and development lease terminates, upon a disposition or partial disposition, or at lessor's discretion including but not limited to at the time of a sublease or assignment. IV is generally determined through appraisal by comparing the subsequent value of the leased premises to the base value of the leased premises with an adjustment for natural appreciation pursuant to the following and as described in Paragraph (1) of Subsection C of 19.2.22.17 NMAC below:

(1) Base appraisal. Prior to the effective date of the planning and development lease, the applicant, at the applicant's expense, shall cause an appraisal of the trust land to be performed by a qualified appraiser conforming to the uniform standards of professional appraisal practice (USPAP) to establish the base value (BV). The commissioner may require specific appraisal instructions and require that the appraiser be approved in advance. The state land office staff appraiser shall review the base appraisal pursuant to the USPAP Standard 3, and make a recommendation to the commissioner that the base appraisal be accepted, rejected, or accepted with adjustments. The commissioner may approve a BV consistent with the staff appraiser's recommendation or make deviations therefrom if appropriate based on the commissioner's exercise of reasonable judgment, documented in writing. The commissioner reserves the right to reject any base appraisal.

(2) Subsequent appraisal. A subsequent appraisal is required in order to update the current value of the leased premises for purposes of identifying IV, if any. At least 60 but not more than 90 days prior to the expiration of a lease, disposition or partial disposition, or at lessor's discretion including but not limited to at the time of a sublease or assignment, lessee at lessee's expense shall cause an appraisal of the trust land to be performed by a qualified appraiser and conforming to USPAP to

establish the subsequent value of the leased premises (SV). The commissioner may require specific appraisal instructions, including but not limited to those described in Subparagraph (a) of Paragraph (3) below, and require that the appraiser be approved in advance. The state land office staff appraiser shall review the subsequent appraisal pursuant to USPAP Standard 3, and make a recommendation to the commissioner that the subsequent appraisal be accepted, rejected, or accepted with adjustments. The commissioner may set the SV consistent with the staff appraiser's recommendation or make deviations therefrom if appropriate based on the commissioner's exercise of reasonable judgment, documented in writing. The commissioner reserves the right to reject any subsequent appraisal.

(3) Adjustment for NA. Only the beneficiaries of the land trust are entitled to increased value resulting from NA. Accordingly, every planning and development lease must provide for one of the following methodologies designed to adjust for NA when determining IV:

(a) Appraisal instructions method. In addition to any other specific appraisal instructions required by the commissioner, each subsequent appraisal must be performed pursuant to the following specific instructions requiring two iterations of the appraisal:

(i) first iteration - the appraiser shall first appraise the disposition parcel for its present value considering only those improvements, if any, that were in place at the time that the base appraisal was performed; if the value that results from this first iteration exceeds BV as established by the base appraisal, this first iteration value becomes the BV of the disposition parcel for purposes of calculating IV; and

(ii) second iteration - the appraiser shall next appraise the disposition parcel at its full present value considering all present improvements; the value that results from this second iteration becomes the SV of the disposition parcel for purposes of calculating IV.

(b) Predetermined adjustment factor or other alternative method. Any methodology determined by the commissioner to protect the trust's interest in the value created by NA as opposed to the value created by lessee's improvements may be used, including but not limited to a pre-negotiated periodic adjustment factor included in the lease to be applied to the BV to account for the anticipated NA at the time of disposition.

B. IVC accrual; when payable. IVC accrues only upon completion of base infrastructure at least up to the boundary of the leased premises, or in the case of a partial disposition, sublease or partial assignment, at least to the present boundary of the disposition parcel, sublease or partial assignment. Alternatively, pursuant to the terms of a lease, IVC may accrue when the lessee has contractually obligated itself to construct such base infrastructure and where the contractual obligation is adequately secured by a transferable bond or letter of credit or other acceptable security. The commissioner may require that base infrastructure be extended or guaranteed through

a given parcel prior to allowing a disposition, partial disposition, sublease or assignment. Upon disposition to any person or entity other than the holder of the IVC, the purchaser or new lessee shall satisfy payment for the IVC pursuant to the following:

(1) in the case of a sale or exchange, the commissioner shall convey payment of the IVC, if any, to the holder thereof from the sale or exchange proceeds; or

(2) in the case of a lease, the commissioner shall convey payment of the IVC, if any, to the holder thereof from the deposit described in Paragraph (3) of Subsection A of 19.2.22.11 NMAC above less any rent, costs, or damages owed to the commissioner; however, no payment of the IVC will be made if a bill of sale or waiver of payment signed by the holder of the IVC is filed with the commissioner.

C. IVC, how calculated. Subject to the conditions and restrictions set forth in this provision, a lessee may be entitled to IVC as determined by the following procedures and calculations and pursuant to the terms of the lease:

(1) Step 1: The base value is subtracted from the subsequent value, as adjusted for NA through one of the methodologies described in Paragraph (3) of Subsection A of 19.2.22.17 NMAC above, to determine the improvement value [SV – BV = IV].

(2) Step 2: The improvement value is multiplied by the lessee percentage to determine improvement value credit [IV x LP = IVC].

EXAMPLE WHERE: SV (adjusted for NA) = 200, BV = 100, and LP = 60%

$$200 - 100 = 100: \quad \mathbf{IV = 100}$$

$$100 \times .60 = 60: \quad \mathbf{IVC = 60}$$

(3) A lessee will not be liable for any negative IVC.

(4) Any bonus offered at a lease auction, or any value bid at a sale or exchange auction in excess of SV as set by Paragraph (2) of Subsection A of 19.2.22.17 NMAC above, will be payable solely to the commissioner and will not be considered for purposes of IVC.

D. Depreciation of IVC. A planning and development lease may provide that IVC may be lost or depreciated over a stated time if, after termination of the planning and development lease, there is no successor in interest other than the commissioner.

E. Commissioner not liable for IVC. Except for the transfer of funds for IVC deposited by a lessee or to be paid from the proceeds of a sale, the commissioner is not liable for the payment of any IVC. The commissioner may require a release or indemnity from the party receiving payment of the IVC.

F. IVC holder must be identifiable. The holder of the IVC must be identified in the records of the state land office. Unless otherwise provided in a lease, leasehold mortgage or collateral assignment of IVC or infrastructure approved by the commissioner and filed with the state land office, the commissioner shall treat the lessee, not the collateral assignee or mortgagee, as the holder of the IVC and the party entitled to payment

[19.2.22.17 NMAC - Rp, 19.2.22.17 NMAC, 11/30/2012]

19.2.22.18 TAKE-OUT LEASES; TAKE-OUT SALES OR EXCHANGES AUTHORIZED:

During the term of a planning and development lease, a lessee may from time to time apply for a take-out lease or take-out sale or exchange. Take-out sales will be considered most appropriate where the final land use proposal is owner-occupied residential, otherwise take-out leases in the form of long term business leases will be considered most appropriate.

[19.2.22.18 NMAC - N, 11/30/2012]

19.2.22.19 ACQUISITION OF RIGHTS-OF-WAY BY LESSEE FOR DEDICATION TO A GOVERNMENTAL ENTITY:

Trust lands within a planning and development lease may, from time to time, be purchased by a lessee for dedication to a governmental entity as rights-of-way pursuant to the following:

A. Dedications through long term lease, sale, or exchange. A lessee may acquire rights-of-way by lease, sale, or exchange only after 10 weeks public notice and a public auction as required by applicable state land office rules and other applicable law.

B. Dedications through easement with right of reversion. A lessee may acquire rights-of-way in the form of an easement where the easement is simultaneously dedicated to a governmental entity for a term of "for so long as it used for a public purpose."

C. Pricing of the easement. Rights-of-way acquired by a lessee on behalf of a governmental entity and simultaneously dedicated to the governmental entity will, at the sole discretion of the commissioner, be priced either on a per rod basis pursuant to the commissioner's standard price schedule, or at the per acre value as extrapolated from BV without adjustment for NA or SVA. In determining the proper pricing for the right-of-way, the commissioner shall consider the immediate and certain economic impacts to adjacent trust lands, if any, that may reasonably result from the right-of-way and associated infrastructure.

D. Effect on IV. The acquisition or dedication of a right-of-way pursuant to this section is not a disposition for purposes of IV, and such dedications will in no way impact a lessee's right or interest in IVC. A lessee may claim IVC relating to infrastructure on portions of the leased premises dedicated as rights-of-way at the time of a subsequent disposition.

[19.2.22.19 NMAC - N, 11/30/2012; A, 6/30/2016]

19.2.22.20 RELINQUISHMENT:

A. A lessee may, with the approval of the commissioner, relinquish to the commissioner the lessee's interest in a planning and development lease. The commissioner may establish in the terms of a lease conditions pursuant to which the lessee may, at prescribed times, relinquish all or portions of the lease.

B. A lessee may request relinquishment of the lease on forms prescribed by the commissioner and upon payment of a relinquishment fee, provided that:

(1) the lessee is in compliance with the terms of the lease; and

(2) all improvements made pursuant to the lease on, for, or appurtenant to the lands leased have been approved by the commissioner and arrangements satisfactory to the commissioner have been made for either the removal or the retention of the improvements.

C. A lessee shall not, by relinquishment, avoid or be released from any liability for known or unknown waste or damage to trust lands, including but not limited to environmental damage, arising from or connected with lessee's use or occupancy of trust lands.

D. A relinquishment shall not be valid or effective until approved by the commissioner. Any attempted relinquishment of the lease, without the commissioner's approval, shall be a breach of the lease.

E. Upon relinquishment, a lessee shall not be entitled to the refund of any rent previously paid; however, a lessee seeking relinquishment in response to a request by the commissioner shall not be charged a fee, and shall be entitled to a pro-rata refund of prepaid rent to be paid only by the successor lessee, purchaser or other successor in interest, if any.

[19.2.22.20 NMAC - N, 11/30/2012]

19.2.22.21 DEFAULT; REMEDIES:

Unless otherwise provided in a planning and development lease, a lessee shall be in default under a planning and development lease if a breach of the lease is not cured

within 30 days after the commissioner gives written notice of the breach to the lessee. A breach of the lease may include, without limitation, a failure to pay any rent or other monetary obligation due under the lease, or a violation of any term, condition, or covenant of the lease, or the failure to perform or observe any other obligation of the lessee under the lease.

A. Notice. Written notice of a breach shall be sent to the lessee, and to the holder of any collateral assignment or leasehold mortgage, at their addresses of record at the state land office, by certified mail. The commissioner need only provide proof of mailing to establish satisfactory compliance with this notice requirement.

B. Remedies. On the default of a lessee, the commissioner shall have all the remedies available to the commissioner at law or in equity in New Mexico, and as provided in the planning and development lease, including, without limitation, terminating the lease, retaking possession of the leased trust land with or without termination of the lease, and proceeding to recover any damages, including damages for any unpaid or unperformed obligations of the lessee.

[19.2.22.21 NMAC - N, 11/30/2012]

19.2.22.22 EXISTING LEASES:

Except as provided in this section, the commissioner may not lease under a planning and development lease any trust land currently leased under an existing surface lease unless the existing lessee relinquishes the lessee's interest in the trust land or the commissioner exercises any right of withdrawal of land which the commissioner may have. Notwithstanding the foregoing, the commissioner may determine that a proposed planning and development lease will not unreasonably interfere with the authorized uses under an existing lease, and may allow a new planning and development lease in compliance with the following requirements.

A. The new planning and development lease shall identify the existing lease, shall state that the new planning and development lessee's rights and privileges are subject to the existing lessee's rights and privileges under the existing lease, unless waived or amended, and shall provide that the new planning and development lessee will not interfere with the uses permitted under the existing lease.

B. The existing lessee must consent in writing to the new planning and development lease unless the commissioner previously reserved the right to execute such a lease under the terms of the existing lease.

[19.2.22.22 NMAC - Rp, 19.2.22.18, 11/30/2012; A, 6/11/2019]

PART 23: STATE TRUST LANDS RESTORATION AND REMEDIATION FUND

19.2.23.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, 310 Old Santa Fe Trail, P.O. Box 1148, Santa Fe, New Mexico 87501.

[19.2.23.1 NMAC - N, 10/31/2017]

19.2.23.2 SCOPE:

This part pertains to the expenditure of funds from the state trust lands restoration and remediation fund created under Section 19-1-11 NMSA 1978.

[19.2.23.2 NMAC - N, 10/31/2017]

19.2.23.3 STATUTORY AUTHORITY:

The state land office's authority to administer the state trust lands restoration and remediation fund is found in Section 19-1-11 NMSA 1978. Under Section 19-1-1 NMSA 1978, the commissioner is the executive officer of the state land office. The commissioner's authority to manage the state trust lands is found in N.M. Const., art. XIII, Section 2, and in Section 19-1-1 NMSA 1978. The authority to promulgate this rule is found in Section 19-1-2 NMSA 1978.

[19.2.23.3 NMAC - N, 10/31/2017]

19.2.23.4 DURATION:

Permanent.

[19.2.23.4 NMAC - N, 10/31/2017]

19.2.23.5 EFFECTIVE DATE:

October 31, 2017, unless a later date is cited at the end of a section.

[19.2.23.5 NMAC - N, 10/31/2017]

19.2.23.6 OBJECTIVE:

The objective of this part is to provide for the orderly, lawful, and appropriate expenditure of funds from the state trust lands restoration and remediation fund to administer contractual surface damage and watershed restoration and remediation projects on state trust lands, which are under the care, custody and control of the commissioner.

[19.2.23.6 NMAC - N, 10/31/2017]

19.2.23.7 DEFINITIONS:

As used in 19.2.23 NMAC, the following terms have the meaning set forth in this section unless otherwise indicated in the text of this rule:

A. "clearance and compliance requirements" means biological and archeological surveys, or site delineation surveys, or any other state or federal regulatory requirement that may be needed to proceed with a restoration or remediation project.

B. "commissioner" means the New Mexico commissioner of public lands, and the commissioner's appointees under Section 19-1-7 NMSA 1978 acting within the scope of their authority. The commissioner may delegate to state land office staff the performance of functions required of the commissioner under this part.

C. "contaminant" means solid waste, hazardous materials, or any other state- or federally-regulated substance that threatens, or could threaten, public health or the environment.

D. "contractual surface damage and watershed restoration and remediation projects" means projects performed by vendors or service providers through contracts with the state land office to repair surface damage on, restore or remediate state trust lands.

E. "in-kind contribution" means a contribution of labor, materials, or other non-monetary resources by an individual or entity other than the state land office.

F. "matching contribution" means a monetary contribution by an individual or entity other than the state land office.

G. "reclamation" means returning land that has been rendered unusable by human activities or natural processes to a usable state.

H. "remediation" means actions necessary to investigate, prevent, minimize, remove, or mitigate threats to the public health or to the environment that may otherwise result from a release or threat of release of contaminants.

I. "restoration" means repairing or treating a site to return it to a desired previously existing condition or to achieve native plant cover and diversity levels equal to or exceeding the natural potential levels in undisturbed soils adjacent to the project area.

J. "restoration and remediation fund" means the state trust lands restoration and remediation fund.

K. "state land office" means the New Mexico state land office established under Section 19-1-1 NMSA 1978, the executive officer of which is the commissioner.

L. "surface damage" means the removal of, mechanical disturbance to, or introduction of hazardous materials to, the ground surface, vegetation, or soils in a given location.

M. "trust lands" means those lands, their natural products and all assets derived from them, which are under the care, custody and control of the commissioner.

[19.2.23.7 NMAC - N, 10/31/2017; A, 6/11/2019]

19.2.23.8 PERMISSIBLE FUND EXPENDITURES:

A. Expenditures made from the state trust lands restoration and remediation fund shall be used to implement the following categories of projects:

- (1) surface damage remediation and restoration;
- (2) watershed, forest, or grassland restoration;
- (3) illegal dump site remediation and restoration; and
- (4) contaminated site remediation.

B. The restoration and remediation fund shall not be expended for:

- (1) any project or portion thereof that is not located on state trust lands;
- (2) any internal state land office operation cost, administration expense, overhead, or salary; or
- (3) any other land office expense that is not related to trust land restoration or remediation or is not part of a commissioner-approved project proposal.

C. The restoration and remediation fund shall not be used to make improvements to trust lands, unless such improvements are necessary to protect the land or ensure the success of the restoration or remediation project.

D. The restoration and remediation fund shall not be used for project clearance and compliance requirements, as defined in this rule. Other funding sources, including in-kind contributions, matching contributions, or other state land office funds, may be used to pay for clearance and compliance requirements.

E. The commissioner's prior written approval of a project proposal is required for all expenditures from the restoration and remediation fund.

[19.2.23.8 NMAC - N, 10/31/2017]

19.2.23.9 PROJECT PROPOSALS:

A. Land restoration or remediation project proposals may be initiated by the commissioner or by outside individuals or entities, as follows:

(1) the commissioner may direct state land office staff to prepare proposals for state trust land restoration or remediation projects; or

(2) individuals or entities that wish to partner with the state land office on a restoration or remediation project involving state trust lands may submit a written request to the commissioner using guidelines provided by the land office. If, in the commissioner's judgment, the requested project should be considered for funding from the land restoration and remediation fund, the commissioner shall direct land office staff to prepare a project proposal in consultation with the requestor.

B. Project proposals shall provide information necessary for the selection and prioritization of projects and shall include:

(1) a statement of need, including how the project addresses land office priorities in 19.2.23.10 NMAC;

(2) the project category (see Subsection A of 19.2.23.8 NMAC);

(3) a detailed estimated total project cost, including a description of project clearance and compliance requirements, an estimate of the cost and time needed for clearance and compliance, an explanation of how clearance and compliance requirements will be funded, and, if applicable, a list of partners or collaborators and their anticipated contributions to the total project cost;

(4) a location description by section, township and range;

(5) a map outlining the treatment area;

(6) an estimate of the acres to be treated or restored;

(7) a description of the current site conditions, including terrain, existing plant communities, and native plant communities adapted to the project location;

(8) a description of the treatment type and specifications, to include project objectives and desired outcomes, a detailed description of the materials to be used, the machinery and labor requirements, and project timing;

(9) a list of current land office lessees within the treatment area, with contact information;

(10) a description of potential impacts to biological and cultural resources; and

(11) a description of the procurement requirements for the project, such as contracting or bidding requirements.

[19.2.23.9 NMAC - N, 10/31/2017]

19.2.23.10 SELECTION OF PROJECTS:

In considering which projects to fund, the commissioner will give consideration to the following priorities:

A. emergency treatments requiring a timely response to any situation that presents an imminent and substantial danger to life, public health, property, or the environment;

B. projects that:

(1) protect communities by reducing the risk of wildfire or the risk of harm to water quality and quantity;

(2) restore or remediate threats to forests, grasslands, or watersheds that have been identified by the commissioner as priority resources;

(3) involve in-kind or matching contributions for twenty percent or more of the total project cost;

(4) provide an equitable, statewide geographic distribution of funds;

(5) build on previous expenditures or leverage resources;

C. projects that have a high probability of successful implementation, including the following considerations:

(1) ability to meet procurement requirements;

(2) time required for and availability of other sources of funding to complete clearance and compliance requirements; and

(3) total project cost, including matching and in-kind contributions.

[19.2.23.10 NMAC - N, 10/31/2017]

19.2.23.11 COST RECOVERY:

A. For any expenditure made from the restoration and remediation fund, the commissioner shall attempt to recover the project costs from any person or entity that may bear liability for that project under any lease, easement, or other agreement with the state land office, or by statute, including the Voluntary Remediation Act (Chapter 74,

Article 4G NMSA 1978), the New Mexico Mining Act (Chapter 69 Article 36 NMSA 1978), the Surface Mining Act (Chapter 69, Article 25A NMSA 1978), the Oil and Gas Act, (Chapter 70, Article 2 NMSA 1978), the Water Quality Act (Chapter 74, Article 6 NMSA 1978), the Solid Waste Act (Chapter 74, Article 9, Sections 1-42, 72-73 NMSA 1978), or the Hazardous Waste Act (Chapter 74, Article 4 NMSA 1978).

B. Prior to making an expenditure from the restoration and remediation fund for which the commissioner will seek to recover project costs, the commissioner shall send written notice notifying the person or entity, if known, that the commissioner may initiate an action to recover project costs. Notwithstanding the foregoing, lack of written notice does not waive the commissioner's right to recover project costs from any person or entity that may bear liability for the project.

[19.2.23.11 NMAC - N, 10/31/2017]

PART 24: CULTURAL PROPERTIES PROTECTION

19.2.24.1 ISSUING AGENCY:

Commissioner of Public Lands - New Mexico State Land Office - 310 Old Santa Fe Trail
- P.O. Box 1148 - Santa Fe, New Mexico 87501.

[19.2.24.1 NMAC - N, 12/01/2022]

19.2.24.2 SCOPE:

This part pertains to the identification and protection of cultural properties on state trust lands.

[19.2.24.2 NMAC - N, 12/01/2022]

19.2.24.3 STATUTORY AUTHORITY:

The commissioner is the executive officer of the state land office, pursuant to Section 19-1-1 NMSA 1978. The commissioner's authority to manage, control, and care for state trust lands is found in N.M. Const., art. XIII, Section 2 and in Section 19-1-1 NMSA 1978. The New Mexico Cultural Properties Protection Act, Sections 18-6A-1 to 18-6A-6 NMSA 1978, requires the state land office, as an agency with jurisdiction over state land, to exercise due caution to ensure that cultural properties on state trust lands are not inadvertently damaged or destroyed. The New Mexico Cultural Properties Act, Sections 18-6-1 to 18-6-17 NMSA 1978, authorizes the commissioner to initiate action against any person who violates the Cultural Properties Act by causing damage to or destroying cultural properties located on state trust lands. The authority to promulgate this part is found in Section 19-1-2 NMSA 1978.

[19.2.24.3 NMAC - N, 12/01/2022]

19.2.24.4 DURATION:

Permanent.

[19.2.24.4 NMAC - N, 12/01/2022]

19.2.24.5 EFFECTIVE DATE:

December1, 2022 unless a later date is cited at the end of a section.

[19.2.24.5 NMAC - N, 12/01/2022]

19.2.24.6 OBJECTIVE:

The objective of this part is to establish and maintain processes to proactively identify cultural properties on state trust lands to ensure that such properties are not damaged or destroyed, by generally requiring informational reviews and archaeological surveys before surface disturbing activity on state trust lands takes place, requiring avoidance and mitigation of damage to cultural properties, and providing mechanisms to enforce protections for cultural properties. This part applies to all state trust lands, the surface of which is held in trust by the commissioner.

[19.2.24.6 NMAC - N, 12/01/2022]

19.2.24.7 DEFINITIONS:

As used in 19.2.24 NMAC, the following terms have the meaning set forth in this section unless otherwise indicated in the text of this rule:

A. **"Archaeological survey" or "Survey"** means a visual inspection of land to examine, identify, record, evaluate, and interpret cultural properties, which may include communications with potentially impacted tribes and may include limited tests but shall not include excavation or test excavation, as provided in 4.10.15 NMAC. An archaeological survey is conducted by an archaeologist who meets the professional qualification standards in accordance with 4.10.8 NMAC.

B. **"Area of potential effect" or "APE"** means the geographic area or areas within which a project may directly or indirectly cause changes in the character or use of a cultural property, if any such properties exist, as provided in 4.10.15 NMAC. The APE is influenced by the scale and nature of the project, variation in topography and vegetation, and the results of consultations, and may be different for different kinds of effects caused by the undertaking and may include a buffer.

C. **"ARMS inspection"** means a search of the New Mexico cultural resources information system (NMCRIS) and the other cultural resource records maintained by the archaeological records management section (ARMS) of the historic preservation

division of the New Mexico department of cultural affairs, in accordance with 4.10.15.9 NMAC.

D. "Commissioner" means the commissioner of public lands. The commissioner is the executive officer of the state land office and may delegate to state land office staff the performance of duties required of the commissioner under this rule.

E. "Cultural property" means a structure, place, site, object, or resource having historic, archaeological, scientific, architectural, or other cultural significance. A cultural property includes a property listed on or eligible for inclusion on either the New Mexico register of cultural properties pursuant to the Cultural Properties Act, or listed on or eligible for listing on the national register of historic places pursuant to the National Historic Preservation Act, 54 U.S.C. 300101 et seq.

F. "Cultural Properties Act" means the New Mexico Cultural Properties Act, Sections 18-6-1 through 18-6-17 NMSA 1978.

G. "Cultural Properties Protection Act" means the New Mexico Cultural Properties Protection Act, Sections 18-6A-1 through 18-6A-6 NMSA 1978.

H. "Party" means any person applying to the commissioner for a lease, sublease, easement, permit, license, grant, amendment, certificate or other instrument issued by the commissioner of public lands; any person to whom the commissioner has issued a lease, sublease, easement, permit, license, grant, amendment; certificate or other instrument; and any person who is otherwise lawfully present and conducting activities on state trust lands, including well operators and unit operators.

I. "Person" is a natural person or group of persons, or a partnership, corporate entity, association or organization, governmental entity, or any other legal entity.

J. "Project" means any surface disturbing activity or proposed surface disturbing activity on state trust lands that requires a lease, sublease, easement, permit, license, grant, amendment, certificate, or other entitlement from the commissioner, as well as any surface disturbing activity that is directly undertaken by the state land office. Project activity includes temporary work spaces and installation surface disturbing activities.

K. "State historic preservation officer" or "SHPO" means the individual appointed pursuant to Section 18-6-8 NMSA 1978 of the Cultural Properties Act who serves as the director of the historic preservation division of the New Mexico department of cultural affairs.

L. "State land office" means the New Mexico state land office.

M. "State trust lands" or "trust lands" means those lands, their natural products, and all assets derived from them, which are under the care, custody, and control of the commissioner.

N. "Surface disturbance" or "Surface disturbing" means any ground disturbing or ground breaking activity, including but not limited to blading, scraping, contouring, excavating, trenching, drilling, digging, burying, paving, covering, or compacting soil surfaces, whether or not previously disturbed, and whether or not the person engaged in those activities is authorized to occupy or use state trust lands.

O. "Tribe" means any tribe, nation, or pueblo that may or may not be federally recognized but has indicated cultural affinity to New Mexico areas as documented in the tribal consultation list maintained by the historic preservation division of the New Mexico department of cultural affairs.

P. "Trust" means the trust established by the Enabling Act (Act of June 20, 1910, 36 Statutes at Large 557, Chapter 310) and that trust's assets, which are administered through the state land office by the commissioner.

[19.2.24.7 NMAC - N, 12/01/2022]

19.2.24.8 GENERAL REQUIREMENTS:

A. Avoidance of damage. Any persons engaged in activities on state trust lands are subject to the requirements of the Cultural Properties Act, the Cultural Properties Protection Act, and 19.2.24.13 NMAC. Persons shall not disturb, dislodge, damage, destroy, or remove any cultural properties on state trust lands. Any project on state trust lands that has the potential to directly or indirectly damage cultural properties is additionally subject to the requirements of Subsections B, C, D, and E of 19.2.24.8 NMAC.

B. Signed acknowledgment. Parties shall acknowledge, on a form prescribed by the commissioner, that they understand and agree to comply with applicable laws and rules pertaining to the protection of cultural properties on state trust lands.

C. ARMS inspection and survey. Prior to conducting surface disturbing activities, parties shall cause a permitted archaeologist to submit to the state land office an ARMS inspection of the entire area of potential effect. More detailed guidance regarding the submission process for ARMS inspection and surveys under this subpart will be provided in an instructional document to be published on the state land office's website and also will be provided to any party or other interested person upon request. The time when that submission is required is provided in Subsection E of this section. In the best interest of the trust, the commissioner, in the commissioner's discretion, may elect to provide the ARMS inspection for any particular portion of state trust land. The following subparagraphs describe the necessary steps to be taken after an ARMS inspection is conducted.

(1) If the ARMS inspection demonstrates that the entire area of potential effect has been surveyed, and that no cultural properties are located within the area of potential effect, then the party shall cause a permitted archaeologist to submit the ARMS inspection to the state land office, in which case the required archaeological review is complete.

(2) If the ARMS inspection or survey demonstrates that the entire area of potential effect has been surveyed, and cultural properties are identified within the area of potential effect, the party shall cause a permitted archaeologist to submit the most recent applicable survey(s) to the state land office. If a prior survey is submitted that is more than ten years old, the state land office will determine if the survey conforms to the requirements of 4.10.15 NMAC and if it does not, may require an updated survey. The party shall be subject to the requirements of Subsection D of this section.

(3) If the ARMS inspection demonstrates that the entire area of potential effect has not been surveyed, a complete archaeological survey must be conducted by a permitted archaeologist in accordance with the requirements of 4.10.15 NMAC and submitted to the state land office. The new survey need not include areas already subjected to acceptable surveys. The party shall be subject to the requirements of Subsection D of this section, if cultural properties are identified in the survey.

D. Compliance measures. For any application or project where any survey has identified cultural properties within the area of potential effect, the party shall cause a permitted archaeologist to develop and submit to the state land office compliance measures related to project siting, and avoidance and mitigation of damage to cultural properties; those compliance measures may be included within the survey that is submitted to the state land office on behalf of any party, or may be submitted separately. The state land office will review any applicable compliance measures, and determine if those measures are sufficient to protect or mitigate damages to the affected cultural properties, a review that may include consultation with the SHPO and shall include consultation with any impacted tribe. In the best interests of the trust, the state land office may require additional or different compliance measures as a condition to approval of the application or project. This review process will be completed within 60 calendar days of submission of an administratively complete submission (ARMS inspection or survey, and any applicable compliance measures), but that time period may be extended in the commissioner's discretion for up to an additional 60 calendar days as may be necessary to ensure appropriate review. Upon commissioner approval, the relevant leasing division shall include appropriate compliance measures in the relevant lease, easement, or other instrument, if applicable, consistent with applicable statutes and rules.

E. Timing of requirements. The undertakings required in Subsections A, B, and C of 19.2.24.8 NMAC are required at different points in time depending on the nature of the application or project, as follows:

(1) Leases, easements, or other instruments not requiring subsequent approval. For applications or projects where no review or approval is required after issuance of the applicable lease, easement, or other instrument: the acknowledgment specified in Subsection B of 19.2.24.8 NMAC, an ARMS inspection and survey specified in Subsection C of 19.2.24.8 NMAC, and any applicable compliance measures specified in Subsection D of 19.2.24.8 NMAC, are required at the time of submission of the application for the lease, easement, or other instrument, and in any event prior to commencement of surface-disturbing activities.

(2) Leases, easements, or other instruments requiring subsequent approval. For applications or projects where subsequent review by the commissioner is required after a lease, easement, or other instrument may be issued, and before project activities may take place: the acknowledgment specified in Subsection B of 19.2.24.8 NMAC is required at the time of submission of application or bid. The ARMS inspection or survey specified in Subsection C of 19.2.24.8 NMAC, and any applicable compliance measures specified in Subsection D of 19.2.24.8 NMAC, are required at the time of submission of the project plans or, if no project plans are required to be submitted, at least 60 calendar days prior to commencement of surface disturbing activities.

(3) Oil and gas leases. This subpart applies to oil and gas leases. The acknowledgment specified in Subsection B of 19.2.24.8 NMAC is required prior to issuance of a lease or any lease assignment. For all surface disturbing activities (whether under a new or existing lease or lease assignment), the description and location of the project, the ARMS inspection or survey specified in Subsection C of 19.2.24.8 NMAC, and any applicable compliance measures specified in Subsection D of 19.2.24.8 NMAC, must be received, reviewed, and approved by the state land office prior to any surface disturbing activity, along with the acknowledgment specified in Subsection B of 19.2.24.8 NMAC if one has not already been submitted by the party undertaking the surface disturbing activity for that particular lease. Upon authorization from the state land office, the party may commence the surface disturbing activity.

(4) Mining leases. This subpart applies to leases for mining as specified in Chapter 19, Articles 8-9 NMSA 1978, and 19.2.2, 19.2.3, 19.2.4, 19.2.5, 19.2.6, and 19.2.7 NMAC. The acknowledgment specified in Subsection B of 19.2.24.8 NMAC is required at the time of submission of an application or bid to lease. The ARMS inspection or survey specified in Subsection C of 19.2.24.8 NMAC and any applicable compliance measures specified in Subsection D of 19.2.24.8 NMAC, are required at the time of submission of an application for a mining permit with the mining and minerals division of the New Mexico energy, minerals, and natural resources department, or equivalent permitting agency, for leases that are subject to 19.2.2 and 19.2.6 NMAC; and prior to commencement of any surface disturbing activity for all other types of mineral leases.

F. Archaeological survey permits and notifications to survey. Individuals with valid archaeological survey permits issued by the New Mexico cultural properties review

committee, as provided in 4.10.8 NMAC, are preapproved to access state trust lands for the sole purpose of conducting archaeological surveys pursuant to this rule, without the need for a separate authorization from the commissioner. For other project purposes (that is, other than archaeological surveys), parties who are already authorized to access and occupy particular state trust lands by virtue of a lease or easement are not required to obtain separate authorization from the commissioner. All other persons needing access to state trust lands for other project purposes (that is, other than archaeological surveys) shall apply for a right of entry permit on a form prescribed by the commissioner, and the state land office will process such application on a timely basis. The state land office should be notified at least 15 calendar days before an archaeological survey is conducted, except for exigent situations, including but not limited to responses to spills or hazardous conditions, in which case the state land office should be notified as soon as possible and in any event prior to the survey.

[19.2.24.8 NMAC - N, 12/01/2022]

19.2.24.9 ACKNOWLEDGMENT-ONLY REQUIREMENTS:

The acknowledgement specified in Subsection B of 19.2.24.8 NMAC shall be included with applications for the following, with no ARMS inspection or survey as specified in Subsection C of 19.2.24.8 NMAC or compliance measures as specified in Subsection D of 19.2.24.8 NMAC, unless those additional measures are specifically required by the commissioner for a particular application:

A. renewals or reissues, assignments, conversions, and subleases of existing grants, leases or permits, and agricultural improvement replacements, where no new surface disturbance will occur, or when the area of potential effect of a new project activity is entirely within a previously disturbed area of the same nature and extent of disturbance;

B. applications for new agricultural leases in open acreage or through competitive bid; and

C. applications for non-surface disturbing rights of entry, with the final decision vested with the commissioner about whether or not the relevant activity is surface disturbing.

[19.2.24.9 NMAC - N, 12/01/2022]

19.2.24.10 EXEMPTIONS:

A. The following activities are exempt from the acknowledgment, ARMS inspection and survey, and compliance measures requirements of this rule. These exemptions do not provide authorization to enter or occupy state trust lands, which must be granted by the commissioner under a valid lease, easement, permit, or other instrument:

(1) law enforcement, emergency response, or natural disaster response ("emergency response") activities, whether or not undertaken by or in coordination with the state land office, that are necessary to protect immediate threats to public health, safety, or the environment, including but not limited to firefighting, flood management, or for controlling, containing, or capturing releases of hazardous or harmful materials. If the state land office is not already involved in undertaking or coordinating the emergency response, it shall be notified of the response as soon as practicable. Any known cultural property within the area of emergency response should be monitored to the extent practicable so that any adverse effects to the cultural property can be avoided, mitigated, or minimized;

(2) administrative actions performed by the state land office, such as executive orders or rule making activities, and any internal agency processes or decisions that do not create new surface disturbance;

(3) memoranda of understanding or agreements to cooperate executed by the commissioner;

(4) easements, leases, or other instruments granted by the commissioner to any person that do not directly expand current surface uses or create new surface disturbance;

(5) recreational access permits and educational access permits, applications for such permits, non-surface disturbing natural resource authorizations, or activities that already require the presence of an archaeological monitor such as special use agreements;

(6) projects analyzed under the National Environmental Policy Act of 1969, 42 U.S.C. Section 4321 et seq. and the National Historic Preservation Act of 1966, 16 U.S.C. Section 470 et seq., and their implementing regulations, so long as such analysis includes impacted state trust lands. For such projects, the party shall submit a copy to the state land office of the survey or portions thereof pertaining to impacted state trust lands;

(7) acquisition or disposition of lands through exchange or sale; and

(8) plugging, restoration, remediation, or reclamation activities that do not involve new surface disturbing activity outside the authorized boundaries of any existing roads, rights of way, well pads, associated oil and gas facilities or other structures.

B. Parties or other persons engaged in the activities exempted in Subsection A of 19.2.24.10 NMAC remain subject to the requirements of the Cultural Properties Act, the Cultural Properties Protection Act, and 19.2.24.13 NMAC.

C. Notwithstanding any other provision of this part, the commissioner may require an ARMS inspection or survey for any project when determined to be in the best interest of the trust.

[19.2.24.10 NMAC - N, 12/01/2022]

19.2.24.11 CONFIDENTIALITY:

Consistent with the Cultural Properties Act, Section 18-6-11.1 NMSA 1978 and Section 19-1-2.1 NMSA 1978, any information in the custody of the state land office concerning the location of cultural properties, the preservation of which is in the interest of the state of New Mexico, shall remain confidential and not subject to inspection under the New Mexico Inspection of Public Records Act, Section 14-2-1 to Section 14-2-12 NMSA 1978 unless the commissioner determines that the dissemination of such information will further the purposes of the Cultural Properties Act and will not create a risk of loss of cultural properties.

[19.2.24.11 NMAC - N, 12/01/2022]

19.2.24.12 ENFORCEMENT AND IMPLEMENTATION:

A. In the event any party becomes aware of actual or threatened damage to cultural properties on state trust lands where that party is conducting project activities or has filed an application to conduct project activities, the party shall immediately notify the state land office, which will then notify the SHPO, and the party shall immediately suspend all project activities in the immediate area of the damage or the threatened cultural property, in consultation with the state land office. Project activities shall remain suspended until the state land office, in consultation with the SHPO and any impacted tribe, approves resumption of those activities, and such approval may be conditioned on the party's adoption of compliance measures relating to project siting, avoidance, or mitigation of impacts to the cultural properties at issue. If human remains are uncovered, project activities within 50 feet shall stop immediately and the party shall notify the local law enforcement agency with jurisdiction, the state land office and the SHPO pursuant to the Cultural Properties Act, Subsection C of Section 18-6-11.2 NMSA 1978. Subsequent response by local law enforcement is governed by 4.10.11 NMAC.

B. In the event a party conducts project activities without first performing a survey or does not comply with any applicable avoidance and mitigation measures established by the survey or contained within the relevant lease, permit, or other instrument, and cultural property is damaged in the process, the party will be required to conduct an archaeological damage assessment at the party's own expense and will be liable for damages as determined by the archaeological damage assessment in the amount equal to the cost of restoration, stabilization, and interpretation of the damaged cultural property. If the party failed to conduct an archaeological survey as required by this rule prior to conducting surface disturbing activity, that party shall undertake such survey after the fact. In addition, the commissioner may recover an amount equal to twice the

cost of restoration, stabilization, and interpretation of the damaged cultural property, in accordance with the Cultural Properties Act, Section 18-6-9.2 NMSA 1978.

C. All parties that are subject to any provision of 19.2.24.8 and 19.2.24.9 NMAC shall promptly provide to the state land office all records relating to compliance with this part upon request.

D. As provided by the Cultural Properties Act, Section 18-6-9.2 NMSA 1978 the commissioner may initiate a civil action against any person violating the Cultural Properties Act on or with respect to state trust lands. This remedy is not exclusive and does not limit the rights or remedies that are otherwise available to the commissioner and the state land office under applicable law, including action against a lease, easement, or other instrument issued by the commissioner.

E. The commissioner may refer a criminal violation of the Cultural Properties Act, Sections 18-6-9, 18-6-9.1, and 18-6-9.3 NMSA 1978 to the New Mexico attorney general or to the district attorney in whose district the violation took place.

F. The state land office may undertake monitoring and staff training to protect against damage to cultural properties.

G. The commissioner will develop instructional materials and forms necessary for the implementation of this rule.

[19.2.24.12 NMAC - N, 12/01/2022]

PART 25-99: [RESERVED]

PART 100: RELATING TO OIL AND GAS LEASES

19.2.100.1 ISSUING AGENCY:

Commissioner of Public Lands, New Mexico State Land Office, P.O. Box 1148, Santa Fe, New Mexico 87504-1148.

[19.2.100.1 NMAC - Rp, 19.2.100.1 NMAC, 6/30/2016]

19.2.100.2 SCOPE:

This rule pertains to all oil and gas leases on those lands held in trust by the commissioner of public lands under the terms of the Enabling Act and subsequent legislation (trust lands).

[19.2.100.2 NMAC - Rp, 19.2.100.2 NMAC, 6/30/2016]

19.2.100.3 STATUTORY AUTHORITY:

The commissioner's authority to manage trust lands is found in Article 13 of the constitution of New Mexico, and in Section 19-1-1 NMSA 1978. The commissioner's authority to promulgate this rule is found in Section 19-1-2 NMSA 1978. The commissioner's authority over lessees and leases for the exploration, development and production of oil and natural gas on trust lands is found in Sections 19-10-1 *et seq* NMSA 1978.

[19.2.100.3 NMAC - Rp, 19.2.100.3 NMAC, 6/30/2016]

19.2.100.4 DURATION:

Permanent.

[19.2.100.4 NMAC - Rp, 19.2.100.4 NMAC, 6/30/2016]

19.2.100.5 EFFECTIVE DATE:

June 30, 2016, unless a later date is cited at the end of a section.

[19.2.100.5 NMAC - Rp, 19.2.100.5 NMAC, 6/30/2016]

19.2.100.6 OBJECTIVE:

The objective of 19.2.100 NMAC is to provide for the orderly and lawful administration, and the appropriate exploration, development and production, of oil and natural gas on trust lands.

[19.2.100.6 NMAC - Rp, 19.2.100.6 NMAC, 6/30/2016]

19.2.100.7 DEFINITIONS:

"Schedule of fees" means a list of fees that must be paid for performance of certain administrative functions. The schedule of fees shall be published on the state land office website and is subject to change at the discretion of the commissioner. Unless otherwise noted in the schedule of fees or in this rule, the fee shall be non-refundable.

[19.2.100.7 NMAC - Rp, 19.2.100.7 NMAC, 6/30/2016]

19.2.100.8 PRODUCTS INCLUDED:

The commissioner is authorized to execute and issue oil and gas leases covering state common school and institutional trust lands as lessor in the name of the state of New Mexico. The form of basic lease is statutory and includes carbon dioxide. All leases issued after June 9, 1963, include helium. Leases issued on or before June 9, 1963, do not include helium gas unless stipulated as provided in 19.2.100.55 NMAC. All forms are provided by the land office.

[19.2.100.8 NMAC - Rp, 19.2.100.8 NMAC, 6/30/2016]

19.2.100.9 CLASSIFICATION INTO DISTRICTS:

There are two types of districts, known respectively as restricted districts and non or unrestricted districts. A restricted district comprises an area usually in a proven oil and gas area and is created by statute or by authority of the commissioner. A non- or unrestricted district includes all lands outside the exterior boundaries of restricted districts.

[19.2.100.9 NMAC - Rp, 19.2.100.9 NMAC, 6/30/2016]

19.2.100.10 LANDS SUBJECT TO LEASE:

All state lands presently open for oil and gas lease purposes, or lands which may become open in the future due to the cancellation or expiration of leases, or for any other reason, may be leased only by competitive bid after public notice in accordance with 19.2.100.25 NMAC hereof, except as provided in 19.2.100.12 NMAC.

[19.2.100.10 NMAC - Rp, 19.2.100.10 NMAC, 6/30/2016]

19.2.100.11 RESTRICTED DISTRICTS - LEASING:

A. All lands within a restricted district are classified as restricted lands and no tract of such lands shall be leased without being further categorized by the commissioner as either regular or premium based upon five factors: oil and gas trends; oil and gas traps; reservoir volume and recovery rating; lease bonus rating; and exploration and activity. A percentage of zero percent to twenty percent shall be allocated to each factor. In allocating percentages, the following procedures and criteria shall be used:

(1) Oil and gas trends, i.e., where depositional and structural conditions are favorable for accumulation of oil and gas, shall be determined as accurately as possible by the commissioner upon the advice of a qualified geologist using drilling patterns, geological society data, well records and logs, available seismic surface and subsurface geological information and structural maps;

(2) The likelihood of locating structural or stratigraphic oil and gas traps necessary for the accumulation of oil or gas in commercial quantities shall be determined by the commissioner upon the advice of a qualified geologist and a petroleum engineer based upon available seismic and geological data;

(3) Reservoir volume and recovery rating shall be determined considering the nearest known reservoir conditions which may be reasonably assumed to be applicable. Known porosity, permeability, water saturation, pressures and recovery factors shall be included when available and shall be utilized by a qualified petroleum engineer in recommending a reservoir volume and recovery rating;

(4) Lease bonus rating shall be based upon all available recent leasing data which may be reasonably assumed to be applicable. In the absence of sufficient recent leasing data, drilling patterns, geological trends, available seismic data and known or reasonably assumed structural features may be considered in determining the lease bonus rating; and

(5) Exploration and drilling activity shall be determined considering all available information which may include drilling patterns, approved drilling permits, progress reports of drilling wells, workover notices and other information which may be reasonably assumed to be applicable.

B. If the total percentage of all factors for a tract of land is less than seventy-five percent, the tract shall be categorized as regular. If the total percentage of all factors for a tract of land is seventy-five percent or more, the tract shall be categorized as premium.

[19.2.100.11 NMAC - Rp, 19.2.100.11 NMAC, 6/30/2016]

19.2.100.12 UNRESTRICTED DISTRICTS:

Lands in an unrestricted district are ordinarily leased by offering them for sale at public auction to the highest and best bidder, as hereinafter explained and in accordance with 19.2.100.25 NMAC *et seq.* However, such lands may be leased on application without bidding if, in the opinion of the commissioner, the best interests of the trust will be served by so doing.

[19.2.100.12 NMAC - Rp, 19.2.100.12 NMAC, 6/30/2016]

19.2.100.13 TERM AND FORM OF LEASES:

The commissioner shall issue oil and gas leases upon one of three statutory forms as follows, the form and royalty rate to be specified in the regular notice of public lease sale:

A. For lands classified as non-restricted lands under Section 19-10-3 NMSA 1978 and 19.2.100.9 NMAC, the commissioner shall use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978.

B. For lands classified as restricted lands and categorized as regular under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the commissioner, in the commissioner's discretion, may use the exploratory lease form as set forth in Section 19-10-4.1 NMSA 1978 or the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978.

C. For lands classified as restricted lands and categorized as premium under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the commissioner, in the commissioner's discretion, may use the exploratory lease form as set forth in Section

19-10-4.1 NMSA 1978, the discovery lease form as set forth in Section 19-10-4.2 NMSA 1978 or the development lease form as set forth in Section 19-10-4.3 NMSA 1978; provided, that in using the development lease form for a tract receiving less than 90 total percentage points under Section 19-10-3 NMSA 1978 and 19.2.100.11 NMAC, the royalty rate shall not exceed three-sixteenths.

[19.2.100.13 NMAC - Rp, 19.2.100.13 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.14 ANNUAL RENTAL - PRIMARY AND SECONDARY TERM:

All leases issued by the commissioner shall provide for an annual rental to be paid by the lessee, whether or not a lease is producing oil or gas. The initial rental shall be fixed by the commissioner, but in no case shall the initial amount be less than twenty-five cents (\$0.25) nor more than one dollar (\$1.00) per acre. For ten-year leases, if production in paying quantities is obtained during the primary term of the first five years, then the initial rental rate shall be applicable as long as the lease is held by such production. If no production in paying quantities is obtained during the primary term and the lease enters the secondary term of five years, the rental for the remaining life of the lease shall be either double that of the primary term or the highest rate of rental prevailing in the area at the commencement of the secondary term, whichever is higher.

[19.2.100.14 NMAC - Rp, 19.2.100.14 NMAC, 6/30/2016]

19.2.100.15 MINIMUM CHARGE:

The minimum initial charge for any lease shall be one hundred dollars (\$100.00) or the minimum rental rate, whichever is greater, plus the application fee as set forth in the schedule of fees. Minimum rental rate is computed by multiplying the rental rate by the acreage in each advertised tract.

[19.2.100.15 NMAC - Rp, 19.2.100.15 NMAC, 6/30/2016]

19.2.100.16 LIMITATION OF ACREAGE:

Unless otherwise approved and granted by the commissioner, no oil and gas lease shall be issued to cover more than the total number of acres of two sections of land to be wholly or partially included in the lease, regardless of the number of acres within those sections, provided that the lease may incorporate lands within more than two different sections of land.

[19.2.100.16 NMAC - Rp, 19.2.100.16 NMAC, 6/30/2016]

19.2.100.17 DIFFERENT RENTAL DISTRICTS - HIGHEST RENTAL PREVAILING:

Where part of the lands in any lease are situated in one rental district and part thereof in another, or other districts, the lessee shall pay the rental prevailing in the district wherein part of the lands affected are situated having the highest rental.

[19.2.100.17 NMAC - Rp, 19.2.100.17 NMAC, 6/30/2016]

19.2.100.18 [RESERVED]

[19.2.100.18 NMAC - Rp, 19.2.100.18, 6/30/2016]

19.2.100.19 CLEAR-LIST OF LANDS FROM UNITED STATES ESSENTIAL BEFORE ISSUANCE OF LEASE:

Ordinarily, leases will not be issued for selected lands which have not been clear-listed or for any lands where the records of the state land office show the title of the state to be in question, controversy or dispute.

[19.2.100.19 NMAC - Rp, 19.2.100.19 NMAC, 6/30/2016]

19.2.100.20 LIMITATION TO NOT MORE THAN TWO PERSONS OR LEGAL ENTITIES - TRUST LIMITATIONS - WAIVERS:

As a matter of administration and without affecting property rights in oil and gas leases, whenever more than two persons or legal entities apply for the issuance of an oil and gas lease, the commissioner shall grant the lease in the names of no more than two persons acting as attorneys-in-fact for all potential interest owners. In the case of a trust, the trust must be express and a copy of the creating document filed with the commissioner. If more than two trustees are named, a lease shall be granted in the names of no more than two trustees acting as attorneys-in-fact for all trustees. The limitations in this rule may be waived by the commissioner for good cause.

[19.2.100.20 NMAC - Rp, 19.2.100.20 NMAC, 6/30/2016]

19.2.100.21 LEASE WITHIN 25 MILES SQUARE - RIGHT OF COMMISSIONER:

No one lease may be issued for lands which will not fall within the area of a square twenty-five miles long by twenty-five miles wide; however, this requirement may be waived by the commissioner in any proper case.

[19.2.100.21 NMAC - Rp, 19.2.100.21 NMAC, 6/30/2016]

19.2.100.22 LIMITATION TO NOT MORE THAN ONE BENEFICIARY INSTITUTION:

Leases will not be issued covering lands belonging to more than one beneficiary institution.

[19.2.100.22 NMAC - Rp, 19.2.100.22 NMAC, 6/30/2016]

**19.2.100.23 SURETY TO PROTECT SURFACE PURCHASER AND LESSEE -
WAIVERS:**

A. Before any lessee shall commence development or operations, including any and all prospecting activities upon the lands, such lessee or operator shall execute and file with the commissioner a good and sufficient bond or other surety, in an amount to be fixed by the commissioner but not less than ten thousand dollars (\$10,000) in favor of the state of New Mexico for the benefit of the appropriate trust beneficiary and the state's contract purchasers, patentees and surface lessees, to secure payment to the extent allowed by law for such damage to their interests and tangible improvements upon such lands as may be suffered by reason of development, use and occupation of the lands by the oil and gas lessee.

B. A bond or other surety in the minimum amount of ten thousand dollars (\$10,000) for each lease shall be deemed sufficient unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided, however, that if a lessee holds more than one oil and gas lease, a blanket bond or other surety in the amount of twenty thousand dollars (\$20,000) will be acceptable unless and until the commissioner determines, or one or more surface lessees or purchasers show the commissioner, that such an amount is not adequate in a given case. Provided further, that if any purchaser, patentees or surface lessees shall file with the commissioner a waiver duly executed and acknowledged by the purchaser, patentee or surface lessee of the purchaser's, patentee's or surface lessee's right to require such bond or other surety pursuant to Section 19-10-26 NMSA 1978 the development, occupation and use of the lands by the oil and gas lessee may in the discretion of the commissioner be permitted without said surety.

C. With the approval of the commissioner, in lieu of the single and blanket bonds for oil and gas lessees, a twenty-five thousand dollar (\$25,000) bond or other surety may be used at the option of lessee for the use and benefit of the commissioner, to secure surface improvement damage and the performance of the lessee under one or more state leases or permits for minerals, oil and gas, coal or geothermal resources or as holder under one or more state rights of way or easements which the lessee has executed with the commissioner. The lessee will be obligated to perform and keep all terms, covenants, conditions and requirements of all state leases for minerals, oil and gas, coal or geothermal resources and of all state rights of way and easements executed with the commissioner, including the payment of royalties when due and compliance with all established mining plans and reclamation requirements.

[19.2.100.23 NMAC - Rp, 19.2.100.23 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.24 [RESERVED]

[19.2.100.24 NMAC - Rp, 19.2.100.24, 6/30/2016]

19.2.100.25 COMPETITIVE BIDDING ON ALL LANDS WITHIN RESTRICTED DISTRICTS:

No oil and gas leases upon any state lands within any restricted district will be issued except to the highest and best bidder after competitive offers by sealed bids or a public auction. Regularly advertised sales covering lands within restricted areas are held on the third Tuesday of each month, or on the next business day following where the third Tuesday falls on a legal holiday. Lands outside the restricted districts may also be offered on said third Tuesday when it is deemed advisable. The commissioner may, in the commissioner's discretion, hold oil and gas lease sales, as aforesaid, by a combination of the methods set out above, and may also hold any sale at the county seat of the county where the lands or the greater part thereof are situated.

[19.2.100.25 NMAC - Rp, 19.2.100.25 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.26 NOTICE OF SALE:

On or before ten days prior to the date of any such sale, notice of the same shall be posted in a conspicuous place in the state land office specifying the place, date and hour of the sale, and containing a description of the lands to be offered for lease, with a statement of the minimum bid which will be accepted.

[19.2.100.26 NMAC - Rp, 19.2.100.26 NMAC, 6/30/2016]

19.2.100.27 ACCEPTANCE OF BIDS:

Up to the hour set for such sale, the commissioner will receive sealed bids for an oil and gas lease upon any tract of land described in the posted notice. All sealed bids submitted will be opened at the hour mentioned in the notice, and the lease will be awarded to the highest and best bidder, subject to the discretionary right of the commissioner to reject any bid.

[19.2.100.27 NMAC - Rp, 19.2.100.27 NMAC, 6/30/2016]

19.2.100.28 WHERE NO SEALED BIDS RECEIVED:

Each of said tracts described in the notice on which no sealed bids are received may be offered for lease at public auction to the highest and best bidder, for cash, and lease will be awarded to such highest and best bidder if the offer shall be deemed acceptable. If no sealed bids or other bids are received for any tract described in the notice, such tract will be withdrawn until further notice at the discretion of the commissioner.

[19.2.100.28 NMAC - Rp, 19.2.100.28 NMAC, 6/30/2016]

19.2.100.29 APPLICATION UNDER OATH - FEES:

Application for lease accompanying sealed bids shall be executed under oath by the applicant, or by the applicant's agent or attorney, duly authorized in writing, or by an officer or attorney-in-fact of a corporation, if application is by a corporation, and must be accompanied by a bid fee as set forth in the schedule of fees (applied toward application fee for successful bidder) and the amount of the first year's rental and bonus offered. Unless approval of the commissioner for use of non-certified exchange is obtained, payment shall be made in cash, money order or certified check on a solvent bank. The land office furnishes application blanks upon request.

[19.2.100.29 NMAC - Rp, 19.2.100.29 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.30 TIE BIDS:

When two or more sealed highest and best bids received for the same tract of land are equal, the commissioner (if such highest and best bidders are present and cannot agree, by stipulation in writing, on how such tract shall be disposed of) shall call such equal highest and best bidders before the commissioner in the state land office (or if such sale is held in the county in which such lands are located, the person conducting such sale shall call such equal highest and best bidders before the person) on the same day such bids are opened, and again offer such tracts at auction to such bidders only, and grant such lease to the then highest and best bidder. If such bidders are not present when such bids are opened, then the commissioner will notify such bidders to submit sealed proposals within 10 days next following the date of the sale at which such bids were determined to be equal.

[19.2.100.30 NMAC - Rp, 19.2.100.30 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.31 RIGHT TO REJECT ANY AND ALL BIDS - WITHHOLDING FROM LEASING:

The commissioner reserves the right to reject any and all bids not in conformity with law and the posted notice of sale, and to require higher rentals, impose additional restrictions and requirements and to withhold lands from leasing whenever, in the commissioner's discretion, the commissioner shall deem it to be for the best interests of the trust to do so.

[19.2.100.31 NMAC - Rp, 19.2.100.31 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.32 TRANSFER AND ASSIGNMENT OF OIL AND GAS LEASES:

Any transfer of an oil and gas lease or assignment is considered to convey an interest in real property and is therefore required to be formally executed by the proper parties and upon prescribed forms furnished by the state land office before such transfer or assignment shall be approved by the commissioner. Ordinarily, leases shall be

transferred or assigned in the names of no more than two persons or legal entities as provided in 19.2.100.20 NMAC.

[19.2.100.32 NMAC - Rp, 19.2.100.32 NMAC, 6/30/2016]

19.2.100.33 JOINT TENANTS:

Where an oil and gas lease is held in joint tenancy with the right of survivorship and a tenant dies, the lease shall be considered as belonging to the survivor or survivors and shall be so transferred upon presentation of a certified copy of the death certificate of the deceased tenant and payment of the proper rentals and fees.

[19.2.100.33 NMAC - Rp, 19.2.100.33 NMAC, 6/30/2016]

19.2.100.34 RESIDENT DECEDENT:

To effect transfer of regular interest in state oil and gas leases of a deceased person resident in New Mexico, proper probate proceedings should be had in the county of residence of the deceased and certified copies of such proceedings, showing proper legal authority to transfer, should be filed with the commissioner.

[19.2.100.34 NMAC - Rp, 19.2.100.34 NMAC, 6/30/2016]

19.2.100.35 FOREIGN DECEDENT:

In the event a decedent owner of a lease was resident of a state other than New Mexico, the estate must be probated in the state of such residence and ancillary proceedings conducted in the proper New Mexico court, and certified copies of such proceedings showing proper legal authority to transfer must be filed with the commissioner. Provided, however, where the decedent died on or after July 1, 1976, the lease may be transferred upon the foreign personal representative's compliance with the provisions of the New Mexico Probate Code.

[19.2.100.35 NMAC - Rp, 19.2.100.35 NMAC, 6/30/2016]

19.2.100.36 CO-OPERATIVE AGREEMENTS:

Assignments of acreage committed to unit or co-operative agreements shall meet the requirements of Subsection G of 19.2.100.51 NMAC.

[19.2.100.36 NMAC - Rp, 19.2.100.36 NMAC, 6/30/2016]

19.2.100.37 [RESERVED]

[19.2.100.37 NMAC - Rp, 19.2.100.37, 6/30/2016]

19.2.100.38 LEASE CONTINUED BY PRODUCTION IN PAYING QUANTITIES:

Except as otherwise provided in a co-operative agreement, production in paying quantities upon any part of the acreage included in any state oil and gas lease continues the lease upon every subdivision thereof (whether the same remains in the original lease or is assigned before or after production is had) subject, however, to the continued payment of rentals at the rate in effect at the time of production, and further subject to the implied covenants of development contained in any such lease.

[19.2.100.38 NMAC - Rp, 19.2.100.38 NMAC, 6/30/2016]

19.2.100.39 ASSIGNMENTS TO BE IN TRIPLICATE - ACKNOWLEDGMENT REQUIRED:

Assignments of oil and gas leases shall be filed in triplicate in the office of the commissioner and must be executed and acknowledged in the manner provided for transfer of real estate in New Mexico. The original copy of each assignment will be recorded and filed as a public record in the state land office and one copy returned to the person entitled to same.

[19.2.100.39 NMAC - Rp, 19.2.100.39 NMAC, 6/30/2016]

19.2.100.40 ASSIGNMENTS TO BE RECORDED IN THE LAND OFFICE:

Assignments must be filed with the commissioner for approval within one hundred days after having been signed by the assignor as shown upon the face of the instrument, accompanied by a filing fee as set forth in the schedule of fees. Those presented after expiration of that time shall not be approved unless it can be shown to the satisfaction of the commissioner that extreme hardship will result to one or more of the parties and that no prejudice to the rights of the state will occur. An additional fee as set forth in the schedule of fees will be charged for each such assignment (or each group of assignments if the same basic facts are involved) to cover expense of investigation and records search.

[19.2.100.40 NMAC - Rp, 19.2.100.40 NMAC, 6/30/2016]

19.2.100.41 RESTRICTIONS:

Assignments shall not be accepted nor approved by the commissioner:

A. for less than assignor's entire interest in any legal subdivision (except where transfer is by operation of law);

B. for less than a legal subdivision;

C. in the names of more than two persons or legal entities. (See 19.2.100.20 NMAC);

D. in the name of a trusteeship unless the trust is expressly set forth and not more than two persons are named as trustee;

E. after *lis pendens* is filed;

F. for any assignment containing any language other than the approved form;

G. where the assignment covers acreage included in more than one lease;

H. if the lease is not in good standing; or

I. unless the assignor covenants to the assignee and the commissioner that the assigned leasehold estate is valid and subsisting and that all rental and royalties due thereunder have been properly paid.

[19.2.100.41 NMAC - Rp, 19.2.100.41 NMAC, 6/30/2016]

19.2.100.42 APPROVAL AND FILING WITHHELD:

A. When assignments are accompanied by personal checks, the commissioner reserves the right to withhold approval of any and all assignments until checks are cleared and rentals on the lease from which assignments are made must be fully paid before assignments are subject to filing in the state land office.

B. When an assignment is presented to the commissioner for approval and the address of record of the assignee thereon is the same as that of the assignor, or when such address had not been established on the records of the state land office, or when the approved assignment is to be returned to the assignor, the commissioner reserves the right to withhold approval and filing of the assignment until the assignee has verified, under oath, the address and the assignee's acceptance of the assignment of the lease.

[19.2.100.42 NMAC - Rp, 19.2.100.42 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.43 EFFECT OF COMMISSIONER'S APPROVAL - MISCELLANEOUS INSTRUMENTS:

Upon approval by the commissioner, the assignor shall be relieved from all obligations owing to the state with respect to the lands embraced in the assignment, and the state shall be likewise relieved from all obligations to the assignor as to the said lands, and the assignee shall succeed to all of the rights and privileges of the assignor and assumes all of the duties and obligations of the assignor as to the said lands. Provided, however, any record owner of any lease may enter into any contract for development of the leasehold premises or any portion thereof, or may create overriding royalties or

obligations payable out of production, or enter into any other agreements with respect to the development of the leasehold premises or disposition of the production therefrom, and it shall not be necessary for any such contracts, agreements or other instruments to be approved by the commissioner, but nothing contained in these items shall relieve the record title owner of such lease from complying with any of the terms or provisions thereof, and the commissioner shall look solely and only to such record owner for compliance therewith, and in any controversy respecting any such contracts, agreements or other instruments entered into by the lessee with other persons, neither the state of New Mexico nor the commissioner shall be a necessary party. All such contracts and other instruments may be filed either in the office of the commissioner or recorded in the office of the county clerk wherein the lands are situated, and the filing or recording thereof shall constitute notice to all the world of the existence and contents of the instrument so filed. The fee for filing such miscellaneous instruments in the office of the commissioner shall be as set forth in the schedule of fees.

[19.2.100.43 NMAC - Rp, 19.2.100.43 NMAC, 6/30/2016]

19.2.100.44 [RESERVED]

[19.2.100.44 NMAC - Rp, 19.2.100.44 NMAC, 6/30/2016]

19.2.100.45 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY PURCHASE:

Transfer of oil and gas interests by corporations shall be formally executed, as in the case of transfer of real estate in New Mexico, in conformity with statute and by payment of proper fees as provided in this rule.

[19.2.100.45 NMAC - Rp, 19.2.100.45 NMAC, 6/30/2016]

19.2.100.46 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY CONSOLIDATION:

In cases where corporations consolidate, transfer of oil and gas interests to the newly created corporation shall be accomplished pursuant to 19.2.100.39 through 19.2.100.45 NMAC.

[19.2.100.46 NMAC - Rp, 19.2.100.46 NMAC, 6/30/2016]

19.2.100.47 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY MERGER:

In cases where two or more corporations merge, transfer of oil and gas interests to the surviving corporation shall be accomplished by filing with the commissioner a copy of the merger agreement or certificate of merger. Thereafter, the oil and gas lease shall be transferred on the books of the land office in the name of the surviving corporation.

[19.2.100.47 NMAC - Rp, 19.2.100.47 NMAC, 6/30/2016]

19.2.100.48 TRANSFER OF RIGHTS BY CORPORATE ENTITIES - BY REORGANIZATION:

Where the assets of any corporation are taken over under court order by a corporation, the procedure will follow the provisions of the court order, which should direct separate assignments to be executed and filed for approval in the state land office.

[19.2.100.48 NMAC - Rp, 19.2.100.48 NMAC, 6/30/2016]

19.2.100.49 NOTICE OF PENDENCY OF SUIT FEES - EFFECT ON THE ABILITY TO ASSIGN LEASE:

At the time of filing of any suit affecting an oil and gas lease or the interest of any person therein, or at any time thereafter before judgment, the plaintiff may file with the commissioner a notice of pendency of suit containing the names of the parties thereto, the object of the action and a description of the lands affected, and upon filing of such notice and payment of the required fees as set forth in the schedule of fees, the land affected by such suit will not be subject to assignment or other disposition until such suit shall be finally determined and disposed of.

[19.2.100.49 NMAC - Rp, 19.2.100.49 NMAC, 6/30/2016]

19.2.100.50 CANCELLATION FOR DEFAULT:

The commissioner may cancel any lease or assignment thereof for default upon giving the lessee or assignee notice by registered mail (certified mail if the lease so provides) of the commissioner's intention to cancel, specifying the default and, unless the lessee or assignee remedies the default within thirty days of the mailing date, the commissioner may cancel the lease or assignment. Proof of receipt of notice is not necessary or required before a valid cancellation may be entered.

[19.2.100.50 NMAC - Rp, 19.2.100.50 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.51 CO-OPERATIVE AND UNIT AGREEMENTS:

A. Purpose - consent: The commissioner may consent to and approve agreements made by lessees of state lands for any of the purposes enumerated in Section 19-10-45 NMSA 1978.

B. Application - requisites of agreements: Formal application shall be filed with the commissioner for approval of a co-operative or unit agreement at least 20 days in advance of the New Mexico oil conservation division's hearing date. A filing fee as set forth in the schedule of fees shall be paid for each section or fractional part thereof, whether the acreage is federal, state or privately owned. A unit agreement presented must have a unique unit name that will identify the agreement for so long as the agreement remains in effect and only under extraordinary circumstances will a unit

name change be allowed after initial approval is granted. Applications for approval shall contain a statement of facts showing:

(1) that such agreement will tend to promote the conservation of oil and gas and the better utilization of reservoir energy;

(2) that under the proposed unit operation, the state of New Mexico will receive its fair share of the recoverable oil and gas in place under its lands in the proposed unit area;

(3) that each beneficiary institution of the state of New Mexico will receive its fair and equitable share of the recoverable oil and gas under its lands within the unit area; and

(4) that such unit agreement is in other respects for the best interest of the trust.

C. Information to be furnished:

(1) Complete geological and engineering data shall be presented with the application and the information offered for the commissioner's action must be in clear and understandable form. Such data shall be kept confidential by the commissioner pursuant to Section 19-1-2.1 NMSA 1978 for a period of six months or until the unit agreement is approved, whichever first occurs. Then such data will be made a permanent part of the records and open for public inspection. If for any reason such proposed agreement is not approved, then at the request of the applicant, the data shall be returned to the applicant.

(2) Use of fresh water: The use of fresh water in waterflood units is discouraged in the cases where salt water is practical. If an operator plans to use fresh water in a proposed unit, the following specific information should also be provided:

(a) laboratory analyses of water compatibility tests (fresh vs. salt water);

(b) reservoir analyses for swelling clays and soluble salts;

(c) estimate of monthly make-up water required for operations; and

(d) location and depth of area salt water wells or quantities of produced water available for injection.

D. Decision postponed: In any matter respecting co-operative and unit agreements, the commissioner may postpone the commissioner's decision pending action by the oil conservation division and may use any information obtained by the commissioner's own investigators, or obtained by the oil conservation division to enable the commissioner to act properly on the matter. The applicant shall deposit with the commissioner a sum of

money estimated to be sufficient to meet the actual and necessary expenses of any investigation or inspection by representatives of the state land office.

E. Leases conformed: When any co-operative or unit agreement has been approved by the commissioner and executed by the lessee, the terms and provisions of the lease, so far as they apply to lands within the unit area, are automatically amended to conform to the terms and provisions of the co-operative agreement; otherwise, said terms and provisions shall remain in full force and effect.

F. Posting to tract books: In every case where a co-operative unit agreement is finally approved by the commissioner such agreement and the application therefor shall be entered upon the tract books of the state land office, filed and recorded, together with any order respecting the same issued by the New Mexico oil conservation division; any modification or dissolution of such co-operative or unit agreement shall be likewise entered and filed. The fees therefor shall be as set forth in the schedule of fees.

G. Assignments: No assignment of acreage under lease within any unitized or co-operative area will be approved by the commissioner unless the assignment is subject to the provisions of the co-operative or unit agreement covering the area within which the acreage sought to be assigned lies, or unless the commissioner and all parties to the co-operative agreement agree, in writing, that such acreage is not needed for proper co-operative operations.

H. Form of agreement: No specific forms for the various types of co-operative or unit operating agreements are required; however, sample forms of agreements now in operation will be furnished for guidance upon request, if available. Agreements submitted for approval must be submitted in duplicate. At least one copy must contain original signatures, which copy, after approval of the agreement, will be retained by the commissioner as the approved copy.

[19.2.100.51 NMAC - Rp, 19.2.100.51 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.52 FORCED POOLING - OIL CONSERVATION DIVISION ORDER:

A. The record owner or operator of all oil and gas leases covering the state owned lands forced pooled by order of the New Mexico oil conservation division, either under Section 70-2-17 NMSA 1978 (gas proration unit) or under Section 70-7-1 NMSA 1978 (statutory unitization act for secondary recovery), shall file with the commissioner the following information:

(1) one copy of application for hearing for forced pooling at least ten days prior to date set for hearing;

(2) state lease number, record owner and legal description of all state lands forced pooled;

- (3) oil conservation division order number and date;
- (4) legal description and type (federal, fee, or Indian) of all lands included in forced pooling order;
- (5) location, formation, and depth of well;
- (6) oil conservation division approved copies of forms numbered C-101, C-102, C-103, C-104 and C-105. These are to be filed at same time as filed with oil conservation division;
- (7) date production commenced; and
- (8) a copy of the agreement for unit operations involving state lands approved in writing by the oil conservation division, and signed by parties required by the agreement to initially pay at least seventy-five percent of unit operating costs, and by owners of at least seventy-five percent of the non-cost bearing interests such as royalties, overriding royalties and production payments.

B. This rule has no application to a situation wherein all parties have voluntarily executed a communitization agreement covering all lands in a proration unit or a secondary recovery unit and such agreement has been approved by the commissioner.

[19.2.100.52 NMAC - Rp, 19.2.100.52 NMAC, 6/30/2016]

19.2.100.53 COMMINGLING AND OFF-LEASE STORAGE OF OIL AND GAS ON STATE TRUST LANDS:

A. Commingling prohibited: Unless approved pursuant to Subsection B of 19.2.100.53 NMAC, the commingling, confusion or the intercommunication of oil or gas production from any state well with any production from any other well, whether state or non-state, by the use of common tankage facilities or central delivery points, is strictly prohibited.

B. Commingling allowed - off-lease storage:

(1) Commingling of oil and gas production, including downhole commingling, if properly metered or allocated and accounted for, may be permitted within the discretion of the commissioner only after the commissioner's receipt of a written application containing the information specified in Subsection C of 19.2.100.53 NMAC and an application fee as set forth in the schedule of fees.

(2) Off-lease storage of production may be permitted if properly metered or allocated and accounted for, within the discretion of the commissioner only after the commissioner's receipt of a written application containing the information specified in

Subsection C of 19.2.100.53 NMAC and an application fee as set forth in the schedule of fees.

C. Application for permission to commingle or off-lease store production.

Applications for permission to commingle or off-lease store production shall be directed to the commissioner and shall include:

- (1) formal application stating the type of permission desired and the reasons therefor, accompanied by an application fee as set forth in the schedule of fees;
- (2) plat showing the location of leases, wells, flow lines, metering facilities and common tankage. All plats and diagrams should differentiate between surface and underground pipe;
- (3) a list of the involved leases arranged by their state land office lease number, their legal description and including state beneficiaries;
- (4) a designation of the pool from which each well produces;
- (5) an economic analysis of proposed operation showing profit or loss to the state of New Mexico;
- (6) schematic diagram of entire system from production manifold to pipeline connection showing position of all components of flow stream;
- (7) description of the operating sequence explaining the complete operation;
- (8) the applicant's proposal for allocating or metering production so that all production is properly accounted for at the well; and
- (9) any other pertinent data that will assist the commissioner in deciding upon the application.

[19.2.100.53 NMAC - Rp, 19.2.100.53 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.54 ACREAGE TAKEN FOR MILITARY PURPOSES - WAIVER OF DEVELOPMENT REQUIREMENTS:

A. Where the use of lands embraced in any state oil and gas lease is taken by the United States government for military purposes, under such circumstances as will prevent drilling and development by the lessee, the commissioner may, on application by the lessee, waive compliance with the drilling and development requirements of any such lease during the period of such use and for six months thereafter, but in no event for more than five years from the beginning of such use by the United States. Where the use of only part of the lands embraced in such oil and gas lease is taken, any waiver shall extend only to the lands the use of which is so taken.

B. In all cases, the lessee shall continue to pay rentals at the rate which is in effect at the time of taking, and failure to so pay rentals subjects the lease to the regular cancellation procedure.

C. Waivers, when executed and approved, relate back to the date of the notice of taking by the United States.

[19.2.100.54 NMAC - Rp, 19.2.100.54 NMAC, 6/30/2016]

19.2.100.55 STIPULATION TO CURRENT LEASE PROVISIONS:

A. The owner of any oil and gas lease issued by the commissioner which does not contain all of the provisions of the current applicable five- or ten-year lease form or which does not include helium gas within its terms may file an application to include all the provisions of such applicable lease form and to include helium gas, provided the lease has been maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations.

B. The application for stipulation shall be made in duplicate and on a form prescribed and furnished by the commissioner and shall be filed in duplicate, accompanied by the fee as set forth in the schedule of fees.

C. Upon filing of such an application and determination by the commissioner that the application conforms to the governing statutes and this rule, the commissioner shall execute a stipulation and thereupon the provisions of the current applicable five- or ten-year lease form and inclusion of helium gas will be part of said existing lease with the like effect as if originally incorporated therein; provided, however, that no such stipulation shall be effective or binding on any of the parties until each and every working interest owner and record owner of the original lease or approved assignment thereof has signed the stipulation.

D. One executed copy of the stipulation will be attached to the original lease in the files of the commissioner. The remaining copy will be forwarded to the applicant with the receipt of the state land office evidencing payment of the filing fee.

[19.2.100.55 NMAC - Rp, 19.2.100.55 NMAC, 6/30/2016]

19.2.100.56 CONTINUATION OF LEASE AFTER EXPIRATION OF TERM:

A. The payment in advance of rentals for the lease year commencing at the expiration of the secondary term in a 10-year lease or at the expiration of the five-year term in a five-year lease shall be a prerequisite for relying upon current bona fide drilling or reworking operations to extend the lease beyond such term. There will be no refund by the state land office of any sum received by it as rental under the terms of any oil and gas lease issued by the commissioner, whether in the primary or secondary term or subsequent to the expiration thereof.

B. The owner of any oil and gas lease proposing to conduct drilling or reworking operations and proposing to rely upon such operations to extend the lease beyond the fixed term in accordance with the provisions thereof shall file in the oil and gas division of the state land office, prior to the expiration of the secondary term of a 10-year lease or the primary term of a five-year lease, a statement in writing of the location of the proposed well, the drilling or reworking of which will be relied upon to continue said lease in effect, the depth to which it is proposed to drill said well, the reworking operations which, if any, are contemplated and the name and address of the drilling contractor or other persons who will conduct such operations. The approval by the commissioner of the operations so proposed will normally be evidenced by the signature of the commissioner on a copy of such statement, but any such proposed operation, about which a statement has been filed in accordance with this item, shall be conclusively presumed to have been approved by the commissioner prior to the expiration of the lease to which it relates, unless the commissioner shall, prior to the expiration of said lease, advise the applicant, in writing, of the commissioner's disapproval and the reasons therefor.

C. The owner of an oil and gas lease who, subsequent to the expiration of the secondary term in a 10-year lease or the primary term in a five-year lease, is engaged in drilling or reworking operations on lands embraced therein, and who proposes to rely upon such operations as extending said lease in accordance with the provisions thereof shall file a report of the status of such operations for each 30 day period during which they are continued. It shall contain a statement of the depth of said well, the status of any reworking operations at the end of said 30 day period, a general statement of the drilling or reworking operations that have been accomplished during the preceding 30 days, and the fact, if it is a fact, that such operations are bona fide in progress and will be continued. Status reports filed in the office of the commissioner within 15 days after the close of such a 30 day period shall meet the requirements of the lease. If operations have ceased during any period covered by a status report, such report shall state the date of cessation and the reason therefore, and the date of resumption of operations, if any.

D. Each application and stipulation filed under Subsection B of 19.2.100.56 NMAC shall be signed by the lease owner, if an individual; and if a partnership or corporation, by a responsible official thereof. The application shall be verified under oath and the stipulation shall be acknowledged. Each statement of operations and status report filed under this rule shall be signed by the lease owner, if an individual, or by a responsible official, if a partnership or corporation, and shall be verified by affidavit of the signer.

E. Operations conducted by any person under the terms of an oil and gas lease issued by the commissioner, including all operations conducted pursuant to this rule shall be subject to inspection at all reasonable times by representatives of the state land office.

[19.2.100.56 NMAC - Rp, 19.2.100.56 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.57 CALCULATING AND REMITTING OIL AND GAS ROYALTIES:

A. Payment of royalties - appeal to commissioner: Payment shall be made in the time and in the manner described below:

(1) Each lessee whose average monthly state royalty payment for the twelve months ending with the latest March 31, was twenty-five thousand dollars (\$25,000) or less shall pay royalties on or before the twenty-fifth day of the second month following the month for which royalties are due. Unless the remitter elects to pay royalties by means of electronic funds transfer, payment shall be made by check payable to the commissioner of public lands. Payment shall be mailed or delivered to the taxation and revenue department along with any paper report. If the remitter elects to pay royalties by means of electronic funds transfer, payment shall be made in accordance with Option 1 or Option 2 in Paragraph (4) of Subsection A of 19.2.100.57 NMAC and shall conform with the special instructions on electronic transmission of state royalty payments for separate oil and gas royalty reporting in the ONGARD system.

(2) Unless an election is timely made to pay royalties pursuant to Paragraph (3) of this Subsection, each lessee whose average monthly state royalty payment for the twelve months ending with the latest March 31, was greater than twenty-five thousand dollars (\$25,000) shall pay royalties on or before the twentieth day of the month following the month for which the royalties are due. Payment shall be made in accordance with Paragraph (4) of this Subsection.

(3) In lieu of paying royalties within the time specified by Paragraph (2) of this Subsection, a lessee may submit to the lessor, in writing, an election to pay royalties within the time frames specified for state severance taxes. Royalties paid by any lessee making the election under this Paragraph shall be due on the twenty-fifth day of the second month following the month for which the royalties are due. However, on or before the twenty-fifth day of the month in which the election is made and on or before the twenty-fifth day of each month thereafter, the lessee shall also make an advance royalty payment. Beginning with royalties initially paid under this Paragraph and each month thereafter, the previous month's advance royalty payment shall be taken as a credit. The amount of the advance royalty payment shall be adjusted by July 25 of each year and shall equal the average monthly royalty paid during the twelve months ending with the latest March 31. Payment shall be made in accordance with Paragraph (4) of this Subsection.

(4) Lessees remitting royalties under the provisions of Paragraphs (2) and (3) of this Subsection shall make payments in accordance with one of the four options listed below. For payment to be considered timely, the state land office must have access to funds on the due date for royalty remittances. Payment shall be made in accordance with the instructions on special payment procedures. Such payment can only be utilized with the separate oil and gas royalty reporting in the new ONGARD system.

(a) Option 1: automated clearinghouse (ACH) deposit.

(b) Option 2: fedwire transfer.

(c) Option 3: check drawn on any New Mexico financial institution. Payment shall be made in the manner prescribed by the provisions of this rule.

(d) Option 4: check drawn on any domestic non-New Mexico financial institution. Payment shall be made in the manner prescribed by the provisions of this rule.

(e) "Financial institution" means any state- or nationally-chartered federally-insured financial institution.

(5) Irrespective of whether a lessee pays royalties pursuant to Paragraph (1), (2) or (3) of this Subsection, all royalty information shall be reported on forms prescribed by the lessor and shall be submitted on or before the twenty-fifth day of the second month following the month for which royalties are due. The lessee shall indicate in the space provided if payment accompanies the report or if payment is made by separate check, fedwire or ACH transfer.

B. Effective date: The provisions of 19.2.100.57 NMAC shall be used to calculate, report and remit royalties for oil and gas produced on or after January 1, 1990.

[19.2.100.57 NMAC - Rp, 19.2.100.57 NMAC, 6/30/2016]

19.2.100.58 OCD REPORTS:

The producer or lessee of producing state lands shall file in the New Mexico state land office, Santa Fe, New Mexico, at the time of filing with the New Mexico oil conservation division (OCD), reports labeled C-101 through C-105.

[19.2.100.58 NMAC - Rp, 19.2.100.58 NMAC, 6/30/2016]

19.2.100.59 WAIVER OF DEVELOPMENT IN POTASH OR OTHER MINERAL AREAS:

Application for waiver of compliance with exploratory drilling development or production requirements of a lease, or to extend the term thereof, where exploration and development operations of the oil and gas lease are inconsistent with the exploration and development operations of a state mineral lease, and where waste will occur, must be made in writing and accompanied by a filing and approval fee as set forth in the schedule of fees. Such applications must be filed in the state land office at least thirty days before expiration date of the oil and gas lease. No waivers or extension shall be granted by the commissioner for more than five years. Ordinarily, waivers will be granted by the commissioner only as to the legal subdivisions upon which the conflict exists.

[19.2.100.59 NMAC - Rp, 19.2.100.59 NMAC, 6/30/2016]

19.2.100.60 WATER WELLS:

A. Water wells drilled on all state oil and gas leases for temporary use on the lease and for purposes directly connected with operations shall be in compliance with the provisions of Sections 72-12-1 through 72-12-21 NMSA 1978, as amended, with the regulations of the state engineer, and with 19.2.12 NMAC.

B. Within thirty days after completion of said well, the lessee shall furnish in writing to the commissioner a report containing the following information:

- (1) location of well; and
- (2) depth, log and casing record production data.

[19.2.100.60 NMAC - Rp, 19.2.100.60 NMAC, 6/30/2016]

19.2.100.61 SALT WATER DISPOSAL:

Lessees are expected to comply with all lawful rules of the New Mexico oil conservation division pertaining to prevention of waste, which includes disposal of produced salt water or brine. If state lands are needed for a salt water disposal operation, then application for a salt water disposal easement site shall be made to the "oil and gas division" or application for a business lease shall be made to the "land surface division" of the state land office, depending upon whether underground or surface disposal, respectively, is desired. Ordinarily, water produced on lease may be disposed of on lease without the commissioner's permission if the disposal operation otherwise meets the approval of the oil conservation division and is otherwise reasonable and accepted practice in the industry.

[19.2.100.61 NMAC - Rp, 19.2.100.61 NMAC, 6/30/2016]

[Applications for a salt water disposal easement or a business lease shall be made to the commercial division of the state land office.]

19.2.100.62 ROYALTY PURCHASE - PREFERENCE RIGHT:

Requests made by petroleum refineries within the state to the commissioner to purchase state royalty oil as a preference right under the provisions of Sections 19-10-64 through 19-10-70 NMSA 1978 shall be accompanied by an order or ruling of the New Mexico oil conservation division determining that the applicant is qualified and otherwise entitled to such preference. Requests to purchase state royalty oil on a bid basis may be made directly to the commissioner in letter form. In either case, the applicant must identify the wells from which the applicant desires to purchase the royalty oil.

[19.2.100.62 NMAC - Rp, 19.2.100.62 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.63 RESERVATION OF RIGHT TO PURCHASE PRODUCTION:

The state reserves a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or part of the oil and gas that may be produced from the lands embraced in all leases issued on or after June 11, 1973.

[19.2.100.63 NMAC - Rp, 19.2.100.63 NMAC, 6/30/2016]

19.2.100.64 APPEALS FROM DECISION OF THE COMMISSIONER:

Any party aggrieved by any ruling or decision of the commissioner affecting such party's interest in any oil and gas lease may appeal to the appropriate district court within sixty days after such ruling or decision is rendered pursuant to Section 19-10-23 NMSA 1978.

[19.2.100.64 NMAC - Rp, 19.2.100.64 NMAC, 6/30/2016]

19.2.100.65 [RESERVED]

[19.2.100.65 NMAC - Rn, SLO Rule 1, Section 1.067, 12/13/2002; Repealed, 6/30/2016]

19.2.100.66 SURFACE OPERATIONS ON STATE OIL AND GAS LEASES:

A. Purpose and application of 19.2.100.66 NMAC: The purpose of 19.2.100.66 NMAC is to establish minimum procedures for protecting the surface affected by operation and development activities on state oil and gas leases. 19.2.100.66 NMAC applies to all operations conducted after its effective date on state oil and gas leases, the surface of which is held in trust by the commissioner of public lands.

B. Operation Requirements:

(1) Surface trash and debris: All operators shall remove all surface trash and debris caused by their operations from the lease and shall keep such premises free and clear of such trash and debris. As used in 19.2.100.66 NMAC, "surface trash and debris" means all nonoperational and nonessential equipment resulting from the drilling and producing operation of oil and gas leases and includes, but is not limited to, garbage, rubbish, junk or scrap.

(2) Pits:

(a) Pits shall not be located in, or hazardously near, water drainages. Pits shall be constructed to prevent contamination of the surface and the subsurface by

seepage or flowage; including, if necessary, lining with impermeable materials as provided by rules and regulations of the oil conservation division. Under no circumstances shall pits be used for disposal, dumping or storage of off-lease fluids. Subject to all applicable state and federal laws, and if the operator agrees to accept all liability therefore; garbage, junk, waste or other inorganic debris may be disposed of in the caliche or burn pit located on the side of the reserve pit when the reserve pit is reclaimed.

(b) All pits shall be fenced. The type of fence used must be specific to the class of livestock in the area. Fencing shall remain in place for the life of the pit and be maintained to keep livestock out. All fences shall be braced or constructed in such a manner as to keep wires tight with no sagging between posts. State land office personnel will inspect and, if necessary, notify operators or lessees of necessary repairs or requirements for maintaining the required condition of all fences associated with leases. Fencing shall comply with all other state and federal requirements.

(c) If a pit is lined, the liner shall be installed and maintained to prevent ingestion by livestock and wildlife.

(d) Drilling fluids and drill cuttings shall be disposed of in a manner to prevent contamination to the surface. Rules of the oil conservation division which relate to the disposal of drilling fluids and drill cuttings shall be complied with.

(3) Site Development:

(a) All access roads shall be built, maintained and reclaimed in accordance with 19.2.20 NMAC.

(b) All trees and wood over three inches in diameter removed for site preparation shall be disposed of on site as determined by the state land office.

(c) Where required by the federal Clean Water Act, other applicable federal or state law, or regulations promulgated pursuant thereto, production and storage tanks shall be surrounded with an earthen berm in compliance with such applicable law and regulations. In addition, such a berm may be required by the state land office if a particular tank has a history of repeated leaks.

(4) Spills:

(a) All new spills shall be treated and cleaned up immediately. All surface affected by such spills and leaks shall be reclaimed. Reclamation of the area involved shall be implemented in consultation with the state land office.

(b) All spills shall be reported in accordance with the regulations of the oil conservation division.

(5) Pipelines: If practicable, lines placed on top of the surface shall be placed to take advantage of existing roads or alongside other lines already on top of the ground. If regular maintenance and inspection by vehicle is necessary, and a permanent road required, the road shall be constructed and maintained in accordance with 19.2.20 NMAC. All other traffic shall be kept to a minimum.

C. Closeout and operation plan:

(1) A reclamation or operation plan may be submitted to the state land office for review. If approved, the plan shall substitute for the reclamation and operation requirements of 19.2.100.66 NMAC and 19.2.100.67 NMAC.

(2) The plan shall consist of reclamation and operation specifics for compliance with the regulations concerning reclamation and operations, with an additional section that sets out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, spills, leaks, cleanup and revegetation.

D. Review and inspection:

(1) State land office personnel or oil conservation division personnel may, from time to time, recommend actions necessary to comply with reasonable use of the surface and prudent operator standards.

(2) These recommendations shall be made either to state land office administrators or the commissioner's office, or to the lessee directly.

E. Exemptions and appeal procedure:

(1) The commissioner, or the commissioner's qualified designated representative, may grant an exemption to any or all of the requirements of this rule when a lessee provides a state land office approved reclamation or operation plan, or demonstrates that compliance would be impracticable or has occurred naturally. Any such exemption granted shall be in writing addressed to the lessee or operator requesting the exemption.

(2) Any lessee or operator aggrieved or adversely affected by a determination or interpretation of the state land office under 19.2.100.66 NMAC may, within 60 days of the receipt of such determination or interpretation, request a hearing before the commissioner of public lands. Within 30 days after receiving such a request, the commissioner shall convene a hearing at which the lessee or operator and the commissioner's staff may present evidence. Within 15 days of the hearing, the commissioner shall enter the commissioner's decision on the matter. Any decision of the commissioner may be appealed pursuant to Section 19-10-23 NMSA 1978.

19.2.100.67 SURFACE RECLAMATION ON STATE OIL AND GAS LEASES:

A. Purpose and application of 19.2.100.67 NMAC:

(1) The purpose of 19.2.100.67 NMAC is to establish minimum procedures to follow in reclaiming surface disturbances resulting from development and production on state oil and gas leases, the surface of which is held in trust by the commissioner of public lands.

(2) 19.2.100.67 NMAC applies to areas disturbed by operations conducted under all existing and future leases. However, current lessees will not be held responsible for reclaiming areas disturbed under a lease which has previously expired or been terminated and for which the current lessee is not a successor-in-interest. Also, a prudent operator standard will be applied to the reclamation of other conditions existing on the effective date of this rule. In this regard, lessees are expected to comply with all requirements concerning removal of debris and improvements; however, specific requirements relating to ripping and reseeding will be developed by consultation and planning between the lessee and the state land office, using accepted industry standards such as those established by the bureau of land management.

B. Definitions, as used in 19.2.100.67 NMAC:

(1) "temporary abandonment" occurs if a well is no longer usable for beneficial purposes; has been continuously inactive for more than one year; and has been approved for temporary abandonment by the oil conservation division.

(2) "permanent abandonment" occurs if a well is no longer usable for beneficial purposes; has been continuously inactive for more than one year; and has not been approved for temporary abandonment by the oil conservation division.

C. Reclamation requirements:

(1) Surface sites and off-lease storage areas:

(a) Surface sites and off-lease storage areas, upon temporary or permanent abandonment, shall be cleared of junk and debris and, if necessary, be bermed or water-barred in order to stabilize the site and prevent erosion. Within one year of permanent abandonment, the sites and areas shall be ripped through to the underlying material and reseeded.

(b) Where available, topsoil removed from surface sites shall be stored for use in future reclamation of the site. Pads, within one year of permanent abandonment, shall have all caliche ripped through to the underlying material, any remaining stored topsoil replaced and the site reseeded.

(2) Roads: Roads shall be left in place only if authorized by the state land office. If any road is not needed, then, within one year of permanent abandonment, it shall be ripped, reseeded, bermed (closed) at the entrance, and water bars shall be constructed as directed or approved by the state land office. 19.2.20 NMAC shall be followed for specifics relating to road construction, maintenance and reclamation.

(3) Spills and leaks: Within one year of permanent abandonment, all surface affected by spills and leaks shall be reclaimed. Reclamation of the area involved shall be implemented in consultation with the state land office.

(4) Pits (operating/drilling and other):

(a) All pits, within one year of permanent abandonment or within a reasonable time of nonuse, shall be dried and leveled to restore as much of the original contour as is practical to minimize erosion. The pits shall be reseeded as required by this Section.

(b) All lining materials (plastics or otherwise) shall be removed from the surrounding area, cut off and permanently buried below the surface or removed from the area.

(5) Pipelines:

(a) Buried pipelines may be left in place and the surface ripped, water-barred and reseeded according to the specifics of the site.

(b) Within one year of permanent abandonment, surface lines shall be removed and the surface reclaimed as specified in Subparagraph (a) of Paragraph (5) of Subsection C of 19.2.100.67 NMAC.

(6) Debris: All oil and gas lease related surface trash and debris shall be removed upon temporary or permanent abandonment or disposed of in the manner permitted in 19.2.100.66 NMAC. As used in 19.2.100.67 NMAC, "surface trash and debris" means all nonoperational and nonessential equipment resulting from the drilling and producing operation of oil and gas leases and includes, but is not limited to, garbage, rubbish, junk or scrap.

(7) Revegetation:

(a) For all reseeded required by this Section, the state land office will approve seeding rates and seed mixtures, or approve site-specific recommendations. When possible, the state land office will recommend such approved rates and mixtures, but will not require seed varieties in its mixtures which are not in common use in the area.

(b) All required reseeded shall be planned and completed with a goal of revegetation consistent with local natural vegetation density. After a failed attempt to revegetate an area, a second reseeded may be required by the state land office, but in

no event shall such second reseeding be required more than two years after the initial one.

(8) Lessee's Improvements: The lessee or operator shall remove all improvements placed or erected on the premises within 60 days after the expiration or termination of an oil and gas lease. Any improvements remaining at the end of such 60-day period shall be deemed abandoned for the purposes of Sections 19-7-14 and 19-10-28 NMSA 1978 and no payments shall be due for such remaining improvements pursuant to those Sections.

D. Release upon permanent abandonment and grant of access: Upon state land office approval and release, a lessee's reclamation responsibilities are terminated. The state land office shall issue a reclamation permit for access to complete reclamation after expiration or termination of an oil and gas lease. The reclamation permit shall be a standard form developed after consultation with interested industry groups.

E. Closeout and operation plan:

(1) A reclamation or operation plan may be submitted to the state land office for review. If approved, the plan shall substitute for the reclamation and operation requirements of this Section and 19.2.100.66 NMAC.

(2) The plan shall consist of reclamation and operation specifics for compliance with the regulations concerning reclamation and operations, with an additional section that sets out the schedule of implementation on a continuing basis during the life of the lease relative to operation, maintenance, spills, leaks, cleanup and reseeding.

F. Exemptions and appeal procedure:

(1) The commissioner, or the commissioner's qualified designated representative, may grant an exemption to any or all of the requirements of 19.2.100.67 NMAC when a lessee provides a state land office approved reclamation or operation plan, or demonstrates that compliance would be impracticable or has occurred naturally. Any such exemption granted shall be in writing addressed to the lessee or operator requesting the exemption.

(2) Any lessee or operator aggrieved or adversely affected by a determination or interpretation of the state land office under 19.2.100.67 NMAC may, within 60 days of the receipt of such determination or interpretation, request a hearing before the commissioner of public lands. Within 30 days after receiving such a request, the commissioner shall convene a hearing at which the lessee or operator and the commissioner's staff may present evidence. Within 15 days of the hearing, the commissioner shall enter the commissioner's decision on the matter. Any decision of the commissioner may be appealed pursuant to Section 19-10-23 NMSA 1978.

G. Temporary provision - phase-in: Lessees or operators of leases which contain conditions existing on the effective date of 19.2.100.67 NMAC, otherwise requiring immediate reclamation under 19.2.100.67 NMAC, shall have five years to complete reclamation of such conditions if they demonstrate steady progress toward such completion pursuant to an approved reclamation plan or the requirements of 19.2.100.67 NMAC.

[19.2.100.67 NMAC - Rp, 19.2.100.67 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.68 AMENDMENT OF LEASE TO LOWER ROYALTY RATE FOR OIL WELLS UNDER CERTAIN CONDITIONS:

A. Purpose - eligibility: The records owner of an oil and gas lease issued by the commissioner of public lands whose lease is maintained in good standing according to the terms and conditions of the lease and all applicable statutes and regulations, may apply to the commissioner for an amendment to the lease for the purpose of changing the royalty rate on oil produced from a specified oil well. Any well that produces on a lease basis or as a communitized or unitized property is eligible for the lower rate. Multiple wells from the same lease, communitization or unit may be submitted for approval under one application. Communitized or unit wells must qualify individually for the lower royalty rate.

B. Application, requirements, and information to be furnished. An application for a change in royalty rate shall be on a form prescribed by the commissioner and shall be accompanied by the application fee as set forth in the schedule of fees. For each oil well, the application shall:

(1) show that the oil well has produced oil attributable to a communitization, unit or lease premises, and:

(a) if the production is from formations shallower than 5,000 feet, has produced less than an average of three barrels of oil per day during the preceding 12 months and has not averaged over five barrels per day for any month during the preceding 12 months; or

(b) if the production is from formations 5,000 feet deep or deeper, has produced less than an average of six barrels of oil per day during the preceding 12 months and has not averaged over 10 barrels of oil per day for any month during the preceding 12 months; and

(2) include a statement that to the best of the applicant's knowledge and experience the well is not capable of sustained production limits specified in Paragraph (1) of this Subsection.

(3) provide data and describe efforts to:

(a) negotiate lower rates paid to other royalty owners and overriding royalty owners in the oil well; and

(b) minimize the costs of operating the well; and

(4) include any other fact which may justify a lower royalty rate.

C. Commissioners approval. Upon receipt of an application, the commissioner shall review the information submitted as well as other, independent information obtained by the commissioner and shall agree to amend the lease to a lower royalty rate for oil produced from the oil well if, in the commissioner's sole discretion, the commissioner finds that:

(1) the operator has taken reasonable steps to minimize the operator's costs of operating the oil well;

(2) the oil well will likely be plugged and abandoned in the near future, with a resulting loss of reserves, if operating costs are not reduced further;

(3) the oil well will produce for a longer period, and the amount of oil produced will ultimately be larger, if the royalty rate is lowered; and

(4) a lower royalty rate will actually maximize revenue to the trust beneficiaries.

D. Applicable royalty rate, effective date. The lower royalty rate agreed to under this Section shall be equal to five percent and, except as provided in Subsection G of this Section, shall be valid for a period of three years, after which time the record owner of the oil and gas lease may submit a written request for an extension which, if approved pursuant to Subsection C of this Section, shall be valid for an additional three year term.

E. Accounting and reporting of oil royalties. Production, royalties and taxes for oil produced from any well for which a lower royalty rate has been granted under this Section shall be reported separately from other oil wells, under the PUN-lease business rules of the oil and gas royalty filer's kit utilized by the oil and natural gas administration and revenue database (ONGARD) system.

F. Form of application. Applications for a lower royalty rate under this Section shall be submitted on a form provided by the commissioner.

G. Termination of lower rate. The effective period for a lower royalty rate, approved pursuant to this Section, shall terminate and the royalty rate specified in the lease shall be applicable if the commissioner determines, in the commissioner's sole discretion, that the oil production has significantly increased through well workover, recompletion or other means, so that the well would no longer qualify on an annual basis for a lower royalty rate.

[19.2.100.68 NMAC - Rp, 19.2.100.68 NMAC, 6/30/2016; A, 6/11/2019]

19.2.100.69 PAYMENT OF STATE ROYALTIES:

A. Objective and application:

(1) This Section shall apply to oil and condensate ("oil kind") and natural gas and natural gas products ("gas kind") produced and saved from state oil and gas leases and marketed or utilized in any manner.

(2) In order to ensure that all royalties have been paid, to properly account for all revenues, to promote uniformity of accounting and reporting, to provide for the most efficient management of state oil and gas leases and to comply with the intent and letter of New Mexico law, it is the policy of the state land office that royalties owed under state oil and gas leases be paid monthly on all production deemed to be produced from each state lease during that month.

(a) Gas kind:

(i) Payment on entitlement basis. For leases included in mixed agreements or in units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries, gas kind royalties shall be paid monthly on the production allocated to each lease under the unit or communitization agreement on the entitlement basis.

(ii) Payment on takes basis. For individual producing leases or state leases within one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries, gas kind royalties shall be paid monthly on all production deemed to be produced from the lease on a takes basis.

(b) Oil kind: royalties on oil production are based on each working interest owner's proportionate share of production from the lease, unit or communitization agreement. As a result, no problem exists with regard to the current process for paying such royalties.

(3) As stated above, the purpose of this Section is to ensure that all royalties due under state oil and gas leases are paid and accounted for in a timely manner. Nothing herein relieves any lessee of record, operator, working interest owner or other person of any legal obligation to pay royalties. The commissioner of public lands reserves the right to seek payment of any deficient royalties from any such person.

(4) Effective Date. This policy will become effective six months after the effective date of this Section (the "effective date").

B. Gas deemed to be produced from state leases within mixed agreements or units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries:

(1) For gas deemed to be produced from state leases in mixed agreements or in units or communitized tracts which do not contain uniform royalty rates or uniform beneficiaries, gas kind royalties must be paid on each working interest owner's entitled share of the produced volume from the agreement. If the working interest owner did not take any gas from the agreement, the value of the entitled share of production for royalty purposes shall be the benchmark entitlement value.

(2) Lessees in a unit or communitized tracts may contractually agree to assign reporting and payment responsibility among themselves in any manner which insures that entitled royalty volumes allocable to state leases are reported and paid each month.

C. Gas deemed to be produced from individual leases and one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries:

(1) For leases producing on an individual basis or on one hundred percent state agreements which contain leases with uniform royalty rates and uniform beneficiaries, royalties are due on all of the natural gas and natural gas products deemed to be produced. Unless notice has been given to the state land office under the following paragraph, royalties will be paid by each working interest owner on the amount of natural gas and natural gas products actually taken and sold by such owner. Any notices of volume variances shall be sent to the property operator of the lease.

(2) Upon written notification to the state land office by the property operator that all interest owners in the property have elected to pay gas kind royalties on an entitlements basis, notice of volume variances will be sent to those working interest owners who are entitled to the production, as shown by state land office records. If a working interest owner does not sell all of the production to which the working interest owner is entitled, then royalty payments on such untaken but entitled share are to be paid on the benchmark entitlement value. Failure to remit royalties based on benchmark entitlement value will result in assessments being issued and interest charges being assessed for the underpaid amount.

D. Adjustments of prior periods:

(1) Adjustments of prior period reports for under-reported or over-reported volumes made necessary by the promulgation of this Section shall be completed within 18 months from the effective date. Adjustments must be reported by specific time period for each affected property. The state land office may grant specific remitters an extension of this deadline for good cause.

(2) In making adjustments under this subsection, a remitter shall report the difference between the take and the entitlement basis volumes or vice-versa on a production month basis for each affected property.

(a) For convenience, a remitter may group volume differences on a calendar year basis, at the mid-point of the year, and apply a product valuation to the volume difference which is representative of the weighted average product values for that year. Such volume differences for the past will be reported as detail line entries into the ONGARD system in the PUN-lease format, etc., on the appropriate forms adopted and made available by the commissioner in accordance with Section 19.2.100.70 NMAC.

(b) In the alternative, a remitter may make a one-time cumulative adjustment for all past periods for each affected property by providing to the state land office a valuation proposal which estimates a fair average value of gas under-reported or over-reported for the period during which the imbalance occurred for the affected properties. Upon approval of such valuation proposal, or upon agreement of the remitter and the state land office to utilize different values, the remitter may make adjustments on the basis of such valuations.

(3) Irrespective of any applicable statute of limitations, credits for previously over-reported natural gas volumes may be taken if:

(a) the adjustment is caused by the promulgation of this section by the state land office;

(b) the adjustment is made within the time period specified in Paragraph 1 of this Subsection; and,

(c) the credit is taken for subsequent royalties owed on the same production unit number (property) for which the volumes were over reported or any other property with the same trust beneficiary as the affected property.

E. Definitions:

(1) "average value received" means the value required by law to be used for the calculation of royalties.

(2) "benchmark entitlement value" means:

(a) An amount equal to the average value received by the working interest owner for production from: the unit or communitized area; or state leases within one hundred percent state units or communitized areas where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC; or, individual state leases where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC, in which the working interest owner's production is located during the production month, so long as the working interest owner took at least fifty percent of its entitled

share of production for their unprocessed or processed gas. In the event that this Subparagraph (a) is not applicable, then the benchmark entitlement value shall be:

(b) In the event that the working interest owner sold less than fifty percent of its entitled share, or sold no gas from: the unit or communitized area; or, state leases within one hundred percent state units or communitized areas where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC; or, individual state leases where entitlements are elected under Paragraph (2) of Subsection C of 19.2.100.69 NMAC, the value of the untaken but entitled share shall equal the average value received by the working interest owner for like quality gas produced in the same producing basin in that production month for their unprocessed or processed gas. In the event that Subparagraphs (a) or (b) do not apply, then the benchmark entitlement value shall be:

(c) In the event that the working interest owner does not take any like quality gas in the same producing basin during a production month, the benchmark entitlement value shall be a valid index price, less a location differential, multiplied by the total mmbtu's produced at the field for unprocessed gas or similar index prices, less a location differential, multiplied by the mmbtu's produced applicable to the residue gas portion, plus a valid index price for natural gas liquids, less an estimated processing deduction for the portion of the processed gas converted to equivalent mmbtu value, and less a location differential, multiplied by the mmbtu's produced applicable to such natural gas liquids portion.

(3) "Like quality gas" means gas produced from the same pool, as defined by the New Mexico oil conservation division from time to time.

(4) "Location differential" shall be equal to the costs incurred by the working interest owner to move gas from the field to the index point in the most recent month of production.

(5) "Valid index price" means:

(a) in the case of natural gas, an average of two or more price indices for interstate pipelines transporting natural gas from producing regions that are located entirely or partially within New Mexico, based on acceptable survey techniques, appearing in a publication recognized in the oil and gas industry as a reputable source of such price information (e.g., *Inside FERC*, *Gas Daily*, *Natural Gas Weekly*).

(b) in the case of natural gas liquids, the price for individual products produced from natural gas (e.g. ethane, propane, butanes (iso- and normal), natural gasoline, etc.) based on acceptable survey techniques, appearing in a publication recognized in the oil and gas industry as a reputable source of such price information (e.g., *Oil Price Information Service*).

[The effective date of 19.2.100.69 NMAC is December 30, 1995.]

19.2.100.70 REPORTING AND ROYALTY RENDITION FORMS:

When oil and gas royalties are or should be remitted, as described in 19.2.100.57 NMAC, the remitting person or company shall submit to the state land office a remittance document and royalty reporting form adopted and made available by the commissioner in accordance with the instructions for completing the remittance document and royalty reporting form.

[19.2.100.70 NMAC - Rp, 19.2.100.70 NMAC, 6/30/2016]

19.2.100.71 TEMPORARY SHUT-IN OF OIL WELLS DUE TO SEVERE REDUCTION IN THE PRICE OF OIL:

A. Basis for allowing shut in of oil wells: Pursuant to Section 19-10-6 NMSA 1978, the commissioner has determined that, because of a severe reduction in the price of oil, the beneficiaries of state trust lands will be better served if oil wells are allowed to be temporarily shut in rather than produced at a low price.

B. Effective period:

(1) Unless extended by the commissioner after a subsequent notice and public hearing or terminated sooner by a subsequent regulation of the commissioner after finding that the price of oil is no longer severely reduced, 19.2.100.71 NMAC shall remain in effect for a period of one year from the effective date of this rule.

(2) Any termination of 19.2.100.71 NMAC before one year from the effective date of this rule shall not be effective until 30 days after the commissioner has by certified mail sent notice of such prospective termination to each lessee whose lease is being extended by the operation of this section.

C. Any oil and gas lease issued by the commissioner of public lands and maintained in good standing according to the terms and conditions thereof and all applicable statutes and regulations shall not expire if:

(1) There is at least one well capable of producing oil located upon some part of the lands included in the lease and all such wells are shut in because of the severe reduction in the price of oil;

(2) The lessee timely notifies the commissioner in writing, within 30 days of the date all oil wells capable of producing have been shut in, with the following information: the API (american petroleum institute well number), the well name and number, the lease number, the date the well was shut in, and the date the last well on the lease was shut in. Notice may be filed via electronic mail to oilSIRnotice@slo.state.nm.us or may be mailed to the state land office. Said notice shall

be accompanied by a form C-103 filed with the oil conservation division or other written oil conservation division approval of the shut-in for each well shut in; and

(3) The lessee timely pays an annual shut-in royalty within 90 days from the date all wells capable of producing oil have been shut in and thereafter before each anniversary of such date. Each payment remitted under this section shall accompany a form made available by the commissioner which shall specify the shut-in well, along with other applicable information. The amount of the shut-in royalty shall be twice the annual rental due by the lessee under the terms of the lease but not less than three hundred twenty dollars (\$320) per well per year, the fee established by the state legislature in Section 19-10-6 NMSA 1978. If the other requirements of this subsection are satisfied, the timely payment of the shut-in royalty shall be considered for all purposes the same as if oil were being produced in paying quantities until the next anniversary of the date the well was first shut in; provided, that this rule continues to be in effect.

(a) A state land office lease may be maintained in effect by virtue of one or more wells located within an area covered by a unit agreement where all such wells have been temporarily shut in pursuant to this rule. For such shut-in wells located on a state land office lease, the lessee of each state lease maintained in effect by virtue of such wells shall pay royalty per well calculated by multiplying the base shut-in royalty that would be due for that lease by the percentage of acreage of that lease within the area; but in no event shall the lessee pay less than three hundred twenty dollars (\$320) per well per year.

(b) A state land office lease may be maintained in effect by virtue of one or more wells located within an area covered by a communitization agreement, or constituting a pooled unit or cooperative area, where all such wells have been temporarily shut in pursuant to this rule. The lessee of the largest state lease within the communitized area shall pay the base shut-in royalty due for that lease; but in no event shall the lessee pay less than three hundred twenty dollars (\$320) per well per year.

(c) If the date when a shut-in royalty payment is due falls on a Saturday, Sunday or legal state or federal holiday, the shut-in royalty may be timely paid if received on the next calendar day which is not a Saturday, Sunday or holiday

(d) Under the standard business practice of the state land office, the date that the state land office stamps or otherwise marks the shut-in royalty payment or check establishes the date of actual receipt by the state land office.

D. If the lessee fails to timely comply with the requirements of Subsection C of 19.2.100.71 NMAC, no action by the commissioner or the state land office may ratify, re-grant or revive the expired lease or estop the commissioner from treating the lease as expired, unless such relief is granted expressly in writing signed by the commissioner.

E. Lessees utilizing the temporary shut-in provisions of this rule, and assignees of any lease that is maintained in effect by virtue of this rule, remain fully responsible for compliance with all laws, regulations of the state land office and other state agencies, and lease terms regarding operations on the leased premises, including with respect to environmental protection. Lessees shutting in under this rule, and assignees of any lease that is maintained in effect by virtue of this rule, shall remain subject to all present state land office bonding requirements, and shall be subject to any future bonding requirements upon adoption. No lessee whose actions or omissions have caused expenditures to be made from the state trust lands restoration and remediation fund may shut in under the provisions of this rule until that lessee has reimbursed the state trust lands restoration and remediation fund in the amount of the expenditure.

F. Under no circumstances will the commissioner refund any portion of the shut-in royalty paid for a shut-in well up to the amount required by Subsection C of 19.2.100.71 NMAC.

G. Upon the termination of 19.2.100.71 NMAC, automatically or by action of the commissioner, a lease maintained in effect by payment of shut-in royalty shall expire unless there is actual production in paying quantities within 90 days thereafter, unless the time is further extended, in writing, on an individual lease basis, upon request at the discretion of the commissioner; provided that if the commissioner shortens the effective period of this rule to less than one year pursuant to Subsection B of 19.2.100.71 NMAC, a lease maintained in effect by payment of shut-in royalty shall expire unless there is actual production in paying quantities within 120 days thereafter.

[19.2.100.71 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016; 19.2.100.71 NMAC - N, 10/31/2016; A/E, 4/22/2020; A, 8/11/2020]

19.2.100.72 [RESERVED]

[19.2.100.72 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.73 [RESERVED]

[19.2.100.73 NMAC, Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.74 [RESERVED]

[19.2.100.74 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.75 [RESERVED]

[19.2.100.75 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.76 [RESERVED]

[19.2.100.76 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.77 [RESERVED]

[19.2.100.77 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

19.2.100.78 [RESERVED]

[19.2.100.78 NMAC - Rn, SLO Rule 1, Section 1.072, 12/13/2002; Repealed, 6/30/2016]

CHAPTER 3: [RESERVED]

CHAPTER 4: GRAZING [RESERVED]

CHAPTER 5: STATE PARKS AND RECREATION

PART 1: GENERAL PROVISIONS

19.5.1.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, State Parks Division.

[19.5.1.1 NMAC - Rp, 19.5.1.1 NMAC, 1/1/2025]

19.5.1.2 SCOPE:

19.5.1 NMAC applies to persons using the New Mexico state parks system.

[19.5.1.2 NMAC - Rp, 19.5.1.2 NMAC, 1/1/2025]

19.5.1.3 STATUTORY AUTHORITY:

19.5.1 NMAC is authorized pursuant to Subsection E of Section 9-1-5 NMSA 1978 and Section 16-2-2 *et seq.* NMSA 1978.

[19.5.1.3 NMAC - Rp, 19.5.1.3 NMAC, 1/1/2025]

19.5.1.4 DURATION:

Permanent.

[19.5.1.4 NMAC – Rp, 19.5.1.4 NMAC, 1/1/2025]

19.5.1.5 EFFECTIVE DATE:

January 1, 2025, unless a later date is cited at the end of a section.

[19.5.1.5 NMAC – Rp, 19.5.1.5 NMAC, 1/1/2025]

19.5.1.6 OBJECTIVE:

19.5.1 NMAC's objective is to identify general provisions and definitions, which apply to parts in Title 19, Chapter 5.

[19.5.1.6 NMAC – Rp, 19.5.1.6 NMAC, 1/1/2025]

19.5.1.7 DEFINITIONS:

A. "Authorized areas" means locations, places, sites, regions, zones or spaces identified by the director or, for purposes of hunting or fishing, the state game commission. These areas may be defined with signs or other appropriate proclamation or means. For purposes of bowfishing, authorized areas include all parks where fishing is allowed.

B. "Boating and rafting excursions" means a guiding service for boating or rafting trips offered to the general public.

C. "Capital improvement" means a construction project by a concessionaire to the concession premises that is not maintenance or repair and that costs at least \$1,000.

D. "Commercial activity" means for-profit sales or services but does not include the operation of vending machines unless the vending machine is operated as part of a larger concession operation.

E. "Commercial charter bus" means a bus transporting a group of persons who pursuant to a common purpose, and under a single contract at a fixed price, have acquired the exclusive use of a bus to travel together under an itinerary.

F. "Commercial filming" means the use of motion picture, videotaping, sound recording or other moving image or audio recording equipment that involves the advertisement of an event, product or service; or the creation of a product for sale including film, videotape, television broadcast or documentary of participants in commercial sporting or recreation events for the purpose of generating income.

G. "Commercial photography" means still images taken with a camera that the photographer intends to sell.

H. "Concession" means commercial activity conducted within a park the department has authorized in writing.

I. "Concessionaire" means the owner or operator of a concession who operates pursuant to a department-issued concession contract.

J. "Concessions administrator" means a division employee who maintains records and documentation concerning concession contracts and concession permits.

K. "Concession contract" means an agreement between the department and a person, or business entity, which allows the concessionaire to provide services, merchandise, accommodations or facilities within a park. The concessionaire may or may not occupy a permanent structure or location within the park. The concession contract's term shall not exceed 30 years pursuant to Section 16-2-9 NMSA 1978.

L. "Concession permit" means a permit the department issues to a person or business entity to provide commercial activities, including services or goods in a park for a period of up to one year. The fee for a concession permit is established in 19.5.6 NMAC. Services the division may authorize under a concession permit include guiding and outfitting services for fishing, boating and rafting excursions; educational and park resource protection services; and other services or goods, including commercial services, that enhance visitors' experience and enjoyment, such as sales of firewood, propane, ice, food or refreshments.

M. "Concession permittee" means the holder of a department-issued concession permit.

N. "Cultural property" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

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

P. "Director" means the director of the energy, minerals and natural resources department, state parks division.

Q. "Director designee" means persons the director appoints including deputy directors, bureau chiefs, regional managers and park superintendents.

R. "Division" means the energy, minerals and natural resources department, state parks division.

S. "Flotation assist device" means a wet suit or wearable flotation device in good condition capable of providing flotation to the wearer on the water's surface.

T. "Geocaching" means an outdoor treasure-hunting activity in which the participants use a global positioning system receiver or other navigational means to hide or find containers called "geocaches" or "caches".

U. "Gross receipts from sales and services" means the total amount of receipts from sales and services.

V. "Guide" means an individual or an employee of an outfitter who is hired to escort or accompany clients in fishing, rafting or boating.

W. "Letter boxing" means an outdoor hobby that combines elements of orienteering, art and puzzle solving. Letter boxers hide small, weatherproof boxes in publicly accessible places and distribute clues to finding the boxes in printed catalogs, on websites or by word of mouth. The activity is characterized by the boxes containing a logbook and a rubber stamp. Letter boxers stamp the box's logbook with personal rubber stamps and use the box's stamp to imprint their personal logbooks as proof they found the box.

X. "Net receipts from sales and services" means the total amount of receipts from sales and services, less the amount of gross receipts taxes.

Y. "Off highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) **"all-terrain vehicle"**, which means a motor vehicle 50 inches or less in width, having an unladen dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) **"off-highway motorcycle"**, which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and has handlebar-type steering control;

(3) **"snowmobile"**, which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or part by skis, belts, cleats, runners or low-pressure tires;

(4) **"recreational off-highway vehicle"**, which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:

(a) a steering wheel for steering control;

(b) non-straddle seating;

(c) maximum speed capability greater than 35 miles per hour;

- (d) gross vehicle weight rating no greater than 1,750 pounds;
- (e) less than 80 inches in overall width, exclusive of accessories;
- (f) engine displacement of less than 1,000 cubic centimeters; and
- (g) identification by means of a 17-character vehicle identification number; or

(5) by rule of the department of game and fish, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes.

Z. "Other power-driven mobility device" means any mobility device powered by batteries, fuel or other engines – whether or not designed primarily for use by individuals with mobility disabilities – that is used by individuals with mobility disabilities for the purpose of locomotion including golf cars, electronic personal assistance mobility devices, such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

AA. "Outfitter" means a person or company who employs guides.

BB. "Park" means an area designated as a state park within the state parks system and that the division manages or owns.

CC. "Park" or "parking" means the leaving of a vehicle, camping unit or trailer, whether occupied or not, in a location, other than when engaged in loading or unloading.

DD. "Park management and development plan" means a plan used as a guide for expansion, services, programs and development for the park.

EE. "Park support group" means an organization as defined in Section 6-5A-1 NMSA 1978, or an organized group of individuals that volunteers time, services or funds to promote and support the division or an individual park and whose principal purpose as authorized by the division is to complement, contribute to and support, aid the function of or forward the division's or park's purposes.

FF. "Person" means an individual, partnership, firm, corporation, association, joint venture or other entity.

GG. "Personal flotation device" means a United States coast guard approved life preserver, buoyant vest, hybrid device, ring buoy or buoyant cushion.

HH. "Rally" means a parking area or facility designated for group functions.

II. "Receipts" means consideration in money and in trade received from sales and charges for services.

JJ. "Regional manager" means a division employee responsible for several parks within a region.

KK. "Resident" means an individual with a valid New Mexico state identification card or NM license plate on the vehicle.

LL. "Resource program" means a division employee or employees responsible for the natural and cultural resource protection program.

MM. "Sales and services" means transactions by a concessionaire, or a concessionaire's agents or employees, for which the concessionaire receives consideration in money or money's worth in connection with the concession business operated pursuant to the concession contract.

NN. "Secretary" means the secretary of the department.

OO. "Special event facility" means an entire building or structure such as a visitor center, lodge, pavilion or group shelter, or an area designated by the superintendent.

PP. "Special use permit" means a permit the division has issued to a person for a non-commercial activity or event in a park.

QQ. "State parks system" means land and water in a park.

RR. "Superintendent" means a division employee who is in charge of a specific park; which includes a park superintendent or park manager.

SS. "Vehicle" means an automobile, car, van, sport-utility truck, pickup truck, motorcycle, wagon, buggy or similar device that is used or may be used to transport persons or property on a highway, except devices moved exclusively by human power.

TT. "Vending machine" means a coin-operated beverage, snack or service machine subject to division approval.

UU. "Visitor" means a person who reserves park facilities or enters a park. This definition does not include department employees who are on duty, concessionaires or their employees operating their concession or on duty employees of an entity that owns the property where the park is located.

VV. "Wheelchair" means a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or both indoor and outdoor locomotion.

WW. "Working days" means Monday through Friday, excluding state holidays.

[19.5.1.7 NMAC – Rp, 19.5.1.7 NMAC, 1/1/2025]

PART 2: PARK VISITOR PROVISIONS

19.5.2.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, State Parks Division.

[19.5.2.1 NMAC - Rp, 19.5.2.1 NMAC, 1/1/2008]

19.5.2.2 SCOPE:

19.5.2 NMAC applies to persons using the New Mexico state parks system.

[19.5.2.2 NMAC - Rp, 19.5.2.2 NMAC, 1/1/2008]

19.5.2.3 STATUTORY AUTHORITY:

19.5.2 NMAC is authorized pursuant to Subsection E of Sections 9-1-5 and 16-2-2 *et seq.* NMSA 1978.

[19.5.2.3 NMAC - Rp, 19.5.2.3 NMAC, 1/1/2008; A, 5/15/2018]

19.5.2.4 DURATION:

Permanent.

[19.5.2.4 NMAC - Rp, 19.5.2.4 NMAC, 1/1/2008]

19.5.2.5 EFFECTIVE DATE:

January 1, 2008, unless a later date is cited at the end of a section.

[19.5.2.5 NMAC - Rp, 19.5.2.5 NMAC, 1/1/2008]

19.5.2.6 OBJECTIVE:

19.5.2 NMAC's objective is to provide standards for visitor use of the New Mexico state parks system in a manner that promotes public health, safety and welfare and preserves park facilities and the environment.

[19.5.2.6 NMAC - Rp, 19.5.2.6 NMAC, 1/1/2008]

19.5.2.7 DEFINITIONS:

[RESERVED]

[See 19.5.1.7 NMAC for definitions.]

[19.5.2.7 NMAC - Rp, 19.5.2.7 NMAC, 1/1/2008]

19.5.2.8 DELEGATION:

The secretary delegates concurrent authority to the director as contained in Subsections B, E and F of Section 16-2-32 NMSA 1978.

[19.5.2.8 NMAC - Rp, 19.5.2.8 NMAC, 1/1/2008]

19.5.2.9 RESTRICTED AREAS:

A. Access to parks, both land and water, shall be open to the public, except that each superintendent may close an area or facility by posting or otherwise designating the area as closed to entry. A superintendent may close an area for no more than five consecutive days without the director's approval. The superintendent shall ensure areas designated for seasonal closure are posted indicating the closure period.

B. The superintendent may set a visitor capacity limit for a park or areas within a park. State park officials shall enforce each park's visitor capacity to protect visitors and to prevent damage to the park's natural or cultural resources. Once capacity is reached, state park officials shall not admit additional visitors until some of the visitors already there have left.

C. The superintendent may restrict or prohibit activities in certain areas of a park by posting or otherwise designating the prohibition or restriction.

[19.5.2.9 NMAC - Rp, 19.5.2.9 NMAC, 1/1/2008]

19.5.2.10 HOURS:

The director or the director's designee establishes opening and closing times for every area and facility of the state parks system. Hours are posted at the established park entrances, offices or pay stations.

[19.5.2.10 NMAC - Rp, 19.5.2.10 NMAC, 1/1/2008; A, 1/1/2025]

19.5.2.11 DAY USE:

A. Day use of a park area is from 6:00 a.m. to 9:00 p.m. unless the superintendent posts different hours or extends hours for special programs or events. Visitors shall pay required day-use fees upon entering the park. See 19.5.6 NMAC.

B. The division may designate areas solely for day use to exclude camping.

C. Visitors shall always maintain sites in parks in a clean and sanitary condition.

D. Visitors shall clean the site and dispose of trash and litter in appropriate waste receptacles.

[19.5.2.11 NMAC - Rp, 19.5.2.11 NMAC, 1/1/2008; A, 1/1/2013; A, 1/1/2025]

19.5.2.12 CAMPING:

A. Visitors may camp in parks in designated areas, provided they obtain a valid camping permit. Visitors shall obtain permits upon entry by paying appropriate fees. See 19.5.6 NMAC. Use of park properties and facilities between the hours of 9:00 p.m. and 6:00 a.m., or as posted by the superintendent, is camping. Check out time, the time the campsite is to be vacated, is 2:00 p.m. unless otherwise posted; however, the camping permit allows day use of the park until 9:00 p.m. or as posted by the superintendent, on the day the camping permit expires. Camping is not available at Cerrillos Hills state park, Living Desert Zoo and Gardens state park, Rio Grande Nature Center state park, Mesilla Valley state park or Smokey Bear historical park.

B. Campers shall not leave unoccupied any type of vehicle, motorized camper, trailer, tent or other sleeping unit or facility or otherwise leave a campsite unoccupied for more than 24 hours without the superintendent's prior approval. Unoccupied means the camper is not present at the campsite for more than 24 hours.

C. Campers shall always maintain campsites in a clean and sanitary condition. Campers shall clean campsites and place litter only in appropriate disposal containers.

D. Campers in areas or parks designated and posted by the superintendent as pack-in, pack-out, shall carry out supplies and solid waste or other refuse, including human bioproducts, and properly dispose of these items in appropriate waste receptacles outside of the designated area or park.

E. From October 1 through April 30 campers may reside in a park for a maximum of 14 calendar days during any 20-calendar day period unless the director extends, decreases or waives this limit. From May 1 through September 30 campers may reside in a park for a maximum of seven calendar days during any 20-calendar day period unless the director extends, decreases or waives this limit. Campers shall completely remove camping equipment and gear from the park after reaching the maximum stay limit.

F. The division shall charge fees according to the facilities provided at each campsite, as provided in 19.5.6 NMAC, regardless of whether the camper uses the facilities at the campsite. For example, camping at a site with electricity requires

payment of the fee for a developed site with electrical hookup even if the camper uses no electricity.

G. Vehicles in a park between the hours of 9:00 p.m. and 6:00 a.m., or as posted by the superintendent, are individually subject to the appropriate camping fees. The division considers motor homes towing a vehicle or vehicles towing a camper a single vehicle for 19.5.2.12 NMAC's purposes.

H. The division may require visitors to pay fees for their entire stay in advance (rather than daily) for weekends, holidays or special events.

I. Anchoring a boat or vessel overnight within a park constitutes camping and requires a valid camping permit for the anchored boat or vessel unless the visitor has paid camping fees for the towing vehicle.

(1) Visitors may not leave anchored boats or vessels vacant for more than 24 hours without the superintendent's permission. From October 1 through April 30 anchored boats or vessels may remain within a park for a maximum of 14 calendar days during any 20-calendar day period unless the director extends, decreases or waives this limit. From May 1 through September 30 anchored boats or vessels may remain within a park for a maximum of seven calendar days during any 20-calendar day period unless the director extends, decreases or waives this limit. Visitors shall completely remove boats or vessels from the park after reaching the maximum stay limit.

(2) Subsection I of 19.5.2.12 NMAC does not apply to boats or vessels only while they are moored overnight at concession operated facilities such as marinas or buoy lines. Boats or vessels are subject to division camping permits and camping fees when moored overnight at any other location in the park. Time limits do not apply while boats or vessels are moored at the concession facilities.

J. Reserved campsites shall become available to other visitors if the visitor holding the reservation does not occupy the reserved site or contact the reservations contractor or the park by 4:00 p.m. the day after the scheduled arrival date. At that time the site will be available to other visitors and reservations. The visitor holding the reservation who failed to file a cancellation is not eligible for a refund.

[19.5.2.12 NMAC - Rp, 19.5.2.12 NMAC, 1/1/2008; A, 1/1/2013; A, 5/15/2018; A, 1/1/2025]

19.5.2.13 USE OF FACILITIES:

A. Facilities are available on a first come, first served basis except at parks where the division has established a reservation program and a visitor has reserved the facility. Campers shall not save or reserve camping spaces for other individuals even by purchasing additional permits.

B. Visitors using a park facility shall keep it in a clean and sanitary manner and shall leave it in a clean and sanitary condition.

C. Glass containers are prohibited outside vehicles, motor homes, campers, trailers and tents within the state parks system except on established commercial premises.

D. The division has developed and designated special accessible facilities for the use of individuals with disabilities. These facilities are marked with standard ADA signage. Individuals with disabilities shall have preferential use of these facilities over other persons.

E. Visitors shall not remove water from the park for use outside the park or deposit trash generated outside the park within a park.

F. Advance reservations are required for the use of meeting rooms. Meeting rooms are not available in all parks. A person who reserves a meeting room is responsible for setting up the room, cleaning the room after use and leaving the room in the same condition it was in before use. See 19.5.6 NMAC for meeting room fees.

G. The director may designate areas within the state parks system including campsites, group shelters, group areas, cabins, yurts and lodges for use by reservation.

H. Advance reservations are required for the use of group shelters, group areas or reservation campsites. Visitors shall pay the appropriate day use or camping fees in addition to the fees for use of the facility or area. If visitors make reservations through the division's reservation system contractor, visitors shall pay the reservation processing and cancellation fees the contractor charges. The division may accept annual permits at reservation campsites if posted. See 19.5.6 NMAC for group shelter fees.

I. The superintendent may restrict the number or size of tents, shade or screen shelters occupying a campsite or day use site by posting the restriction or restrictions in the affected area or areas.

[19.5.2.13 NMAC - Rp, 19.5.2.13 NMAC, 1/1/2008; A, 12/30/2010; A, 1/1/2013; A, 5/15/2018; A, 1/1/2025]

19.5.2.14 PARKING:

A. Visitors shall park vehicles, camping units or trailers only in established parking areas or parking turnouts where provided. Visitors shall not park any vehicle, camping unit or trailer in a manner that blocks access, restricts traffic or inhibits the free movement of other vehicles, persons or wheelchairs. Visitors shall not leave a trailer, boat or vessel that is not attached to a vehicle in parking areas or parking turnouts for a period of more than 24 hours without prior approval of the superintendent. At the superintendent's discretion, the division may remove vehicles so parked at the owner's expense.

B. Visitors shall not park a vehicle, camping unit or trailer in a designated disabled parking space unless the visitor's vehicle has registration plates or a state-issued placard indicating disability.

C. The superintendent may restrict the number or size of vehicles, camping units or trailers occupying a campsite, day use site or parking area by posting the restriction or restrictions in the affected area or areas.

[19.5.2.14 NMAC - Rp, 19.5.2.14 NMAC, 1/1/2008; A, 1/1/2013; A, 1/1/2025]

19.5.2.15 VEHICLE TRAFFIC:

A. Visitors shall drive vehicles within the state parks system only on established roads or areas authorized for vehicle traffic. Visitors shall operate vehicles at speeds at or below the posted limit and in a manner that is reasonable and prudent, with due regard for traffic, pedestrians and road surface conditions and width.

(1) Visitors shall not operate vehicles in a manner that endangers the safety of persons, property or wildlife.

(2) Visitors shall not operate vehicles at speeds greater than the posted limit and shall not exceed 30 miles per hour where no limit is posted.

B. Vehicles operating within a park shall be registered and operated according to New Mexico motor vehicle laws.

C. It is unlawful to ride or to allow anyone to ride in a boat or vessel loaded on a trailer, except when launching or loading a boat or vessel at an established boat ramp.

[19.5.2.15 NMAC - Rp, 19.5.2.15 NMAC, 1/1/2008; A, 1/1/2013]

19.5.2.16 OFF-HIGHWAY MOTOR VEHICLES AND GOLF CARS:

A. Visitors shall not operate off-highway motor vehicles or golf cars in the state parks system, except for persons with mobility disabilities as provided in Subsection D of 19.5.2.16 NMAC.

B. Off-highway motor vehicles and golf cars may be used for official purposes including:

(1) state park officials may use off-highway motor vehicles or golf cars for park operations and maintenance;

(2) government agencies or government officials or employees, including law enforcement and emergency service personnel, may use off-highway motor vehicles or

golf cars while performing official duties in state parks (official duties do not include activities that do not have to occur in a park such as conferences, retreats, or training).

C. The park superintendent may approve the use of golf cars or off-highway motor vehicles by concessionaires within certain areas of a park for concession operations and maintenance.

D. Other power-driven mobility devices may only be used by visitors with mobility disabilities on established roads, pathways, trails and other areas open to pedestrian use. The use of other power-driven mobility devices is subject to more stringent laws or rules or regulations of a landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.) from which the division leases the land or reservoir. Visitors and state park officials shall comply with laws or regulations or rules of the landowner (e.g. United States department of the interior, bureau of reclamation) where applicable. Visitors shall consult park information provided at the park office and on the division's official website to determine limitations on park pathways, trails and other areas open to pedestrian use. To ensure protection of park resources, visitor safety and enjoyment:

(1) only other power-driven mobility devices not exceeding 36 inches in width and 62 inches in length are permitted on park pathways, trails and other areas open to pedestrian use;

(2) certain park pathways, trails and other areas open to pedestrian use may have other size limitations, or use of other power-driven mobility devices on certain park pathways, trails and other areas open to pedestrian use may be prohibited, as designated at the park office and on the division's official website;

(3) internal combustion engine devices are prohibited on park pathways, trails and other areas open to pedestrian use;

(4) maximum speed on park pathways, trails and other areas open to pedestrian use shall not exceed 10 miles per hour;

(5) the use of other power-driven mobility devices on park pathways, trails and other areas open to pedestrian use that produces noise that exceeds 96 decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J1287 is prohibited.

E. Persons using an other power-driven mobility device may be required to provide verification that the mobility device is required because of the person's disability. Acceptable forms of verification are:

(1) a valid, state-issued, disability parking placard or card;

(2) other state-issued proof of disability; or

(3) in lieu of Paragraphs (1) and (2) of Subsection E of 19.5.2.16 NMAC, a person may provide a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability.

[19.5.2.16 NMAC - Rp, 19.5.2.16 NMAC, 1/1/2008; A, 1/1/2013; A, 5/15/2018; A, 1/1/2025]

19.5.2.17 SPARK ARRESTORS:

Internal or external combustion engines shall be equipped with a properly installed, maintained and functioning spark arrestor meeting either the:

A. United States department of agriculture, forest service standard 5100 (as amended); or

B. appropriate society of automotive engineers recommended practice J335(b) or J350(a).

[19.5.2.17 NMAC - Rp, 19.5.2.17 NMAC, 1/1/2008; 19.5.2.17 NMAC - N, 1/1/2013]

19.5.2.18 SWIMMING:

Swimming shall be at the swimmer's own risk. Swimming is prohibited within 150 feet of marinas, fishing piers, docks, ramps, dams or as otherwise posted. Visitors using air mattresses, inner tubes, surfboards, sail or wind, styrofoam flotation devices, paddleboards or other similar articles shall wear a United States coast guard approved personal flotation device or a flotation assist device. Swimming may be subject to more stringent laws or rules or regulations of a landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir.

[19.5.2.18 NMAC - Rp, 19.5.2.18 NMAC, 1/1/2008; 19.5.2.18 NMAC - Rn & A, 19.5.2.17 NMAC, 1/1/2013]

19.5.2.19 SKIN OR SCUBA DIVING:

A. Skin or scuba diving is at the diver's own risk and is prohibited within 150 feet of marinas, fishing piers, docks, ramps or dams except for official activities and in other areas the superintendent designates. Skin or scuba diving may be subject to more stringent laws or rules or regulations of a landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir.

B. The division permits scuba diving only in groups of two or more divers. An additional scuba diver or competent diver-tender shall remain above water at all times.

C. Equipment such as tanks, weight belts, etc. shall be equipped with quick-release fasteners.

D. Scuba divers shall be equipped with a buoyancy compensator. Scuba divers shall only use self-inflated, air supplied canister, or tank inflated, direct connection to the tank supplied air.

E. Divers shall use a diver's flag to mark the point of submergence. Divers shall fly the diver's flag from a boat or flotation device while diving. The flag shall be red with a white diagonal stripe running from the upper left corner to the lower right corner.

F. Boats or vessels shall stay at least 150 feet away from a diver's flag and shall exercise special care in the diver's flags' vicinity.

[19.5.2.19 NMAC - Rp, 19.5.2.19 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.19 NMAC - Rn & A, 19.5.2.18 NMAC, 1/1/2013]

19.5.2.20 HORSEBACK RIDING:

A. Visitors shall not ride, stable or maintain horses except in designated areas within the state parks system or without prior approval of the superintendent.

B. Visitors shall not use or possess hay or feed in parks located on state game commission property, including Clayton Lake state park, Fenton Lake state park, Cimarron Canyon state park, Mesilla Valley state park and Eagle Nest Lake state park, or United States department of the interior, bureau of reclamation property, including Navajo Lake state park, Heron Lake state park, El Vado Lake state park, Elephant Butte Lake state park, Caballo Lake state park, Percha Dam state park, Leasburg Dam state park, Sumner Lake state park and Brantley Lake state park, that is not certified as weed free by the New Mexico state university's certified weed free forage program or another governmental entity's certified weed free forage program.

[19.5.2.20 NMAC - Rp, 19.5.2.20 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.20 NMAC - Rn & A, 19.5.2.19 NMAC, 1/1/2013]

19.5.2.21 FIREARMS AND BOWS:

A. Visitors shall not possess firearms with a cartridge in any portion of the mechanism except:

(1) a legally licensed hunter during a designated hunting season and within park areas designated as open to hunting for the species the hunter is licensed to hunt;

(2) on duty law enforcement officials;

(3) persons with a valid concealed handgun license issued to them pursuant to the Concealed Handgun Carry Act, Section 29-19-1 *et seq.* NMSA 1978.

(4) persons with a concealed handgun license issued to them by a state that has a valid concealed handgun reciprocity agreement with the state on New Mexico; or

(5) persons carrying a firearm in a private vehicle or other private means of conveyance, for lawful protection of the person's or another's person or property.

B. Visitors shall not discharge a firearm within a state park except:

(1) a legally licensed hunter during designated hunting season who is hunting within park areas designated as open to hunting for the species the hunter is licensed to hunt and who is more than 300 yards from a developed park area or occupied campsite;

(2) on duty law enforcement officials pursuant to their official duties; or

(3) persons with a valid concealed handgun license issued to them pursuant to the Concealed Handgun Carry Act, Section 29-19-1 *et seq.* NMSA 1978, or another state that has a valid concealed handgun reciprocity agreement with the state of New Mexico when discharged in self defense, defense of another person or defense of a dwelling or habitation.

C. Visitors shall not use or discharge arrows, bolts or air or gas fired projectiles, weapons and other devices capable of causing injury to persons or animals or damage or destruction of property in the state parks system, except:

(1) a legally licensed hunter or fisherman during a designated hunting or fishing season who is hunting or fishing within park areas designated as open to hunting or fishing for the species the hunter or fisherman is licensed to hunt or fish, or in authorized areas, and who is more than 100 yards from a developed park area or occupied campsite; or

(2) for park authorized events and activities.

D. Subsection C of 19.5.2.21 NMAC does not apply to on duty law enforcement officials acting pursuant to their official duties.

[19.5.2.21 NMAC - Rp, 19.5.2.21 NMAC, 1/1/2008; 19.5.2.21 NMAC - Rn & A, 19.5.2.20 NMAC, 1/1/2013; A, 1/1/2025]

19.5.2.22 ICE-SKATING AND ICE-FISHING:

Visitors may ice-skate or ice-fish within parks at their own risk. Superintendents may prohibit or limit these activities as conditions require. Ice-fishing is permitted as

regulated by the state game commission. Visitors shall not cut holes in the ice for ice-fishing larger than 12 inches in diameter.

[19.5.2.22 NMAC - N, 1/1/2008; 19.5.2.22 NMAC - Rn, 19.5.2.21 NMAC, 1/1/2013]

19.5.2.23 LETTER BOXING AND GEOCACHING:

Visitors shall not conduct letter boxing or geocaching activities in parks without the superintendent's written permission.

[19.5.2.23 NMAC - Rp, 19.5.2.30 NMAC, 1/1/2008; 19.5.2.23 NMAC - Rn, 19.5.2.22 NMAC, 1/1/2013]

19.5.2.24 METAL DETECTING:

Metal detecting within a state park is prohibited unless a visitor obtains the superintendent's permission to use metal detectors for scientific activities such as projects permitted through the New Mexico cultural properties review committee or to retrieve lost items.

[19.5.2.24 NMAC - Rp, 19.5.2.22 NMAC, 1/1/2008; 19.5.2.24 NMAC - Rn, 19.5.2.23 NMAC, 1/1/2013]

19.5.2.25 ROCK COLLECTING:

A. Rock collecting is permissible in areas designated by the secretary and posted at the rockhound unit of Rockhound state park.

B. Rocks removed from Rockhound state park shall be as souvenirs only, not for resale, trade or commercial use.

C. Rock collecting is limited to small hand tools only. The following are prohibited: mechanical or motorized tools and equipment, tools with a handle longer than 12 inches, wheeled devices such as wheelbarrows, carts or wagons.

[19.5.2.25 NMAC - Rp, 19.5.2.23 NMAC, 1/1/2008; 19.5.2.25 NMAC - N, 1/1/2013; A, 1/1/2025]

19.5.2.26 NOISE LIMITATIONS:

A. Park "quiet hours" begin at 10:00 p.m. and end at 7:00 a.m. Visitors shall not operate generators, radios or unmuffled vehicles or engage in other loud activity during this time period.

B. Except in case of an emergency, creation of loud noise through the use of a loudspeaker requires the superintendent's advance written approval. Visitors shall

operate radios, tape players or other sound producing devices at a reasonable level during non-quiet hours so as not to disturb other visitors.

C. Visitors shall not use fireworks within parks without the superintendent's advance written approval. Use or possession of fireworks may be prohibited by the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir.

[19.5.2.26 NMAC - Rp, 19.5.2.24 NMAC, 1/1/2008; 19.5.2.26 NMAC - Rn & A, 19.5.2.24 NMAC, 1/1/2013]

19.5.2.27 CONDUCT:

A. Visitors are encouraged to enjoy park experiences without infringing upon other visitors' ability to enjoy the same experiences. Visitors shall not engage in threatening, abusive, boisterous, insulting or indecent language or behavior.

B. Visitors shall not solicit, gamble or illegally discriminate.

C. Visitors shall not evade, disobey or resist a state park official's lawful order.

D. Parents, guardians or other adults in charge shall exercise constant direct supervision of minor children or adults who do not possess the intelligence or awareness to recognize possible danger.

E. Law enforcement officers may forcibly eject a person who violates a state law or a department rule or a person who evades, disobeys or resists a state park official's lawful order from a park. Based on the severity of conduct or reported incident, i.e., threatening or intimidating conduct toward visitors or park staff, the ejection may be permanent.

(1) Permanent ejection requires the regional manager to issue written notification to the person being permanently ejected.

(2) To request review of a permanent ejection a regional manager issues, an individual ejected from a park or parks shall submit a written request including the reasons for requesting review to the director within 15 calendar days of issuance and provide written notice to the regional manager.

(3) The regional manager and the ejected individual shall submit written statements to the director within 10 working days of the submission of the request for review.

(4) The director shall base the director's decision on the written statements unless the ejected individual or the regional manager requests the opportunity to call witnesses or make oral arguments within 10 working days of the request for review.

(5) A request for hearing shall explain the need for any witness testimony or oral argument. If the ejected individual or regional manager asks to make oral arguments or call witnesses, the director may set a hearing to be held within 10 working days after receiving that request and provide notice of the hearing date, time and location to the regional manager and the ejected individual. Oral testimony shall be made under oath. An audio or stenographic record shall be made of any oral argument or witness testimony.

(6) The director shall issue a written final decision, including findings of fact within 10 working days after the date for submission of written statements, or a hearing if any, and send copies to the ejected individual and the regional manager.

[19.5.2.27 NMAC - Rp, 19.5.2.25 NMAC, 1/1/2008; 19.5.2.27 NMAC - Rn & A, 19.5.2.25 NMAC, 1/1/2013; A, 1/1/2025]

19.5.2.28 ANIMALS:

A. Visitors with dogs, cats or other domestic animals in areas of the state parks system shall control their animals, so as not to cause a nuisance to others. Visitors shall ensure their animals are vaccinated in accordance with applicable municipal or county ordinances and state laws.

B. Visitors shall pick up after their animals and shall maintain the area in a clean and sanitary condition.

C. Visitors shall restrain dogs on leashes that are not more than 10 feet in length, except in areas the superintendent designates. Subsection C of 19.5.2.28 NMAC does not apply to dogs being used in authorized activities such as field trials, retriever training or hunting. Visitors shall otherwise restrain their animals other than dogs to keep them from roaming freely within the parks.

D. Visitors shall prevent their animals from excessive barking, howling and making loud noises. Visitors shall prevent their animals from biting or attacking any person or destroying property. Visitors shall not leave their animals unattended in vehicles or campsites.

E. Animals are prohibited, except service animals, within visitor centers and at the following parks:

- (1) Rio Grande Nature Center state park;
- (2) Living Desert Zoo and Gardens state park; and
- (3) Smokey Bear historical park.

F. The director may designate and post areas within a park where visitors' animals do not have to be restrained.

[19.5.2.28 NMAC - Rp, 19.5.2.26 NMAC, 1/1/2008; 19.5.2.28 NMAC - Rn & A, 19.5.2.26 NMAC, 1/1/2013; A, 5/15/2018]

19.5.2.29 LITTERING:

A. Visitors shall not dispose of commercial or construction waste, appliances or furnishings within a park.

B. Visitors shall not dispose of solid or liquid waste in the state parks system, except in receptacles provided for that purpose.

C. The superintendent may designate and post an area or an entire park as pack-in, pack-out, where visitors are responsible for properly disposing their solid waste outside of the designated area or park.

[19.5.2.29 NMAC - Rp, 19.5.2.29 NMAC, 1/1/2008; 19.5.2.29 NMAC - Rn & A, 19.5.2.27 NMAC, 1/1/2013; A, 5/15/2018]

19.5.2.30 ABANDONED PROPERTY:

Unless the visitor has obtained the superintendent's prior written permission, personal property left in any park for longer than 14 calendar days shall be deemed abandoned. State park officials shall remove property deemed abandoned at the owner's expense and dispose of it as provided by law.

[19.5.2.30 NMAC - Rp, 19.5.2.27 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.30 NMAC - Rn, 19.5.2.28 NMAC, 1/1/2013]

19.5.2.31 PROHIBITION OF ALCOHOLIC BEVERAGES:

The director may prohibit alcohol consumption or possession within a park or a designated area within a park and the superintendent shall post notice of the prohibition.

[19.5.2.31 NMAC- Rp, 19.5.2.28 NMAC, 1/1/2008; 19.5.2.31 NMAC - Rn, 19.5.2.29 NMAC, 1/1/2013]

19.5.2.32 FEES AND CHARGES:

A. Upon entering a park, visitors shall pay fees and charges in accordance with 19.5.6 NMAC. The visitor shall display applicable permits in accordance with instructions provided with the permit. If a visitor fails to obtain a permit, state park officials may field collect fees.

B. Fees, charges and permit display requirements do not apply to:

- (1) government agencies or government officials or employees, including law enforcement and emergency service personnel, who are performing official duties (official duties do not include activities that do not have to occur in a park such as conferences, retreats or training);
- (2) non-governmental emergency service personnel, such as private ambulance companies, who are performing their official duties;
- (3) persons traveling nonstop through a park on a state or federal highway, county road, federal road or municipal road or street;
- (4) on duty news media personnel who are reporting on events or activities within a park and are only in the park to report on those events or activities; or
- (5) individuals or groups who are entering the park to provide volunteer services and have signed a volunteer agreement with the division or have arranged with the division to provide volunteer services.

C. Fees and charges do not apply to:

- (1) division contractors, suppliers or agents or other persons providing services to a park who are not using the park or its facilities for purposes other than providing services to the park;
- (2) concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents who are only traveling to and from the concession and are not using the park or its facilities for personal use;
- (3) persons needing to pass through a park to access private property who are only passing through the park and are not using the park or its facilities;
- (4) park support group members or volunteers who have a park pass issued pursuant to Subsection D of 19.5.2.36 NMAC; or

D. Visitors not subject to Subsection B of 19.5.2.32 NMAC shall display permits at all times inside a park.

E. The superintendent or director may waive or reduce park fees for primary or secondary school groups, college or university groups, or other organized youth groups or for governmental entities holding such activities as trainings or other educational activities or projects, retreats or conferences at a park.

F. State park officials may issue rain checks for unused, prepaid daily camping activities or the cancellation of a group shelter reservation.

G. The division or its contractors may charge fees in addition to the appropriate use fee for reservation processing and cancellation. The contractor or state park officials shall collect the reservation fee for those park sites where the division has established a reservation program. See 19.5.6 NMAC. Visitors shall pay the reservation fee in advance with applicable fees for facilities, sites, day use, camping, electricity or other service for the total reservation period.

H. In addition to the appropriate use fees, the division may charge additional fees for special events such as concerts, festivals, etc. The additional fees shall not exceed the value of admission to the special events.

[19.5.2.32 NMAC - N, 1/1/2008; 19.5.2.32 NMAC - Rn & A, 19.5.2.30 NMAC, 1/1/2013; A, 5/15/2018; A, 1/1/2025]

19.5.2.33 PERMITS AND CONCESSIONS:

Concession-operated campgrounds do not accept division-issued permits.

[19.5.2.33 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.33 NMAC - Rn, 19.5.2.31 NMAC, 1/1/2013; A, 1/1/2025]

19.5.2.34 DAY USE AND CAMPING PERMITS:

A. Day use permits.

(1) Day use permits authorize visitors to use park facilities that do not require other fees, such as meeting rooms or group shelters, from 6:00 a.m. to 9:00 p.m.; unless the superintendent has posted different hours.

(2) When purchasing the day use permit visitors shall comply with the instructions on the permit and provide, as requested, their name, address and vehicle license number as well as the date of purchase and the amount enclosed and, if applicable, their site number. Visitors shall also indicate they are visiting the park for day use.

(3) New Mexico residents are exempt from purchasing day use permits from October 1 through April 30 annually.

B. Camping permits. Visitors shall purchase camping permits to camp in a park.

(1) Subject to the availability of a campsite, camping permits authorize visitors to camp in a park.

(2) When purchasing the camping permit visitors shall comply with the instructions on the permit and provide, as requested, their name, address and vehicle license number as well as their site number, the date of purchase, the amount enclosed

and length of stay and, if applicable, their annual permit number. Visitors shall also indicate they are camping.

[19.5.2.34 NMAC - N, 1/1/2008; 19.5.2.34 NMAC - Rn, 19.5.2.32 NMAC, 1/1/2013; A, 1/1/2025]

19.5.2.35 ANNUAL PERMITS AND PASSES:

A. Annual day use passes.

(1) Annual day use passes authorize the vehicle owner or individual to access and use the park at no additional charge during the times indicated in 19.5.2.11 NMAC. Visitors may use annual day use passes at all parks, except at the Living Desert Zoo and Gardens state park and Smokey Bear historical park.

(2) When purchasing an annual day use pass visitors shall comply with the instructions on the pass and provide their name and address.

(3) The division does not issue extra vehicle passes for annual day use passes.

B. Annual camping permits.

(1) Annual camping permits authorize the vehicle owner or individual to access and use the park at no additional charge except for utility hookups during the times indicated in 19.5.2.12 NMAC. The annual camping permit allows the visitor one sleeping unit. A motor home towing a vehicle or a vehicle towing a camping trailer is considered a sleeping unit. The visitor shall pay the per night camping fee for additional vehicles.

(2) Annual camping permits are available for:

(a) New Mexico residents as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(b) New Mexico residents 62 years of age or older as documented with a current New Mexico driver's license or other state of New Mexico issued photo identification;

(c) New Mexico residents with disabilities who present a New Mexico handicap motor vehicle license plate issued to them; a parking placard for mobility impaired individuals with a placard holder identification card issued to them by the taxation and revenue department, motor vehicle division if the placard was issued before June 4, 2008; a parking placard for mobility impaired individuals with the photograph of the placard holder issued to them by the taxation and revenue department, motor vehicle division if the placard was issued on June 4, 2008 or after; a

New Mexico department of game and fish lifetime hunting and fishing card containing their name; a written determination from the United States social security administration finding that they are currently eligible for social security disability benefits or supplemental security income disability benefits; or a photocopy of the award letter the United States department of veterans affairs issues indicating they have a one hundred percent service-connected disability;

(d) A New Mexico resident who is active-duty military or an honorably discharged veteran of the United States military as defined by the New Mexico department of veterans' services. Orders or other documentation (excluding military ID cards) of current active-duty service must be presented to purchase an active-duty military pass. The applicant's DD-214 must be presented to purchase a veteran pass.

(e) all-out-of-state-residents.

(3) When purchasing an annual camping permit, visitors shall comply with the instructions on the permit and provide their name; address; if applicable, proof of age or residency; and the license plate number of the vehicle for which the visitor is purchasing the permit.

(4) Visitors may use annual camping permits at all parks, except at the Living Desert Zoo and Gardens state park and Smokey Bear historical park.

(5) Annual camping permits are authorized for use by the person the permit is issued to as indicated on the permit receipt and are non-transferrable.

C. Annual day use passes and annual camping permits are valid from January 1 through December 31 annually. Annual day use passes and annual camping permits for the next calendar year may be purchased beginning July 1 each year. The division shall not make refunds or prorations for permits or passes that remain in effect for less than 12 months.

D. Visitors may obtain replacement annual camping permits and stickers by submitting a signed affidavit describing the facts of the purchase and the permit's loss or destruction and the original permit or proof of purchase. The division shall not issue replacement annual camping permits without proof of purchase. The division does not issue replacements for annual day use passes.

E. The division may sell gift certificates for annual day use passes and annual camping permits.

[19.5.2.35 NMAC - N, 1/1/2008; 19.5.2.35 NMAC - Rn & A, 19.5.2.33 NMAC, 1/1/2013; A, 1/1/2025]

19.5.2.36 DISABLED VETERANS PASSES:

A. Disabled veterans camping passes.

(1) A disabled veterans camping pass authorizes New Mexico resident veterans with a fifty percent or greater service-connected disability to camp at a park at no charge for three nights, consecutive or non-consecutive, within a 12-month period.

(2) To obtain the three one-night passes, an eligible veteran shall apply with the New Mexico department of veterans services for certification that verifies the veteran's disability and residency (current address) and that the New Mexico department of veterans services forwards to the division.

(3) Disabled veterans may obtain replacement camping passes and stickers by submitting a signed affidavit describing the facts of the issuance and loss or destruction of the pass and, if available, the original pass or proof of issuance.

B. Disabled veterans annual day use passes.

(1) Disabled veterans annual day uses passes authorize New Mexico resident veterans with a permanent fifty percent or greater service-connected disability to obtain one annual day use pass at no charge for personal use only. An eligible veteran desiring more than one annual day use pass shall purchase additional annual day use passes at full price.

(2) To obtain an annual day use pass, an eligible veteran shall apply with the New Mexico department of veterans services for certification that verifies the veteran's disability and residency (current address) and that the New Mexico department of veterans services forwards to the division.

(3) The division does not issue replacements for disabled veterans annual day use passes.

[19.5.2.36 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.36 NMAC - Rn, 19.5.2.34 NMAC, 1/1/2013]

19.5.2.37 VETERANS' DAY:

On the federally designated legal holiday known as Veterans' day any New Mexico resident who provides satisfactory proof that the resident is currently serving or has served in the United States armed forces, and the resident's spouse and dependent children are entitled to free use of any park including the waiving of all day use, camping or other fees.

[19.5.2.37 NMAC - Rp, 19.5.2.28 NMAC, 1/1/2008; A, 12/30/2010; 19.5.2.37 NMAC - Rn, 19.5.2.35 NMAC, 1/1/2013]

19.5.2.38 FOSTER FAMILIES:

Foster parents and children in their custody, young adults enrolled in the fostering connections program and children who are in custody of the children, youth and families department or in tribal custody, who are New Mexico residents are entitled to free day use of parks and a camping pass for up to three consecutive nights of overnight access to a state park. To obtain a free annual day use pass for entry to parks or a free camping pass for up to three consecutive nights of overnight access to a state park the foster parent shall present a current New Mexico driver's license or other state of New Mexico issued photo identification and a current New Mexico children, youth and families department foster parent certification card to park staff.

[19.5.2.38 NMAC – N, 6/25/2019; A, 1/1/2025]

19.5.2.39 PARK PASSES:

A. Concessionaires. The director or director designee (see Subsection Q of 19.5.7 NMAC) may issue park passes to concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents for access to and from the concession. Concessionaires, concession permittees or their employees or commercial contractors, suppliers and agents using the park, lake or facilities away from the concession premise shall pay the appropriate fees.

B. Contractors. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue park passes to division contractors, suppliers or agents or other persons providing services to a park for access to the park. Division contractors, suppliers or agents or other persons providing services to a park using the park or its facilities for purposes other than providing services to a park shall pay the appropriate fees.

C. Access to private property. The director or director designee may issue park passes to persons needing to pass through a park to access private property. Persons with such park passes shall only use the park passes to travel through the park. If they use the park or its facilities they shall pay the appropriate fees.

D. Park support groups and volunteers. The director or director designee may issue park passes to individuals who are members of a park support group that has entered into an agreement with the department or, as provided in division policy, to volunteers who significantly contribute to the division.

E. Complimentary park passes. The director or director designee (see Subsection Q of 19.5.1.7 NMAC) may issue complimentary passes as rainchecks to visitors for unused services or to resolve visitor complaints about park operation or maintenance.

F. Official use passes. The director may issue "official use only" passes to state government executive branch officials with direct oversight of the division, park advisory board members and state legislators for the performance of their official duties.

G. Advertising and promotions. To promote the parks or in exchange for advertising or promotion of parks, the director may issue free or discounted park passes or not charge fees if the director obtains the secretary's approval after the division provides the secretary with written justification showing that the issuance of park passes for promotion or advertising or not charging fees for promotional purposes provides a benefit to the division. Reduced rates for advertising must be equal to or exceed the value of the park passes the division provides in exchange for receiving the reduced rates.

[19.5.2.39 NMAC - Rn, 19.5.2.38 NMAC, 6/25/2019; A, 1/1/2025]

19.5.2.40 SPECIAL USE PERMITS:

A. The division shall authorize public assemblies involving groups of more than 10 people; public assemblies involving groups of 10 people or less that are using stages, platforms or structures; or special events within the state parks system only by special use permit and only after payment of associated fees. Persons shall submit applications for special use permits to the superintendent of the park where the special event or public assembly is proposed at least 15 calendar days prior to the special event or public assembly, or at least 30 calendar days prior to the special event if the special event is a regatta, motorboat or boat race, marine parade, tournament or exhibition. The director may waive the time limits for submittal of special use permit applications where arrangements can be made in a shorter time without placing an undue administrative burden on staff or when no special arrangements are necessary.

B. Persons shall complete the division-provided special use permit, which may include the park where the special event or public assembly is proposed; the location of the proposed special event or public assembly within the park; the date of the proposed special event or public assembly; start and end times for the proposed special event or public assembly; the number of people expected to attend; a detailed description of the proposed special event or public assembly; the applicant's name, address and phone number; a hold harmless requirement if the applicant is a non-governmental entity; insurance coverage; and designation of the type of proposed special event or public assembly (*i.e.* special use, marine event, park event, etc.).

C. The superintendent shall approve the special use permit, approve the special use permit with conditions or deny the special use permit as provided in 19.5.2.40 through 19.5.2.42 NMAC. The superintendent shall not issue a special use permit for a period of more than 14 consecutive calendar days without the director's approval. The director may approve a special use permit for more than 14 consecutive calendar days if the event will exceed 14 consecutive calendar days. The park may charge fees in addition to the special use permit fee to cover costs of additional staff, facilities, etc. needed for the special event or public assembly. The division may enter into an agreement with the special use permittee to have the special use permittee pay a fee equal to the estimated fees, such as day use fees, that individuals attending the special event would have paid in fees in lieu of such fees.

D. No person shall violate a condition or restriction attached to or indicated on the special use permit. The division may revoke a permit if the permit holder violates 19.5.2 NMAC. The superintendent may also revoke a special use permit for any of the conditions that constitute grounds for denial of a special use permit as provided in Subsection B of 19.5.2.41 NMAC for special events and Subsection B of 19.5.2.42 NMAC for public assemblies, or for violation of the terms and conditions of the special use permit. Such a revocation shall be made in writing, with the reasons for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation may be made to be followed by written confirmation within 72 hours.

[19.5.2.40 NMAC - Rn & A, 19.5.2.39 NMAC, 6/25/2019]

19.5.2.41 SPECIAL EVENTS:

A. Special events are allowed in a park if the applicant has obtained a special use permit from the superintendent.

B. The superintendent shall deny a special use permit if such activities would:

- (1)** cause injury or damage to park resources;
- (2)** be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;
- (3)** unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;
- (4)** substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;
- (5)** present a danger to the public health and safety;
- (6)** result in significant conflict with other existing uses; or
- (7)** not comply with the laws or policies of the landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers, New Mexico state land office, etc.).

C. As a condition of the special use permit's issuance, the superintendent may require:

- (1)** for non-New Mexico government or non-federal government applicants, the filing of a bond payable to the director, in an amount adequate to cover costs such as restoration, rehabilitation and cleanup of the area used, and other costs resulting from the event; or

(2) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner.

D. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the special event is allowed.

[19.5.2.41 NMAC – Rn, 19.5.2.40 NMAC, 6/25/2019]

19.5.2.42 PUBLIC ASSEMBLIES, MEETINGS:

A. Public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views are allowed within parks. A special use permit issued by the park superintendent is required for public assemblies, meetings, gatherings, demonstrations, parades and other public expressions of views that involve groups of:

- (1) more than 10 people; or
- (2) 10 people or less who are using stages, platforms or structures.

B. The superintendent shall, without unreasonable delay, issue a special use permit on proper application unless:

- (1) a prior application for a special use permit for the same time and place has been made that has been or will be granted and the activities authorized by that special use permit do not reasonably allow multiple occupancy of that particular area;
- (2) it reasonably appears that the event will present a danger to the public health or safety; or
- (3) the event is of such nature or duration that it cannot reasonably be accommodated in the particular location applied for, considering such things as damage to park resources or facilities, interference with program activities or impairment of public use facilities.

C. If the superintendent denies a special use permit, the superintendent shall inform the applicant in writing with the reasons for the denial set forth.

D. The superintendent shall designate on a map, which shall be available in the office of the superintendent, the locations available for public assemblies. Locations may be designated as not available if such activities would:

- (1) cause injury or damage to park resources;
- (2) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;
- (3) substantially impair the operation of public use facilities or services of division concessionaires or contractors; or
- (4) present a danger to the public health and safety.

E. The special use permit may contain such conditions as are reasonably consistent with protection and use of the park area for the purposes for which it is established. It may also contain reasonable limitations on the equipment used and the time and area within which the event is allowed.

F. It is prohibited for persons engaged in activities permitted or authorized pursuant to 19.5.2.42 NMAC to obstruct or impede pedestrians or vehicles, harass park visitors, interfere with park programs or create security or accessibility hazards.

[19.5.2.42 NMAC - Rn & A, 19.5.2.41 NMAC, 6/25/2019; A, 1/1/2025]

19.5.2.43 RESEARCH AND COLLECTIONS:

A. Academic research activities, including plant and animal collecting, are allowed in a park if the person or entity has obtained a research permit through the division's resource program.

B. The division shall deny a research permit if such activities would:

- (1) cause undue injury or damage to park resources;
- (2) be contrary to the purposes for which the park is established or operated; or unreasonably impair the purposes for which the park is established or operated;
- (3) unreasonably interfere with interpretive, visitor service or other program activities, or with the division's administrative activities;
- (4) substantially impair the operation of the division's public use facilities or services of concessionaires or contractors;
- (5) present a danger to the public health and safety;
- (6) result in significant conflict with other existing uses;

(7) not comply with the laws or policies of the landowner (e.g. United States department of the interior, bureau of reclamation; New Mexico department of game and fish; United States army corps of engineers; New Mexico state land office, etc.); or

(8) not comply with federal or state laws concerning threatened and endangered species or cultural resources.

C. As a condition of the research permit's issuance, the division may require:

(1) the acquisition of liability insurance in which the state, department and division, and if applicable the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir, are named as co-insured in an amount sufficient to protect the state, the department and the division, and if applicable the landowner; or

(2) the permittee to submit to the resource program a written report summarizing the data collected within six months of completion of the permitted activity.

D. The research permit may contain such conditions as are reasonably consistent with protection and use of the park for the purposes for which it is established or operated. It may also contain reasonable limitations on the equipment used and the time and area within which the research activity is allowed.

E. The park may charge fees to cover costs of additional staff, facilities, etc. needed for the research activities.

[19.5.2.43 NMAC - Rn, 19.5.2.42 NMAC, 6/25/2019]

PART 3: PARK MANAGEMENT AND DEVELOPMENT PLAN

19.5.3.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, State Parks Division.

[12-31-96; 19.5.3.1 NMAC - Rn, 19 NMAC 5.3.1, 12/31/2002; A, 1/1/2008]

19.5.3.2 SCOPE:

19.5.3 NMAC applies to the division and the general public.

[12-31-96; 19.5.3.2 NMAC - Rn, 19 NMAC 5.3.2, 12/31/2002; A, 1/1/2008]

19.5.3.3 STATUTORY AUTHORITY:

19.5.3 NMAC is authorized pursuant to NMSA 1978, Section 9-1-5(E) and Sections 16-2-2 *et seq.*

[12-31-96; 19.5.3.3 NMAC - Rn, 19 NMAC 5.3.3, 12/31/2002; A, 1/1/2008]

19.5.3.4 DURATION:

Permanent.

[12-31-96; 19.5.3.4 NMAC - Rn, 19 NMAC 5.3.4, 12/31/2002]

19.5.3.5 EFFECTIVE DATE:

December 31, 1996, unless a later date is cited at the end of a section.

[12-31-96; 19.5.3.5 NMAC - Rn & A, 19 NMAC 5.3.5, 12/31/2002]

19.5.3.6 OBJECTIVE:

19.5.3 NMAC's objective is to provide direction for the management and development of the parks in the New Mexico state parks system in a manner that enhances recreational opportunities, protects park resources, provides for public input and protects the environment.

[12-31-96; A, 12-31-98; 19.5.3.6 NMAC - Rn, 19 NMAC 5.3.6, 12/31/2002; A, 1/1/2008]

19.5.3.7 DEFINITIONS:

[RESERVED]

[12-31-96; 19.5.3.7 NMAC - Rn, 19 NMAC 5.3.7, 12/31/2002; A, 1/1/2008]

[See 19.5.1.7 NMAC for definitions.]

19.5.3.8 REQUIREMENT:

Each park shall establish a park management and development plan and conform to the plan at all times except in cases of emergency in order to protect life or property. This requirement shall not prevent the director or secretary from making and implementing policy decisions concerning a park's management and operation if a plan is not in place and shall not require an existing plan to be amended before such policy decision is made and implemented.

[12-31-96; 19.5.3.8 NMAC - Rn & A, 19 NMAC 5.3.8, 12/31/2002; A, 1/1/2008]

19.5.3.9 CONTENT OF PARK MANAGEMENT AND DEVELOPMENT PLANS:

A. Park management and development plans shall address at a minimum:

- (1) the park's mission and goals;
- (2) park operational and management programs that:
 - (a) identify how public use facilities, support facilities and infrastructure are maintained;
 - (b) identify how the division manages the park to provide recreation opportunities and to protect park resources and visitors; and
 - (c) provide for the park's administration;
- (3) current and future concessions at the park; and
- (4) expansion and development concepts that identify future capital improvement needs to facilities, structures and recreational use areas.

B. Park management and development plans shall include a map that identifies current facilities and activity areas and may identify areas where future development, management and recreational activities may be planned in the park.

[12-31-96, 12-31-98; 19.5.3.9 NMAC - Rn & A, 19 NMAC 5.3.9, 12/31/2002; A, 1/1/2008]

19.5.3.10 PUBLIC COMMENT:

The park management and development plan shall be available for public comment for 30 calendar days before the division implements or modifies it. The division shall publish a public notice in a newspaper of general circulation in the park's locality and mail it to persons who have made a written request for advance notice at least 30 calendar days before the division implements or modifies a park management and development plan.

[12-31-96; 19.5.310 NMAC - Rn & A, 19 NMAC 5.3.10, 12/31/2002; A, 1/1/2008]

19.5.3.11 APPROVAL:

Park management and development plans require the director and secretary's written approval.

[12-31-96; 19.5.311 NMAC - Rn & A, 19 NMAC 5.3.11, 12/31/2002; A, 1/1/2008]

19.5.3.12 MODIFICATION OF PARK MANAGEMENT AND DEVELOPMENT PLAN:

The division shall not modify or change a park management and development plan without a public comment period as provided in 19.5.3.10 NMAC. The division may review and update park management and development plans at any time if the director determines review is necessary.

[12-31-96; 19.5.312 NMAC - Rn & A, 19 NMAC 5.3.12, 12/31/2002; A, 1/1/2008; A, 1/1/2013]

PART 4: LEASE LOT PROVISIONS [REPEALED]

[This part was repealed on January 1, 2008.]

PART 5: CONCESSION ACTIVITIES

19.5.5.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, State Parks Division.

[19.5.5.1 NMAC - Rp, 19.5.5.1 NMAC, 1/1/2008]

19.5.5.2 SCOPE:

19.5.5 NMAC applies to a person conducting commercial activity within the state parks system and to a person who proposes to conduct commercial activity within the state parks system, except for a park support group unless the division director determines that the commercial activity's scale requires 19.5.5 NMAC's application to such group. 19.5.5 NMAC does not apply to repair or assistance services the public hires for personal property assistance or repair within a park. 19.5.5 NMAC does not apply to contractors the division hires to perform construction or other services for the division within the state parks system.

[19.5.5.2 NMAC - Rp, 19.5.5.2 NMAC, 1/1/2008]

19.5.5.3 STATUTORY AUTHORITY:

19.5.5 NMAC is authorized pursuant to NMSA 1978, Section 9-1-5(E) and Sections 16-2-2 *et seq.*

[19.5.5.3 NMAC - Rp, 19.5.5.3 NMAC, 1/1/2008]

19.5.5.4 DURATION:

Permanent.

[19.5.5.4 NMAC - Rp, 19.5.5.4 NMAC, 1/1/2008]

19.5.5.5 EFFECTIVE DATE:

January 1, 2008, unless a later date is cited at the end of a section.

[19.5.5.5 NMAC - Rp, 19.5.5.5 NMAC, 1/1/2008]

19.5.5.6 OBJECTIVE:

19.5.5 NMAC's objective is to establish standards and procedures for allowing commercial activities within the state parks system, which will provide essential, quality service to the public while preserving natural and cultural resources; provide economic development opportunities for the public; and provide revenue for the state of New Mexico.

[19.5.5.6 NMAC - Rp, 19.5.5.6 NMAC, 1/1/2008]

19.5.5.7 DEFINITIONS:

[RESERVED]

[19.5.5.7 NMAC - Rp, 19.5.5.7 NMAC, 1/1/2008]

[See 19.5.1.7 NMAC for definitions.]

19.5.5.8 SUBMITTAL OF PROPOSALS FOR CONCESSION CONTRACTS:

A. An interested person seeking to operate a concession within a park or a concessionaire within a park who wishes to expand services beyond the location the concession contract authorizes may send a proposal summary including a brief description of the concession operation with the services to be offered, the concession's proposed location within the park and a description of how the concession meets the criteria in Subsection A of 19.5.5.9 NMAC to the superintendent at the park where the concession is proposed.

B. The director shall evaluate the proposal summary, with the understanding that new or replacement contracts shall be awarded on a competitive basis and notify the interested person and any existing concessionaire that:

(1) the proposal summary indicates the concession does not fit the criteria as listed in Subsection A of 19.5.5.9 NMAC; or

(2) the division will issue a request for concession proposals and the interested person may submit a proposal.

C. The division may request concession proposals when the division determines that there is a concession opportunity within a park, when a concession contract with an

existing concessionaire has been terminated or expires or when an existing concessionaire no longer wishes to provide the services. The division shall consider at least the following in deciding whether to issue a request for proposals for the concession:

- (1)** the park's location, remoteness and, if applicable, facility accommodations;
- (2)** the population of the area surrounding the park and similar services being offered within the area;
- (3)** whether other persons have expressed an interest in providing the concession;
- (4)** the proposed concession operation's size; and
- (5)** whether an existing concession can provide the new and expanded service, as provided by the existing contract.

D. An interested person responding to a request for concession proposals shall submit the original of a concession proposal consisting of a cover letter and proposal summary, bound with tab dividers indicating the separately numbered paragraphs corresponding to the following numbers and information requested to the concessions administrator at the division office in Santa Fe through the superintendent at the prospective park where the concession is to be located.

- (1)** Business plan for the proposed concession that identifies:
 - (a)** the type of business;
 - (b)** the park name and the business' specific location within the park;
 - (c)** services to be offered;
 - (d)** proposed concession fee;
 - (e)** the percentage mark up of goods and services to be offered;
 - (f)** a description of how the business will be operated;
 - (g)** an assurance statement that the concessionaire will follow all federal, state and local statutes or ordinances and regulations or rules;
 - (h)** a proposed maintenance schedule;

(i) a building and improvements schedule outlining any proposed capital improvements, including a plan for the financing of the capital improvements, if applicable;

(j) identification of all investors or potential investors; and

(k) a current financial statement.

(2) A market analysis that:

(a) defines the market area;

(b) identifies existing concessions and other similar ventures within the market area and an indication of their success;

(c) provides the results of any existing public demand survey; and

(d) estimates the economic impact to the park and neighboring community.

(3) Plan for advertising and promoting the proposed concession and the park.

(4) Environmental evaluation of the effects of operating the proposed business that addresses solid and liquid waste generation/removal; air quality; water quality; and compliance with federal, state and local environmental laws.

(5) A cultural property evaluation that includes the identification and significance of cultural properties in the project area and outlines the project impact on cultural properties and proposed impact mitigation, which follows appropriate state or federal cultural property legislation, guidelines and standards, and is coordinated with appropriate federal and state agencies, including the state historic preservation office.

(6) Statement of the proposed terms and conditions relating to revenue generated to the state and term of agreement.

(7) Identification of required permits from other agencies and authorization or pre-approval, as required.

(8) Description of past business or other experience that demonstrates the interested person's ability to operate the concession.

(9) Projected revenue statement.

E. The division shall not evaluate incomplete proposals. The division may request additional information from the interested person as necessary for the proposal's review and evaluation.

F. The division may allow persons submitting proposals the opportunity to discuss the proposals with the division and revise the proposals, but may accept proposals without these discussions. The division may permit interested persons to revise their proposals after submittal of proposals and prior to the division's acceptance for the purpose of obtaining best and final offers. The division may conduct negotiations with interested persons who submit proposals the division finds to be reasonably likely to be selected.

G. The division should notify the interested person of its decision to accept or reject the proposal. During the review process, the division reserves the right to seek comment on a proposal from the public, federal and state agencies and other appropriate entities. If the division requests comments, it may take additional time to review and evaluate a proposal and reach a decision to accept or reject the proposal.

H. When an existing concession contract expires, the division shall not give the existing concessionaire preference for selection. The division may consider performance and the amount of capital investment in the selection process.

[19.5.5.8 NMAC - Rp, 19.5.5.8 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.9 CRITERIA FOR GRANTING CONCESSION CONTRACTS:

The secretary shall consider at least the following in determining whether or not to grant a concession contract.

A. Concessions shall:

- (1)** provide a needed service or a service in which visitors have shown a substantial interest and the service is not adequately provided within the park or within the area;
- (2)** provide services to the general public rather than a particular individual or group;
- (3)** enhance, improve, protect and conserve park natural, historical and cultural resources;
- (4)** provide reasonable revenue to the state in exchange for the concession agreement;
- (5)** include facilities, if required, that are of sufficient size to support the proposed activity and that are harmonious in form, line, color and texture with the surrounding landscape; and
- (6)** be consistent with the park management and development plan in effect for the park in which the concession is to be located.

B. The division shall not grant new concession contracts unless the director and secretary have approved a park management and development plan that identifies the concession development.

C. Concessionaires shall:

(1) provide evidence to the division that the concessionaire possesses a sufficient level of experience and adequate financial resources to operate the concession in an efficient and professional manner; and

(2) not have past concession performance problems, such as repeated noncompliance with previous or current concession contracts or concession permits or 19.5.5 NMAC.

[19.5.5.9 NMAC - Rp, 19.5.5.9 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.10 CONCESSION CONTRACT PROVISIONS:

Following a proposal's acceptance, the division shall enter into negotiations with the successful offeror for a concession contract to operate the concession or with a concessionaire to amend an existing concession contract. To the extent 19.5.5.10 NMAC contradicts an existing concession contract in effect on May 15, 1997, 19.5.5.10 NMAC shall not apply to those contracts unless they are renegotiated or amended. The concession contract's provisions shall be consistent with the following requirements.

A. The concession contract's term shall be limited to the shortest period possible and the term shall not exceed five years unless justified by at least the following: the amount of a concessionaire's investment, the capital improvements made or to be made on the premises and the types of services offered. Under no circumstances shall the concession contract's term exceed 30 years. The division may terminate the concession contract for the concessionaire's noncompliance with the concession contract or 19.5.5 NMAC, or if the division's lease or other agreement with the landowner (e.g. United States department of the interior, bureau of reclamation) from which the division leases the land or reservoir terminates.

B. Each concession contract shall include a legal description or a detailed map that defines the area in which the concession will operate.

C. A concession contract is subject to limitations applicable federal and state agencies place on the division. The division reserves the right to install park facilities and utilities and to use the park for authorized purposes. The division reserves the right to close the park or the concessionaire's operations for reasonable law enforcement or safety purposes.

D. A concession contract shall require the concessionaire to pay the division a monthly concession fee, based on a flat fee or a percentage of the concessionaire's net

receipts from sales and services. The concessionaire shall submit the concession fee and a monthly report detailing net receipts from sales and services on a division provided form to the concessions administrator at the division office in Santa Fe. The concession fee and monthly report shall be postmarked no later than 5:00 p.m. on the 25th day of the month after the reporting month, unless the 25th falls on a Saturday, Sunday or state-recognized holiday in which case the concession fee and monthly report shall be postmarked no later than 5:00 p.m. of the next business day. The concessionaire's failure to submit the concession fee and monthly report shall result in a penalty fee of 10 percent of the concession fee for the month that is late or \$50.00, whichever is greater.

E. The concession contract shall include a schedule for construction. If the schedule for construction includes improvements to publicly owned property, the division may authorize the concessionaire in writing to expend a percentage of amounts due the division in lieu of remitting them to the division for construction and alterations to publicly owned property to benefit the park. Improvements shall be consistent with the park management and development plan and the concessionaire shall obtain the division's, and if applicable the landowner's, prior approval for the improvements.

F. The concession contract shall require the concessionaire to have liability insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as co-insured, and indemnifying the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, for public liability, personal injury and property damage in amount equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time along with worker's compensation insurance, if applicable, prior to taking control of the concession premises.

G. The concession contract shall require the concessionaire, prior to taking control of the concession premises, to have the greater of:

(1) financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of 10 percent of the gross receipts from sales and services for the prior year; or

(2) financial assurance satisfactory to the division conditioned upon the faithful performance of the concession contract in a minimum amount of \$5,000 annually, by performance bond or irrevocable letter of credit; if the receipts are anticipated to be less than \$50,000, the division shall consider the concession operation's size and nature and may reduce the financial assurance amount.

H. The concessionaire shall properly maintain concession facilities and real property the concessionaire intends to use in operating the concession and capital improvements the concessionaire makes to the premises. The concessionaire shall complete maintenance with due diligence, in a commercially reasonable manner, so as to ensure

visitors' health, safety and welfare. The concessionaire shall prepare an annual operation and maintenance plan, which requires the superintendent's approval. The superintendent shall submit a copy of the approved operation and maintenance plan to the concessions administrator. The approved operations and maintenance plan shall become part of the file the concessions administrator maintains.

I. The concessionaire shall comply with appropriate local, state and federal laws and shall comply with current applicable environmental regulations or rules and building code requirements, including those for accessibility, historical preservation and cultural properties protection. The concessionaire shall obtain applicable permits prior to beginning construction and provide copies to the superintendent.

J. Concessions offering food services shall comply with federal statutes and regulations, state statutes and rules and county or municipal ordinances regarding food sanitation.

K. A concession's advertising and signs within the park shall be subject to the director's prior written approval, and the appropriate federal agency or other state agency if applicable. Approvals shall become a part of the file the concessions administrator maintains. Advertising through any media, including the internet, shall acknowledge that the concession premises are within the park in which the concession is located. Printed information using the logo of the division or a federal agency or other state agency requires prior written approval from the division or the federal agency or other state agency.

L. No concession contract shall be amended except by written instrument executed by the parties and approved by the New Mexico board of finance and applicable state or federal agencies.

M. Either the division or a concessionaire may request to amend the concession contract provisions or to renegotiate the contract at any time during the contract term. A concessionaire shall make such a request in writing to the superintendent. Within 30 calendar days of receipt of such a request, the division should either notify the concessionaire of its decision or schedule a meeting with the concessionaire to negotiate the contract. If the concessionaire seeks to amend the contract provisions or to renegotiate the contract in order to expand services beyond those authorized by the concession contract, the concessionaire shall comply with 19.5.5.8 NMAC. The concessionaire shall also submit a copy of a request for amendment to the concessions administrator.

N. Upon expiration or termination of the concession contract the following shall apply to disposal or removal of improvements.

(1) Upon expiration or termination of the concession contract, the incoming concessionaire shall purchase the permanent improvements that have been placed on the concession premises with the secretary's prior written approval. Sale of

improvements and personal property shall be at appraised value and conducted as follows. The current concessionaire shall at concessionaire's own expense provide an appraisal conducted by a licensed independent appraiser six months prior to expiration of the contract. Any person submitting a concession proposal pursuant to 19.5.5.8 NMAC, for an existing concession where such appraised improvements exist, shall provide, with his or her proposal, proof of financing based on the appraisal. Upon award the incoming concessionaire may accept the appraisal or at the incoming concessionaire's expense conduct a second appraisal. If neither appraisal is acceptable to both the prior concessionaire and the incoming concessionaire a third appraiser acceptable to both may be sought. The third appraisal shall be binding on both the prior concessionaire and incoming concessionaire.

(2) If upon the expiration or termination of the concession contract there is not an incoming concessionaire, within 120 calendar days after expiration or termination the concessionaire shall remove the personal property and any permanent improvements the division has directed the concessionaire to remove from the concession premises at the concessionaire's own costs and the concessionaire shall restore the concession premises to a safe and natural condition after removing permanent improvements that the division has not authorized the concessionaire to leave in place.

O. A concessionaire shall establish and maintain a system for record keeping that uses generally accepted accounting principles. A concessionaire shall submit a year-end financial statement a New Mexico independent certified public accountant prepared that includes an income statement, balance sheet and statement of cash flows no later than 90 calendar days after the end of the concession fiscal year to the concessions administrator at the division office in Santa Fe. The level of certified public accountant assurance certification may be an audit, review or compilation of the financial statements. The division shall consider the amount of the concessionaire's gross receipts from sales and services and length of term of the concession contract when determining the level of certification required.

P. The department and, if applicable, the federal agency or other state agency shall have access to and may examine and audit a concessionaire's pertinent books, documents, papers and other records related to the concession business operated pursuant to the concession contract during the concession contract's term and for three years after the concession contract has expired. A concession shall make such records available at the concession operation or at the division's office in Santa Fe upon demand during usual business hours. Such records include financial, employer and equipment records.

Q. If the division operates the park in which the concession is located pursuant to a lease with a local, state or federal agency, the concession contract is subject to the lease agreement between the division and the agency and may require the appropriate agency's approval.

19.5.5.11 CONCESSION CONTRACT APPROVAL BY NEW MEXICO BOARD OF FINANCE:

Concession contracts require the New Mexico board of finance's approval. After the parties have agreed on contract terms and signed the concession contract, the division shall submit the concession contract to the board of finance for approval.

[19.5.5.11 NMAC - Rp, 19.5.5.11 NMAC, 1/1/2008]

19.5.5.12 ASSIGNMENT AND SUBCONTRACTS OF CONCESSION CONTRACTS:

A. A concessionaire shall not transfer, sell, subcontract, encumber, assign, extend, renew, assign management responsibilities, exchange concession business or property or assign rights a concession contract grants, without the secretary's prior written approval. In addition, the above transactions may also require the approval of the New Mexico board of finance and the appropriate federal or state agency. Subcontracts are subject to the concession contract's terms and provisions.

B. The secretary may choose not to approve a transfer, sale, subcontract, encumbrance, assignment, extension, renewal, assignment of management responsibilities, exchange of concession business or property or an assignment of rights that a concession contract grants at the secretary's discretion or may place appropriate conditions on approval, including modification of the concession contract's terms and conditions as a condition of approval. The secretary shall not unreasonably withhold a sale or transfer or place unreasonable conditions or modifications on a concession contract as a condition of approval.

C. A concessionaire who seeks to subcontract services the concession contract authorizes shall submit a proposed subcontract to the superintendent who shall attach a forwarding letter with recommendations concerning the proposed subcontracting to the concessions administrator. The division may request additional information from the concessionaire as necessary for the subcontract's review and evaluation. The division shall notify the concessionaire after the proposed subcontract's receipt of its decision to approve or reject the subcontract. The concessionaire shall submit the subcontract for approval at least 90 calendar days prior to the subcontract's intended effective date to allow for approval by the board of finance and the appropriate federal or state agency, if required.

[19.5.5.12 NMAC - Rp, 19.5.5.12 NMAC, 1/1/2008]

19.5.5.13 REVIEW OF DECISIONS BY THE DEPARTMENT:

A. Requests for review or written responses.

(1) If the division proposes to terminate a concession contract for noncompliance with the contract terms, the division shall send a notice of proposed termination to the concessionaire identifying the areas of noncompliance. The notice shall provide that the concessionaire may request review by the secretary of the division's proposal to terminate by responding in writing to the proposal to terminate within 15 calendar days after the notice of the proposed termination's receipt. The notice shall provide that proposed termination shall be effective 30 calendar days after the concessionaire's receipt of the notice if the concessionaire does not request review. The division may include in a concession contract provisions that provide other reasons for termination and a review process for terminations based upon those reasons.

(2) If the division decides to terminate a concession contract immediately without notice due to a life endangering situation, the concessionaire may request review by the secretary or respond in writing within 15 calendar days after termination.

(3) If the division does not approve a concessionaire's request for transfer, sale, subcontract or any other transaction requiring approval as set forth in Subsection A of 19.5.5.12 NMAC, the concessionaire may request review by the secretary or respond in writing within 15 calendar days after receipt of notice that the division did not approve the transfer, sale, subcontract or other transaction.

B. Review by the secretary shall consist of an informal oral response by the concessionaire in which the concessionaire may present justification, facts, etc. that support continuing the concession's operation. If the concessionaire requests review of a decision, the department shall meet with the concessionaire within 15 calendar days following the request. The secretary may designate an employee of the department, but not of the division, to hear the concessionaire's response.

C. The secretary shall consider the concessionaire's written or oral response. The secretary shall send a final notice to the concessionaire either affirming or withdrawing the decision within 15 calendar days after the written response's receipt or within 15 calendar days after the oral response. The secretary's decision shall be final and is not subject to further review or appeal within the department.

[19.5.5.13 NMAC - Rp, 19.5.5.13 NMAC, 1/1/2008]

19.5.5.14 CONCESSION PERMITS:

A. A concession permit is valid for one year or less. For outfitters and guides, the concession permit's full one-year period is from April 1st until March 31st annually. All other concession permits are valid for 12 months from the date of issue, unless otherwise indicated on the concession permit. The concession permit activity is allowed only on the date or dates of activity approved in the permit.

B. A person applying for a concession permit shall obtain a concession permit application from the superintendent at the park where the applicant intends to operate.

The application shall require the following information: a detailed description and location of the proposed activity, when the proposed activity will take place and the number of people involved; the applicant's information including name, address and telephone number; the applicant's New Mexico tax identification number and proof of insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as additional insured; and a hold harmless agreement signed by the applicant. The person shall complete the application and return it to the superintendent along with the concession permit fee (see 19.5.6 NMAC). An outfitter or guide shall submit a concession permit application to the superintendent by March 1st if the applicant intends to hold a concession permit for the full permit term beginning April 1st.

C. The superintendent shall review the application and determine whether the service or activity meets the following criteria:

- (1)** does not significantly adversely impact an existing concessionaire's operation;
- (2)** provides a needed service to park visitors or a service in which the public has shown a substantial interest;
- (3)** enhances, improves or protects park resources or enjoyment thereof; and
- (4)** meets the concession permit definition in 19.5.1.7 NMAC.

D. The superintendent should contact the applicant within 15 calendar days if the application is incomplete. The superintendent may request additional information from the applicant as necessary for the application's review and evaluation. The regional manager shall submit applications the superintendent and regional manager approve to the concessions administrator for the division's processing and review and the secretary's final approval.

E. The concession permittee shall not maintain fixed assets within the park.

F. The concession permittee's business address shall be outside of the park.

G. Concession permittees, their employees and their clients shall pay applicable fees associated with a park's use. See 19.5.6 NMAC.

H. A concession permit is valid only within the park for which it is issued. However, a concession permittee may use a single concession permit for Heron Lake state park and El Vado Lake state park or Elephant Butte Lake state park and Caballo Lake state park and Percha Dam state park.

I. The division shall not issue a concession permit until the applicant has provided proof of insurance for public liability for personal injury and property damage, which

shall at a minimum provide a \$1,000,000 limit for each occurrence and a \$2,000,000 general aggregate limit in which the state of New Mexico, department and division, and if applicable the landowner from which the division leases the land or reservoir, are named as co-insured.

J. Concession permittees, their employees and their clients are subject to appropriate state rules and federal regulations.

K. Concession permits are not transferable. A concession permittee shall not sell or transfer a concession permit for any reason. The department shall not refund a portion of the permit fee if the permittee ceases business during the permit year.

L. The director may limit the number and type of concession permits issued for a park in order to protect park resources. In determining whether to limit the number or type of concession permits, the director shall consider factors such as impact to the park infrastructure or impact to natural resources such as vegetation, erodible soils, etc. The director may prescribe special requirements and conditions for concession permits when it is in the division or state's best interests, including limitations on use of park resources, grounds and facilities; designation of a specific area within a park in which a concession permittee is allowed to operate; designation of specific days or hours during which a concession permittee is allowed to operate; limitations on prices the concession permittee charges; requirements for submission of use and price data including number of customers and charges for services provided; and training requirements.

M. A permittee shall not violate a condition or restriction of the concession permit or 19.5.5 NMAC. The division may immediately cancel a concession permit if the permittee violates the concession permit or 19.5.5 NMAC.

[19.5.5.14 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.15 OUTFITTERS AND GUIDES:

A. An outfitter may apply for one concession permit and purchase guide cards for guides the outfitter employs who will be conducting guided fishing, boating or rafting trips. The outfitter shall provide the superintendent with a list of guides authorized to conduct guided trips for the outfitter and request the number of guide cards the outfitter wishes to purchase at the time the outfitter submits a concession permit application and fee. The fee for a guide card shall be the same as the fee for a concession permit. See 19.5.6 NMAC. During the concession permit's term, the outfitter shall have public liability insurance naming the state of New Mexico, the department and the division, and if applicable the landowner from which the division leases the land or reservoir, as principal beneficiaries and shall have, if applicable, workers' compensation insurance in force and effect with a carrier licensed to do business in New Mexico. The public liability insurance shall cover personal injury and property damage in amounts equal to or greater than the liability limits set forth in NMSA 1978, Section 41-4-19, as it may be amended from time to time.

B. The number of guides on the outfitter's guide list may exceed the number of guide cards the outfitter purchased. However, at no time shall the number of guides conducting commercial activity in a park exceed the number of guide cards the division issued to the outfitter. Only guides whose names appear on the guide list may conduct guided trips.

C. Each guide shall be able to present a guide card to a state park official at all times when the guide is conducting commercial activity in a park. A person shall not conduct commercial guiding activities without having a guide card in his or her possession. An outfitter or guide shall present the guide card to a state park official when requested to do so.

D. The outfitter is responsible for all guide cards the division issues to the permittee and for updating the guide list as necessary and providing the updated guide list to the superintendent.

E. Each outfitter shall submit an annual report that provides information concerning the outfitter's activities for the preceding year to the superintendent by April 15th. Annual reports shall include dates of guided trips, number of trips on each date and total number of clients on each date or a statement that no trips were made during the year.

F. An outfitter or guide shall not take more than three clients on a wade trip or more than three clients on a float boat at one time.

G. Outfitters and guides are subject to boat safety inspections at all times while boating.

H. Commercial boat use on the San Juan river, Navajo Lake state park is allowed only from the Texas hole and downstream.

I. Outfitters shall identify their boats with the outfitter's company name prominently and clearly printed on the vessel on both the port and starboard sides. Lettering shall be at least three inches in height.

J. Outfitters or guides shall display a concession permittee vehicle pass while conducting commercial activities within the boundaries of a state park. The concession permittee vehicle pass does not exempt the holder from paying park fees if the outfitter or guide is using the park or its facilities for personal use.

K. Outfitters shall submit trip ticket information using the internet-based trip ticket reporting system for commercial trips. The outfitter, or the outfitter's guide or agent, shall complete this form prior to the trip commencing. The guide conducting the trip shall carry a copy of the trip ticket for the duration of the commercial trip. A person shall not conduct commercial fishing or hunting activities within a state park without having a valid trip ticket in his or her possession.

[19.5.5.15 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; A, 1/1/2013]

19.5.5.16 PROHIBITED COMMERCIAL ACTIVITIES:

The following commercial activities are prohibited within the state parks system:

- A.** commercial activity without written authorization pursuant to a concession contract, concession permit, film permit or special use permit;
- B.** services or activities not benefiting the visitor's experience;
- C.** services or activities that may threaten the public's health or safety;
- D.** services or activities that may threaten or damage park resources;
- E.** sale of goods or services outside of a specifically-defined location designated for a concession, unless authorized in a concession permit, special use permit or cooperative agreement; and
- F.** solicitation of unwanted business.

[19.5.5.16 NMAC - Rp, 19.5.5.14 NMAC, 1/1/2008; Repealed, 1/1/2013; 19.5.5.16 NMAC - Rn, 19.5.5.17 NMAC, 1/1/2013]

19.5.5.17 CONCESSION MANAGEMENT PROCEDURES:

The superintendent is the division's designated representative with concessionaires and concession permittees in day-to-day operations. Concessionaires shall direct questions concerning a concession contract or permit, including responsibilities pursuant to the contract or permit and interpretation of a contract's or permit's terms to the superintendent. Concessionaires or concession permittees shall direct questions, problems or complaints to the superintendent. The concessions administrator shall maintain historical, fiscal and administrative records at the division office in Santa Fe to ensure compliance with the concession contract. The concessions administrator shall notify the director of a concession contract's expiration at least nine months prior to the expiration date.

[19.5.5.17 NMAC - Rp, 19.5.5.15 NMAC, 1/1/2008; 19.5.5.17 NMAC - Rn, 19.5.5.18 NMAC, 1/1/2013]

19.5.5.18 INSPECTIONS:

- A.** Concessionaires are subject, with prior notice, to a state park official's inspection of the concession premises for public safety and health reasons and to monitor compliance with the concession contract and operation and maintenance plan. Concessionaires shall always maintain a safe and healthy environment for the public

and the concessionaire's employees. If applicable, the landowner from which the division leases the land or reservoir may inspect the concession premises.

B. The department shall have the right to close down a concession operation at any time without prior notice in order to protect the safety and health of parks, visitors and staff.

C. Concession operations shall comply with applicable codes and rules or regulations of applicable authorities.

[19.5.5.18 NMAC - Rp, 19.5.5.16 NMAC, 1/1/2008; 19.5.5.18 NMAC - Rn & A, 19.5.5.19 NMAC, 1/1/2013]

19.5.5.19 PREFERENCES FOR BLIND PERSONS:

The department shall comply with NMSA 1978, Section 22-14-27 in assuring that it gives blind persons the commission for the blind licenses preference in the establishment and operation of vending machines with the state parks system when blind persons may properly and satisfactorily operate vending machines.

[19.5.5.19 NMAC - Rp, 19.5.17 NMAC, 1/1/2008; 19.5.5.19 NMAC - Rn, 19.5.5.20 NMAC, 1/1/2013]

PART 6: PARK FEES

19.5.6.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, State Parks Division.

[19.5.6.1 NMAC - Rp, 19 NMAC 5.6.1, 5/1/2004; A, 1/1/2008]

19.5.6.2 SCOPE:

19.5.6 NMAC applies to persons using the state parks system.

[19.5.6.2 NMAC - Rp, 19 NMAC 5.6.2, 5/1/2004; A, 1/1/2008]

19.5.6.3 STATUTORY AUTHORITY:

19.5.6 NMAC is authorized pursuant to Subsection E of Section 9-1-5 and Sections 16-2-2 *et seq.* NMSA 1978.

[19.5.6.3 NMAC - Rp 19 NMAC 5.6.3, 5/1/2004; A, 1/1/2008; A, 5/15/2018]

19.5.6.4 DURATION:

Permanent.

[19.5.6.4 NMAC - Rp, 19 NMAC 5.6.4 , 5/1/2004]

19.5.6.5 EFFECTIVE DATE:

May 1, 2004, unless a later date is cited at the end of a section.

[19.5.6.5 NMAC - Rp, 19 NMAC 5.6.5, 5/1/2004]

19.5.6.6 OBJECTIVE:

19.5.6 NMAC's objective is to establish fees for visitors to off-set the cost of park operations so that each park may be made as nearly self-supporting as possible.

[19.5.6.6 NMAC - Rp, 19 NMAC 5.6.6, 5/1/2004; A, 1/1/2008]

19.5.6.7 DEFINITIONS:

[RESERVED]

[19.5.6.7 NMAC - Rp, 19 NMAC 5.6.7, 5/1/2004; A, 1/1/2008]

[See 19.5.1.7 NMAC for definitions.]

19.5.6.8 DAY USE PERMIT (use fees):

A. All parks (except as noted in Subsection B of 19.5.6.8 NMAC).

Per motor vehicle (residents with valid state identification card or NM license plate on the vehicle.)	\$5.00
Per motor vehicle (non-resident)	\$10.00
Walk in/bicycle	No Charge
School bus (non-resident only)	\$15.00
Commercial charter bus	\$50.00
RV dump station per use (resident and non-resident visitors not camping in the park)	\$10.00

B. Parks with exceptions.

Rio Grande Nature Center state park	
Parking fee per motor vehicle	\$5.00
Walk in/bicycle	No Charge
Parking fee per School bus (non-resident only)	\$15.00
Commercial charter bus	\$50.00

Living Desert Zoo and Gardens state park	
Adult	\$10.00
Child (seven to 12 years old)	\$5.00
Child (six years and under)	No Charge
Group rate adults (20 or more) per person	\$5.00
Youth school groups (per person)	\$1.00
American zoological association reciprocal fees	
Adult	\$5.00
Child	\$3.00
Smokey Bear historical park	
Adult	\$6.00
Senior (62 years or older)	\$4.00
Child (seven to 12 years old)	\$3.00
Child (six years and under)	No Charge
Youth/school groups (per person)	No Charge
Bus	\$15.00

[19.5.6.8 NMAC - Rp, 19 NMAC 5.6.8, 5/1/2004; A, 1/1/2008; A, 5/15/2018; A, 1/1/2025]

19.5.6.9 CAMPING PERMIT (per night per vehicle or per walk-in/bicycle):

Primitive site (resident with a valid state identification card or NM registration on the vehicle)	\$10.00
Primitive site (non-resident)	\$15.00
Developed site (resident with a valid state identification card or NM registration on the vehicle)	\$15.00
Developed site (non-resident)	\$20.00
Water hook-up (per day)	\$5.00
Electric hook-up (per day)	\$10.00
Sewer hook-up (per day)	\$5.00

[19.5.6.9 NMAC - Rp, 19 NMAC 5.6.9, 5/1/2004; A, 1/1/2008; A, 1/1/2025]

19.5.6.10 ANNUAL DAY USE PASS (per vehicle):

Resident annual day use pass	\$75.00
Non-resident annual day use pass	\$150.00
Disabled veterans pass	No Charge (New Mexico resident veteran with a fifty percent or greater service-connected disability)

[19.5.6.10 NMAC - Rp, 19 NMAC 5.6.10, 5 /1/2004; A, 1/1/2008; A, 1/1/2025]

19.5.6.11 ANNUAL CAMPING PERMIT (per vehicle includes one tow vehicle upon request):

New Mexico resident with valid state issued ID	\$300.00
New Mexico senior resident – 62 years or older with valid state issued ID	\$150.00
New Mexico physically disabled resident (see Subsection B of 19.5.2.35 NMAC)	\$150.00
New Mexico active-duty military or honorably discharged veteran	\$150.00
Out-of-state resident	\$600.00

[19.5.6.11 NMAC - Rp, 19 NMAC 5.6.11, 5/1/2004; A, 1/1/2008; A, 1/1/2013; A, 1/1/2025]

19.5.6.12 REPLACEMENT OF ANNUAL CAMPING PERMIT:

\$25.00.

[19.5.6.12 NMAC - Rp, 19 NMAC 5.6.12, 5/1/2004; A, 1/1/2008; A, 1/1/2025]

19.5.6.13 [RESERVED]

[19.5.6.13 NMAC - Rp, 19 NMAC 5.6.13, 5/1/2004; A, 1/1/2008; Repealed, 5/15/2018]

19.5.6.14 GROUP SHELTER:

The following fees are for use of the facility or area only and do not include day use fees.

750 square feet or less	\$45.00
More than 750 square feet	\$90.00
Rally (as designated)	
Groups less than 30 persons	\$135.00
Groups 30 or more persons	\$180.00

[19.5.6.14 NMAC - Rp, 19 NMAC 5.6.14, 5/1/2004; A, 1/1/2008; A, 5/15/2018; A, 5/15/2018; A, 1/1/2025]

19.5.6.15 SPECIAL USE PERMIT:

\$30.00 (see 19.5.2.40 NMAC)

[19.5.6.15 NMAC - Rp 19 NMAC 5.6.15, 5/1/2004; A, 1/1/2008; A, 1/1/2013; A, 6/25/2019; A, 1/1/2025]

19.5.6.16 CONCESSION PERMIT:

Guide, fishing services, boating and rafting excursions for Navajo Lake state park	\$500.00
For other parks, guide, fishing services, boating and rafting excursions	\$300.00
Educational, park resource protection services and other services	\$300.00

Short term educational, park resource protection services and other services (less than five consecutive days)	\$50.00
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[19.5.6.16 NMAC - Rp, 19 NMAC 5.6.16, 5/1/2004; A, 6/30/2004; A, 1/1/2008; A, 1/1/2025]

19.5.6.17 GUIDE CARD:

Guide, fishing services, boating and rafting excursions for Navajo Lake state park	\$500.00
For other parks guide, fishing services, boating and rafting excursions	\$300.00

[19.5.6.17 NMAC - Rp, 19 NMAC 5.6.17; 5/1/2004; A, 6/30/2004; A, 1/1/2008]

19.5.6.18 MEETING, EVENT AND LODGING FACILITIES (per day):

The following fees are for use of the facility or area only and do not include applicable day use or camping fees.

A. Meeting room, conference room, classroom.

Park open hours	Large for entire day \$200.00 Small for entire day \$100.00 Large for partial day (four hours) \$50.00 Small for partial day (four hours) \$25.00
Damage and cleaning deposit (reimbursed upon satisfactory inspection)	\$50.00
Park after hours	Large \$300.00 Small \$200.00
Damage and cleaning deposit (reimbursed upon satisfactory inspection)	\$75.00

B. Special event facility.

Park open hours Per day cost will vary according to certain seasons. Please refer to the division website.	Season \$1,000.00 Off-season \$500.00
Damage and cleaning deposit (reimbursed upon satisfactory inspection)	\$250.00
Park after hours Per day cost will vary according to certain seasons. Please refer to the division website.	Season \$1,500.00 Off-season \$700.00
Damage and cleaning deposit (reimbursed upon satisfactory inspection)	\$350.00

C. Yurts (per night).

Rental inclusive of camping fee for two vehicles. Additional vehicles will be subject to day use or camping fees as applicable. Per night fee may be less on certain days or in certain seasons. Please refer to the division website.	Season \$150.00 Off-season \$80.00
Damage and cleaning deposit (reimbursed upon satisfactory inspection)	\$100.00

D. Cabins (per night).

Rental inclusive of camping fees for two vehicles. Additional vehicles will be subject to day use or camping fees as applicable. Per night fee may be less on certain days or in certain seasons. Please refer to the division website.	Season \$150.00 Off-season \$80.00
Damage and cleaning deposit (reimbursed upon satisfactory inspection)	\$100.00

E. Corrals (per night).

Small	\$30.00
Large	\$50.00

Persons using the facilities listed in 19.5.6.18 NMAC may be required to enter into an agreement with the division that contains conditions of use.

[19.5.6.18 NMAC - Rp, 19 NMAC 5.6.18, 5/1/2004; A, 1/1/2008; A, 1/1/2013; A, 5/15/2018; A, 1/1/2025]

19.5.6.19 FEE CHANGES:

The division shall review the fees in 19.5.6 NMAC every five years and the director may change any or all the fees to reflect the Chained Consumer Price Index for Urban Consumers. Any fee change shall be rounded to the nearest dollar.

[19.5.6.19 NMAC - N, 1/1/2025]

19.5.6.20 [RESERVED]

[19.5.6.20 NMAC - Rp, 19 NMAC 5.6.20, 5/1/2004; Repealed, 1/1/2013]

PART 7: FILMING IN STATE PARKS**19.5.7.1 ISSUING AGENCY:**

Energy, Minerals and Natural Resources Department, State Parks Division.

[19.5.7.1 NMAC - N, 1/1/2008]

19.5.7.2 SCOPE:

19.5.7 NMAC applies to filming and photography occurring within a park.

[19.5.7.2 NMAC - N, 1/1/2008]

19.5.7.3 STATUTORY AUTHORITY:

19.5.7 NMAC is authorized pursuant to Subsection E of Section 9-1-5 NMSA 1978 and Section 16-2-2 *et seq.* NMSA 1978.

[19.5.7.3 NMAC - N, 1/1/2008; A, 6/25/2019]

19.5.7.4 DURATION:

Permanent.

[19.5.7.4 NMAC - N, 1/1/2008]

19.5.7.5 EFFECTIVE DATE:

January 1, 2008, unless a later date is cited at the end of a section.

[19.5.7.5 NMAC - N, 1/1/2008]

19.5.7.6 OBJECTIVE:

19.5.7 NMAC's objective is to establish procedures for issuance of film permits within parks.

[19.5.7.6 NMAC - N, 1/1/2008]

19.5.7.7 DEFINITIONS:

[RESERVED]

[See 19.5.1.7 NMAC for definitions.]

[19.5.7.7 NMAC - N, 1/1/2008]

19.5.7.8 ACTIVITIES REQUIRING A FILM PERMIT:

An individual or entity shall obtain a division-issued film permit for a film or photography project when the film or photography project:

- A.** involves commercial filming;
- B.** will or may impact a park's natural, cultural or recreational resources or disrupt or interfere with visitors' use and enjoyment;
- C.** uses actors, models, special effects, vehicles, sets or props;
- D.** requires entry into areas closed to visitors;
- E.** involves articles of commerce for the purpose of commercial advertising; or
- F.** requires closure of all or part of a park.

[19.5.7.8 NMAC - N, 1/1/2008]

19.5.7.9 ACTIVITIES NOT REQUIRING A FILM PERMIT:

- A.** An individual or entity does not need to obtain a film permit:
 - (1)** when using a camera or other audio or video recording device for the individual's or entity's own personal use in areas open to visitors;
 - (2)** for commercial photography, so long as the project does not require a film permit for any of the reasons stated in 19.5.7.8 NMAC; or
 - (3)** when filming, photographing or audio recording a news event that occurs in a park.
- B.** When a film permit is not required pursuant to Subsection A of 19.5.7.9 NMAC, a special use permit may be required pursuant to 19.5.2.40 NMAC, depending on the scope of the activity.

[19.5.7.9 NMAC - N, 1/1/2008; A, 1/1/2013; A, 6/25/2019]

19.5.7.10 APPLICATION FOR A FILM PERMIT:

- A.** An individual or entity shall apply for a film permit with the division's office in Santa Fe at least 30 calendar days before the film or photography project is to start by submitting a division-developed film permit application and the non-refundable film permit application fee. The individual or entity may not begin the film or photography project until the division issues the film permit.
- B.** The film permit application shall include the following, as applicable:

(1) name, address, phone number, fax number and e-mail of the individual or entity applying for the film permit and the local contact;

(2) a brief description of the proposed film or photography project including:

(a) whether it is a feature film; still photography; television series, movie or pilot; documentary; video; television commercial; or other;

(b) title or product;

(c) the project's content;

(d) producer;

(e) director;

(f) production manager; and

(g) number in cast;

(3) the name of the park where the proposed film or photography project would occur;

(4) the dates and times the proposed film or photography project would occur in the park;

(5) description of how the individual or entity would use the park, the approximate number of people and vehicles involved, special accommodations needed and special effects planned, including any activity that involves fire;

(6) whether partial or full closures of the park will be needed;

(7) whether equipment or vehicles will be used off of established trails or outside of developed areas; and

(8) additional information the division requests to determine the proposed project's nature and potential impacts upon the park's resources and visitors.

[19.5.7.10 NMAC - N, 1/1/2008]

19.5.7.11 FILM PERMIT ISSUANCE OR DENIAL:

A. After receipt of the film permit application and the application fee, the division shall either:

(1) issue the film permit with such conditions as the division deems necessary, including those needed to protect park resources or to ensure visitors' safety and enjoyment, upon the applicant's submission of the following:

(a) payment of film permit fees pursuant to 19.5.7.12 NMAC, park fees pursuant to 19.5.7.13 NMAC, as well as costs for division staff or equipment needed for the project to occur (e.g. providing a snowplow and operator to remove snow from roads normally closed for the winter) and for park fees the division loses as a result of a park's full or partial closure;

(b) a damage deposit sufficient to cover the division's costs for restoration that public liability insurance does not cover and clean up; the division will calculate the damage deposit based on the size, number of hours and days, number of individuals involved and the project's overall complexity;

(c) certificate of worker's compensation; and

(d) certificate of insurance for public liability for personal injury and property damage in amounts greater than or equal to the liability limits set forth in Section 41-4-19 NMSA 1978, as it may be amended, which shows the department as an additional insured; or

(2) deny the film permit application in writing for any of the following reasons:

(a) the film permit application does not contain the information required by 19.5.7.10 NMAC.

(b) the proposed film or photography project is incompatible with park resources and visitor use and demand;

(c) the proposed film or photography project depicts activities that are incompatible with or damage the division's image;

(d) the proposed film or photography project will or may risk division employee and visitor safety or damage division property or the park's natural and cultural resources; or

(e) the park lacks sufficient staff to monitor the proposed film or photography project's activity.

B. If the division denies the film permit application because it is incomplete or for any reason listed in Paragraph (2) of Subsection A of 19.5.7.11 NMAC, the applicant may provide additional information to complete the film permit application or revise the film permit application for the division's reconsideration.

[19.5.7.11 NMAC - N, 1/1/2008]

19.5.7.12 FILM PERMIT FEES:

A. Non-refundable application fee: \$100.

B. Rental fees.

Motion pictures/videos/television documentaries:	
1-30 people	\$250/location/day
31-60 people	\$500/location/day
over 60 people	\$1,000/location/day
Commercial still photography:	
1-10 people	\$100/location/day
11-30 people	\$150/location/day
over 30 people	\$250/location/day

C. Monitoring fees: \$25 per ranger/per hour.

D. Damage deposits.

Less than five people, no stock (animals), props or sets	\$500
Five to 10 people, no stock (animals)	\$1,000
Six to 24 people or up to five consecutive calendar days scheduled filming; complex sets; construction of sets at location	\$2,000 plus \$100 per animal/per day
25 or more people or more than five consecutive calendar days scheduled filming; complex sets; construction of sets at location	\$5,000 plus \$100 per animal/per day

E. The superintendent or director may waive or reduce the fees for individual student projects that are non-commercial.

[19.5.7.12 NMAC - N, 1/1/2008; A, 1/1/2013]

19.5.7.13 PAYMENT OF PARK FEES:

A. Persons associated with the filming project shall pay the generally applicable visitor fees including camping and electrical and sewage hook-up. Day use fees are not charged.

B. The permittee or those involved in the film or photography project shall not use annual permits to cover day use or camping fees for film or photography projects that require closure of all or part of a park.

[19.5.7.13 NMAC - N, 1/1/2008]

19.5.7.14 PARK MONITORS:

A. The division may assign staff to monitor all aspects of filming. The number of monitors the division assigns shall depend upon the number of individuals involved in the project. Generally, the division will assign the following number of monitors.

Less than 50 people	one monitor
51-89 people	two monitors
More than 90 people	three monitors

B. The division may assign fewer or no monitors, such as for a commercial still photography shoot that is using only one location and using no props or sets, or assign additional monitors due to the complexity of the shoot, locations used, special effects or fire danger or other hazards.

[19.5.7.14 NMAC - N, 1/1/2008]

19.5.7.15 ADDITIONAL REQUIREMENTS:

A. The permittee shall remove equipment and materials brought into a park for the film or photography project immediately upon the project's completion unless otherwise agreed upon in the film agreement.

B. The permittee shall, on a daily basis, remove and properly dispose of garbage, trash, food, supplies, temporary props and other debris associated with the film or photography project's activities from all filming location, staging, catering, parking and storage areas located within the park. The permittee shall arrange for private trash service and shall not use the park's trash disposal facilities or sewage dump stations.

C. If a film project uses animals, the film project shall comply with the American humane association guidelines for the safe use of animals in filmed media, have an American humane animal safety representative present on the set and qualify for the end credit disclaimer "*No Animals Were Harmed*"TM. For the most current edition of the American humane association guidelines for the safe use of animals in filmed media please go to www.americanhumane.org/film.

D. Helicopter or aircraft operations within park boundaries require specific approval in the film permit and helicopters and aircraft shall maintain at least a 500-foot altitude above known bird nesting sites, occupied campgrounds and other sensitive park locations that the division identifies.

E. If the film or photography project involves more than 10 people, the permittee shall provide or hire its own security services. The permittee shall provide one security officer for every 20 people involved.

F. The permittee shall include the division and the individual park where the actual filming occurred in the "credits" listing at the end of each motion picture, video, sound recording or television documentary.

[19.5.7.15 NMAC - N, 1/1/2008]

19.5.7.16 DAMAGE TO PARK RESOURCES OR STRUCTURES:

A. Unless modified in the film permit, the permittee shall not:

- (1)** use materials, adhesives or paints on geological, paleontological or archaeological or other scientific resources within a park;
- (2)** disturb trees, shrubs, forbs, grasses or other vegetative resources; or
- (3)** temporarily or permanently modify the interior or exterior of any park structure.

B. The permittee shall ensure that no material is discharged into waters of the state or storm drainage system.

C. The permittee shall repair, replace or compensate the division for damage to park resources or structures caused or allowed by the permittee's activities within seven days after the division has notified the permittee of the damage.

[19.5.7.16 NMAC - N, 1/1/2008]

CHAPTER 6: MINE SAFETY

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: EMERGENCY NOTIFICATION

19.6.2.1 ISSUING AGENCY:

New Mexico Mining Safety Board.

[19.6.2.1 NMAC - Rp, 5/3/2022]

19.6.2.2 SCOPE:

All persons subject to Section 69-5-1 et seq and Sections 69-8-1 et seq. NMSA 1978 and all mines as defined in Subsection D of 69-8-2 NMSA 1978.

[19.6.2.2 NMAC - Rp, 5/3/2022]

19.6.2.3 STATUTORY AUTHORITY:

Section 69-5-1 et seq and Sections 69-8-1 et seq., NMSA 1978.

[19.6.2.3 NMAC - Rp, 5/3/2022]

19.6.2.4 DURATION:

Permanent.

[19.6.2.4 NMAC - Rp, 5/3/2022]

19.6.2.5 EFFECTIVE DATE:

May 3 2022, unless a later date is cited at the end of a section.

[19.6.2.5 NMAC - Rp, 5/3/2022]

19.6.2.6 OBJECTIVE:

The objective of 19.6.2 NMAC is to establish regulations to implement the requirements for emergency notification plans, mine accident emergency operations center and accident notifications as directed in Chapter 69, Article 5 NMSA 1978.

[19.6.2.6 NMAC - Rp, 5/3/2022]

19.6.2.7 DEFINITIONS:

A. "Accident" means accident as defined in Subsection A of Section 69-8-2 NMSA 1978.

B. "Annual tonnage of coal" means the clean coal tons reported on the form 7000-2 for the previous calendar year.

C. "Board" means the state mining safety board.

D. "CFR" means Code of Federal Regulations.

E. "Days" means calendar days.

F. "Deputy state mine inspector" means a senior employee of the New Mexico bureau of mine safety who has knowledge and understanding of the 19.6 NMAC mine safety rules.

G. "Extended absence" means the state mine inspector cannot perform his/her duties due to illness, medical condition, is on family medical leave (FMLA) or other circumstances for a period of 30 days or longer.

H. "Hours worked" means hours reported to mine safety and health administration (MSHA) on the 7000-2 form or for an occupational safety and health administration (OSHA) regulated site on the OSHA form 300-A, for the previous calendar year.

I. "Inspector" means the state mine inspector

J. "Mine" means the mine as defined in Subsection E of Section 69-8-2 NMSA 1978.

K. "Operator" means operator as defined in Subsection G of Section 69-8-2 NMSA 1978.

L. "Service" means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.

M. "Vacant" means there is not a state mine inspector because the incumbent state mine inspector has resigned, retired, been terminated or is deceased and a new state mine inspector has not been appointed or assumed the office.

[19.6.2.7 NMAC - Rp, 5/3/2022]

19.6.2.8 REQUIREMENT TO FILE EMERGENCY NOTIFICATION PLAN:

A. All operators of existing mines must prepare an emergency notification plan and submit the plan to the state mine inspector for approval. All operators of new or reopened mines shall submit an emergency notification plan to the state mine inspector prior to opening or reopening the mine.

B. Each emergency notification plan must contain procedures for notifying the state mine inspector within 30 minutes of an accident.

C. Any changes made by a mine operator to an approved emergency notification plan shall be submitted by the operator, within no less than seven working days from date of the change, to the state mine inspector for review and approval. The inspector shall no less than annually, from the date of approval of an operator's emergency notification plan, notify the operator to ensure that the plan on file with the state mine inspector is current.

D. The inspector shall retain a copy of each mine operator's approved emergency notification plan at the mine accident emergency operations center.

[19.6.2.8 NMAC - Rp, 5/3/2022]

19.6.2.9 ESTABLISHMENT OF MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. The state mine inspector shall establish and maintain the mine accident emergency operations center as the primary state government communications for dealing with mine accidents that:

(1) provides emergency assistance requested by the mine operator or the mine safety and health administration for mine accidents or emergencies; and

(2) is accessible 24 hours a day, seven days a week, at a statewide telephone number established and designated by the inspector.

B. Upon receipt of an emergency call regarding an accident, the mine accident emergency operations center shall immediately notify the state mine inspector or their designee, who will ensure that the emergency notification plan for the appropriate mine is complied with.

C. In the event of an accident or recovery operation in or about a mine, the state mine inspector may, upon request of the mine operator or the mine safety and health administration, coordinate the assignment of mine rescue teams to assist with needed rescues.

[19.6.2.9 NMAC - Rp, 5/3/2022]

19.6.2.10 REQUIREMENTS TO NOTIFY THE MINE ACCIDENT EMERGENCY OPERATIONS CENTER:

A. Whenever an accident occurs in or about a mine or the machinery connected to a mine, the operator of the mine shall give notice 30 minutes of ascertaining the occurrence of the accident to the mine accident emergency operations center at the statewide telephone number established by the state mine inspector stating the facts and circumstances of the accident and providing the names and telephone numbers of at least two persons the operator designates who are knowledgeable about the accident or about the emergency operations at the mine.

B. Nothing in this section shall be construed to relieve the operator of the mine from any reporting or notification requirement under federal law. Notification of any other federal, state or local agency does not relieve the operator of its obligation to provide notification under Subsection A of 19.6.2.10 NMAC.

[19.6.2.10 NMAC - Rp, 5/3/2022]

19.6.2.11 FAILURE TO PROVIDE TIMELY NOTICE:

A. The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of a mine if it is determined that the operator failed to give immediate notice as required in 19.6.2.10 NMAC. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by circumstances outside the control of the operator.

B. In determining the amount of the penalty, the inspector shall consider all relevant factors including whether notice was provided at all to the inspector or, if notice was provided, the lateness of such notice and the seriousness of the accident. The inspector shall utilize the penalty structure approved by the mining safety board.

(1) Penalty points for coal mining operators based on coal production.

Annual tonnage of coal mine failing to provide timely notice	Penalty points
0 to 15,000	0
Over 15,000 to 30,000	1
Over 30,000 to 50,000	2
Over 50,000 to 100,000	3
Over 100,000 to 200,000	4
Over 200,000 to 300,000	5
Over 300,000 to 500,000	6
Over 500,000 to 800,000	7
Over 800,000 to 1.1 million	8
Over 1.1 million to 2 million	9
Over 2 million	10

(2) Penalty points for coal mining operators based on the coal production in New Mexico of the controlling entity.

Annual tonnage of coal produced in New Mexico of controlling entity	Penalty points
0 to 100,000	0
Over 100,000 to 700,000	1
Over 700,000 to 1.5 million	2
Over 1.5 million to 5 million	3
Over 5 million to 10 million	4
Over 10 million	5

(3) Penalty points for metal/non-metal operators based on hours worked.

Annual hours worked at a M/NM mine failing to provide timely notice	Penalty points
0 to 10,000	0

Over 10,000 to 20,000	1
Over 20,000 to 30,000	2
Over 30,000 to 60,000	3
Over 60,000 to 100,000	4
Over 100,000 to 200,000	5
Over 200,000 to 300,000	6
Over 300,000 to 500,000	7
Over 500,000 to 700,000	8
Over 700,000 to 1 million	9
Over 1 million	10

(4) Penalty points for metal/non-metal operators based on annual hours worked in New Mexico by controlling entity of a M/NM mine.

Annual hours worked in New Mexico by controlling entity of a M/NM mine	Penalty points
0 to 60,000	0
Over 60,000 to 400,000	1
Over 400,000 to 900,000	2
Over 900,000 to 3 million	3
Over 3 million to 6 million	4
Over 6 million	5

(5) Penalty points based on operator negligence.

Negligence		
Categories	Penalty points	
	Persons endangered	No endangerment
Low negligence - The operator failed to report the accident within the required 30 minutes but did report within one hour.	10	5
Moderate negligence - The operator failed to report the accident for more than one hour and less than four hours.	15	7
High negligence - The operator failed to report the accident for more four hours and less than 12 hours.	20	10
Reckless disregard - The operator failed to report the accident for greater than 12 hours, or the operator was previously	25	12

<p> fined for failure to report an accident within one year of the occurrence. </p>		
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(6) Points based on type of accident.

Type of accident (as prescribed in Subsection A of 69-8-2 NMSA 1978. <i>There could be more than one category where the penalty points are accrued i.e., a fire at a mine that burns for more than 30 minutes and results in a fatality, would equal 40 penalty points.</i>	Penalty points	
	Persons endangered	No endangerment
Fatality	25	N/A
An injury at a mine that has a reasonable potential to cause death	20	N/A
An entrapment of an individual that has a reasonable potential to cause death	10	N/A
An unplanned inundation of a mine by a liquid or gas	10	5
An unplanned ignition or explosion of gas or dust	15	5
An unplanned mine fire not extinguished within 10 minutes of discovery in an underground mine or 30 minutes at a surface facility of an underground mine	15	7
An unplanned ignition or explosion of blasting agent or explosive	20	10
An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage.	10	N/A
A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour.	15	N/A
An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank.	10	N/A

Damage to hoisting equipment in a shaft or slope which endangers an individual.	10	N/A
An event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs	20	N/A

- (7) Penalty amounts based on total points.

Penalty conversion table	
Penalty points	Penalty
0 to 15 points	\$5,000
16 to 25 points	\$10,000
26 to 35 points	\$20,000
36 to 45 points	\$50,000
46 to 55 points	\$65,000
56 to 65 points	\$85,000
66 to 70 points	\$95,000
71 or more points	\$100,000

C. If the state mine inspector determines that notice was not timely provided, the inspector shall within 90 days after notification of an accident or, if notice was not provided to the inspector, after ascertaining that an accident did occur at a mine, mail a notice of violation with a proposed penalty to the operator.

(1) The operator shall pay the penalty within 30 days after receipt of the notice.

(2) If the operator wishes to challenge the violation or request that the penalty be adjusted or waived, the operator must submit a written petition to the inspector within 20 days after receipt of the notice. Filing of a petition stays the requirement to pay the penalty. The operator may also submit written documentation in support of his petition and may request a meeting with the inspector to discuss the circumstances of the violation.

(3) Within 60 days after receipt of a petition, the inspector shall issue a final order upholding, amending or rescinding the notice of violation and penalty. The inspector may consider actions of the operator in response to the violation when considering amending the penalty. The inspector's final order shall include a statement that the operator may file an appeal of the final order with the board. Unless the inspector's final order is appealed to the board in accordance with Subsection E of 19.6.2 NMAC, if the final order contains a penalty, the operator shall pay the penalty within 30 days after receipt of the final order.

D. In determining whether to adjust or waive imposition of the penalty, the inspector may consider factors such as, but not limited to:

- (1) whether the mine was idled for any reason at the time of the accident;
- (2) whether the mine operator encountered communications problems that made it impossible to provide timely notice;
- (3) whether medical personnel determined that an injury was not considered life threatening immediately after an accident; if injury becomes life threatening, then notice requirements would be triggered when operator learns of a change in status from a medical authority;
- (4) whether a fatality of mine personnel that occurs after an accident is associated with a specific accident;
- (5) whether the need to provide emergency medical treatment or emergency rescue and recovery efforts reasonably precluded the mine operator from timely providing notice; and
- (6) whether the penalty creates an undue financial hardship on the mine.

E. The operator may appeal the inspector's final order to the board pursuant to these rules.

- (1) The operator shall file a written notice of appeal of the inspector's final order within twenty (20) days after service of the final order. Unless a timely written appeal is made, the inspector's final order shall be final and not subject to judicial review. The filing of a timely notice of appeal shall stay enforcement of the inspector's final order until the board issues its written decision on the appeal.
- (2) The operator shall file the written notice of appeal with the chair of the board or the chair's designee, and include the order number and the name of the operator.
- (3) If a timely written notice of appeal is made, the board shall consider the appeal at a hearing held no sooner than 30 days and no more than 90 days after receipt of the written notice of appeal. The board shall notify the operator and the inspector of the date, time and place of the hearing at which the appeal will be considered.
- (4) No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory hearing may serve as a hearing officer in that hearing or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.
- (5) The board shall review the record compiled before the inspector and shall allow any party to submit arguments at the hearing.

(6) Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the inspector's final order, and stating the reasons for that action. This decision shall be signed by the board chair or the chair's designee, and shall be served on both parties within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[19.6.2.11 NMAC - Rp, 5/3/2022]

19.6.2.12 INVESTIGATION TO PROVIDE TIMELY NOTICE OF AN ACCIDENT:

A. The state mine inspector shall lead the investigation if a timely notice of an accident was or was not provided and determine if a civil penalty should be imposed as required in 19.6.2.11 NMAC.

B. In the event the position of the state mine inspector is vacant, or during an extended absence of the state mine inspector, in order to provide a timely determination of compliance of emergency notification, a deputy state mine inspector shall lead the investigation and determine if a civil penalty should be imposed as outlined in

[19.6.2.12 NMAC - Rp, 5/3/2022]

PART 3: MINE SAFETY FOR UNDERGROUND WORKERS

19.6.3.1 ISSUING AGENCY:

New Mexico State Mine Inspector.

[N, 12/31/06; 19.6.3.1 NMAC - Rn, 11.8.3.1 NMAC, 9/30/08]

19.6.3.2 SCOPE:

All persons subject to NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq.

[N, 12/31/06; 19.6.3.2 NMAC - Rn, 11.8.3.2 NMAC, 9/30/08]

19.6.3.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq.

[N, 12/31/06; 19.6.3.3 NMAC - Rn, 11.8.3.3 NMAC, 9/30/08]

19.6.3.4 DURATION:

Permanent.

[N, 12/31/06; 19.6.3.4 NMAC - Rn, 11.8.3.4 NMAC, 9/30/08]

19.6.3.5 EFFECTIVE DATE:

December 31, 2006, unless a later date is cited at the end of a section.

[N, 12/31/06; 19.6.3.5 NMAC - Rn, 11.8.3.5 NMAC, 9/30/08]

19.6.3.6 OBJECTIVE:

The objective of Part 3 of 19.6 NMAC is to establish general requirements for all underground mine workers.

[N, 12/31/06; 19.6.3.6 NMAC - Rn, 11.8.3.6 NMAC, 9/30/08]

19.6.3.7 DEFINITIONS:

[RESERVED]

[N, 12/31/06; 19.6.3.7 NMAC - Rn, 11.8.3.7 NMAC, 9/30/08]

19.6.3.8 REQUIREMENTS FOR UNDERGROUND MINE WORKERS:

A. No mine employee or other person shall remove, displace, damage, destroy, carry off or fail to use any safety device, safeguard notice or warning, provided for use in any mine employment or place of mine employment, or interfere in any way with the use thereof by any other person, or interfere with the use of any method or process adopted for the protection of any mine employee, in such employment or place of employment, or fail or neglect to follow and obey safety orders promulgated by the mine operator or mine inspector, and to do every other thing reasonably necessary to protect the life, health, safety and welfare of employees, including himself. This being a state law, violation of this act constitutes a misdemeanor.

B. No miner or other person shall carry into a mine intoxicating liquors or alcoholic beverages or any controlled substances or enter the mine under the influence of intoxicating liquor or controlled substances. This being a state law, violation constitutes a crime punishable by fine or imprisonment, or both.

[N, 12/31/06; 19.6.3.8 NMAC - Rn, 11.8.3.8 NMAC, 9/30/08]

PART 4: CERTIFICATION OF COAL MINE OFFICIALS

19.6.4.1 ISSUING AGENCY:

New Mexico Mining Safety Board.

[19.6.4.1 NMAC - Rp, 5/3/2022]

19.6.4.2 SCOPE:

All persons subject to NMSA 1978, Article 14, Qualifications and Duties of Coal Mine Officials.

[19.6.4.2 NMAC - Rp, 5/3/2022]

19.6.4.3 STATUTORY AUTHORITY:

Section 69-5-1 et seq., Section 69-8-1 et seq., and Section 69-14-1 et seq., NMSA 1978.

[19.6.4.3 NMAC - Rp, 5/3/2022]

19.6.4.4 DURATION:

Permanent.

[19.6.4.4 NMAC - Rp, 5/3/2022]

19.6.4.5 EFFECTIVE DATE:

May 3, 2022, unless a later date is cited at the end of a section.

[19.6.4.5 NMAC - Rp, 5/3/2022]

19.6.4.6 OBJECTIVE:

The objective of 19.6.4 NMAC is to establish rules pertaining to the certification of coal mine officials. Officials include, but are not limited to, mine examiners, underground mine foreman and surface mine foreman. Officials must obtain certification from the state mine inspector as required in Section 69-14-1 NMSA 1978. NMSA Chapter 69, Article 14 also requires certain qualifications, that testing must be conducted, requires recertification and lists discipline procedures.

[19.6.4.6 NMAC - Rp, 5/3/2022]

19.6.4.7 DEFINITIONS:

A. "Board" means the state mining safety board.

B. "Certificate" means a document issued by the state mine inspector, or certifying agency from another state, allowing the holder to be employed as a coal mine official in the state of origin.

C. "CFR" means Code of Federal Regulations.

D. "Days" means calendar days.

E. "Deputy state mine inspector" means a senior employee of the New Mexico bureau of mine safety who has knowledge and understanding of the 19.6 NMAC mine safety rules.

F. "Extended absence" means the state mine inspector cannot perform their duties due to illness, medical condition, is on family medical leave (FMLA) or other circumstances for a period of 30 days or longer.

G. "Inspector" means the state mine inspector.

H. "Mining engineering graduate" means a person having a B.S. degree in mining or mineral engineering from an accredited college or university.

I. "Official" means coal mine official, including underground coal mine foreman, underground coal mine examiner, general underground coal mine foreman, or surface coal mine foreman Table in Subsection G of 19.6.4.9 NMAC.

J. "Revoke" means to permanently invalidate a certification.

K. "Service" means providing any document, paper or pleading to a person either personally or by certified mail, return receipt requested.

L. "Suspend" means to invalidate a certification for a specified period of time.

M. "Vacant" means there is not a state mine inspector because the incumbent state mine inspector has resigned, retired, been terminated or is deceased and a new state mine inspector has not been appointed or assumed the office.

[19.6.4.7 NMAC - Rp, 5/3/2022]

19.6.4.8 REQUIREMENT FOR CERTIFICATION BY STATE MINE INSPECTOR:

The state mine inspector shall certify, recertify or discipline persons to act as mine foremen and mine examiners. No mine operator shall employ any person as underground mine foreman, mine examiner or surface mine foreman unless that person has been certified by the state mine inspector for such position.

[19.6.4.8 NMAC - Rp, 5/3/2022]

19.6.4.9 METHODS AND REQUIREMENTS OF CERTIFICATION:

A. The state mine inspector may recognize the foreman's or mine examiner's certificate issued by another state and issue certificates accordingly when:

(1) the state mine inspector reviews the certification requirements of another state and determines that the requirements are equivalent or more stringent than New Mexico's, and are pertinent to the mining conditions found in New Mexico's coal mines; or

(2) an agreement of reciprocity is signed between the state mine inspector and the director of the certification agency from another state.

B. Persons with four or more years of experience in or about underground coal mines, and providing underground foreman certification from another state program or persons with four or more years of experience in or about surface coal mines, and providing surface foreman certification from another state program, meet the requirements for testing.

C. The state mine inspector shall hold written examinations, at times, dates and places to be given out at least sixty days in advance, to all persons desiring to secure mine foreman certificates or mine examiner certificates. Alternatively, at the discretion of the state mine inspector, such examinations may be administered by appointment.

D. The state mine inspector shall require that any applicant for examination to the position of mine foreman or mine examiner submit a completed application at least 30 days prior to the examination date and shall meet the experience requirements of this section as summarized in Table in Subsection G of 19.6.4.9 NMAC. The state mine inspector may require documentation from an applicant supporting their qualification and competency. Every person desiring to secure an underground coal mine foreman's certificate and not already in such position or not holding such certificate from another state shall first have regularly performed the duties of an underground coal mine examiner for six months and shall have at least four years of underground coal mine experience to participate in the underground coal mine foreman's examination. Every person desiring to secure a surface coal mine foreman's certificate, and not already holding such certificate from another state, shall have at least four years of surface coal mine experience to participate in the surface coal mine foreman's examination. A person who holds a certificate for surface coal mine foreman who wishes to take the underground coal mine foreman test must have a minimum of four years of experience in underground coal mine workings. A person who holds an underground coal mine foreman certificate and who wishes to participate in the surface coal mine foreman examination must have at least two years of surface coal mine experience. A person who holds an underground coal mine foreman certificate and who wishes to participate in the general underground coal mine foreman examination must have at least two years of surface mine experience or two years of surface experience at an underground mine. Every person desiring to secure an underground coal mine examiner's certificate and not already in such position or not holding such certificate from another state recognized by the state mine inspector, shall have at least two years of underground

coal mine experience to participate in the underground coal mine examiner's examination.

E. The state mine inspector may allow a mining engineering graduate or a person with other credentials that attest to advanced competency including applicable experience at non-coal mines to participate in the foreman's or examiner's examination if the candidate meets at least one-half of the experience requirements and all other prerequisites listed in Subsections B and D of this section prior to taking the examination.

F. All candidates for certification or recertification must achieve a cumulative score of eighty percent or higher on the corresponding written exam.

G. Table in Subsection G of 19.6.4.9 NMAC is incorporated into this section as a guide to the prerequisites and areas of responsibility for coal mine officials.

Certification Title	Qualification	Authorization
Underground Coal Mine Examiner	Two-years underground mining experience, or One-year underground mining experience and advanced competency, or Equivalent experience and certification from another state	Underground areas at underground coal mines.
Underground Coal Mine Foreman	Four-years underground mining experience with six months examiner experience, or Two-years underground mining experience with six months examiner experience and advanced competency, or Equivalent experience and certification from another state.	Underground areas at underground coal mines.
General Underground Coal Mine Foreman	Current NM certification as underground coal mine foreman and two-years of experience at surface areas of underground coal mines.	Underground areas at underground coal mines. Surface areas at underground coal mines.
Surface Coal Mine Foreman	Four-years surface mining experience, or Two-years surface mining experience and advanced competency, or Equivalent experience and certification from another state, or	Surface coal mines Surface areas at underground coal mines

	Current NM certification as underground coal mine foreman and two-years of experience at surface coal mines or surface areas of underground coal mines	
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[19.6.4.9 NMAC - Rp, 5/3/2022]

19.6.4.10 FEES FOR CERTIFICATION AND EXAMINATION:

The state mine inspector, after consultation with the mining safety board, may impose fees for examination and certification of officials. Current fees will be posted with examination notice given out as required in Subsection C of 19.6.4.9 NMAC.

[19.6.4.10 NMAC - Rp, 5/3/2022]

19.6.4.11 CERTIFICATION PERIOD AND RECERTIFICATION PROCESS:

A. Certification of officials shall be issued for a period of five years. All officials certified by the state mine inspector prior to June 15, 2007 shall have their certification period extended five years. Each official is required to have retraining as a qualified/certified person on an annual basis from the mine in which they are employed as required in 30 CFR 75.160, 30 CFR 75.161 and 30 CFR 77.107 and 30 CFR 77.107-1. Failure to have re-training as a qualified/certified person on an annual basis may result in suspension of certification. Should a certified official fail to meet the annual training requirement for any reason; or should a certified official be absent from mine employment in New Mexico for a period of one year or more and upon resumption of mine employment in New Mexico; the certified official may appeal to the state mine inspector for reinstatement of active certification. The state mine inspector may require testing, remedial training, interviews, evidence of applicable training, or other criteria to assure competency before re-activating said certification.

B. Each official has the responsibility to notify the state mine inspector of any change in address or change in mine employment within 30 days of such change. Failure to provide current contact information may result in suspension of certification.

C. Certified persons may apply for recertification within 12 months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. The state mine inspector may extend the certification period for an official for no more than six months to facilitate the recertification process. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector.

D. Recertification may be done by taking an exam every five years, prior to certification expiration, or an organization may submit an alternative plan for the inspector's approval as follows:

(1) officials taking an exam every five years will follow the same process required for original certification; or

(2) an organization may submit an alternative plan, for the state mine inspector's approval; the alternative plan may be carried out over the five year period; the alternative plan shall include the subjects to be covered, the minimum amount of time per subject, the methods of instruction, and the methods of participant evaluation during process completion; following completion, the applicant shall provide the state mine inspector with verification that all training for the recertification period is current; and

(3) applicants shall submit an application, pay the applicable fee, and provide all appropriate documentation as required by the state mine inspector, before receiving recertification.

E. Underground coalmine examiners may fulfill the recertification by successfully completing the examination for underground coal mine foreman certification or recertification.

[19.6.4.11 NMAC - Rp, 5/3/2022]

19.6.4.12 REFUSAL TO CERTIFY OR RECERTIFY AND SUSPENSION OR REVOCATION OF CERTIFICATION:

A. The inspector may refuse to certify or recertify or may suspend or revoke any certification held or applied for under 19.6.4 NMAC upon grounds that the applicant or certified person:

(1) gave false or forged evidence to the inspector to obtain certification;

(2) is grossly negligent or incompetent in duties as a certified person;

(3) has failed to maintain certification;

(4) has violated or aided or abetted any person in a violation of the Federal Mine Safety and Health Act of 1977 or the New Mexico mine safety laws; or

(5) has been disciplined by a state mine regulatory authority in another state that certifies mine personnel.

B. If the inspector contemplates taking any of the actions described in Subsection A of 19.6.4.12 NMAC for any of the reasons provided in that subsection, the inspector shall provide written notice to the applicant or certified person. The notice shall include a statement that the inspector has sufficient evidence that, if not rebutted or explained, will justify the inspector in taking the contemplated action, that indicates the general

nature of the evidence and that provides the applicant or certified person at least 20 days to submit written evidence to rebut or explain the allegations.

C. If, after the response period ends, the state mine inspector takes any action of a type specified in Subsection B of 19.6.4.12 NMAC, the inspector shall serve upon the applicant or certified person a written notice of the action containing a statement that the applicant or certified person may file a petition for review with the mining safety board pursuant to the Mining Safety Act 69-8-1 NMSA 1978.

[19.6.4.12 NMAC - Rp, 5/3/2022]

19.6.4.13 APPEAL TO MINING SAFETY BOARD OF CERTIFICATION ACTIONS BY INSPECTOR TO MINING SAFETY BOARD:

An appeal of an inspector's action may be made to the board by the person affected by the action.

A. A person affected by the inspector's action shall file a written petition for review of the action within twenty days after service of the action. Unless a timely written appeal for review is made, the action of the inspector shall be final and not subject to judicial review.

B. The petition shall be filed in writing with the chair of the board or the chair's designee, and include the action number and the name of the appellant.

C. If a timely petition is made, the board shall consider the petition at a hearing held no sooner than thirty days and no more than ninety days after receipt of the written petition. The board shall notify the petitioner and the inspector of the date, time and place of the hearing at which the petition will be considered.

D. No board member with any financial interest affected or potentially affected by the outcome of an adjudicatory proceeding may serve as a hearing officer in that proceeding or otherwise participate in the hearing. All board members shall adhere with the Governmental Conduct Act.

E. The board shall review the record compiled before the inspector and shall allow any party to submit arguments at the hearing.

F. Within 20 days following the hearing the board shall render a written decision affirming, modifying or reversing the action of the inspector, and stating reasons for that action. The decision shall be signed by the board chair or the chair's designee, and shall be served on both parties within 30 days after the decision is rendered and signed. A person who is adversely affected by a decision of the board pursuant to this section may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[19.6.4.13 NMAC - Rp, 5/3/2022]

19.6.4.14 CERTIFICATION OF COAL MINE OFFICIALS IN THE EVENT THE POSITION OF STATE MINE INSPECTOR IS VACANT:

In the event the position of the state mine inspector is vacant, or during an extended absence of the state mine inspector, in order to provide timely certification and prevent a lapse between recertification of coal mine officials, the certification and recertification, or refusal to certify or recertify and suspension or revocation of certification, as required in 19.6.4.9 NMAC and 19.6.4.12 NMAC shall be completed by a deputy state mine inspector.

[19.6.4.14 NMAC - N, 5/3/2022]

PART 5: NEW MEXICO MINE SAFETY CODE FOR ALL MINES INCLUDING OPEN-CUT AND OPEN-PIT

19.6.5.1 ISSUING AGENCY:

Mining Safety Board.

[06/01/08; 19.6.5.1 NMAC - Rn, 19.7.20.1 NMAC, 9/30/08]

19.6.5.2 SCOPE:

All owners, employees and visitors of mining operations in New Mexico, utilizing hoist to access underground mining operations.

[06/01/08; 19.6.5.2 NMAC - Rn, 19.7.20.2 NMAC, 9/30/08]

19.6.5.3 STATUTORY AUTHORITY:

Section 69-8-4 NMSA 1978.

[06/01/08; 19.6.5.3 NMAC - Rn, 19.7.20.3 NMAC, 9/30/08]

19.6.5.4 DURATION:

Permanent.

[06/01/08; 19.6.5.4 NMAC - Rn, 19.7.20.4 NMAC, 9/30/08]

19.6.5.5 EFFECTIVE DATE:

06/01/08, unless a later date is cited at the end of a section.

[06/01/08; 19.6.5.5 NMAC - Rn, 19.7.20.5 NMAC, 9/30/08]

19.6.5.6 OBJECTIVE:

Maintain a system of uniform hoist signals for all underground mines.

[06/01/08; 19.6.5.6 NMAC - Rn, 19.7.20.6 NMAC, 9/30/08]

19.6.5.7 DEFINITIONS:

[RESERVED]

19.6.5.8 SIGNALS FOR ALL MINES:

The following signal code shall be used in all mines:

A. 1 bell, stop immediately if in motion; 1-2-1 bells, hoist muck; 2-1-2 bells, release cage, skip or bucket; 2 bells, lower; 3-1 bells, hoist persons; 3-2 bells, lower persons, if bells rung slowly move slowly; 7 bells, danger signal, followed by station signal calls cage to that station. This signal takes precedence over all other except an accepted blasted signal.

B. Additional mine specific signals may be used if approved by the state mine inspector.

C. Automated hoists shall be exempt from compliance with the bell signal requirements.

[06/01/08; 19.6.5.8 NMAC - Rn, 19.7.20.8 NMAC, 9/30/08]

CHAPTER 7: MINING - GENERAL PROVISIONS

PART 1: NEW MEXICO MINE REGISTRATION AND REPORTING

19.7.1.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[10-14-95; 19.7.1.1 NMAC - Rn, 19 NMAC 7.1.1, 5/30/2003]

19.7.1.2 SCOPE:

These rules and regulations shall apply to all mining operations.

[10-14-95; 19.7.1.2 NMAC - Rn, 19 NMAC 7.1.2, 5/30/2003]

19.7.1.3 STATUTORY AUTHORITY:

The secretary of the department is generally authorized to make and adopt rules and regulations necessary to carry out the duties of the department at Section 9-1-5E NMSA 1978. The general duties and purposes of the mining and minerals division are set out at Section 9-5A-4D NMSA 1978 as amended 1987. The secretary is specially authorized to promulgate and enforce rules and regulations concerning operator compliance, Section 69-5-16; penalties for violations by operator, Section 69-6-1; registration of coal mines, Section 69-11-1; annual coal mine information to be furnished, Section 69-11-2; furnishing of requested coal mine data, Section 69-11-3; non-coal mine registration, notice of suspension and reactivation, Section 69-26-1; non-coal mine production information and confidentiality, Section 69-26-2; and non-coal mine request for information, Section 69-26-3 NMSA 1978, as amended 1989.

[8-21-89, 10-14-95; 19.7.1.3 NMAC - Rn, 19 NMAC 7.1.3, 5/30/2003]

19.7.1.4 DURATION:

Permanent.

[10-14-95; 19.7.1.4 NMAC - Rn, 19 NMAC 7.1.4, 5/30/2003]

19.7.1.5 EFFECTIVE DATE:

October 14, 1995. [unless a later date is cited at the end of a section.]

[8-21-89, 10-14-95; 19.7.1.5 NMAC - Rn, 19 NMAC 7.1.5, 5/30/2003]

19.7.1.6 OBJECTIVE:

The following rules have been adopted by the secretary of the New Mexico energy, minerals and natural resources department to provide for the registration, annual reporting and change in registration of mines, mills and smelters.

[8-21-29, 10-14-95; 19.7.1.6 NMAC - Rn, 19 NMAC 7.1.6, 5/30/2003]

19.7.1.7 DEFINITIONS:

A. "Construction" means any on-site activity directly related to the development of a new mine site not yet registered, including shaft sinking, tunneling, excavation, building of surface facilities and road building.

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

C. "Director" means the director of the mining and minerals division.

D. "Division" means the mining and minerals division of the New Mexico energy, minerals and natural resources department.

E. "Mine" means and includes all surface and underground operations to win coal, metals and other mineral substances from their deposits (exclusive of natural gas or petroleum), all tunnel operations, all caisson operations, all mills, ore houses and treatment plants, all quarries, pits, open-cut workings, strippings, placer mines, sand, gravel and similar banks.

F. "Mineral" means coal, metallic or non-metallic ores or any naturally occurring rock substances that are mined or recovered on or under the surface of the earth.

G. "Operations" means any construction or excavation activities, including smelting and leaching activities, for the purpose of winning minerals from their deposits, as well as for mine reclamation and dismantling of surface facilities.

H. "Operator" means and includes owner, operator, lessee, manager, superintendent or agent, receiver or trustee and political subdivisions and instrumentalities of the state of New Mexico operating any mine.

I. "Permanent suspension" means the cessation for an indefinite period of mining operations which are not expected to resume at a future time. Mines where suspension is permanent do not have to report annually once the closed mine is effectively safeguarded.

J. "Secretary" means the secretary of the energy, minerals and natural resources department.

K. "Suspension" means the cessation of mine operations and may be either permanent or temporary in nature.

L. "Temporary suspension" means the cessation for a limited time of mining operations which are expected to resume at a future time. Mines under temporary suspension are considered active for registration and reporting purposes.

[8-21-89, 10-14-95; 19.7.1.7 NMAC - Rn, 19 NMAC 7.1.7, 5/30/2003]

19.7.1.8 REGISTRATION OF MINES REQUIRED:

Before the start of any operations an operator shall register such mine with the division on a mine registration form (form 1). The registration shall be accompanied by an accurate plat or standard USGS topographic map sheet showing the location of the proposed mine with reference to the nearest lines of a governmental section if the mine has been surveyed. The registration must include a precise written description of the mine location with specific directions describing how to reach the mine site, including road names and numbers, obvious landmarks and mileage distances. Location of mines

on surveyed lands shall be indicated by county, township, range and quarter-quarter section. Information to be included with such registration shall be the name of the mine, post office address, name of the operator or person in charge, the character of operation such as the mineral produced or sought and the method of access including shaft, adit, leach field, surface mine or other method, the name of the appropriate USGS topographic sheet and the name of the mineral and surface estate owners.

[8-21-89, 10-14-95; 19.7.1.8 NMAC - Rn, 19 NMAC 7.1.8, 5/30/2003]

19.7.1.9 REPORTING REQUIREMENTS:

Before April 30 of every year, each mining, milling or smelting operation shall furnish to the division a report, on the appropriate form designated for that type of operation and commodity (forms 3-11) provided by the division, information including the following: name, address and phone number of operator, parent company, contractor, subcontractor and owner of property; name, location, and type of operation; type of commodity mined; method of extraction; production and sales quantities and values; unit value; production by mineral estate ownership classification; MSHA I.D. number; stockpiles; physical plant improvements and value; employment and payroll statistics; explosives information; quality and analysis statistics; ownership changes during year; mineral recovery statistics; net mine water production; mill capacity rates; and mill and refinery shipments. Submittal of the annual operator report on forms 3-11 satisfies the annual registration requirements under Section 69-26-1 NMSA 1978.

[8-21-89, 10-14-95; 19.7.1.9 NMAC - Rn, 19 NMAC 7.1.9, 5/30/2003]

19.7.1.10 CHANGE OF REGISTRATION:

The operator shall fill out a change of registration form (form 2) at least 10 days prior to any change in ownership, operator name, mine name, address or operational status, or at least 10 days prior to a reactivation of operations that have been in suspension. change of registration forms are available from the director.

[8-21-89, 10-14-95; 19.7.1.10 NMAC - Rn, 19 NMAC 7.1. 10, 5/30/2003]

19.7.1.11 SUSPENSION OF OPERATIONS:

The operator shall fill out a notice of intention to suspend operations form (form 12) prior to any temporary or permanent suspension of operations. Notice of intention to suspend operations forms are available from the director.

[10-14-95; 19.7.1. 11 NMAC - Rn, 19 NMAC 7.1.11, 5/30/2003]

19.7.1.12 ENFORCEMENT:

Written notice of non-compliance may be issued by the director and sent by certified mail to the operator. The operator shall submit a written response to the director within ten (10) days of certified mail receipt of the notice of non-compliance. Failure to respond in writing to the director within the ten (10) day limit may result in referral by the director to the appropriate district attorney for prosecution. Each individual failure to comply with a rule or regulation, or failure to respond to a written notice will constitute a separate and unlawful act that may be prosecuted. Each unlawful act is subject to a fine of not more than two hundred dollars (\$200.00) or imprisonment or both.

[8-21-89; 19.7.1.12 NMAC - Rn, 19 NMAC 7.1.12, 5/30/2003]

PART 2: NEW MEXICO MINE SAFEGUARDING

19.7.2.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department.

[10-14-95; 19.7.2.1 NMAC - Rn, 19 NMAC 7.2.1, 5/30/2003]

19.7.2.2 SCOPE:

These rules and regulations shall apply to all mining operations with surface mine openings including shafts, adits, highwalls and auger boreholes where operations are suspended permanently (abandoned), or for a temporary period of time when an office with a responsible person is not maintained at the site, exclusive of coal mining operations regulated under Section 69-25A-1 to Section 69-25A-35 NMSA 1978 and all mines subject to the New Mexico Mining Act, Section 69-36-1 to Section 69-36-20 NMSA 1978 (1993 Repl. Pamp.).

[8-21-89, 10-14-95; 19.7.2.2 NMAC - Rn, 19 NMAC 7.2.2, 5/30/2003]

19.7.2.3 STATUTORY AUTHORITY:

The secretary of the department is generally authorized to make and adopt rules and regulations necessary to carry out the duties of the department at Section 9-1-5E NMSA 1978. The general duties and purposes of the mining and minerals division are set out at Section 9-5A-4D NMSA 1978 as amended 1987. The secretary is specially authorized to promulgate and enforce rules and regulations concerning the safeguarding of abandoned mines, Sections 69-12-4 and 69-27-3 NMSA 1978.

[8-21-89; 19.7.2.3 NMAC - Rn, 19 NMAC 7.2.3, 5/30/2003]

19.7.2.4 DURATION:

Permanent.

[10-14-95; 19.7.2.4 NMAC - Rn, 19 NMAC 7.2.4, 5/30/2003]

19.7.2.5 EFFECTIVE DATE:

October 14, 1995 [unless a later date is cited at the end of a section]

[8-21-89, 10-14-95; 19.7.2.5 NMAC - Rn, 19 NMAC 7.2.5, 5/30/2003]

19.7.2.6 OBJECTIVE:

The following rules and regulations have been adopted by the secretary of the New Mexico energy, minerals and natural resources department to provide for the protection of public health and safety through the effective safeguarding of mine surface openings when mining operations have been suspended permanently, or have been suspended for a temporary period of time and an office with a responsible person is not maintained at the site.

[8-21-89; 19.7.2.6 NMAC - Rn, 19 NMAC 7.2.6, 5/30/2003]

19.7.2.7 DEFINITIONS:

A. "Abandoned" means the permanent cessation of mining operations or the temporary cessation when no office with a responsible person is maintained at the site at all times and access to the mine is controlled.

B. "Director" means the director of the mining and minerals division.

C. "Division" means the mining and minerals division of the New Mexico energy, minerals and natural resources department.

D. "Effectively close or fence off" means to prevent entrance or access to any mine surface openings associated with any permanently suspended mining operation or any mine surface openings associated with any temporarily suspended mining operations when an office with a responsible person is not maintained at the site to all unauthorized persons, by sealing such opening with earthen or other suitable materials in a manner approved by the director, or by the construction of a fence around such openings of materials and in a manner approved by the director, and includes the monitoring and maintenance of such closures or fences as necessary to ensure that entrance and access is prevented.

E. "Immediate danger" means a condition that could reasonably be expected to have a high probability of resulting in physical harm to public health and safety.

F. "Mine" means and includes all surface and underground operations to win coal, metals and other mineral substances from their deposits (exclusive of natural gas or petroleum), all tunnel operations, all caisson operations, all mills, ore houses and

treatment plants, all quarries, pits, open cut workings, strippings, placer mines, sand, gravel and similar banks.

G. "Mineral" means coal, metallic or non-metallic ores or any naturally occurring rock substances that are mined or recovered on or under the surface of the earth.

H. "Operations" means any construction or excavation activities for the purpose of winning minerals from their deposits or any activities undertaken in the proper safeguarding of mine surface openings.

I. "Operator" means and includes owner, operator, lessee, manager, superintendent or agent, receiver or trustee and political subdivisions and instrumentalities of the state of New Mexico operating any mine.

J. "Permanent suspension" means the cessation for an indefinite period of mining operations which are not expected to resume at a future time. Mines where suspension is permanent are considered abandoned mines for purposes of safeguarding.

K. "Secretary" means the secretary of the energy, minerals and natural resources department.

L. "Suspension" means the cessation of mine operations and may be either permanent or temporary in nature.

M. "Temporary suspension" means the cessation for a limited time of mining operations which are expected to resume at a future time. Mines under temporary suspension which have no office with a responsible person at the site at all times and where access to the mine is not controlled are considered abandoned for purposes of safeguarding.

N. "Unauthorized persons" means anyone other than the mine owner or operator, the state mine inspector or the director and their agents or any other state or federal regulatory agency authorized to inspect the mine site.

[8-21-89, 10-14-95; 19.7.2.7 NMAC - Rn, 19 NMAC 7.2.7, 5/30/2003]

19.7.2.8 SAFEGUARDING OF MINE OPENINGS:

A. Prior to either the permanent suspension of mining operations or the temporary suspension of mining operations when an office with a responsible person present at all times is not maintained at the site, on which are located mine surface openings including shafts, adits, highwalls or auger boreholes, the operator shall notify the division on a notice of intention to suspend operations form (form 12). The operator shall include on the form a plan to effectively close or fence off all surface mine openings on the property. The plan shall include a description of the materials and procedures which are proposed to be used, and the construction and location of

trespass warnings and appropriate danger notices. The plan shall include a timetable for completion of the proposed safeguarding procedures. Commencing of safeguarding operations shall take place immediately when the operator suspends mining operations. If the safeguarding plan is not approved by the director, the operator will receive notice of disapproval and may resubmit an amended plan for approval.

B. Acceptable methods to effectively close or fence off surface mining openings include the sealing of such openings with earthen materials, concrete, masonry or other materials approved by the director. Fences must be constructed of durable materials and in a manner approved by the director and must be reasonably capable of preventing entrance or access to the mine surface openings by unauthorized persons. Closures and fences shall be monitored and maintained throughout the period or permanent (abandonment) or temporary suspension. Trespass warnings and danger notices must be constructed of durable materials and be visible by persons who may approach the safeguarded openings. Notices and warning shall be printed in both the English and Spanish languages and be legible from a distance of fifty feet. Signs shall contain the mine name, name of operator and the assigned U.S. mine safety and health administration (MSHA) registration number in addition to the trespass warning and danger notice.

[8-21-89, 10-14-95; 19.7.2.8 NMAC - Rn, 19 NMAC 7.2.8, 5/30/2003]

19.7.2.9 DECISION OF DIRECTOR:

If the director disapproved the proposed plan because it does not effectively safeguard surface mine openings, the director shall indicate in writing the reason therefor. The operator shall then submit an amended safeguarding plan.

[8-21-89, 10-14-95; 19.7.2.9 NMAC - Rn, 19 NMAC 7.2.9, 5/30/2003]

19.7.2.10 RIGHT OF ENTRY:

The director and his agents shall have right of entry to mines for the purpose of determining compliance with the rules and regulations for the effective safeguarding of surface mine openings.

[8-21-89; 19.7.2.10 NMAC - Rn, 19 NMAC 7.2.10, 5/30/2003]

19.7.2.11 INSPECTION AND ENFORCEMENT:

If upon inspection or the investigation of a complaint by any affected party the director determines that there is a violation of statutes, rules and regulations applicable to safeguarding mine surface openings and a party responsible for such safeguarding can be identified, the director shall issue a written notice of non-compliance by certified mail to the responsible party. The responsible party shall submit a written response to the director within ten days of certified mail receipt of the notice of non-compliance. Failure

to respond in writing to the director within the ten day limit shall be deemed a failure to properly safeguard and may result in referral by the director to the appropriate district attorney for prosecution. Each individual failure to comply with a statute, rule or regulation, or failure to respond to a written notice will constitute a separate and unlawful act that may be prosecuted. Each unlawful act is subject to a fine of not more than two hundred dollars (\$200) or by imprisonment for three months in the county jail or by such fine and imprisonment. Additionally, the director may bring a direct action in district court seeking to compel compliance with the statute requiring safeguarding of mine surface openings.

[8-21-89; 19.7.2.11 NMAC - Rn, 19 NMAC 7.2.11, 5/30/2003]

19.7.2.12 EMERGENCY ACTION:

If the director determines that an immediate danger to public health and safety exists due to the lack of or ineffective safeguarding of mine surface openings, the director may take appropriate actions necessary to effectively safeguard the mine and recover reasonable costs for such work from the owner of the mine through negotiation or, if necessary, by the filing of a civil suit in district court in the county where the emergency action occurred. The director's actions are discretionary and are subject to financial limitations.

[8-21-89; 19.7.2.12 NMAC - Rn, 19 NMAC 7.2.12, 5/30/2003]

19.7.2.13 INTERPRETATIVE MEMORANDA:

The director from time to time may issue interpretative memoranda which discuss the type of safeguarding techniques that may be used. Varying types of mine openings, the likelihood of reopening the mine, the proximity to populated areas and other relevant factors will be considered. These memoranda are intended to be guidelines and are not to be considered applicable to any specific mine closure.

[8-21-89; 19.7.2.13 NMAC - Rn, 19 NMAC 7.2.13, 5/30/2003]

PART 3: CONSOLIDATION OF MINING PROPERTIES

19.7.3.1 ISSUING AGENCY:

New Mexico Energy, Minerals and Natural Resources Department.

[10-31-96; Recompiled 12/31/01]

19.7.3.2 SCOPE:

Section 8 applies to all persons seeking to consolidate mining properties pursuant to Section 69-9-1 through 69-9-10 NMSA 1978. Section 9 applies to Kerr-McGee

Corporaion and the owners of all tracts of land in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley County, New Mexico.

[10-31-96; Recompiled 12/31/01]

19.7.3.3 STATUTORY AUTHORITY:

Section 69-9-4 NMSA 1978.

[10-31-96; Recompiled 12/31/01]

19.7.3.4 DURATION:

Permanent.

[10-31-96; Recompiled 12/31/01]

19.7.3.5 EFFECTIVE DATE:

October 31, 1996, unless a different date is cited at the end of a section or paragraph.

[10-31-96; Recompiled 12/31/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

19.7.3.6 OBJECTIVE:

The objective of Section 8 of Chapter 7 Part 3 is to establish regulations addressing the application for consolidation of mining properties. The objective of Section 9 of Chapter 7 Part 3 is to outline the conditions and requirements of a consolidation of mining properties in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley county, New Mexico, and to order said consolidation.

[10-31-96; Recompiled 12/31/01]

19.7.3.7 DEFINITIONS:

[RESERVED]

[10-31-96; Recompiled 12/31/01]

19.7.3.8 APPLICATION FOR CONSOLIDATION:

Order adopting rules and regulations for administration of Chapter 33, New Mexico Laws of 1967 concerning consolidation of mining properties. Pursuant to Section 4 of

Chapter 33, New Mexico Laws of 1967, the state geologist of New Mexico hereby adopts the following rules and regulations:

A. Filing of application; form. Any person, firm or corporation desiring to make application to the state geologist for consolidation of mining properties under Chapter 33, New Mexico Laws of 1967, shall file three copies of the application, and three copies of all exhibits thereto, with the state geologist, state land office building, Santa Fe, New Mexico. The application shall contain all of the information required by law and may contain any additional information that the applicant deems pertinent.

B. Notice of hearing. Upon receiving an application for consolidation, the state geologist shall set a time and place for hearing and immediately shall notify the applicant thereof. The applicant shall give notice of hearing in accordance with law and shall file with the state geologist an affidavit of publication, and an affidavit of mailing showing in detail the date and manner of giving notice and to whom notice was given. All return receipts from certified mailing of notice of hearing shall be filed with the state geologist.

C. Record: The state geologist shall cause an official record to be made of all proceedings in connection with the application, including a transcript of all testimony and exhibits offered with respect thereto.

D. Order: notice of order: At the conclusion of the hearing on an application, the applicant shall submit a proposed order to the state geologist. Any order of the state geologist shall be made part of the official record, and notice of the order shall be given to the applicant or to the applicant's attorney of record.

E. Procedure upon petition for approval by district court. Upon the filing of a petition in district court for approval of an order of consolidation pursuant to Section 9, Chapter 33, New Mexico Laws of 1967, the state geologist shall certify the record made before him and transmit it to the clerk of the district court.

F. Payment of costs. The expenses of any proceeding on an application for consolidation, including the cost of giving notice of hearing and the fees and expenses in connection with preparation of the record, shall be borne and paid directly by the applicant.

G. DONE at Santa Fe, New Mexico, this 6th day of July, 1967.

[07-06-67, 10-31-96; Recompiled 12/31/01]

19.7.3.9 KERR-MCGEE ORDER OF CONSOLIDATION:

In the matter of the application of Kerr-McGee Corporation for consolidation of all small tracts or interests in Section 19, Township 14 North, Range 9 West, New Mexico

Principal Meridian, McKinley County, New Mexico, pursuant to Chapter 33, New Mexico Laws of 1967.

A. This cause came on for hearing at 9:30 a.m. on March 19, 1968, at Santa Fe, New Mexico, upon the Application of Kerr-McGee Corporation (hereinafter called "Kerr-McGee") praying for an order of consolidation of all small tracts or interests in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley County, New Mexico (hereinafter called "Section 19"), pursuant to Chapter 33 of the New Mexico Laws of 1967.

B. After an examination of the files in said cause, the undersigned finds said Application was filed with the undersigned on the 19th day of December, 1967, and that on said date the undersigned set the Application for hearing at 9:30 a.m. on March 19, 1968, at Santa Fe, New Mexico; that due notice of this hearing has been given by publication in the Gallup Independent on February 7, 14, 21, and 28, 1968, as shown by affidavit of publication filed herein, and by mailing, as shown by affidavit of mailing filed herein.

C. The undersigned, having heard and considered the evidence concerning the said application, and being fully advised in the premises, Finds:

(1) The state geologist of the state of New Mexico (appointed pursuant to Section 65-3-1 New Mexico Statutes Annotated, 1953 Compilation) has jurisdiction of this cause and the subject matter thereof.

(2) Kerr-McGee is a corporation organized under the laws of the state of Delaware, qualified to do business in the state of New Mexico, and is presently engaged in the exploration, development, mining and processing of ore, and the production and marketing of uranium in concentrate, in the Ambrosia lake area of McKinley county, New Mexico.

(3) Section 19, containing 645.50 acres, is comprised wholly of contiguous small tracts, each containing two acres or less. Such small tracts were created by the subdivision of Section 19 by a plat of subdivision filed with the county clerk of McKinley county, New Mexico, on November 30, 1933, as Reception No. 2162, and recorded in Book 6 of Miscellaneous Records, page 586.

(4) Kerr-McGee has made extensive, diligent and good faith effort to identify and locate every person owning an interest in each small tract in Section 19, and, as to each owner who has been identified and located, has made extensive, diligent and good faith effort to purchase, lease or otherwise acquire mining rights covering such interest for the purpose of exploring, developing, mining, producing, marketing and/or processing uranium and uranium ore. As a result of these efforts, Kerr-McGee presently holds mining rights covering in excess of 85 percent of the entire mineral estate in Section 19. Despite the efforts that have been made by Kerr-McGee to identify, locate and acquire mining rights from all owners of interest in Section 19, there remain owners

of small tracts or interests therein whose addresses are unknown, or from whom Kerr-McGee has not acquired mining rights.

(5) The lack of exploration and development on Section 19 up to the present time makes it impossible to ascertain that all or any portion of Section 19, or any small tract therein, definitely contains uranium ore on all sides of Section 19, and other geologic evidence, indicates that each small tract in Section 19 probably will be productive of uranium ore. The entirety of Section 19 therefore composes an appropriate unit for consolidation.

(6) Kerr-McGee proposes to conduct exploratory operations on, and to develop, mine, produce, save, remove, market or process uranium ore and other associated minerals mined therewith from Section 19. The proposed operations are feasible and in accord with good industry practices.

(7) The exploration and mineral development of the small tracts in Section 19 on a separate and individual basis would be uneconomic and impractical, and the consolidation of Section 19 is needed to induce mineral exploration and potential mineral development in order to avoid waste of natural resources and to protect the correlative rights of all owners in Section 19.

(8) Due to the diversity of ownership of the small tracts in Section 19, and due to the inability of Kerr-McGee to obtain mining rights from some of the owners, and in order to insure the development of Section 19, all small tracts or interests in said Section 19 should be ordered consolidated in the manner provided by Chapter 33, New Mexico Laws of 1967.

D. It is therefore ordered: that all small tracts or interests therein in Section 19, Township 14 North, Range 9 West, N.M.P.M., McKinley county, New Mexico, be, and the same hereby are consolidated pursuant to Chapter 33 of the New Mexico Laws of 1967. As to each small tract or interest therein in Section 19 on which Kerr-McGee does not otherwise hold the mining rights, a mining lease thereon is hereby effectuated to Kerr-McGee under which it shall have the exclusive right and privilege, by such means and methods as it shall determine, to explore for, develop, mine (by underground, strip, solution or any other mining methods), extract, store, remove, own, market or process, for its benefit and use, any uranium ore and other associated minerals mined therewith, in, upon or under the said tracts or interests therein, and to use so much of the surface of each of said small tracts and of the water and appurtenant water rights as it shall deem necessary or desirable for such operations, including, but not by way of limitation, the right to construct and maintain buildings, roads, openings, ditches, stockpiles, dumps and other improvements and facilities thereon, being hereby given all such rights and privileges as may be necessary or convenient in connection with the foregoing, as well as the right to mine and remove ore from any of said tracts in Section 19 through or by means of shafts, haulage ways or by other facilities located in or on other tracts in said Section 19 or other lands, upon the following terms and conditions;:

(1) The mining leases effectuated by this order shall be effective as of February 7, 1968, and shall remain in force for a term of ten years from this date, and as long thereafter as such ores are being produced, saved and removed from, or any mining operations are being conducted on, said Section 19. Mine development or other operations preparatory to mining, as well as actual mining and operations for or in connection therewith, shall be considered to be mining operations. Mining operations shall be deemed continuous so long as such operations are not suspended for any period of longer than ninety consecutive days and despite interruptions in such operations of whatever duration (whether or not in excess of ninety days) caused by force majeure or by reason of lack of a satisfactory market for ores from Section 19.

(2) If mining operations are being conducted anywhere on Section 19, it shall be considered such operations are being conducted on each small tract within Section 19.

(3) Uranium ore and other associated minerals mined therewith, produced, saved and removed from any part of Section 19, (hereinafter called "area production"), shall be considered as though production of ore is had from each small tract within Section 19, and there shall be allocated to each such tract as its share of the area production that part of the area production which bears the same ratio to the whole amount of such area production, as the area that the number of surface acres in said small tract bears to the total number of surface acres of 645.50 acres in Section 19.

(4) Kerr-McGee shall pay a bonus of \$10.00 to each owner with respect to the mining leases effectuated by this order upon small tracts or interests therein as to which Kerr-McGee does not otherwise hold the mining rights. This bonus shall be due and payable when this order becomes final and effective.

(5) Royalty:

(a) Kerr-McGee shall pay a royalty of ten per cent of the "mine value" of the ore produced, saved and removed from Section 19. The "mine value" shall be the value of such ore at the mouth of the mine in the crude state in which produced, saved and removed, and shall be determined as follows:

(i) The mine value of any such ore taken by Kerr-McGee for processing in its uranium processing mill shall be an amount determined and computed by: (a) multiplying the number of pounds of U_3O_8 contained in said ore by the "unadjusted value per pound" thereof as determined, on the basis of the "grade" (i.e., percentage of contained U_3O_8) of said ore, in accordance with the following schedule:

Grade of Ore	Unadjusted Value per
Uranium (U_3O_8) Content	Pound of Contained U_3O_8
0.10%	\$1.50

0.11%	\$1.70
0.12%	\$1.90
0.13%	\$2.10
0.14%	\$2.30
0.15%	\$2.50
0.16%	\$2.70
0.17%	\$2.90
0.18%	\$3.10
0.19%	\$3.30
0.20% or more	\$3.50

and (b) then adjusting the result so obtained by multiplying such result by a fraction having a denominator of \$8.00 (which is the price being received for U_3O_8 in concentrate produced at Kerr-McGee's mill and sold to the AEC during calendar year 1966) and a numerator equal to the weighted average price per pound received for all sales of U_3O_8 in concentrate made by Kerr-McGee during the twelve month period ending with the month in which said ore was processed and (c) finally then deducting from the adjusted result so obtained the cost of transporting said ore from the mine to Kerr-McGee's mill and also any sales, severance or similar taxes levied or assessed on or in connection with said ore.

(ii) The mine value of any such ore sold by Kerr-McGee before processing shall be the actual net proceeds received by Kerr-McGee from the sale of said ore, less the cost of transporting said ore from mine to point of its sale and less any sales, severance or similar taxes levied or assessed on or in connection with said ore or the sale thereof.

(b) The above specified royalty on ore produced, saved and removed by Kerr-McGee from Section 19 shall be due and payable on or before the 25th day of the month following the calendar quarter-year in which such ore is processed or sold by Kerr-McGee, and said royalty, computed and determined as above provided, shall constitute the sole and total royalty for such ore, and all components and constituents thereof.

(c) Bonus and royalty payments to the owners of each small tract or interest therein may be made by mailing or delivering Kerr-McGee's check to such owners at their respective addresses as shown on the records of Kerr-McGee, or if address is

unknown, such payments shall be made to the state treasurer of the state of New Mexico, at Santa Fe, New Mexico, for the use and benefit of such owner, as provided by Section 10, Chapter 33 of the New Mexico Laws of 1967.

(d) Royalty payments shall be conclusively deemed to have been truly and correctly determined, computed and made if no exception and claim for adjustment is made, with respect to the particular payment involved, by written notice given within twenty-four months from the end of the calendar quarter-year for which such payment was made.

(6) Kerr-McGee's operations shall be carried on in a miner-like fashion and in compliance with applicable laws and governmental regulations. Kerr-McGee shall have the right to deposit waste material and overburden on Section 19, and to mine and remove such pillars as it may elect from any underground working area it may wish to abandon; however, Kerr-McGee shall not be liable for subsidence or other damages done to the surface of the lands comprising Section 19, or the improvements thereon.

(7) Uranium ore and other associated minerals mined therewith, produced from Section 19, will not be commingled with ores mined and produced from other lands, unless procedures, consistent with good practice in the industry, are adopted and employed to determine the quantity and grade of the ore produced from Section 19.

(8) Kerr-McGee shall have the right at any time during the continuance hereof, or within one year after the termination hereof as herein provided, to remove any machinery, fixtures, buildings or other structures or property placed on Section 19.

(9) Kerr-McGee may, if it so elects, pay any mortgage, taxes or other liens or encumbrances on Section 19, and in the event of such payment, Kerr-McGee shall be entitled to reimburse itself therefor out of any royalties becoming due to any tract owner, and shall also be fully subrogated to the rights of the holders of the liens and encumbrances so paid; provided, however, Kerr-McGee shall not be entitled to seek reimbursement for taxes paid by it for the year 1968 or any prior years.

(10) In case of any dispute or question regarding ownership of Section 19, or any royalties payable hereunder, Kerr-McGee shall be entitled to withhold, without interest, payment of royalties until such dispute or question has been properly settled and appropriate proof (such as original or certified copy of the settlement instrument) has been submitted to Kerr-McGee.

(11) If the estate of any tract owner is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to their heirs, devisees, executors, administrators, successors and assigns, but no change or division of ownership or in the royalties payable hereunder shall be binding upon Kerr-McGee for any purpose until fifteen days after Kerr-McGee shall have been furnished with the original recorded instrument or instruments, or duly certified copies thereof, properly

evidencing the same and neither shall any such change or division or ownership ever operate to enlarge the obligations or diminish the rights of Kerr-McGee.

(12) Failure of Kerr-McGee to perform any of its obligations hereunder, or to comply with any requirements hereof, shall not automatically terminate the leases effectuated by this order, it being agreed that such leases shall never be terminated, forfeited or canceled for any failure of performance on the part of Kerr-McGee unless and until it shall have first been finally determined by a court of record of competent jurisdiction that Kerr-McGee is in default hereunder, and it shall have failed to commence action within sixty days after the said judicial determination thereof to cure such default and thereafter to prosecute such action to completion. Provided, that nothing herein shall ever serve to create any commitment or obligation on the part of Kerr-McGee, express or implied, to explore, develop, mine or conduct any other operations on Section 19.

(13) Kerr-McGee shall not be liable or deemed in default for failure to perform any of its obligations during periods in which performance is prevented by any cause reasonably beyond Kerr-McGee's control (any such cause being for purposes hereof "force majeure").

(14) While the leases effectuated by this order remain in force, Kerr-McGee will pay the property taxes on any improvements placed on Section 19 by it, but otherwise each tract owner shall pay all property taxes on their separate tracts, except as provided in paragraph 9.4.9 [now paragraph (9) of subsection D of 19.7.3.9 NMAC] of this order.

(15) The provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, personal representative and heirs of the various tract owners and of Kerr-McGee.

E. Entered at Santa Fe, New Mexico, this 15th day of April, 1968.

[04-15-68, 10-31-96; Recompiled 12/31/01]

CHAPTER 8: COAL MINING

PART 1: GENERAL PROVISIONS

19.8.1.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[11-29-97; 19.8.1.1 NMAC - Rn, 19 NMAC 8.2.1.100, 9-29-2000]

19.8.1.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[11-29-97; 19.8.1.2 NMAC - Rn, 19 NMAC 8.2.1.101, 9-29-2000]

19.8.1.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[11-29-97; 19.8.1.3 NMAC - Rn, 19 NMAC 8.2.1.102, 9-29-2000]

19.8.1.4 DURATION:

Permanent.

[11-29-97; 19.8.1.4 NMAC - Rn, 19 NMAC 8.2.1.104, 9-29-2000]

19.8.1.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[11-29-97; 19.8.1.5 NMAC - Rn & A, 19 NMAC 8.2.1.105, 9-29-2000]

19.8.1.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[11-29-97; 19.8.1.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.1.7 DEFINITIONS:

A. Definitions beginning with the letter "A"

(1) ACCELERATED EROSION - means washing away or blowing away of overburden, spoil, soil or topdressing material in excess of normal erosion resulting from changes in the vegetative cover or ground conditions.

(2) ACID DRAINAGE - means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive or abandoned surface coal mining and reclamation operations or from an area affected by surface coal mining and reclamation operations.

(3) ACID FORMING MATERIALS - means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

(4) ACID-TEST RATIO - means the relation of quick assets to current liabilities.

(5) ACT - is the state of New Mexico Surface Mining Act (Sections 69-25A-1 et. seq. NMSA 1978)

(6) ADJACENT AREA - means land located outside the affected area, permit area, or mine plan area, depending on the context in which adjacent area is used where air, surface or ground water, fish, wildlife, vegetation or other resources protected by the act may be adversely impacted by surface coal mining and reclamation operations.

(7) AFFECTED AREA - means, with respect to surface coal mining activities, any land or water upon or in which those activities are conducted or located. With respect to underground coal mining activities, affected area means:

(a) any water or surface land upon or in which those activities are conducted or located; and

(b) land or water which is located above underground mine workings.

(8) AGRICULTURAL ACTIVITIES - means with respect to alluvial valley floors, the use of any tract of land for the production of animal or vegetable life, where the use is enhanced or facilitated by subirrigation or flood irrigation associated with alluvial valley floors. These uses include, but are not limited to, the pasturing, grazing, or watering of livestock, and the cropping, cultivation, or harvesting of plants whose production is aided by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.

(9) AGRICULTURAL USE - means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation and harvesting of plants.

(10) ALLUVIAL VALLEY FLOORS - means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass movement accumulations, and windblown deposits. Ephemeral or dry streams incapable of supporting agricultural activities by natural means, and without artificial means, are not alluvial valley floors.

(11) ANTHRACITE - means coal classified as anthracite in ASTM standard D 388-77. Coal classifications are published by the American society of testing and materials under the title, "standard specification for classification of coals by rank", ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference as it exists on the date of adoption of 19.8 NMAC Parts 1-35.

(12) APPLICANT - means any person seeking a permit from the director to conduct surface coal mining and reclamation operations or coal exploration pursuant to the act and 19.8 NMAC Parts 1-35.

(13) APPLICATION - means the documents and other information filed with the director under the act and 19.8 NMAC Parts 1-35 for the issuance of exploration approval or a permit as the context requires.

(14) APPLICANT/VIOLATOR SYSTEM or AVS - means the computer system maintained by OSM to identify ownership or control links involving permit applicants, permittees, and persons cited in violation notices.

(15) APPROXIMATE ORIGINAL CONTOUR - means the surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all spoil piles and refuse piles eliminated. Highwalls will also be eliminated except as provided for in Paragraph (2) of Subsection A of 19.8.20.2055 NMAC. Permanent water impoundments may be permitted where the director has determined that they comply with 19.8.20.2017, 2024, and 2075 NMAC.

(16) AQUIFER - means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

(17) ARID AND SEMIARID AREA - includes, in the context of alluvial valley floors, all coal fields in the state.

(18) ASPECTION - means the variability of blooming, fruiting, foliation and defoliation of vegetation during the various seasons of the year.

(19) AUGER MINING - means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(20) AUGMENTED SEEDING - means seeding in excess of the normal husbandry practices approved in the director's *coal mine reclamation program vegetation standards*, or reseeding with fertilization or irrigation, or reseeding in response to unsuccessful revegetation in terms of adequate germination or establishment or permanence.

B. Definitions beginning with the letter "B"

(1) BASAL AREA - means that portion of the sampling unit covered by the cross-sectional area of the individual plants taken at or near the ground surface for the herb and shrub strata and at "breast height" (1.3 m; 4.5 ft.) for tree species.

(2) BEST TECHNOLOGY CURRENTLY AVAILABLE - means equipment, devices, systems, methods or techniques which will:

(a) prevent to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and

(b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; the term includes equipment, devices, systems, methods or techniques which are currently available anywhere as determined by the director, even if they are not in routine use; the term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with 19.8.20 NMAC; within the constraints of the permanent program, the director shall have the discretion to determine the best technology currently available on a case-by-case basis as authorized by the act and 19.8 NMAC Parts 1-35.

(3) BLASTER - means a person directly responsible for the use of explosives in surface coal mining operations who is certified pursuant to these regulations.

C. Definitions beginning with the letter "C"

(1) CEMETERY - means a place dedicated to, used and maintained for the interment of the human dead.

(2) COAL - means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM standard D 388-77, referred to and incorporated by reference in the definition of anthracite.

(3) COAL EXPLORATION - means the field gathering of:

(a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of the act and 19.8 NMAC Parts 1-35.

(4) COAL MINING OPERATION - means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

(5) COAL PREPARATION PLANT - means a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including, but not limited to the following: loading facilities; storage and stockpile facilities; sheds; shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

(6) COAL PROCESSING PLANT - means (a) a collection of facilities where run-of-the-mine coal is subjected to chemical or physical processing and separated from its impurities. The processing plant may consist of, but need not be limited to, the following facilities: loading facilities; storage and stockpile facilities; sheds, shops and other buildings; water treatment and water storage facilities; settling basins and impoundments; coal processing and other waste disposal areas; roads, railroads and other transport facilities; or (b) underground development waste.

(7) COAL PROCESSING WASTE - means (a) earth materials which are combustible, physically unstable, or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal preparation plants, after physical or chemical processing, cleaning, or concentrating of coal, (b) underground development waste.

(8) COAL PROCESSING WASTE BANK - means a surface deposit of coal processing waste that does not impound water, slurry or other liquid or semi-liquid material.

(9) COLLATERAL BOND - means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the state of New Mexico of one or more of the following:

(a) a cash account, which shall be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the state of New Mexico upon demand, or the deposit of cash directly with the director;

(b) negotiable bonds of the United States, a state, or a municipality, endorsed to the order of the state of New Mexico, and placed in the possession of, the director;

(c) negotiable certificates of deposit, made payable or assigned to the state of New Mexico and placed in its possession or held by a federally-insured bank;

(d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the state of New Mexico upon presentation;

(e) a perfected, first-lien security interest in real property in favor of the state of New Mexico only; or

(f) other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of the state of New Mexico, and placed in the possession of, the director.

(10) COMBUSTIBLE MATERIAL - means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

(11) COMMUNITY OR INSTITUTIONAL BUILDING - means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental-health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

(12) COMPACTION - means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effect such as from repeated application of wheel, track, or roller loads from heavy equipment.

(13) COMPLETE APPLICATION - means an application for exploration approval or a surface coal mining and reclamation permit, which contains all information required under the act and 19.8 NMAC Parts 1-35.

(14) CONSTANCY - means the percentage of sampling areas of the same vegetative type in which an individual species occurs.

(15) CROPLAND - means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops. Land used for facilities in support of cropland farming operations which is adjacent to or an integral part of these operations is also included for purposes of these land use categories.

(16) CUMULATIVE IMPACT AREA - means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground-water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) the proposed operation;

(b) all existing operations;

(c) any operation for which a permit application has been submitted to the director; and

(d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

(17) CURRENT ASSETS - means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

(18) CURRENT LIABILITIES - means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

D. Definitions beginning with the letter "D"

(1) DENSITY - means the number of individuals of a species per unit area.

(2) DEVELOPED WATER RESOURCES - is meant to include land used for storing water for beneficial uses such as stockponds, irrigation, fire protection, flood control, and water supply.

(3) DIRECT FINANCIAL INTEREST - means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also any other arrangements where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(4) DIRECTOR - means the director of mining and minerals division, or his authorized representative.

(5) DISTURBED AREA - means any area where vegetation, topsoil, or overburden is removed or upon which topdressing, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by NMAC 19.8.14 is released.

(6) DIVERSION - means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

(7) DOWNSLOPE - means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

(8) DRAINAGE GRADE CROSSING - means the point at which a road crosses a drainage channel at the elevation of the base of that channel.

(9) DRINKING, DOMESTIC OR RESIDENTIAL WATER SUPPLY - means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included except to the extent the water supply is for direct human consumption or human sanitation, or domestic use.

E. Definitions beginning with the letter "E"

(1) EMBANKMENT - means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

(2) EMPLOYEE - means:

(a) any person employed by the director who performs any function or duty under the act; and

(b) advisory board or commission members and consultants who perform any function or duty under the act, if they perform decision-making functions under the authority of state law or regulations; however, members of advisory boards or commissions established in accordance with state law or regulations to represent multiple interests are not considered to be employees.

(3) EPHEMERAL STREAM - means a stream which flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

(4) ESSENTIAL HYDROLOGIC FUNCTIONS - means the role of an alluvial valley floor in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation. The role of the alluvial valley floor in making water usefully available for agricultural activities results from:

(a) the existence of flood plains and terraces where surface and ground water can be provided in sufficient quantities to support the growth of agriculturally useful plants;

(b) the presence of earth materials suitable for the growth of agriculturally useful plants;

(c) the temporal and physical distribution of water making it accessible to plants throughout the critical phases of the growth cycle either by flood irrigation or by subirrigation;

(d) the natural control of alluvial valley floors in limiting destructive extremes of stream discharge; and

(e) the erosional stability of earth materials suitable for the growth of agriculturally useful plants.

(5) **EXCESS SPOIL** - means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with Paragraph (5) of Subsection A of 19.8.20.2055 NMAC in non-steep slope areas shall not be considered excess spoil.

(6) **EXISTING STRUCTURE** - means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of a state program.

(7) **EXPERIMENTAL PRACTICE** - means the use of alternative surface coal mining and reclamation operation practices for experimental or research purposes. Experimental practices need not comply with specific environmental protection performance standards of 19.8.20 NMAC, the act, and 19.8 NMAC Parts 1-35.

(8) **EXTRACTION OF COAL AS INCIDENTAL PART** - means the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of 19.8 NMAC Parts 1-35, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the act and 19.8 NMAC Parts 1-35.

F. Definitions beginning with the letter "F"

(1) **FEDERAL LANDS** - means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

(2) **FEDERAL LANDS PROGRAM** - means a program established by the secretary of the U.S. department of interior, pursuant to Section 523 of the Surface Mining Control and Reclamation Act of 1977 to regulate surface coal mining and reclamation operations on federal lands.

(3) FEDERAL VIOLATION NOTICE - means a violation notice issued by OSM or by another agency or instrumentality of the United States.

(4) FISH AND WILDLIFE HABITAT - means land dedicated wholly or partially to the production, protection or management of species of fish or wildlife.

(5) FIXED ASSETS - means plants, facilities and equipment, not used for the production, transportation or processing of coal, and does not include land or coal in place.

(6) FLOOD IRRIGATION - means, with respect to alluvial valley floors, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

(7) FOLIAGE COVER - means that portion of the sampling unit covered by the vertical projection of an individual plant's aerial parts.

(8) FORESTRY - means land used or managed for the long-term production of wood, wood fiber, or wood derived products. Land used for facilities in support of forest, harvest and management operations which is adjacent to or an integral part of these operations is also included. For purposes of 19.8 NMAC Parts 1-35, pinon-juniper type trees shall not be deemed forest trees managed for such long term production.

(9) FRAGILE LANDS - means unique or valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants and uncommon geologic formations. National natural landmark sites, areas where mining may cause flooding, areas containing a concentration of unique ecological and aesthetic features, areas of recreational value due to high environmental quality, and buffer zones adjacent to the boundaries of areas where surface coal mining operations are prohibited under Section 69-25A-26 NMSA 1978 of the act and 19.8.2, 3 and 4 NMAC, that could be damaged or destroyed by surface coal mining operations.

(10) FREQUENCY - means the percentage of plots or subplots occupied by each individual species in one sampling unit or area.

(11) FUGITIVE DUST - means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and reclamation operations it may include emissions from haul roads, wind erosion of exposed surfaces, storage piles, and spoil piles, reclamation operations and other activities in which material is either removed, stored, transported, or redistributed.

G. Definitions beginning with the letter "G"

(1) GOVERNMENT FINANCED CONSTRUCTION - means construction funded 50 percent or more by funds appropriated from a government financing agency's

budget or obtained from general revenue bonds, but shall not mean government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments. Funding at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of SMCRA.

(2) GRAZING LAND - includes both grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing or occasional hay production. Land used for facilities in support of ranching operations which are adjacent to or an integral part of these operations is also included.

(3) GROUND COVER - means either foliage or basal area cover of living plant material.

(4) GROUND WATER - means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

H. Definitions beginning with the letter "H"

(1) HALF-SHRUB - means a perennial plant with a woody base whose annually produced stems die back each year.

(2) HEAD-OF-HOLLOW FILL - means a fill structure consisting of any material, other than coal processing waste and organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow measured at the steepest point are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In fills with less than 250,000 cubic yards of material, associated with contour mining, the top surface of the fill will be at the elevation of the coal seam. In all other head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

(3) HIGHWALL - means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

(4) HISTORIC LANDS - means historic or cultural districts, places, structures or objects, including archaeological and natural historic landmark sites, sites listed on or eligible for listing on a state or national register of historic places, or sites for which historic designation is pending.

(5) HISTORICALLY USED FOR CROPLAND - means:

(a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of

the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations;

(b) lands that the director determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or

(c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

(6) **HYDROLOGIC BALANCE** - means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

(7) **HYDROLOGIC REGIME** - means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

I. Definitions beginning with the letter "I"

(1) **IMMINENT DANGER TO THE HEALTH AND SAFETY OF THE PUBLIC** - means the existence of any condition or practice, or any violation of a permit, 19.8 NMAC Parts 1-35 or other requirements of the act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

(2) **IMPOUNDMENT** - means a closed basin, naturally formed or artificially built, which is dammed or excavated for the retention of water or sediment.

(3) **INDIGENOUS** - means an organism that is native, not introduced, or immigrates under its own power into an area.

(4) **INDIRECT FINANCIAL INTEREST** - means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests including interests held by his or her spouse, minor child and other relatives,

including in-laws residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

(5) INDUSTRIAL/COMMERCIAL - means land used for:

(a) extraction or transformation of materials for fabrication or products, wholesaling of products or for long-term storage of products; this includes all heavy and light manufacturing facilities such as lumber and wood processing, chemical manufacturing, petroleum refining and fabricated metal products manufacture; land used for facilities in support of these operations which is adjacent to or an integral part of that operation is also included; support facilities include, but are not limited to, all rail, road, and other transportation facilities.

(b) retail or trade of goods or services, including hotels, motels, stores, restaurants and other commercial establishments; land used for facilities in support of commercial operations which is adjacent to or an integral part of these operations is also included; support facilities include, but are not limited to, parking, storage or shipping facilities.

(6) IN SITU PROCESSES - means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining and fluid recovery mining.

(7) INTERMITTENT STREAM - means a stream or reach of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

(8) INTERSEEDING - means a secondary seeding practice into established vegetation cover in order to take advantage of climatic conditions that favor species requiring special conditions for germination and establishment, or to improve or alter the composition between forage species and shrubs, or between warm and cool season grasses.

(9) IRREPARABLE DAMAGE TO THE ENVIRONMENT - means any damage to the environment that cannot be corrected by actions of the applicant.

K. Definitions beginning with the letter "K". **KNOWING OR KNOWINGLY** - means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

L. Definitions beginning with the letter "L"

(1) LAND USE - means specific uses or management related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal uses occur. Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the director. Land use categories identified in 19.8 NMAC Parts 1-35 are:

- (a)** cropland
- (b)** pasture land or land occasionally cut for hay
- (c)** grazing land
- (d)** forestry
- (e)** residential
- (f)** industrial/commercial
- (g)** recreation
- (h)** fish and wildlife habitat
- (i)** developed water resources
- (j)** undeveloped land or no current use or land management

(2) LIABILITIES - means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

(3) LITTER COVER - means that portion of the sampling unit covered by dead s of plants.

M. Definitions beginning with the letter "M"

(1) MATERIAL DAMAGE, in the context of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, means:

- (a)** any functional impairment of surface lands, features, structures or facilities;
- (b)** any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

(2) MATERIALLY DAMAGE THE QUANTITY OR QUALITY OF WATER - means, with respect to alluvial valley floors, changes in the quality or quantity of the water supply to any portion of an alluvial valley floor where such changes are caused by surface coal mining and reclamation operations and result in changes that significantly and adversely affect the composition, diversity, or productivity of vegetation dependent on subirrigation, or which result in changes that would limit the adequacy of the water for flood irrigation of the irrigable land acreage existing prior to mining.

(3) MINE PLAN AREA - means the area of land and water within the boundaries of all permit areas during the entire life of the surface coal mining and reclamation operations as anticipated by the applicant at the time of submission of a permit application. Other terms defined in 19.8 NMAC Parts 1-35 which relate closely to mine plan area are:

(a) permit area, which will always be within or the same as the mine plan area;

(b) affected area, which will always be within or the same as the permit area; and

(c) adjacent area, which may surround or extend beyond the affected area, permit area, or mine plan area.

(4) MINING PLAN - means a complete mining and reclamation operations plan that complies with the requirements of the act, 19.8 NMAC Parts 1-35 and all other applicable laws and regulations.

(5) MOIST BULK DENSITY - means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees C.

(6) MULCH - means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

N. Definitions beginning with the letter "N"

(1) NATURAL HAZARD LANDS - means geographic areas in which natural conditions exist which pose or, as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment.

(2) NET WORTH - means total assets minus total liabilities and is equivalent to owners' equity. For the purposes of Subparagraph (b) of Paragraph (3) of Subsection

A of 19.8.14.1410 NMAC plants, facilities and equipment used for the production, transportation or processing of coal, and land or coal in place shall not be considered assets in a calculation of net worth.

(3) NONCOMMERCIAL BUILDING - means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are also defined in 19.8.1.7 NMAC. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises are excluded.

(4) NO SIGNIFICANT RECREATIONAL, TIMBER, ECONOMIC OR OTHER VALUES INCOMPATIBLE WITH SURFACE COAL MINING OPERATIONS - means those significant values which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on off-site areas which could be affected by mining. Those values to be evaluated for their importance include:

(a) recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) timber management and silviculture;

(c) agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) scenic, historic, archaeological, aesthetic, fish, wildlife, plants or cultural interests.

(5) NORMAL EROSION - means the erosion that occurs on land under natural environmental conditions not disturbed by human activity.

(6) NOXIOUS PLANTS - means species that have been included on the official state lists of noxious plants.

O. Definitions beginning with the letter "O"

(1) OCCUPIED DWELLING - means any building that is currently being used on a regular or temporary basis for human habitation.

(2) OCCUPIED RESIDENTIAL DWELLING AND ASSOCIATED STRUCTURES - means, for purposes of 19.8.9.918 and 19.8.20.2067, 2069 through 2072 NMAC, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to

or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes are excluded.

(3) OPERATOR - means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

(4) OSM - means office of surface mining reclamation and enforcement, U.S. department of the interior.

(5) OTHER TREATMENT FACILITIES - means any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point-source discharge and that are utilized to prevent additional contribution of suspended solids to streamflow or runoff outside the permit area, and to comply with all applicable state and federal water-quality laws and regulations.

(6) OUTSLOPE - means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

(7) OVERBURDEN - means material of any nature, consolidated or unconsolidated that overlies a coal deposit, excluding topsoil.

(8) OWNED OR CONTROLLED AND OWNS OR CONTROLS - means any one or a combination of the relationships specified in Subparagraphs (a) and (b) of Paragraph (8) of Subsection O of 19.8.1.7 NMAC:

(a) being a permittee of a surface coal mining operation, or having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts surface coal mining operations;

(b) the following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted:

(i) being an officer or director of an entity;

(ii) being the operator of a surface coal mining operation;

(iii) having the ability to commit the financial or real property assets or working resources of an entity;

(iv) being the sole proprietor of the entity;

(v) being a general partner in a partnership;

(vi) being a member in a limited liability company;

(vii) based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 percent or more of the entity; or

(viii) owning or controlling coal to be mined by another person under a lease, sublease or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts a surface coal mining operation.

(9) OWNERSHIP or CONTROL LINK - means any relationship included in the definition of "owned or controlled" or "owns or controls" in Subsection O of 19.8.1.7 NMAC or in the violations review provisions of Subsection C of 19.8.11.1105 NMAC. It includes any relationship presumed to constitute ownership or control under the definition of "owned or controlled" or "owns or controls" in this section, unless such presumption has been successfully rebutted under the provisions of 19.8.11.1117 and 1118 NMAC or under the provisions of 19.8.12 and 19.8.11.1118 NMAC.

P. Definitions beginning with the letter "P"

(1) PARENT CORPORATION - means a corporation which owns or controls the applicant.

(2) PASTURELAND OR LAND OCCASIONALLY CUT FOR HAY - means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. Land used for facilities in support of pastureland or land occasionally cut for hay which is adjacent to or an integral part of these operations is also included.

(3) PERENNIAL STREAM - means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

(4) PERFORMING ANY FUNCTION OR DUTY UNDER THIS ACT - means those decisions or actions, which if performed or not performed by an employee, affect the programs under the act.

(5) PERMANENT DIVERSION - means a diversion remaining after surface coal mining and reclamation operations are completed which has been approved for retention by the director and other appropriate state and federal agencies.

(6) PERMIT - means a permit to conduct surface coal mining and reclamation operations issued pursuant to Laws 1972, Chapter 68, as amended, or by the director pursuant to the act.

(7) PERMIT AREA - means the area of land and water within the boundaries of the permit which are designated on the permit application maps, as approved by the director. This area shall include, at a minimum, all areas which are or will be affected by the surface coal mining and reclamation operations during the term of the permit. The permit area shall not include roads, not otherwise within the permit boundary, infrequently used to monitor remote facilities or environmental resources, or for exploration or surveying purposes, if the director approves such use of such roads, after determining that such use will not result in a significant adverse affect upon the environment.

(8) PERMIT MODIFICATION - means an alteration of the terms or requirements of a permit, which alteration is not a permit revision.

(9) PERMIT REVISION - means a significant alteration of the terms or requirements of a permit, as identified in Subsection A of 19.8.13.1301 NMAC.

(10) PERMITTEE - means a person holding or required by the act and 19.8 NMAC Parts 1-35 to hold a permit to conduct surface coal mining and reclamation operations issued by the director pursuant to the act and 19.8 NMAC Parts 1-35.

(11) PERSON - means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agency, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

(12) PERSON HAVING AN INTEREST WHICH IS OR MAY BE ADVERSELY AFFECTED OR PERSON WITH A VALID LEGAL INTEREST - shall include any person:

(a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the secretary of the U.S. department of interior or the director; or

(b) whose property is or may be adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the secretary of the U.S. department of interior or the director.

(13) PRECIPITATION EVENT - means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in 19.8 NMAC Parts 1-35, a precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

(14) PREVIOUSLY MINED AREA - means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the performance standards of SMCRA, the act, and the New Mexico regulatory program.

(15) PRIME FARMLAND - means those lands which are defined by the secretary of the U. S. department of agriculture in 7 CFR 657 (federal register vol. 4 no. 21) and which have historically been used for cropland as that phrase is defined in 19.8 NMAC Parts 1-35.

(16) PROHIBITED FINANCIAL INTEREST - means any direct or indirect financial interest in any coal mining operation.

(17) PROPERTY TO BE MINED - means both the surface and mineral estates on and underneath lands which are within the permit area.

(18) PUBLIC BUILDING - means any structure that is owned by a public agency or used principally for public business, meetings or other group gatherings.

(19) PUBLIC OFFICE - means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

(20) PUBLIC PARK - means an area dedicated or designated by any federal, state, or local agency for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved or held open to the public because of that use.

(21) PUBLIC ROAD - means all roads and highways except private roads, established pursuant to any law of the United States or the state of New Mexico, and roads dedicated to the public use, that have not been vacated or abandoned, and such other roads as are recognized by the corporate authorities of any county in New Mexico.

Q. Definitions beginning with the letter "Q". **QUALIFIED LABORATORY** - means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core sampling, or other services as specified at

19.8.32.3203 NMAC under the small operator assistance program and which meet the standards of 19.8.32.3204 NMAC.

R. Definitions beginning with the letter "R"

(1) RANGELAND - means land on which the natural potential (climax) plant cover is principally native grasses, forbs and shrubs valuable for forage. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

(2) RECHARGE CAPACITY - means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(3) RECLAMATION - means those actions taken to restore mined land as required by the act and 19.8 NMAC Parts 1-35 to a postmining land use approved by the director.

(4) RECREATION - means land used for public or private leisure time use, including developed recreation facilities such as parks, camps and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

(5) RECURRENCE INTERVAL - means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10 year 24 hour precipitation event would be that 24 hour precipitation event expected to occur on the average once in 10 years.

(6) REFERENCE AREA - means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species composition that are produced naturally or by crop production methods approved by the director. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

(7) REPLACEMENT OF WATER SUPPLY - means, with respect to protected water supplies contaminated, diminished, or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies. Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner. If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative

water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

(8) RENEWABLE RESOURCE LANDS - means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands.

(9) RESIDENTIAL - includes single and multiple family housing, mobile home parks and other residential lodgings. Land used for facilities in support of residential operations which is adjacent to or an integral part of these operations is also included. Support facilities include, but are not limited to, vehicle parking and open space that directly relate to the residential use.

(10) ROAD - means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or within the affected area or surface coal mining and reclamation operations, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

S. Definitions beginning with the letter "S"

(1) SAFETY FACTOR - means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

(2) SEDIMENTATION POND - means a primary sediment control structure designed, constructed and maintained in accordance with 19.8.20.2014 NMAC and including but not limited to a barrier, dam, or excavated depression which slows down water runoff to allow sediment to settle out. A sedimentation pond shall not include secondary sedimentation control structures, such as straw dikes, riprap, check dams, mulches, dugouts and other measures that reduce overland flow velocity, reduce runoff volume or trap sediment, to the extent that such secondary sedimentation structures drain to a sedimentation pond.

(3) SELF-BOND - means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the state of New Mexico, with or without separate surety.

(4) SIGNIFICANT FOREST COVER - means an existing plant community consisting predominantly of trees and other woody vegetation. The secretary of the U.S. department of agriculture shall decide on a case-by-case basis whether the forest cover is significant within national forests of New Mexico.

(5) SIGNIFICANT, IMMINENT ENVIRONMENTAL HARM TO LAND, AIR OR WATER RESOURCES - means:

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(i) is causing harm; or,

(ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under Section 69-25A-25(B) NMSA 1978 of the act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(6) SLOPE - means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g. 1v:5h). It may also be expressed as a percent or in degrees.

(7) SMCRA - means the Surface Mining Control and Reclamation Act of 1977, as amended, its implementing regulations at 30 CFR Chapter VII, and any state or federal law, rule, regulation or program enacted or promulgated pursuant to it.

(8) SOIL HORIZONS - means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

(a) "A" HORIZON - the uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant and leaching of soluble or suspended particles are typically the greatest.

(b) "B" HORIZON - the layer that typically is immediately beneath the "A" horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the "A" or "C" horizons.

(c) "C" HORIZON - the deepest layer of a soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(9) SOIL SURVEY - means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the national cooperative soil survey.

(10) SPOIL - means overburden that has been removed during surface coal mining operations, or underground development waste material.

(11) STABILIZE - means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

(12) STATE VIOLATION NOTICE - means any written notification from the director of a violation of the act or 19.8 NMAC Parts 1-35, whether by letter, memorandum, legal or administrative pleading or other written communication, or by another agency or instrumentality of state government.

(13) STEEP SLOPE - means any slope with an average inclination of 20 degrees or more from the horizontal or such lesser slope as may be designated by the director after consideration of soil, climate and other characteristics of a region within the state.

(14) SUBIRRIGATION - means with respect to alluvial valley floors, the supplying of water to plants from underneath or from a semi-saturated or saturated subsurface zone where water is available for use by vegetation. Subirrigation may be identified by:

(a) diurnal fluctuation of the water table, due to the differences in nighttime and daytime evapotranspiration rates;

(b) increasing soil moisture from a portion of the root zone down to the saturated zone, due to capillary action;

(c) mottling of the soils due to iron in the root zone;

(d) existence of an important part of the root zone within the capillary fringe or water table of an alluvial aquifer; or

(e) increase in stream flow or a rise in ground water levels, shortly after the first killing frost on the valley floor.

(15) SUBSTANTIAL LEGAL AND FINANCIAL COMMITMENTS IN A SURFACE COAL MINING OPERATION - means significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and capital-intensive activities.

(16) SUBSTANTIALLY DISTURB - means for purposes of coal exploration, to impact significantly upon land, air or water resources by such activities as blasting, mechanical excavation, drilling or altering coal or water exploratory holes or wells, construction of roads and other access routes, and the placement of structures, excavated earth, or other debris on the surface of land.

(17) SUCCESSOR IN INTEREST - means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

(18) SUITABLE MATERIAL - means subsoil or geologic material that can be manipulated to form a sufficient amount of soil size particles with the nutrient capability for supporting desirable vegetation in compliance with the postmining land use.

(19) SURETY BOND - means an indemnity agreement in a sum certain payable to the state of New Mexico, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in the state.

(20) SURFACE COAL MINING OPERATIONS - means:

(a) activities conducted on the surface lands in connection with a surface coal mine or, subject to the requirements of Section 69-25A-20 NMSA 1978 of the act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce; such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site, provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16 2/3 per centum of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 69-25A-16 NMSA 1978 of the act; and provided, further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) areas upon which the activities described in Subparagraph (a) of Paragraph (20) of Subsection S of 19.8.1.7 NMAC occur or where those activities disturb the natural land surface; these areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

(21) SURFACE COAL MINING AND RECLAMATION OPERATIONS WHICH EXIST ON THE DATE OF ENACTMENT - means all surface coal mining and reclamation operations which were being conducted on August 3, 1977.

(22) SURFACE COAL MINING AND RECLAMATION OPERATIONS - means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term surface coal mining operations.

(23) SURFACE MINING ACTIVITIES - means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

(24) SURFACE OPERATIONS AND IMPACTS INCIDENT TO AN UNDERGROUND COAL MINE - means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in Section 69-25A-3(P) NMSA 1978 of the act and the definition of surface coal mining operations appearing in 19.8.1.7 NMAC.

(25) SUSPENDED SOLIDS OR NONFILTERABLE RESIDUE, EXPRESSED AS MILLIGRAMS PER LITER - means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the environmental protection agency's regulations for waste water and analysis (40 CFR 136).

T. Definitions beginning with the letter "T"

(1) TANGIBLE NET WORTH - means net worth minus intangibles such as goodwill and rights to patents or royalties.

(2) TEMPORARY CESSATION OF OPERATIONS - means cessation of mining or reclamation operations for more than thirty days and where a reasonable expectation of the continuation of mining can be demonstrated by the permittee.

(3) TEMPORARY DIVERSION - means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the director to remain after reclamation as part of the approved postmining land use.

(4) TON - means 2000 pounds avoirdupois (.90718 metric tons).

(5) TOPDRESSING - means topsoil or other suitable material that has the capability of sustaining desirable vegetation for the approved postmining land use.

(6) TOPSOIL - means the "A" soil horizon layer of the three major soil horizons or other surface soil material of suitable texture and pH, and lacking concentrations of elements toxic to plants.

(7) TOXIC-FORMING MATERIALS - means earth materials or wastes which if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(8) TOXIC MINE DRAINAGE - means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

(9) TRANSFER, ASSIGNMENT, OR SALE OF RIGHTS - means a change in ownership or other effective control over the right to conduct surface coal mining operations under a permit issued by the director.

U. Definitions beginning with the letter "U"

(1) UNCONSOLIDATED STREAMLAID DEPOSITS HOLDING STREAMS - means, with respect to alluvial valley floors, all flood plains and terraces located in the lower portions of topographic valleys which contain perennial or other streams with channels that are greater than 3 feet in bankfull width and greater than 0.5 feet in bankfull depth.

(2) UNDERGROUND DEVELOPMENT WASTE - means waste rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved and disposed of during development and preparation of areas incident to underground mining activities.

(3) UNDERGROUND MINING ACTIVITIES - means a combination of:

(a) surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance and reclamation of roads, above ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste and areas on which materials incident to underground mining operations are placed; and

(b) underground operations such as underground construction, operation and reclamation of shafts, adits, underground support facilities, in situ processing and underground mining, hauling, storage, and blasting.

(4) UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT - means land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

(5) UNDEVELOPED RANGELAND - means, for purposes of alluvial valley floors, lands where the use is not specifically controlled and managed.

(6) UPLAND AREAS - means with respect to alluvial valley floors, those geomorphic features located outside the floodplain and terrace complex, such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits and surfaces covered with residuum, mud flows or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

V. Definitions beginning with the letter "V"

(1) VALLEY FILL - means a fill structure consisting of any material other than coal waste and organic material that is placed in a valley where side slopes of the existing valley measured at the steepest point are greater than 20 degrees or the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

(2) VIOLATION NOTICE - means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the act, SMCRA, a state program, or any federal law, rule, or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, a notice of violation; an imminent harm cessation order; a failure-to-abate cessation order; a final order, bill, or demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

(3) VOLUME WHEN USED IN REFERENCE TO TIMBER - means the board foot volume per square foot of basal area for each height class of commercial timber trees or volume per acre in cords for firewood producing trees.

W. Definitions beginning with the letter "W"

(1) WATER TABLE - means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

(2) WILLFUL OR WILLFULLY - means that a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(a) intentionally, voluntarily, or consciously; and

(b) with intentional disregard or plain indifference to legal requirements.

(3) WORKING CAPITAL - means the excess of the operator's current assets over its current liabilities.

[11-29-97; A, 12-15-99; 19.8.2.7 NMAC - Rn, 19 NMAC 8.2.1.107 & A, 9-29-2000; A, 1-15-2002; A, 7-30-2004; A, 12-31-2007; A, 08-31-2010]

19.8.1.8-19.8.1.107 [RESERVED]:

[19.8.1.8 - 19.8.1.107 NMAC - N, 9-29-2000]

19.8.1.108 SUSPENSION OF RULES OR REGULATIONS:

(None) Section 1-11 CSMC Rule 80-1, as adopted May 15, 1980, is hereby repealed, provided, however, that such repeal shall not be deemed to affect the authority of persons to engage in or carry out any surface coal mining operations if he has a permit under Laws 1972, Chapter 68, and such permit has not expired pursuant to the act or 19.8 NMAC Parts 1-35, so long as he complies with the provisions of the act, the permit and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.1.108 NMAC - Rn, 19 NMAC 8.2.1.108 & A, 9-29-2000; A, 1-15-2002]

19.8.1.109 RESTRICTIONS OF EMPLOYEE FINANCIAL INTERESTS:

A. Responsibilities.

(1) Employees performing duties or functions under the act and 19.8 NMAC Parts 1-35 shall:

(a) file a fully completed statement of employment and financial interest 120 days after 19.8 NMAC Parts 1-35 become effective or upon entrance to duty, and annually thereafter on September 1 of each year;

(b) have no direct or indirect financial interest in coal mining operations; and

(c) comply with directions issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

(2) The director shall:

(a) provide advice, assistance, and guidance to all state employees required to file statements pursuant to 19.8 NMAC Parts 1-35 and inform such employees of the name, address and telephone number of other persons whom they may contact for advice and counseling;

(b) promptly review the statement of the employee and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in surface coal mining and reclamation operations;

(c) resolve prohibited financial interest situations by ordering or initiating remedial action which will resolve the prohibited interest as required within 90 days, or by reporting the violations to the director of the office of surface mining;

(d) certify on each statement that review has been made, that prohibited financial interests, if any, has been resolved and that no other prohibited interests have been identified from the statement;

(e) submit to the director of the office of surface mining the initial listing and the subsequent annual listing or positions as required in Subsection C of 19.8.1.109 NMAC; and

(f) furnish a blank statement 45 days in advance of the filing date established in Subparagraph (a) of Paragraph (1) of Subsection A of 19.8.1.109 NMAC to each employee required to file a statement.

B. Penalties.

(1) Any person who knowingly violates the provisions of Section 69-25A-32 NMSA 1978 of the act, shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year, or both.

(2) Any employee who fails to file the required financial interest statement will be considered in violation of the act and 19.8 NMAC Parts 1-35 and will be subject to removal from his or her position, if 90 days after an employee is notified by the director to take remedial action, the employee is not in compliance with the requirements of the act and 19.8 NMAC Parts 1-35.

C. Who shall file.

(1) Any employee who performs any function or duty under the act is required to file a statement of employment and financial interests.

(2) The director shall prepare and submit to the director of the office of surface mining an initial listing of positions that do not involve performance or any functions or duties under the act within 60 days of the effective date of 19.8 NMAC Parts 1-35.

(3) The director shall annually review and update this listing. For monitoring and reporting reasons, the listing must be submitted to the director of the office of surface mining and must contain a written justification for inclusions of the positions

listed. Proposed revisions or a certification that revision is not required shall be submitted to the director of the office of surface mining by no later than January 1 of each year.

(4) The director may revise the listing by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the act or 19.8 NMAC Parts 1-35.

D. Where to file.

(1) The director shall file his statement with the director of the office of surface mining.

(2) All other employees shall file their statement with the director.

E. What to report.

(1) Each employee shall report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The reports shall be on OSM form 705-1. The statement consists of three major parts:

(a) a listing of all financial interests, including employment, security, real property, creditor and other financial interests held during the course of the preceding year;

(b) a certification that none of the listed financial interests represent a direct or indirect financial interest in any surface coal mining operation except as specifically identified and described by the employee as part of the certificate; and

(c) a certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

(2) An employee is expected to:

(a) have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and

(b) be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

(3) The exceptions shown in the employee's certification of the form must provide enough information for the director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

- (a)** list the financial interests;
- (b)** show the number of shares, estimated value or annual income of the financial interests; and
- (c)** include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

F. Gifts and gratuities.

(1) Employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or other thing of monetary value, from a coal company which:

- (a)** conducts or is seeking to conduct operations or activities that are regulated by the act; and
- (b)** has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(2) The prohibitions of this rule do not apply in the context of obvious family or personal relationships, such as those between parents, children, or spouse of the employee, and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. An employee may accept:

- (a)** food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where an employee may properly be in attendance; and
- (b)** unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal value.

[11-29-97; 19.8.1.109 NMAC - Rn, 19 NMAC 8.2.1.109, 9-29-2000; A, 1-15-2002]

19.8.1.110 COMPUTATION OF TIME:

A. Except as otherwise provided computation of time under the act and 19.8 NMAC Parts 1-35 is based on calendar days.

B. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a

Saturday, Sunday, or legal holiday on which the director is not open for business, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

C. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of prescribed time is 7 days or less.

D. An operator's "mining year" shall be the calendar year.

[11-29-97; 19.8.1.110 NMAC - Rn, 19 NMAC 8.2.1.110, 9-29-2000; A, 1-15-2002]

19.8.1.111 EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION:

A. Coal extraction which is an incidental part of government-financed construction is exempt from the act and 19.8 NMAC Parts 1-35.

B. Any person who conducts or intends to conduct coal extraction which does not satisfy Subsection A of 19.8.1.111 NMAC shall not proceed until a permit has been obtained from the director.

C. Any person extracting coal incident to government-financed highway or other construction who extracts more than 250 tons of coal or affects more than two acres shall maintain, on the site of the extraction operation and available for inspection, documents which show:

(1) a description of the construction project;

(2) the exact location of the construction, right-of-way or the boundaries of the area which will be directly affected by the construction; and

(3) the government agency which is providing the financing and the kind and amounts of public financing, including the percentage of the entire construction costs represented by the government financing.

[11-29-97; 19.8.1.111 NMAC - Rn, 19 NMAC 8.2.1.111, 9-29-2000; A, 1-15-2002]

PART 2: AREAS DESIGNATED BY ACTS OF CONGRESS

19.8.2.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.2.1 NMAC - N, 9-29-2000]

19.8.2.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.2.2 NMAC - N, 9-29-2000]

19.8.2.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979.)

[19.8.2.3 NMAC - N, 9-29-2000]

19.8.2.4 DURATION:

Permanent.

[19.8.2.4 NMAC - N, 9-29-2000]

19.8.2.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.2.5 NMAC - N, 9-29-2000]

19.8.2.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.2.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.2.7 DEFINITIONS:

[RESERVED]

[19.8.2.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.2.8-19.8.2.199 [RESERVED]:

[19.8.2.8 - 19.8.2.199 NMAC - N, 9-29-2000]

19.8.2.200 LANDS UNSUITABLE:

The director shall determine whether:

A. an application for a permit must be denied, limited or conditioned, because surface coal mining operations on those lands are prohibited or limited by Section 69-25A-26 NMSA 1978 of the act, and 19.8.2 NMAC;

B. an applicant for a permit covering such lands either had any valid existing rights on August 3, 1977, or was conducting a surface coal mining operation on those lands on August 3, 1977.

[11-29-97; 19.8.2.200 NMAC - Rn 19 NMAC 8.2.2.200, 9-29-2000]

19.8.2.201 AREAS WHERE MINING IS PROHIBITED OR LIMITED:

Subject to valid existing rights, no surface coal mining operations shall be conducted after August 3, 1977, unless those operations existed on the date of enactment:

A. on any lands which will adversely affect any publicly owned park or any places included on the national register of historic places, unless approved jointly by the director, and the federal, state or local agency with jurisdiction over the park or places;

B. within 100 feet measured horizontally of the outside right-of-way line of any public road except:

(1) where mine access roads or haulage roads join such right-of-way line; or

(2) where the director allows the public road to be relocated or the area affected to be within 100 feet of such road, after:

(a) public notice and opportunity for a public hearing in accordance with Subsection D of 19.8.2.202 NMAC; and

(b) making a written finding that the interests of the affected public and landowners will be protected;

C. within 300 feet measured horizontally from any occupied dwelling, unless the owner thereof has provided a written waiver consenting to surface coal mining operations closer than 300 feet, or unless an access or haul road connects with an existing public road on the side of the public road opposite the dwelling;

D. within 300 feet measured horizontally of any public building, school, church, community or institutional building or public park; or

E. within 100 feet measured horizontally of a cemetery; this prohibition does not apply if the cemetery is relocated in accordance with all applicable laws and regulations;

F. on any lands within the boundaries of:

- (1)** the national park system;
- (2)** the national wildlife refuge system,
- (3)** the national system of trails, the national wilderness preservation system;
- (4)** the wild and scenic rivers system, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act 16 U.S.C. 1276(a) or study rivers or study river corridors as established in any guidelines pursuant to that act, and national recreation areas designated by act of congress;

(5) federal lands within a national forest; this prohibition does not apply if the secretary of interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations; and:

(a) any surface operations and impacts will be incident to an underground coal mine; or

(b) with respect to lands that do not have significant forest cover within national forests west of the 100th meridian, the secretary of agriculture has determined that surface mining is in compliance with the act, the Multiple-Use Sustained Yield Act of 1960, 16 U.S.C. 528-531; the Federal Coal Leasing Amendments Act of 1975, 30 U.S.C. 181 et seq.; and the National Forest Management Act of 1976, 16 U.S.C. 1600 et seq.

[11-29-97; 19.8.2.201 NMAC - Rn 19 NMAC 8.2.2.201, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.2.202 PROCEDURES:

A. Upon receipt of a complete application for a surface coal mining and reclamation operations permit, the director shall review the application to determine whether surface coal mining operations are limited or prohibited under 19.8.2.201 NMAC on the lands which would be disturbed by the proposed operation.

B. The director must reject any portion of the application that would locate surface coal mining operations on land protected under 19.8.2.201 NMAC unless:

(1) the site qualifies for the exception for existing operations under 19.8.2.203 NMAC;

(2) a person has valid existing rights for the land, as determined under 19.8.35 NMAC;

(3) the applicant obtains a waiver or exception from the prohibitions of 19.8.2.201 NMAC in accordance with Subsections D, E and G of 19.8.2.202 NMAC.

C. If the director is unable to determine whether the proposed operation is located within the boundaries of any of the lands listed in Subsection F of 19.8.2.201 NMAC or closer than the limits provided in Subsections D and E of 19.8.2.201 NMAC, the director shall transmit a copy of the relevant portions of the permit application to the appropriate federal, state or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The national park service or the U.S. fish and wildlife service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The director, upon request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within 30-day period or within the extended period granted, the director may make the necessary determination based on the information he has available.

D. Where the proposed mining operation is to be conducted within 100 feet measured horizontally of the outside right-of-way line of any public road (except where mine access roads or haulage roads join such right-of-way line) or where the applicant proposes to relocate or close any public road, the director shall:

(1) require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) provide notice in a newspaper of general circulation in the affected locale of a public hearing at least 2 weeks before the hearing;

(3) hold a public hearing in the locality of the proposed mining operations where any member of the public may participate for the purpose of determining whether the interests of the public and affected landowners will be protected; and

(4) make a written finding based upon information received at the public hearing within 30 days after completion of the hearing as to whether the interests of the public and affected landowners will be protected from the proposed mining operations.

E. Where the proposed surface coal mining operations would be conducted within 300 feet measured horizontally of any occupied dwelling, the applicant shall submit with the application a written waiver from the owner of the dwelling, consenting to such operations within a closer distance of the dwelling as specified in the waiver. The waiver must clarify that the owner and signatory had the legal right to deny mining and knowingly waived that right.

(1) A new waiver is not required if an effective waiver from the owner of the occupied building exists at the time of the application.

(2) A valid waiver will remain effective against subsequent purchasers who had actual or constructive knowledge of the existing waiver at the time of purchase. A subsequent purchaser will be deemed to have constructive knowledge if the waiver has been properly filed in public property records pursuant to New Mexico law or if surface coal mining operations have entered the 300-foot zone before the date of purchase.

F. Review by other agencies.

(1) Where the proposed surface coal mining operations may adversely affect any public park or any places included on the national register of historic places, the director shall transmit to the federal, state or local agencies with jurisdiction over a statutory or regulatory responsibility for the park or historic place a copy of the completed permit application containing the following:

(a) a request for that agency's approval or disapproval of the operations, including a copy of applicable parts of the permit application;

(b) a notice to the appropriate agency that it must respond within 30 days from receipt of the request, with a notice that another 30 days is available upon request;

(c) the notice will also state that failure to interpose an objection within the time specified under Subparagraph (b) of Paragraph (1) of Subsection F of 19.8.2.202 NMAC will constitute approval of the proposed operation.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies.

(3) Paragraphs (1) and (2) of Subsection F of 19.8.2.202 NMAC do not apply to:

(a) lands for which a person has valid existing rights, as determined under 19.8.35 NMAC;

(b) lands within the scope of the exception for existing operations in 19.8.2.203 NMAC.

G. When a new surface coal mining operation or boundary revision for an existing surface coal mining operation is proposed that will include federal lands within a national forest, the director may not issue the permit or approve the boundary revision before the secretary of the interior makes a finding based on information submitted pursuant to 30 CFR Part 761.13.

H. If the director determines that the proposed surface coal mining operation is not prohibited under Section 69-25A-26 NMSA 1978 of the act, and this part, it may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for

all or certain types of surface coal mining operations pursuant to 19.8.3 and 19.8.4 NMAC.

[11-29-97; 19.8.2.202 NMAC - Rn 19 NMAC 8.2.2.202, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.2.203 EXCEPTION FOR EXISTING OPERATIONS:

The prohibitions and limitations of 19.8.2.201 NMAC do not apply to:

A. surface coal mining operations for which a valid permit, issued by the director under 19.8 NMAC Parts 1-35, exists when the land comes under the protection of 19.8.2.201 NMAC; this exception applies only to lands within the permit area as it exists when the land comes under the protection of 19.8.2.201 NMAC;

B. with respect to operations existing prior to August 3, 1977, lands upon which validly authorized surface coal mining operations existed when the land comes under the protection of 1978 NMSA 69-25A et seq. and 19.8.2.201 NMAC.

[19.8.2.203 NMAC - N, 1-15-2002]

PART 3: CRITERIA FOR DESIGNATING AREAS AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

19.8.3.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.3.1 NMAC - N, 9-29-2000]

19.8.3.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.3.2 NMAC - N, 9-29-2000]

19.8.3.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.3.3 NMAC - N, 9-29-2000]

19.8.3.4 DURATION:

Permanent.

19.8.3.4 NMAC - [N, 9-29-2000]

19.8.3.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.3.5 NMAC - N, 9-29-2000]

19.8.3.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.3.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.3.7 DEFINITIONS:

[RESERVED]

[19.8.3.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.3.8-19.8.3.299 [RESERVED]:

[19.8.3.8 - 19.8.3.299 - N, 9-29-2000]

19.8.3.300 CRITERIA FOR DESIGNATING LANDS AS UNSUITABLE:

A. Upon petition an area shall be designated as unsuitable for all or certain types of surface coal mining operations, if the director determines that reclamation is not technologically and economically feasible under the act and 19.8.1 through 19.8.35 NMAC.

B. Upon petition an area may be (but is not required to be) designated as unsuitable for certain types of surface coal mining operations, if the operations will:

- (1)** be incompatible with existing state or local land use plans or programs;
- (2)** affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems;

(3) affect renewable resource lands in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) affect natural hazard lands in which the operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geologic formations.

C. Pursuant to appropriate petitions, lands listed in 19.8.2 NMAC are subject to designation as unsuitable for all or certain types of surface coal mining operations under 19.8.3.300 NMAC.

[11-29-97; 19.8.3.300 NMAC - Rn, 19 NMAC 8.2.3.200, 9-29-2000; A, 01-15-2002]

19.8.3.301 LAND EXEMPT FROM DESIGNATION AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS:

The requirements of 19.8.3 NMAC do not apply to:

A. lands on which surface coal mining operations were being conducted on August 3, 1977;

B. lands covered by a permit issued under the act; or

C. lands where substantial legal and financial commitments in surface coal mining operations were in existence prior to January 4, 1977.

[11-29-97; 19.8.3.301 NMAC - Rn, 19 NMAC 8.2.3.301, 9-29-2000]

19.8.3.302 EXPLORATION ON LAND DESIGNATED AS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS:

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to Section 69-25A-26 NMSA 1978 of the act and regulations of 19.8.2 through 19.8.4 NMAC, does not prohibit coal exploration operations in the area, if conducted in accordance with the act, 19.8.1 through 19.8.35 NMAC, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the director under 19.8.6 NMAC to insure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining.

[11-29-97; 19.8.3.302 NMAC - Rn, 19 NMAC 8.2.3.302, 9-29-2000; A, 1-15-2002]

PART 4: PROCESS FOR DESIGNATING LANDS UNSUITABLE FOR SURFACE COAL MINING OPERATIONS

19.8.4.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.4.1 NMAC - N, 9-29-2000]

19.8.4.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.4.2 NMAC - N, 9-29-2000]

19.8.4.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.4.3 NMAC - N, 9-29-2000]

19.8.4.4 DURATION:

Permanent.

[19.8.4.4 NMAC - N, 9-29-2000]

19.8.4.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.4.5 NMAC - N, 9-29-2000]

19.8.4.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.4.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.4.7 DEFINITIONS:

[RESERVED]

[19.8.4.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.4.8-19.8.4.399 [RESERVED]:

[19.8.4.8 - 19.8.4.399 - N, 9-29-2000]

19.8.4.400 PROCEDURES: PETITIONS:

A. Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the director to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated.

B. Designation. The only information that a petitioner need provide is:

- (1) the location and size of the area covered by the petition;
- (2) allegations of facts and supporting evidence which would tend to establish that the area is unsuitable for all or certain types of surface coal mining operations;
- (3) a description of how mining of the area has affected or may adversely affect people, land, air, water or other resources;
- (4) the petitioner's name, address and telephone number; and
- (5) identification of the petitioner's interest which is or may be adversely affected.

C. Termination. The only information that a petitioner need provide to terminate a designation is:

- (1) the location and size of the area covered by the petition;
- (2) allegation of facts, with supporting evidence, not contained in the record of the proceeding in which the area was designated unsuitable, which would tend to establish the statements or allegations, and which statements or allegations indicate that the designation should be terminated based on:
 - (a) the nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in Subsection B of 19.8.3.300 NMAC;
 - (b) reclamation now being technologically and economically feasible, if the designation was based on the criteria found in Subsection A of 19.8.3.300 NMAC;
 - (c) the resources or condition not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal

mining operations during and after mining, if the designation was based on the criteria found in Subsection B of 19.8.3.300 NMAC.

(3) the petitioner's name, address and telephone number; and

(4) identification of the petitioner's interest which is or may be adversely affected by the continuation of the designation.

[11-29-97; 19.8.4.400 NMAC - Rn, 19 NMAC 8.2.4.400, 9-29-2000]

19.8.4.401 PROCEDURES: INITIAL PROCESSING, RECORD-KEEPING AND NOTIFICATION REQUIREMENTS:

A. Initial processing.

(1) Within 30 days of receipt of a petition, the director shall notify the petitioner by certified mail whether or not the petition is complete under Subsection B of 19.8.4.400 NMAC or Subsection C of 19.8.4.400 NMAC.

(2) The director shall determine whether any identified coal resources exist in the area covered by the petition, without requiring any showing from the petitioner. If the director finds there are not any identified coal resources in that area, he shall return the petition to the petitioner with a statement of the findings.

(3) The director may reject petitions for designations or terminations of designations which are frivolous. Once the requirements of 19.8.4.400 NMAC are met, no party shall bear any burden of proof, but each accepted petition shall be considered and acted upon by the director pursuant to the procedures of this part.

(4) When considering a petition for an area which was previously and unsuccessfully proposed for designation, the director shall determine if the new petition presents new allegations of facts. If the petition does not contain new allegations of facts, the director shall not consider the petition and shall return the petition to the petitioner, with a statement of his findings and a reference to the record of the previous designation proceedings where the facts were considered.

(5) If the director determines that the petition is incomplete or frivolous, he shall return the petition to the petitioner, with a written statement of the reasons for the determination and the categories of information needed to make the petition complete.

(6) The director shall notify the person who submits a petition of any application for a permit received which proposes to include any area covered by the petition.

(7) Any petitions received after the close of the public comment period on a permit application relating to the same mine plan area shall not prevent the director from

issuing a decision on that permit application. The director may return any petition received thereafter to the petitioner with a statement why the director cannot consider the petition. For the purposes of this section, close of the public comment period shall mean at the close of any informal conference held under 19.8.11.1103 NMAC, or, if no conference is requested, at the close of the period for filing written comments and objections under 19.8.11.1101 and 1102 NMAC.

B. Public notice.

(1) Promptly after a petition is received, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in a newspaper of general circulation in the county or counties in the area covered by the petition.

(2) Within three weeks after the determination that a petition is complete, the director shall circulate copies of the petition to, and request submissions of relevant information from other interested governmental agencies, the petitioner, intervenors, persons with an ownership interest of record in the property, other persons known to the director to have an interest in the property, and shall notify the general public, through the publication of a notice in the New Mexico state register, of the receipt of a petition to designate lands unsuitable for mining.

(3) Within three weeks after the determination that a petition is complete, the director shall notify the general public of the receipt of the petition and request submissions of relevant information by a newspaper advertisement placed once a week for two consecutive weeks in a newspaper of general circulation in the county or counties in the area covered by the petition.

C. Until three days before the director holds a hearing under 19.8.4.402 NMAC, any person may intervene in the proceeding by filing allegations of facts, supporting evidence, a short statement identifying the petition to which the allegations pertain, and the intervenor's name, address and telephone number.

D. Beginning immediately after a complete petition is filed, the director shall compile and maintain a record consisting of all documents relating to the petition filed with or prepared by the director. The director shall make the record available for public inspection free of charge, and copying at reasonable cost, during all normal business hours.

[11-29-97; 19.8.4.401 NMAC - Rn, 19 NMAC 8.2.4.401, 9-29-2000; A, 12-31-2007]

19.8.4.402 PROCEDURES: HEARING REQUIREMENTS:

A. Within 10 months after receipt of a complete petition, the director shall hold a public hearing in the locality of the area covered by the petition. If all petitioners and

intervenors agree, the hearing need not be held. The director shall make a verbatim transcript of the hearing.

B. Notification requirements.

(1) The director shall give notice of the date, time, and location of the hearing to:

(a) local, state, and federal agencies which may have an interest in the decision on the petition;

(b) the petitioner and the intervenors; and

(c) any person with an ownership or other interest known to the director in the area covered by the petition.

(2) Notice of the hearing shall be sent by certified mail and postmarked not less than 30 days before the scheduled date of the hearing.

C. The director shall notify the general public of the date, time, and location of the hearing by placing a newspaper advertisement in the newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations once a week for 2 consecutive weeks and once during the week prior to the scheduled date of the public hearing. The consecutive weekly advertisement must begin not more than 60 nor less than 30 days before the scheduled date of the public hearing.

D. The director may consolidate in a single hearing the hearings required for each of several petitions which relate to areas in the same locale.

E. Prior to designating any land areas as unsuitable for surface coal mining operations, the director shall prepare a detailed statement, using existing and available information on the potential coal resources of the area, the demand for coal resources, and the impact of such designation on the environment, the economy, and the supply of coal.

F. In the event that all petitioners and intervenors stipulate agreement prior to the hearing, the petition may be withdrawn from consideration.

[11-29-97; 19.8.4.402 NMAC - Rn, 19 NMAC 8.2.4.402, 9-29-2000; A, 12-31-2007]

19.8.4.403 PROCEDURES: DECISIONS:

A. In reaching his decision, the director shall use:

(1) the information contained in the data base and inventory system;

- (2) information provided by other governmental agencies;
 - (3) the detailed statement prepared under Subsection E of 19.8.4.402 NMAC;
- and
- (4) any other relevant information submitted during the comment period.

B. A final written decision shall be issued by the director, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The director shall simultaneously send the decision by certified mail to the petitioner, every other party to the proceeding, and to the regional director of the office of surface mining and reclamation for this region.

C. The decision of the director with respect to a petition, or the failure of the director to act within the time limits set forth in 19.8.403 NMAC, shall be subject to administrative and judicial review in accordance with Sections 69-25A-29 and 69-25A-30 NMSA 1978.

[11-29-97; 19.8.4.403 NMAC - Rn, 19 NMAC 8.2.4.403, 9-29-2000]

19.8.4.404 DATABASE AND INVENTORY SYSTEM REQUIREMENTS:

A. The director shall develop a data base and inventory system which will permit evaluation of whether reclamation is feasible in areas covered by petitions.

B. The director shall include in the system information relevant to the criteria in 19.8.3.300 NMAC including, but not limited to, information received from the United States fish and wildlife service, the state historic preservation officer, and the agency administering Section 127 of the Clean Air Act, as amended.

C. The director shall add to the data base and inventory system information:

- (1) on potential coal resources of the State, demand for those resources, the environment, the economy and the supply of coal, sufficient to enable the director to prepare the statements required by Subsection E of 19.8.4.402 NMAC; and
- (2) that becomes available from petitions, publications, experiments, permit applications, mining and reclamation operations, and other sources.

[11-29-97; 19.8.4.404 NMAC - Rn, 19 NMAC 8.2.4.404, 9-29-2000]

19.8.4.405 PUBLIC INFORMATION:

The director shall:

A. make the information and data base system developed under 19.8.4.404 NMAC available to the public for inspection free of charge and for copying at reasonable cost;

B. provide information to the public on the petition procedures necessary to have an area designated as unsuitable for all or certain types of surface coal mining operations or to have designations terminated and describe how the inventory and data base system can be used.

[11-29-97; 19.8.4.405 NMAC - Rn, 19 NMAC 8.2.4.405, 9-29-2000]

19.8.4.406 DIRECTOR'S RESPONSIBILITY FOR IMPLEMENTATION:

A. The director shall not issue permits which are inconsistent with designations made pursuant to 19.8.2, 19.8.3 or 19.8.4 NMAC.

B. The director shall maintain a map of areas designated as unsuitable for all or certain types of surface coal mining operations.

C. The director shall make available to any person any information within his control regarding designations, including mineral or elemental content which is potentially toxic in the environment but excepting proprietary information relating to the coal to the extent consistent with the act.

[11-29-97; 19.8.4.406 NMAC - Rn, 19 NMAC 8.2.4.406, 9-29-2000]

PART 5: GENERAL REQUIREMENTS FOR PERMITS AND PERMIT APPLICATIONS

19.8.5.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.5.1 NMAC - N, 9-29-2000]

19.8.5.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections.

[19.8.5.2 NMAC - N, 9-29-2000]

19.8.5.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.5.3 NMAC - N, 9-29-2000]

19.8.5.4 DURATION:

Permanent.

[19.8.5.4 NMAC - N, 9-29-2000]

19.8.5.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.5.5 NMAC - N, 9-29-2000]

19.8.5.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.5.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.5.7 DEFINITIONS:

[RESERVED]

[19.8.5.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.5.8-19.8.5.499 [RESERVED]:

[19.8.5.8 - 19.8.5.499 - N, 9-29-2000]

19.8.5.500 GENERAL REQUIREMENTS FOR PERMITS: OPERATORS:

Except as provided for in Subsection A of 19.8.5.501 NMAC on and after 8 months from the date on which a regulatory program for the state is approved by the secretary of the U.S. department of interior, no person shall engage in or carry out surface coal mining and reclamation operations on non-federal lands within the state, unless that person has first obtained a valid permit issued by the director under the approved program.

[11-29-97; 19.8.5.500 NMAC - Rn 19 NMAC 8.2.5.500, 9-29-2000]

19.8.5.501 CONTINUED OPERATION UNDER INTERIM PERMITS:

A person conducting surface coal mining operations under a permit issued pursuant to Laws 1972, Chapter 68, as amended, or issued by the director pursuant to the act, prior to the effective date of an approved program may conduct these operations beyond the period prescribed in 19.8.5.500 NMAC, if:

A. timely and complete application for a permit under the approved program has been made to the director in accordance with the provisions of the act, and 19.8 NMAC Parts 1-35;

B. the director has not yet rendered an initial decision with respect to such application; and

C. the operations are conducted in compliance with all terms and conditions of the interim permit, the requirements of the act, and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.5.501 NMAC - Rn 19 NMAC 8.2.5.501, 9-29-2000; A, 1-15-2002]

19.8.5.502 CONTINUED OPERATION UNDER FEDERAL PROGRAM PERMITS:

A permit issued by the office of surface mining and reclamation pursuant to a federal program for a state shall be valid under any superseding state program approved by the secretary of the U.S. department of interior.

A. The federal permittee shall have the rights to apply to the state director for a state permit to supersede the federal permit.

B. The director may review a permit issued pursuant to the superseded federal program, to determine that the requirements of the act and 19.8 NMAC Parts 1-35 are not violated by the federal permit.

C. To the extent that the approved state program contains additional requirements not contained in the federal program for the state, the director shall:

(1) promptly issue an order requiring the permittee to comply with such additional requirements within 60 days of the issuance of the order, unless the permittee demonstrates to the director that it is physically impossible to meet those additional requirements within 60 days, or unless the director agrees to a longer period under an established time schedule; and

(2) notify the permittee, in writing, of the right to a hearing with respect to the order in the manner and time provided for in the act and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.5.502 NMAC - Rn 19 NMAC 8.2.5.502, 9-29-2000; A, 1-15-2002]

19.8.5.503 COMPLIANCE WITH PERMITS:

All persons shall conduct surface coal mining and reclamation operations under permits issued pursuant to the act and 19.8 NMAC Parts 1-35, and shall comply with the terms and conditions of the permit and the requirements of the act and 19.8 NMAC Parts 1-35.

[11-29-97; 19.8.5.503 NMAC - Rn 19 NMAC 8.2.5.503, 9-29-2000; A, 1-15-2002]

19.8.5.504 PERMIT APPLICATION FILING DEADLINES:

A. Not later than two (2) months following approval of the state program by the secretary of the U.S. department of interior, each person who conducts or expects to conduct surface coal mining and reclamation operations after the expiration of eight (8) months from that approval shall file an application for a permit for these operations.

B. Permit renewals and revisions.

(1) An application for renewal of a permit shall be filed with the director at least 120 days before the expiration of the permit involved.

(2) Any application for revision of a permit shall be filed with the director before the date on which the permittee expects to revise surface coal mining or reclamation operations. After filing of such application, the director shall determine the time by which that application shall be approved or disapproved, based on the time required for review of the application and public participation in the process of review.

C. Any application for a new permit required for a person succeeding by transfer, sale, or assignment of rights granted under a permit shall be filed with the director not later than 30 days after that succession is approved by the director.

[11-29-97; 19.8.5.504 NMAC - Rn 19 NMAC 8.2.5.504, 9-29-2000; A, 12-31-2007]

19.8.5.505 PERMIT APPLICATIONS: GENERAL REQUIREMENTS FOR FORMAT AND CONTENTS:

A. Applications for permits to conduct surface coal mining and reclamation operations shall be filed in the format required by the director. The application shall be complete and include, at a minimum, for surface mining activities, all the applicable information required under 19.8.7, 19.8.8 and 19.8.9 NMAC and for special types of surface coal mining and reclamation operations, all the information required under 19.8.10 NMAC.

B. Information set forth in the application shall be current, presented clearly and concisely, and supported by appropriate references to technical and other written material available to the director.

C. All technical data submitted to the application shall be accompanied by:

- (1) names of persons or organizations which collected and analyzed such data;
- (2) dates of the collection and analyses;
- (3) descriptions of methodology used to collect and analyze the data; and
- (4) the application shall contain a bibliography of published and unpublished material used and names, addresses and telephone numbers of persons providing information through personal communication.

D. Maps and plans - general requirements.

(1) Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. geological survey of the 1:24,000 scale series. Maps of the permit area shall be at a scale of 1:6,000 or larger. Maps of the remainder of the mine plan area and the adjacent areas shall clearly show the lands and waters within those areas and be in a scale determined by the director, but in no event smaller than 1:24,000.

(2) All maps and plans submitted with the application shall distinguish among each of the phases during which surface coal mining operations were or will be conducted at any place within the mine plan area. At a minimum, distinctions shall be clearly shown among those portions of the mine plan area in which surface coal mining operations occurred:

(a) prior to August 3, 1977;

(b) after August 3, 1977 and prior to either:

(i) May 3, 1978;

(ii) in the case of an applicant or operator which obtained a small operator's exemption in accordance with 30 CFR 710.12 January 1, 1979;

(c) after May 3, 1978 (or January 1, 1979, for persons who received a small operator's exemption) and prior to the approval of the regulatory program;

(d) after the estimated date of issuance of a permit by the director.

[11-29-97; A, 12-15-99; 19.8.5.505 NMAC - Rn, 19 NMAC 8.2.5.505, 9-29-2000]

19.8.5.506 PERMIT AND EXPLORATION FEES:

Each application, pursuant to the act and 19.8 NMAC Parts 1-35 shall be accompanied by a fee determined under the following schedule:

A. Original permit filing fee shall be \$2,500 plus \$25.00 per acre for estimated area to be disturbed during the first year of mining.

B. Commencing the second year the annual permit fee shall be \$2,500. In addition, there shall be an acreage fee of \$25.00 per acre of disturbed permit area for which the bond has not been released, provided that \$15,000 per year acreage fee is the maximum charge per year for all disturbance. The maximum annual fee will therefore be:

Permit fee = \$2,500

Acreage fee = \$15,000

Max. Total = \$17,500

The annual fee is to be submitted with the annual report.

C. Pending further study, the initial annual acreage fee shall not be collected for acres classified as disturbed, when disturbance is due to subsidence associated with underground mining, unless it is determined by the director that such subsidence causes significant environmental damage to the surrounding area.

D. The fee for transferring a permit shall be \$1,000.

E. For revision applications expanding the size of the permit the fee shall be \$4,000 plus \$25.00 per acre for the estimated area to be disturbed during the first year of mining in the expansion area. For all other revision applications the fee shall be \$4,000.

F. The fee for filing a notice of intention to explore under 19.8.6.601 NMAC shall be \$100.

G. The fee for filing an application for approval under 19.8.6.602 NMAC shall be \$200.

[11-29-97; 19.8.5.506 NMAC - Rn, 19 NMAC 8.2.5.506, 9-29-2000; A, 1-15-2002; A, 7-30-2004]

19.8.5.507 ANNUAL REPORT:

A. By March 1 of each year, the operator shall submit to the director a report, setting out in detail the measures taken to effect reclamation of the affected area during the previous calendar year. The report must be typewritten and signed by the operator. The report must include the following information:

(1) a current topographic or orthophotographic map with 5' contour intervals. The map shall be the same scale as the mining and reclamation sequence maps found in the approved permit with 5' contour intervals. The map must be made on a single sheet, or series of sheets, each sheet of the map being no larger than 4' x 4'. The scale and all lines and symbols must be clearly described in the legend.

(2) The first annual report map under this rule shall show the following, and each subsequent map shall show all information from the immediately preceding year's map in addition to any changes in:

- (a)** current permit boundary.
- (b)** maintenance buildings, office buildings, and storage areas.
- (c)** petroleum and industrial chemical storage areas.
- (d)** surface and underground storage tanks.
- (e)** public roads and primary and auxiliary roads within the permit.
- (f)** perennial and major intermittent and ephemeral streams, lakes, springs, and other natural bodies of water.
- (g)** sediment ponds, other approved impoundments, and diversions (the sediment ponds should be identified by the same system used in the mine plan or modification to the mine plan).
- (h)** rail facilities.
- (i)** coal processing, storage, and loading facilities within the permit area.
- (j)** sewage treatment plants, fields, or ponds.
- (k)** coal waste disposal areas; other waste disposal areas.
- (l)** section corners, or grid coordinates.
- (m)** locations of water monitoring points (wells, stream sample point, and point source discharges) with NPDES permit number (these should correspond to identification systems used in the mine plan).
- (n)** topdressing stockpiles (these should correspond to mine plan system of identification).

(o) buffer zones. Any area that is required to be left undisturbed to protect pre-mine features of the landscape, or any area (disturbed or undisturbed) that is purposely established to separate different phases of the coal mining operation.

(p) all pits (named or numbered) as presented in the mine plan or modifications to the mine plan.

(q) all areas that have been reseeded (indicate initial year of seeding and last year of reseeding).

(r) areas on which grading was completed during the report year (with each individual area indicate the acreage).

(s) areas that were first disturbed during the report year (within each individual area indicate the acreage).

(t) areas governed by the following regulatory performance standards:

(i) pre 79-1

(ii) 79-1

(iii) 80-1

(u) areas currently under bond and bond release status of each area.

(3) Three copies of the annual report including maps shall be submitted.

B. The annual report shall include:

(1) a list of all permit special conditions and brief indication of the status of each, including those from the 79-1 and 80-1 permits. This requirement may be waived, in part or in full, by the director.

(2) a summary of any required wildlife and vegetation data collected during the report year.

(3) the total number of acres:

(a) initially disturbed during the report year.

(b) that will require backfilling and/or grading but that were not graded as of December 31, of the report year.

(c) that were backfilled and graded during the report year.

(d) that were topdressed during the report year.

(e) that will eventually require topdressing but that were not topdressed as of December 31, of the report year.

(f) that were seeded during the report year with permanent reclamation seed mix, and temporary stabilization seed mix that will eventually require revegetation but that were not revegetated as of December 31, of the report year.

(g) of topdressed and seeded areas that were redisturbed by mining and reclamation operations during the report year. Briefly state the reason for each case of redisturbance (operation change, violation abatement, etc.).

(h) currently under bond for each bond release status, as shown on the map.

(4) a summary and discussion of specific efforts initiated or completed to enhance, restore, or protect wildlife and wildlife habitat.

(5) a mass balance which indicates the amount of topdressing available and the amount of topdressing needed covering the term of the permit.

C. An annual report may include a brief description of modifications or revisions to be submitted to MMD for approval during the year previous to the next annual report.

[11-29-97; 19.8.5.507 NMAC - Rn, 19 NMAC 8.2.5.507 & A, 9-29-2000]

19.8.5.508 VERIFICATION OF APPLICATION:

Applications for permits shall be verified under oath, by a responsible official of the applicant, that the information contained in the application is true and correct to the best of the official's information and belief.

[11-29-97; 19.8.5.508 NMAC - Rn, 19 NMAC 8.2.5.508, 9-29-2000]

PART 6: GENERAL REQUIREMENTS FOR COAL EXPLORATION

19.8.6.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.6.1 - N, 9-29-2000]

19.8.6.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.6.2 - N, 9-29-2000]

19.8.6.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.6.3 - N, 9-29-2000]

19.8.6.4 DURATION:

Permanent.

[19.8.6.4 - N, 9-29-2000]

19.8.6.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.6.5 - N, 9-29-2000]

19.8.6.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.6.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.6.7 DEFINITIONS:

[RESERVED]

[19.8.6.7 - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.6.8-19.8.6.599 [RESERVED]:

[19.8.6.8 - 19.8.6.599 - N, 9-29-2000]

19.8.6.600 GENERAL REQUIREMENTS:

Any person who intends to conduct coal exploration activities outside a permit area on lands designated as unsuitable for surface mining under all of 19.8.2, 19.8.3 and 19.8.4

NMAC shall submit an application and shall obtain written approval from the director. Any person who receives approval from the director for such activities shall comply with 19.8.19 NMAC.

[11-29-97; 19.8.6.600 NMAC - Rn, 19 NMAC 8.2.6.600, 9-29-2000]

19.8.6.601 GENERAL REQUIREMENTS: EXPLORATION OF LESS THAN 250 TONS:

A. Any person who intends to conduct coal exploration during which less than 250 tons of coal will be removed in the area to be explored shall, prior to conducting the exploration, file with the director a written notice of intention to explore.

B. The notice shall include:

- (1)** the name, address, and telephone number of the person seeking to explore;
- (2)** the name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;
- (3)** a precise description and map at a scale of 1:24,000 or larger, of the exploration area;
- (4)** a statement of the period of intended exploration;
- (5)** a narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities.
- (6)** a description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities; and
- (7)** if the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person who will explore claims the right to enter such area for the purpose of conducting exploration and reclamation.

C. Any person who conducts coal exploration activities pursuant to this section which substantially disturbs the natural land surface shall comply with 19.8.19 NMAC.

D. The director shall, except as otherwise provided in 19.8.6.606 NMAC, place such notices on public file and make them available for public inspection and copying.

E. If the director does not act adversely on the notice of intent within 30 days the applicant may proceed with exploration.

F. A bond sufficient to assure that completion of reclamation of the area disturbed by the exploration activity may be required by the director in an amount determined pursuant to 19.8.14.1404 NMAC.

[11-29-97; 19.8.6.601 NMAC - Rn, 19 NMAC 8.2.6.601, 9-29-2000; A, 12-31-2007]

19.8.6.602 GENERAL REQUIREMENTS: EXPLORATION OF MORE THAN 250 TONS:

Any person who intends to conduct coal exploration in which more than 250 tons of coal are removed in the area to be explored, shall, prior to conducting the exploration, obtain the written approval of the director, accordance with the following:

A. Contents of application for approval. Each application for approval shall contain, at a minimum, the following information:

- (1)** the name, address, and telephone number of the applicant;
- (2)** the name, address, and telephone number of the representative of the applicant who will be present at and be responsible for conducting the exploration;
- (3)** an exploration and reclamation operations plan, including:
 - (a)** a narrative description of the proposed exploration area, cross-referenced to the map required under Paragraph (5) of Subsection A of 19.8.6.602 NMAC, including surface topography, geological, surface water, and other physical features, vegetative cover, the distribution and important habitats of fish, wildlife, and plants, including, but not limited to, any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et. seq.), and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978, the Habitat Protection Act, Sections 17-6-1 et seq. NMSA 1978, and the laws relating to the protection of native New Mexico plants including Section 76-8-1 through 76-8-4 NMSA 1978; districts, sites, buildings, structures or objects listed or eligible for listing on the national register of historic places; and known archeological resources located within the proposed exploration area;
 - (b)** a narrative description of the methods to be used to conduct coal exploration and reclamation, including, but not limited to, the types and uses of equipment, drilling, blasting, road or other access route construction, and excavated earth and other debris disposal activities;
 - (c)** an estimated timetable for conducting and completing each phase of the exploration and reclamation;
 - (d)** the estimated amounts of coal to be removed and a description of the methods to be used to determine those amounts;

(e) a description of the measures to be used to comply with the applicable requirements of 19.8.19 NMAC.

(4) the name and address of the owner of record of the surface land and of the subsurface mineral estate of the area to be explored;

(5) a map at a scale of 1:24,000 or larger, showing the areas of land to be substantially disturbed by the proposed exploration and reclamation; the map shall specifically show existing roads, occupied dwellings, and pipelines; proposed location of trenches, roads, and other access routes and structures to be constructed; the location of land excavations to be conducted; water or coal exploratory holes and wells to be drilled or altered; earth or debris disposal areas; existing bodies of surface water; documented historic, topographic, cultural and drainage features; and habitats of any endangered or threatened species listed pursuant to the Endangered Species Act of 1973 and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978, the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978, and the laws relating to the protection of native New Mexico plants including Sections 76-8-1 through 76-8-4 NMSA 1978; and

(6) a bond sufficient to assure that completion of reclamation of the area disturbed by the exploration activity may be required by the director; such bond, if required by the director, shall be in a form approved by the director and shall not be subject to the requirements of 19.8.14 NMAC;

(7) a statement of why extraction of more than 250 tons of coal is necessary for exploration;

(8) such other information as the director deems necessary to take action under 19.8.6.603 NMAC;

(9) for any lands listed in 19.8.2.201 NMAC, a demonstration that, to the extent technologically and economically feasible, the proposed exploration activities have been designed to minimize interference with the values for which those lands were designated as unsuitable for surface coal mining operations; the application must include documentation of consultation with the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, with the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC.

B. Public notice and opportunity to comment. Public notice of the application and opportunity to comment shall be provided as follows:

(1) within such time as the director may designate, public notice of the filing of the application with the director shall be published in a newspaper of general circulation in the county of the proposed exploration area;

(2) the public notice shall state the name and business address of the person seeking approval, the date of filing of the application, the address of the director at which written comments on the application may be submitted, the closing date of the comment period, and a description of the general area of exploration;

(3) any person with an interest which is or may be adversely affected shall have the right to file written comments within the time limits prescribed in the notice.

[11-29-97; 19.8.6.602 NMAC - Rn, 19 NMAC 8.2.6.602, 9-29-2000; A, 01-15-2002]

19.8.6.603 APPLICATIONS: APPROVAL OR DISAPPROVAL OF EXPLORATION OF MORE THAN 250 TONS:

A. The director shall act upon a completed application for approval within 45 days.

B. The director shall approve a complete application filed in accordance with this part, if he finds, in writing, that the applicant has demonstrated that the exploration and reclamation described in the application:

(1) will be conducted in accordance with the act, 19.8.19 NMAC and these rules and regulations;

(2) will not jeopardize the continued existence of an endangered or threatened species listed pursuant to Section 4 of the Endangered Species Act of 1973 and the Wildlife Conservation Act, Sections 17-3-17 et. seq. NMSA 1978 and the laws relating to the protection of New Mexico native plants including Sections 76-8-1 through 76-8-4 NMSA 1978 or result in the destruction of adverse modification of critical habitat of those species and will also comply with the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978;

(3) will not adversely affect any districts, sites, buildings, structures, or objects listed on the national register of historic places unless the proposed exploration has been approved by both the director and the agency with jurisdiction over such matters;

(4) with respect to exploration activities on any lands protected under 19.8.2.201 NMAC, will minimize interference, to the extent technologically and economically feasible, with the values for which those lands were designated as unsuitable for surface coal mining operations; before making this finding, the director must provide reasonable opportunity to the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, to the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC, to comment on whether the finding is appropriate.

C. Terms of approval. Each approval issued by the director shall contain conditions necessary to ensure that the exploration and reclamation will be conducted in compliance with the act, 19.8.19 NMAC and 19.8.1 through 19.8.35 NMAC.

D. The granting of written approval to conduct exploration shall in no way be construed to ensure the issuance of a permit to conduct surface coal mining and reclamation operations under 19.8.5 NMAC.

[11-29-97; 19.8.6.603 NMAC - Rn, 19 NMAC 8.2.6.603, 9-29-2000; A, 1-15-2001; A, 12-31-2007]

19.8.6.604 APPLICATION: NOTICE AND HEARING FOR EXPLORATION OF MORE THAN 250 TONS:

A. The director shall notify the applicant and the appropriate local government officials, in writing, of his decision to approve or disapprove the application. If the application is disapproved, the notice to the applicant shall include a statement of the reason for disapproval. The director shall provide public notice of approval or disapproval of each application by publication in a newspaper of general circulation in the county of the proposed operation.

B. Any person with interests which are or may be adversely affected by decision of the director pursuant to Subsection A of 19.8.6.604 NMAC above, shall have the opportunity for administrative and judicial review as are set forth in 19.8.12 NMAC.

[11-29-97; 19.8.6.604 NMAC - Rn, 19 NMAC 8.2.6.604, 9-29-2000]

19.8.6.605 COAL EXPLORATION COMPLIANCE DUTIES:

A. All coal exploration and reclamation which substantially disturb the natural land surface or which remove more than 250 tons of coal shall be conducted in accordance with the coal exploration requirements of the act, 19.8.6 and 19.8.19 NMAC and all appropriate provisions of 19.8 NMAC, and any conditions on approval for exploration and reclamation imposed by the director.

B. Any person who conducts any coal exploration in violation of Section 69-25A-16 NMSA 1978 of the act, the provisions of 19.8.6 and 19.8.19 NMAC and any other parts of 19.8 NMAC shall be subject to the provisions of Section 69-25A-22 NMSA 1978 of the act, 19.8.29, 19.8.30 and 19.8.31 NMAC, and the applicable inspection and enforcement provisions of 19.8 NMAC.

[11-29-97; 19.8.6.605 NMAC - Rn, 19 NMAC 8.2.6.605, 9-29-2000]

19.8.6.606 PUBLIC AVAILABILITY OF INFORMATION:

A. Except as provided in Subsection B of 19.8.6.606 NMAC, all information submitted to the director under this part shall be made available for public inspection and copying at the director's office.

B. Confidential information.

(1) The director shall not make information available for public inspection, if the person submitting it requests in writing, at the time of submission, that it not be disclosed and the director determines that the information is confidential.

(2) The director shall determine that information is confidential only if it concerns trade secrets or is privileged commercial or financial information which relates to the competitive rights of the person intending to conduct coal exploration.

(3) Information requested to be held as confidential under this section shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

[11-29-97; 19.8.6.606 NMAC - Rn, 19 NMAC 8.2.6.606, 9-29-2000; A, 12-31-2007]

PART 7: PERMIT APPLICATIONS - MINIMUM REQUIREMENTS FOR LEGAL, FINANCIAL, COMPLIANCE AND RELATED INFORMATION

19.8.7.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.7.1 - N, 9-29-2000]

19.8.7.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.7.2 - N, 9-29-2000]

19.8.7.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.7.3 - N, 9-29-2000]

19.8.7.4 DURATION:

Permanent.

[19.8.7.4 - N, 9-29-2000]

19.8.7.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.7.5 - N, 9-29-2000]

19.8.7.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.7.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.7.7 DEFINITIONS:

[RESERVED]

[19.8.7.7 - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.7.8-19.8.7.699 [RESERVED]:

[19.8.7.8 - 19.8.7.699 - N, 9-29-2000]

19.8.7.700 RESPONSIBILITY:

This part applies to any person who applies for a permit to conduct surface coal mining operations. It is the responsibility of the permit applicant to provide to the director all of the information required by this part.

[11-29-97; 19.8.7.700 NMAC - Rn, 19 NMAC 8.2.7.700, 9-29-2000]

19.8.7.701 IDENTIFICATION OF INTERESTS:

An application shall contain the following information, except that the submission of a social security number is voluntary:

A. a statement as to whether the applicant is a corporation, partnership, single proprietorship, association, or other business entity;

B. the name, address, telephone number and, as applicable, social security number and employer identification number of the:

- (1)** applicant;
- (2)** applicant's resident agent; and
- (3)** person who will pay the abandoned mine land reclamation fee;

C. for each person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC of these rules, as applicable:

- (1)** the person's name, address, telephone number, social security number and employer identification number;
- (2)** the person's ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;
- (3)** the title of the person's position, date position was assumed, and when submitted under Subsection C of 19.8.11.1120 NMAC, date of departure from the position;
- (4)** each additional name and identifying number, including employer identification number, federal or state permit number, and MSHA number with date of issuance, under which the person owns or controls, or previously owned or controlled, a surface coal mining and reclamation operation in the United States within the five years preceding the date of the application; and
- (5)** the application number or other identifier of, and the regulatory authority for, any other pending surface coal mining operation permit application filed by the person in any state in the United States;

D. for any surface coal mining operation owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC, the operation's:

- (1)** name, address, identifying numbers, including employer identification number, federal or state permit number and MSHA number, the date of issuance of the MSHA number, and the regulatory authority; and
- (2)** ownership or control relationship to the applicant, including percentage of ownership and location in organizational structure;

E. the name and address of each legal or equitable owner of record of the surface and mineral property to be mined, each holder of record of any leasehold interest in the

property to be mined, and any purchaser of record under a real estate contract for the property to be mined;

F. the name and address of each owner of record of all property (surface and subsurface) contiguous to any part of the proposed permit area and the owner of record and residents of all dwellings and structures on and within one-half mile (2640 feet) of any part of the proposed permit area;

G. the mine safety and health administration (MSHA) numbers for all mine-associated structures that require MSHA approval;

H. a statement of all lands, interest in lands, options, or pending bids on interests held or made by the applicant for lands contiguous to the area described in the permit application; if requested by the applicant, any information required by this section which is not on public file pursuant to state law shall be held in confidence by the director, as provided under Subsection B of 19.8.6.606 NMAC;

I. after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under Subsections A through D of 19.8.7.701 NMAC;

J. the applicant shall submit the information required by this section and 19.8.7.702 NMAC in any format prescribed by the director, that is approved by OSM.

[11-29-97; 19.8.7.701 NMAC - Rn, 19 NMAC 8.2.7.701, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

19.8.7.702 COMPLIANCE INFORMATION:

Each application shall contain:

A. a statement of whether the applicant or any subsidiary, affiliate, or person controlled by or under common control with the applicant has:

(1) had a federal or state coal mining permit suspended or revoked in the 5 years preceding the date of submission of the application; or

(2) forfeited a performance bond or similar security deposited in lieu of bond;

B. a brief explanation of the facts involved if any such suspension, revocation, or forfeiture referred to in Paragraphs (1) and (2) of Subsection A of 19.8.7.702 NMAC has occurred, including:

(1) identification number and date of issuance of the permit, and the date and amount of bond or similar security;

(2) identification of the authority that suspended or revoked the permit or forfeited the bond and the stated reasons for the action;

(3) the current status of the permit, bond, or similar security involved;

(4) the date, location, and type of any administrative or judicial proceedings initiated concerning the suspension, revocation, or forfeiture; and

(5) the current status of the proceedings;

C. a listing of each violation notice received by the applicant in connection with any surface coal mining operation during the 3-year period before the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by either the applicant or any person who is deemed or presumed to own or control the applicant under the definition of "owned or controlled" and "owns or controls" in Subsection O of 19.8.1.107 NMAC; for each notice of violation issued pursuant to 30 CFR 843.12 or under a federal or state program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation; for each violation notice reported, the list shall include the following information, as applicable:

(1) any identifying numbers for the operation, including the federal or state permit number and MSHA number, the dates of issuance of the violation notice and MSHA number, the name of the person to whom the violation notice was issued, and the name of the issuing regulatory authority, department or agency;

(2) a brief description of the violation alleged in the notice;

(3) the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, including, but not limited to, proceedings initiated by any person identified in Subsection C of 19.8.7.702 NMAC to obtain administrative or judicial review of the violation;

(4) the current status of the proceedings and of the violation notice; and

(5) the actions, if any, taken by any person identified in Subsection C of 19.8.7.702 NMAC to abate the violation;

D. after an applicant is notified that his or her application is approved, but before the permit is issued, the applicant shall, as applicable, update, correct or indicate that no change has occurred in the information previously submitted under this section.

[11-29-97; 19.8.7.702 NMAC - Rn, 19 NMAC 8.2.7.702, 9-29-2000]

19.8.7.703 RIGHT OF ENTRY AND OPERATION INFORMATION:

A. Each application shall contain a description of the documents upon which the applicant bases his or her legal right to enter and begin surface coal mining operations in the permit area and whether that right is the subject of pending legislation. The description shall identify those documents by type and date of execution, identify the specific lands to which the document pertains, and explain the legal rights claimed by the applicant.

B. Where the private mineral estate to be mined has been severed from the private surface estate, the application shall also provide for lands within the permit area:

(1) a copy of the written consent of the surface owner to the extraction of coal by surface mining methods; or

(2) a copy of the document of conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

(3) if the conveyance does not expressly grant the right to extract the coal by surface mining methods, documentation that under applicable state law, the applicant has the legal authority to extract the coal by those methods.

C. Nothing in this section shall be construed to afford the director the authority to adjudicate property title disputes.

[11-29-97; 19.8.7.703 NMAC - Rn, 19 NMAC 8.2.7.703, 9-29-2000]

19.8.7.704 RELATIONSHIP TO AREAS DESIGNATED UNSUITABLE FOR MINING:

A. Each application shall contain a statement of available information on whether the proposed permit area is within an area designated unsuitable for surface coal mining operations under 19.8.4 NMAC or under study for designation in an administrative proceeding under 19.8 NMAC.

B. If an applicant claims the exemption in Paragraph (2) of Subsection D of 19.8.11.1106 NMAC, the application shall contain information supporting the applicant's assertion.

C. An application that proposes to conduct surface coal mining operations within 100 feet of a public road or within 300 feet of an occupied dwelling must meet the requirements of Subsection D or E of 19.8.2.202 NMAC, respectively.

[11-29-97; 19.8.7.704 NMAC - Rn, 19 NMAC 8.2.7.704, 9-29-2000; A, 01-15-2002]

19.8.7.705 PERMIT TERM INFORMATION:

A. Timing and extent of operations.

(1) Each application shall state the anticipated or actual starting and termination date of each phase of the surface coal mining operations and the anticipated number of acres of surface land to be affected for each phase of mining and over the total life of the permit.

(2) The horizontal and vertical extent of the proposed workings for each phase of the operation for the life of the permit shall be shown for underground mining.

B. If the applicant proposes to conduct the surface coal mining operations in excess of 5 years, the application shall contain the information needed for the showing required under Subsection A of 19.8.11.1111 NMAC.

[11-29-97; 19.8.7.705 NMAC - Rn, 19 NMAC 8.2.7.705, 9-29-2000; A, 12-31-2007]

19.8.7.706 PERSONAL INJURY AND PROPERTY DAMAGE INSURANCE INFORMATION:

Each permit application shall contain either a certificate of liability insurance or evidence that the self-insurance requirements in 19.8.14.1407 NMAC are satisfied.

[11-29-97; 19.8.7.706 NMAC - Rn, 19 NMAC 8.2.7.706, 9-29-2000]

19.8.7.707 IDENTIFICATION OF OTHER LICENSES AND PERMITS:

Each application shall contain a list of all or other licenses and permits needed by the applicant to conduct the proposed surface coal mining operations. This list shall identify each license and permit by:

A. type of permit or license;

B. name and address of issuing authority;

C. identification numbers of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses; and

D. if a decision has been made, the date of approval or disapproval by each issuing authority.

[11-29-97; 19.8.7.707 NMAC - Rn, 19 NMAC 8.2.7.707, 9-29-2000]

19.8.7.708 IDENTIFICATION OF LOCATION OF PUBLIC OFFICE FOR FILING OF APPLICATION:

Each application shall identify, by name and address, the public office where the applicant will simultaneously file a copy of the application for public inspection under Subsection E of 19.8.11.1100 NMAC.

[11-29-97; 19.8.7.708 NMAC - Rn, 19 NMAC 8.2.7.708, 9-29-2000; A, 12-31-2007]

19.8.7.709 NEWSPAPER ADVERTISEMENT AND PROOF OF PUBLICATION:

A copy of the newspaper advertisement of the application and proof of publication of the advertisement shall be filed with the director and made a part of the complete application, not later than 4 weeks after the last date of publication required under Subsection A of 19.8.11.1100 NMAC.

[11-29-97; 19.8.7.709 NMAC - Rn, 19 NMAC 8.2.7.709, 9-29-2000]

PART 8: PERMIT APPLICATIONS - MINIMUM REQUIREMENTS FOR INFORMATION ON ENVIRONMENTAL RESOURCES

19.8.8.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.8.1 NMAC- N, 9-29-2000]

19.8.8.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.8.2 NMAC - N, 9-29-2000]

19.8.8.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.8.3 NMAC - N, 9-29-2000]

19.8.8.4 DURATION:

Permanent.

[19.8.8.4 NMAC - N, 9-29-2000]

19.8.8.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[[19.8.8.5 NMAC - N, 9-29-2000]

19.8.8.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.8.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.8.7 DEFINITIONS:

[RESERVED]

[19.8.8.7 - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.8.8-19.8.8.799 [RESERVED]:

[19.8.8.8 - 19.8.8.799 - N, 9-29-2000]

19.8.8.800 GENERAL REQUIREMENTS:

Each permit application shall include a description of the existing, premining environmental resources as set forth in this part. All data information shall comply with 19.8.5.505 NMAC. All information required under this part shall be used for the permit application evaluation.

[11-29-97; 19.8.8.800 NMAC - Rn, 19 NMAC 8.2.8.800, 9-29-2000]

19.8.8.801 GENERAL ENVIRONMENTAL RESOURCES INFORMATION:

Each application shall describe and identify:

A. the size, sequence, and timing of the subareas of the lands subject to surface coal mining operations over the estimated life of those operations for which it is anticipated that individual permits for mining will be sought.

B. Cultural and historical resources.

(1) the nature of cultural and historic resources listed or eligible for listing on the national register of historic places and known archeological features within the proposed permit and adjacent areas. The description shall be based on all available information, including, but not limited to, data of state and local archeological, historical, and cultural preservation agencies.

(2) The director may require the applicant to identify and evaluate important historic and archeological resources that may be listed or eligible for listing on the national register of historic places, through:

- (a) collection of additional information;
- (b) conduct of field investigations; or
- (c) other appropriate analyses.

[11-29-97; 19.8.8.801 NMAC - Rn, 19 NMAC 8.2.8.801, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.8.802 DESCRIPTION OF HYDROLOGY AND GEOLOGY: GENERAL REQUIREMENTS:

A. Each application shall contain a description of the geology, and water quality and quantity of all lands within the proposed permit area and the adjacent area. The description shall include information on the characteristics of all surface and ground waters within the permit and adjacent area, and any water, which will flow into or receive discharges of water from the permit area. The description shall be prepared according to 19.8.8.802 through 806 NMAC and conform to the following:

(1) information on hydrology, water quality and quantity, and geology related to hydrology of areas outside the proposed permit area shall be provided to the director, to the extent that this data is available from an appropriate federal or state agency.

(2) If this information is not available from those agencies, the applicant shall gather and submit this information to the director as part of the permit application.

(3) The permit shall not be approved by the director until this information is made available in the application.

B. The use of modeling techniques may be included as part of the permit application, but the same surface and ground water information may be required for each site as when models are not used.

[11-29-97; 19.8.8.802 NMAC - Rn, 19 NMAC 8.2.8.802, 9-29-2000; A, 1-15-2002]

19.8.8.803 GEOLOGY DESCRIPTION:

A. The description shall include a general statement of the geology within the proposed permit area accompanied by appropriate maps and cross-sections down to and including the first aquifer to be affected below the lowest coal seam to be mined.

B. Sampling requirements.

(1) Test borings or core samples from the proposed permit area shall be collected and analyzed down to and including the stratum immediately below the lowest coal seam to be mined to provide the following data in the description:

(a) location of subsurface water, if encountered;

(b) logs of drill holes showing the lithologic characteristics and thickness of each stratum and each coal seam;

(c) physical properties of each stratum within the overburden including compaction, erodibility, and if this material is to be used as topdressing, potential soil texture;

(d) for surface mining activities, chemical analyses of a composite sample of each stratum within the overburden and the stratum immediately below the lowest coal seam to be mined and for underground mining activities, chemical analyses of the stratum immediately above and below the coal seams to be mined to identify at a minimum, those horizons which contain potential acid-forming, toxic-forming, or alkalinity producing materials and a composite sample from each stratum shall be analyzed for the following parameters:

Aluminum (Al)
Arsenic (As)
Barium (Ba)
Boron (B)
Cadmium (Cd)
Chromium (Cr)
Cobalt (Co)
Copper (Cu)

Cyanide (CN)
Fluoride
Iron (Fe)
Lead (Pb)
Manganese (Mn)
Mercury (Hg)
Molybdenum (Mo)
Nickel (Ni)

Silver (Ag)
Sulfate (SO₄)
Uranium (U)
Vanadium (V)
Zinc (Zn)
Radioactivity
Radium
Ra226
Selenium (Se)
Radium
Ra228

(e) If this material is to be considered for use as topdressing, analyses for the parameters necessary for plant growth shall be performed, in addition to those listed above, and shall include at a minimum the following:

Calcium (Ca)
Chloride
Magnesium (Mg)
Phosphorous (P)
Potassium (K)

Sodium (Na)
Carbonate (CO₃)
Bicarbonate (HCO₃)
Nitrate (NO₃)
Sodium Adsorption Ratio (Adjusted)
(SAR)

pH

(f) A demonstration of the suitability of topsoil substitutes or supplements in Subsection E of 19.8.20.2005 NMAC shall be based upon analysis of the thickness of soil horizons and/or geologic strata, total depth, texture, percent coarse fragments, pH, and areal extent of the different kinds of soils. Analyses of additional parameters or additional data may be required by the director.

(g) If the applicant can demonstrate that the analyses of any particular parameter is of little or no significance in the proposed permit area, then such parameter(s) may be waived upon approval of the director;

(h) analysis of the coal seam, including, but not limited to an analysis of the sulfur, pyrite, and marcasite content.

(i) The applicant shall submit a proposed sampling plan to the director for approval.

(2) If required by the director, test borings or core samplings shall be collected and analyzed to greater depths within the proposed permit area, or for areas outside the proposed permit area to provide for evaluation of the impact of the proposed operations on the hydrologic balance.

(3) An applicant may request that the requirements for a statement of the results of the test borings or core samplings be waived by the director. The waiver may be granted only if the director makes a written determination that the statement is unnecessary because other equivalent information is accessible to him in a satisfactory form.

[11-29-97; 19.8.8.803 NMAC - Rn, 19 NMAC 8.2.8.803, 9-29-2000; A, 12-31-2007]

19.8.8.804 GROUND WATER INFORMATION:

A. The application shall contain a description, including appropriate maps, cross sections, and written statements, of the ground water hydrology for the proposed permit and adjacent areas including:

(1) the depth below the surface and the horizontal extent of the water table and aquifers;

(2) the lithology and thickness of the aquifers;

(3) known uses of the water in the aquifers and water table; and

(4) the quality of subsurface water, if encountered.

B. The application shall contain additional information which describes the recharge, storage, and discharge characteristics of aquifers and the quality and quantity of ground water, according to the parameters and in the detail required by the director.

C. All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of "standard methods for the examination of water and wastewater", which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible.

[11-29-97; 19.8.8.804 NMAC - Rn, 19 NMAC 8.2.8.804, 9-29-2000]

19.8.8.805 SURFACE WATER INFORMATION:

A. Surface water information shall contain appropriate maps, cross-sections, charts and written-statements, including the name of the watershed which will receive water discharges, the water discharge into any surface body of water, and descriptions of surface drainage systems sufficient to identify, in detail, the seasonal variations in water quantity and quality within the proposed permit and adjacent areas.

B. Surface water information shall include:

(1) minimum, maximum, and average discharge conditions which identify critical low flow and peak discharge rates of streams sufficient to identify seasonal variations; and

(2) water quality data to identify the characteristics of surface waters in, discharging into, or which will receive flows from surface or ground water from affected areas within the proposed permit area, sufficient to identify seasonal variations, showing:

(a) total dissolved solids in milligrams per liter;

(b) total suspended solids in milligrams per liter;

(c) acidity;

(d) pH in standard units;

(e) total and dissolved iron in milligrams per liter;

(f) total manganese in milligrams per liter; and

(g) such other information as the director determines is relevant.

(3) All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of "standard methods for the examination of water and wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirement of this section shall be conducted according to either methodology listed above when feasible.

[11-29-97; 19.8.8.805 NMAC - Rn, 19 NMAC 8.2.8.805, 9-29-2000]

19.8.8.806 ALTERNATIVE WATER SUPPLY INFORMATION:

The application shall identify the extent to which the proposed surface coal mining operations may proximately result in contamination, diminution, or interruption of an underground or surface source of water within the proposed permit or adjacent areas for domestic, agricultural, industrial, or other legitimate use. If contamination, diminution, or interruption may result, then the description shall identify the alternative sources of water supply that could be developed to replace the existing sources.

[11-29-97; 19.8.8.806 NMAC - Rn, 19 NMAC 8.2.8.806, 9-29-2000]

19.8.8.807 CLIMATOLOGICAL INFORMATION:

A. The application shall contain a statement of the climatological factors that are representative of the proposed permit area, including:

- (1) the average monthly and seasonal precipitation;
- (2) the average direction and velocity of prevailing winds;
- (3) seasonal temperature ranges; and

(4) a plan for collection of climatological data throughout the operator's period of responsibility.

B. The director may request such additional data as deemed necessary to ensure compliance with the requirements of 19.8.5 through 19.8.13 NMAC.

[11-29-97; 19.8.8.807 NMAC - Rn, 19 NMAC 8.2.8.807, 9-29-2000]

19.8.8.808 VEGETATION INFORMATION:

A. The permit application shall contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area for surface mining activities, or for underground mining activities the areas to be affected within the permit area by surface operations or facilities, and within any proposed reference area. This description shall include information adequate to predict the

potential for re-establishing vegetation and quantitative data for each strata (herb, shrub, tree) which includes but not limited to:

- (1) a comprehensive listing of species by plant community;
- (2) ground cover, frequency, and constancy values for each species in the herbaceous stratum for each plant community;
- (3) ground cover, density, and frequency values for each species in the shrub stratum for each plant community;
- (4) foliage cover, basal area, and density of non-timber and timber tree species and volume data for commercial timber producing species;
- (5) acreage which shall be determined for each plant community type and presented on the vegetative map, the quantitative data collected for each plant community shall be correlated with slope, aspect, and soil type within that plant community;
- (6) animal unit months (AUMs) the area is supporting or the AUMs the area could support; and
- (7) a report describing location, soils, and habitat and mitigation measures to be taken for any rare, threatened, or endangered species found within the permit area.
- (8) The director may request such additional data as deemed necessary to ensure compliance with the requirements of 19.8.20.2060 through 2066 NMAC.

B. If the applicant intends to develop a historic record of pre-mining conditions as a basis for comparison to the postmining revegetation, the applicant shall submit a plan indicating:

- (1) a timetable for collecting data and developing the historic record;
- (2) the sampling techniques to be used;
- (3) the number of samples to be collected; and
- (4) location of each permanent sampling point within each vegetative type identified on the map required for this section.

C. Sampling intensity shall be such that the data presents a valid statistical value for the area or population from which the samples were collected.

D. The map or aerial photograph required shall include sufficient adjacent areas to allow evaluation of vegetation as important habitat for fish and wildlife for those species

of fish and wildlife identified under 19.8.8.809 NMAC. The map may be prepared by the local soil and water conservation district of the area or other qualified government or private organization.

E. The director may request such additional data as deemed necessary to ensure compliance with the requirements of 19.8.20.2060 through 2066 NMAC.

[11-29-97; 19.8.8.808 NMAC - Rn, 19 NMAC 8.2.8.808, 9-29-2000]

19.8.8.809 FISH AND WILDLIFE RESOURCES INFORMATION:

A. Each application shall include a study of fish and wildlife and their habitats within the proposed permit area and the portions of the adjacent areas where effects on such resources may reasonably be expected to occur.

B. The applicant in consultation with the appropriate state and federal fish and wildlife management, conservation, or land management agencies having responsibilities for fish and wildlife or their habitats, shall propose the level of detail and the areas of such studies, after consideration of:

- (1) published data and other information;
- (2) site-specific information obtained by the applicant; and
- (3) guidance obtained from agencies consulted.

C. The director in consultation with the appropriate agencies will approve or disapprove the level of detail in the study.

[11-29-97; 19.8.8.809 NMAC - Rn, 19 NMAC 8.2.8.809, 9-29-2000]

19.8.8.810 SOIL RESOURCES INFORMATION:

A. The applicant shall provide adequate soil survey information of the permit area for surface mining activities or for underground mining activities the areas to be affected within the permit area by surface operations or facilities consisting of the following:

- (1) a map delineating different soils;
- (2) soil identification;
- (3) soil descriptions; and
- (4) present and potential productivity of existing soils.

B. The local soil and water conservation district office may be contacted for available information.

C. Where the applicant proposes to use selected overburden materials as a supplement or as topdressing, the application shall provide results of the analyses, trials, and tests required under Subparagraph (e) of Paragraph (1) of Subsection B of 19.8.8.803 NMAC and 19.8.20.2005 NMAC.

D. The director may request such additional data as deemed necessary to ensure compliance with the requirements of 19.8.20.2004 through 2008 NMAC.

[11-29-97; 19.8.8.810 NMAC - Rn, 19 NMAC 8.2.8.810, 9-29-2000]

19.8.8.811 LAND-USE INFORMATION:

A. The application shall contain a statement of the condition, capability, and productivity of the land within the proposed permit area for surface mining activities or for underground mining activities the area which will be affected within the permit area by surface operations and facilities, including:

(1) a map and supporting narrative of the uses of the land existing at the time of the filing of the application. If the premining use of the land was changed within 5 years before the anticipated date of beginning the proposed operations, the historic use of the land shall also be described.

(2) a narrative of land capability and productivity, which analyzes the land-use description under Subsection A of 19.8.8.811 NMAC in conjunction with other environmental resources information required under this part. The narrative shall provide analyses of:

(a) the capability of the land before any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography, vegetative cover and the hydrology; and

(b) the productivity of the proposed permit area for surface mining activities or for underground mining activities, the area proposed to be affected within the permit area by surface operations and facilities before mining, expressed as average yield of food, fiber, forage, or wood products from such lands obtained under proper levels of management. The productivity shall be determined by yield data or estimates for similar sites based on current data from the U.S. department of agriculture, state agricultural universities or appropriate state natural resource or agricultural agencies.

B. The application shall state whether the proposed mine plan area has been previously mined, if so, the following, if available:

(1) the type of mining method used;

- (2) the coal seams or other mineral strata mined;
- (3) the extent of coal or other minerals removed;
- (4) the approximate dates of past mining; and
- (5) the uses of the land preceding mining.

C. The application shall contain a description of the existing land uses and land use classification under local law, if any, of the proposed permit and adjacent areas.

[11-29-97; 19.8.8.811 NMAC - Rn, 19 NMAC 8.2.8.811, 9-29-2000]

19.8.8.812 MAPS: GENERAL REQUIREMENTS:

The permit application shall include maps showing:

A. all boundaries of land and names of present owners of record of those lands, both surface and subsurface, included in the permit area and where available the present owners of record of lands contiguous to the permit area;

B. the boundaries of land within the proposed permit area upon which the applicant has the legal right to enter and begin surface coal mining operations;

C. the boundaries of all areas proposed to be affected over the estimated total life of the proposed surface coal mining operations, with a description of size, sequence, and timing of the mining of sub-areas for which it is anticipated that additional permits will be sought;

D. the location of all dwellings and structures, and names of present owners of record and residents of those dwellings and structures, on and within one-half mile (2640 feet) of the proposed permit area, with identification of the current use of the buildings;

E. the location of surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields;

F. the location, vegetative type, and size of any proposed reference areas for determining the success of revegetation;

G. the locations of water supply intakes for current users of surface water flowing into, out of, and within the permit area and those surface waters which will receive discharges from affected areas in the proposed permit area;

H. each public road located in or within 100 feet of the proposed permit area;

I. the boundaries of any public park and locations of any cultural or historical resources listed or eligible for listing in the national register of historic places and known archaeological sites within the permit or adjacent areas.

J. each cemetery, known grave site, or unmarked burial ground located in or within 100 feet of the proposed permit area;

K. any land within the proposed permit area and adjacent area which is within the boundaries of any units of the national system of trails of the wild scenic rivers system, including study rivers designated under Section 5(a) of the Wild and Scenic Rivers Act; and

L. other relevant information required by the director.

[11-29-97; 19.8.8.812 NMAC - Rn, 19 NMAC 8.2.8.812, 9-29-2000; A, 12-31-2007]

19.8.8.813 CROSS SECTIONS, MAPS AND PLANS:

The application shall include cross sections, maps and plans showing:

A. elevations and locations of test borings and core samplings;

B. elevations and locations of monitoring stations used to gather data for water quality and quantity, fish and wildlife, and air quality if required, in preparation of the application;

C. nature, depth, and thickness of the coal seams to be mined, any coal or rider seams above the seam to be mined, each stratum of the overburden and the stratum immediately below the lowest coal seam to be mined;

D. all coal crop lines and the strike and dip of the coal to be mined within the proposed permit area;

E. location and extent of known workings of active, inactive, or abandoned underground mines, including mine openings to the surface within the proposed permit and adjacent areas;

F. location and extent of sub-surface water, if encountered, within the proposed permit or adjacent area;

G. location of surface water bodies such as streams, lakes, ponds, springs, constructed or natural drains and irrigation ditches within the proposed permit and adjacent areas;

H. location and extent of existing or previously surface mined areas within the proposed permit area;

I. location and dimensions of existing areas of spoil, waste, and non-coal waste disposal, dams, embankments, other impoundments and water treatment and air pollution control facilities within the proposed permit area;

J. location and depth if available, of gas and oil wells within the proposed permit area and water wells in the permit and adjacent areas;

K. the existing land surface configuration of the proposed permit area on contour maps of a maximum of 5 foot contour intervals;

L. Maps, plans, and cross sections included in a permit application which are required by this section shall be prepared by or under the direction of and certified by a qualified professional geologist or a registered professional engineer, with assistance from experts in related fields such as land surveying reclamation or mined land rehabilitation and shall be updated as required by the director.

[11-29-97; 19.8.8.813 NMAC - Rn, 19 NMAC 8.2.8.813, 9-29-2000]

19.8.8.814 PRIME FARMLAND INVESTIGATION:

A. The applicant shall conduct a pre-application investigation of the proposed permit area to determine whether lands within the area may be prime farmland. The director in consultation with U.S. natural resources conservation service shall determine the nature and extent of the required reconnaissance investigation.

B. Land shall not be considered prime farmland where the applicant can demonstrate one of the following:

- (1) the land has not been historically used as cropland;
- (2) the slope of the land is 10 percent or greater;
- (3) the land is not irrigated or naturally subirrigated, has no developed water supply that is dependable or of adequate quality, and the average annual precipitation is 14 inches or less;
- (4) other factors exist, such as a very rocky surface, or the land is frequently flooded during the growing season, more often than once in 2 years, and the flooding has reduced crop yields; or
- (5) on the basis of a soil survey of lands within the permit area, there are no soil map units that have been designated prime farmland by the U.S. natural resources conservation service.

C. If the investigation establishes that the lands are not prime farmlands, the applicant shall submit with the permit application a request for a negative determination

which shows that the land for which the negative determination is sought meets one of the criteria of Subsection B of 19.8.8.814 NMAC.

D. If the investigation indicates that lands within the proposed permit area may be prime farmlands, the applicant shall contact the U.S. natural resources conservation service to determine if a soil survey exists for those lands and whether the applicable soil map units have been designated as prime farmlands. If no soil survey has been made for the lands within the proposed permit area, the applicant shall cause such a survey to be made.

(1) When a soil survey of lands within the proposed permit area contains soil map units which have been designated as prime farmlands, the applicant shall submit an application, in accordance with 19.8.10.1004 NMAC for such designated land.

(2) When a soil survey for lands within the proposed permit area contains soil map units which have not been designated as prime farmland after review by the U.S. natural resources conservation service; the applicant shall submit a request for negative determination for non-designated land with the permit application establishing compliance with Subsection B of 19.8.8.814 NMAC.

[11-29-97; 19.8.8.814 NMAC - Rn, 19 NMAC 8.2.8.814, 9-29-2000; A, 12-31-2007]

PART 9: PERMIT APPLICATIONS - MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATIONS PLANS

19.8.9.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.9.1 NMAC- N, 9-29-2000]

19.8.9.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.9.2 NMAC- N, 9-29-2000]

19.8.9.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.9.3 NMAC- N, 9-29-2000]

19.8.9.4 DURATION:

Permanent.

[19.8.9.4 NMAC- N, 9-29-2000]

19.8.9.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.9.5 NMAC- N, 9-29-2000]

19.8.9.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.9.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.9.7 DEFINITIONS:

[RESERVED]

[19.8.9.7 NMAC- N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.9.8-19.8.9.899 [RESERVED]:

[19.8.9.8 - 19.8.9.899 NMAC - N, 9-29-2000]

19.8.9.900 OPERATION PLAN: GENERAL REQUIREMENTS:

Each application shall contain a description of the mining operations proposed to be conducted within the proposed permit area including, at a minimum, the following:

A. a narrative description of the type and method of coal mining procedures and proposed engineering techniques, anticipated annual and total production of coal, by tonnage, and the major equipment to be used for all aspects of those operations; and

B. a narrative explaining the construction, modification, use, maintenance, and removal of the following facilities (unless retention of such facilities is necessary for postmining land use as specified in 19.8.20.2075 NMAC:

(1) dams, embankments, and other impoundments;

- (2) overburden and topdressing handling and storage areas and structures;
- (3) coal removal, handling, storage, cleaning, and transportation areas and structures;
- (4) spoil, coal processing waste, and non-coal waste removal, handling, storage, transportation, and disposal areas and structures;
- (5) mine facilities; and
- (6) water and air pollution control facilities.

[11-29-97; A, 12-15-99; 19.8.9.900 NMAC - Rn, 19 NMAC 8.2.9.900, 9-29-2000]

19.8.9.901 OPERATION PLAN: EXISTING STRUCTURES:

A. Each application shall contain a description of each existing structure proposed to be used in connection with or to facilitate the surface coal mining and reclamation operation. The description shall include:

- (1) location;
- (2) plans of the structure which describe its current condition;
- (3) approximate dates on which construction of the existing structure was begun and completed; and
- (4) a showing, including relevant monitoring data or other evidence, whether the structure meets the performance standards of 19.8.19 through 19.8.28 NMAC.

B. Each application shall contain a compliance plan for each existing structure which does not meet the performance standards of 19.8.19 through 19.8.28 NMAC and which is proposed to be modified or reconstructed for use in connection with or to facilitate the surface coal mining and reclamation operation. The compliance plan shall include:

- (1) design specifications for the modification or reconstruction of the structure to meet the design and performance standards of 19.8.19 through 19.8.28 NMAC;
- (2) a construction schedule which shows dates for beginning and completing interim steps and final reconstruction;
- (3) provisions for monitoring the structure during and after modification or reconstruction to ensure that the performance standards of 19.8.19 through 19.8.28 NMAC are met; and

(4) a showing that the risk of harm to the environment or to public health or safety is not significant during the period of reconstruction or modification.

[11-29-97; 19.8.9.901 NMAC - Rn, 19 NMAC 8.2.9.901, 9-29-2000]

19.8.9.902 OPERATION PLAN: BLASTING:

Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant intends to comply with the requirements of 19.8.20.2028 through 2033 NMAC and including the following:

A. types and approximate amounts of explosive to be used for each type of blasting operation to be conducted;

B. description of procedures and plans for recording and retention of information on the following during blasting:

(1) drilling patterns, including size, number, depths, and spacing of holes;

(2) charge and packing of holes;

(3) types of fuses and detonation controls; and

(4) sequence and timing of firing holes;

C. description of blasting warning and site access control equipment and procedures;

D. description of types, capabilities, sensitivities, and locations of use of any blast monitoring equipment and procedures proposed to be used;

E. description of plans for recording and reporting to the director the results of preblasting surveys, if required; and

F. description of unavoidable hazardous conditions for which deviations from the blasting schedule will be needed under Paragraph (3) of Subsection A of 19.8.20.2030 NMAC.

[11-29-97; 19.8.9.902 NMAC - Rn, 19 NMAC 8.2.9.902, 9-29-2000]

19.8.9.903 OPERATION PLAN: MAPS AND PLANS:

Each application shall contain maps and plans of the proposed permit area and adjacent areas as follows:

A. the maps and plans shall show the underground mining activities to be conducted, if any, the lands proposed to be affected throughout the surface coal mining operations and any change in a facility or feature to be caused by the proposed operations, if the facility or feature was shown under 19.8.8.812 and 813 NMAC;

B. the following shall be shown for the proposed permit area unless specifically required for the adjacent area by the director:

- (1)** buildings, utility corridors and facilities to be used;
- (2)** the area of land to be affected within the proposed permit area, according to the sequence of mining and reclamation;
- (3)** each area of land for which a performance bond or other equivalent guarantee will be posted under 19.8.14 NMAC;
- (4)** each coal storage, cleaning and loading area;
- (5)** each topdressing, spoil, coal waste, and non-coal waste storage area;
- (6)** each water diversion, collection, conveyance, treatment, storage, and discharge facility to be used;
- (7)** each air pollution collection and control facility, if any;
- (8)** each source of waste and each waste disposal facility relating to coal processing or pollution control;
- (9)** each facility to be used to protect and enhance fish and wildlife and related environmental values;
- (10)** each explosive storage and handling facility;
- (11)** location of each sedimentation pond, permanent water impoundment, coal processing waste bank, and coal processing waste dam and embankment, in accordance with 19.8.9.909 NMAC, and fill area for the disposal of excess spoil in accordance with 19.8.9.914 NMAC;
- (12)** each profile, at cross-sections specified by the director of the anticipated final surface configuration to be achieved for the affected areas;
- (13)** location of each water monitoring point;
- (14)** location of each facility that will remain on the proposed permit area as a permanent feature after the completion of surface coal mining operations; and

(15) in addition to the above, underground mines shall indicate the location of each subsidence monitoring point.

C. Maps, plans, and cross-sections required under Paragraphs (4), (5), (6), (10) and (11) of Subsection B of 19.8.9.903 NMAC shall be prepared by, or under the direction of and certified by a qualified professional geologist or registered professional engineer, with assistance from experts in related fields such as land surveying, reclamation or mined land rehabilitation, except that:

(1) maps, plans and cross-sections for sedimentation ponds may only be prepared by a qualified registered professional engineer; and

(2) spoil disposal facilities, maps, plans, and cross-sections may only be prepared by a qualified registered professional engineer.

[11-29-97; 19.8.9.903 NMAC - Rn, 19 NMAC 8.2.9.903, 9-29-2000]

19.8.9.904 AIR POLLUTION CONTROL PLAN:

A. For all surface coal mining operations with projected production rates exceeding 1,000,000 tons of coal per year, the application shall contain an air pollution control plan which includes the following:

(1) an air quality monitoring program to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices proposed under Paragraph (2) of Subsection A of 19.8.9.904 NMAC to comply with federal and state air quality standards; and

(2) a plan for fugitive dust control practices as required under 19.8.20.2050 NMAC.

B. For all other surface coal mining operations the application shall contain an air pollution control plan which includes the following:

(1) an air quality monitoring program, if required by the director, to provide sufficient data to evaluate the effectiveness of the fugitive dust control practices under Paragraph (2) of Subsection B of 19.8.9.904 NMAC to comply with applicable federal and state air quality standards; and

(2) a plan for fugitive dust control practices, as required under 19.8.20.2050 NMAC.

[11-29-97; 19.8.9.904 NMAC - Rn, 19 NMAC 8.2.9.904, 9-29-2000]

19.8.9.905 FISH AND WILDLIFE PLAN:

A. Each application shall contain a fish and wildlife plan, consistent with 19.8.20.2051 NMAC which provides:

(1) a statement of how the plan will minimize disturbances and adverse impacts on fish and wildlife and related environmental values during surface coal mining and reclamation operations, and how enhancement of these resources will be achieved, where practicable; the plan shall cover the permit and adjacent areas as determined by the director pursuant to Subsection C of 19.8.8.809 NMAC;

(2) if the applicant states that it will not be practicable, in accordance with Paragraph (1) of Subsection A of 19.8.9.905 NMAC, to achieve a condition which clearly shows a trend toward enhancement of fish and wildlife resources at the time revegetation has been successfully completed under 19.8.20.2060 through 2066 NMAC, a statement explaining why it is not practicable to achieve such a condition shall be submitted to the director;

B. a statement, describing the methods, if any, the applicant will utilize to protect or enhance the following, if they are to be affected by surface coal mining operations:

(1) threatened or endangered species of plants or animals which are indigenous to the state listed under the Endangered Species Act of 1973 as amended, and the Wildlife Conservation Act, Sections 17-3-37 et. seq. NMSA 1978, the Habitat Protection Act, Sections 17-6-1 et. seq. NMSA 1978, and the laws relating to the protection of native New Mexico plants including Sections 76-8-1 through 76-8-4 NMSA 1978; and their critical habitats;

(2) species such as eagles, migratory birds or other animals protected by state or federal law and their habitats; or other species identified through the consultation process pursuant to 19.8.8.809 NMAC; or

(3) habitats of unusually high value for fish and wildlife, such as wetlands, riparian areas, cliffs supporting raptors, areas offering special shelter or protection, reproduction and nursery areas, and wintering areas.

[11-29-97; 19.8.9.905 NMAC - Rn, 19 NMAC 8.2.9.905, 9-29-2000]

19.8.9.906 RECLAMATION PLAN: GENERAL REQUIREMENTS:

A. Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with Sections 69-25A-19 and 69-25A-20 NMSA 1978 of the act and 19.8.1 through 19.8.35 NMAC. The plan shall include, at a minimum, all information required under 19.8.9.906 through 918 NMAC.

B. Each plan shall contain the following information for the proposed permit area:

(1) a detailed timetable for the completion of each major step in the reclamation plan;

(2) a detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under 19.8.14 NMAC;

(3) a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 19.8.20.2054 through 2059 NMAC;

(4) a plan for removal, storage, protection and redistribution of topsoil, subsoil, and other material suitable for topsoil to meet the requirements of 19.8.20.2004 through 2008 NMAC;

(5) a plan for revegetation as required in 19.8.20.2060 through 2066 NMAC, including, but not limited to, descriptions of the:

(a) schedule of revegetation;

(b) species and amounts per acre of seeds and seedlings to be used;

(c) methods to be used in planting and seeding;

(d) mulching techniques;

(e) irrigation, if appropriate, and pest and disease control measures, if any;

(f) measures proposed to be used to determine the success of revegetation, as required in 19.8.20.2065 NMAC, and

(g) a soil testing plan for evaluation of the results of topdressing handling and reclamation procedures related to revegetation.

(6) a description of measures to be used to maximize the use and conservation of the coal resource as required in 19.8.20.2027 NMAC;

(7) a description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 19.8.20.2046 and 2056 NMAC, and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) a description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings within the proposed permit area, in accordance with 19.8.20.2001 through 2003 NMAC; and

(9) a description of steps to be taken to comply with the requirements of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.), the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), and all applicable air and water quality laws and regulations and health and safety standards.

[11-29-97; 19.8.9.906 NMAC - Rn, 19 NMAC 8.2.9.906, 9-29-2000; A, 1-15-2002]

19.8.9.907 RECLAMATION PLAN: PROTECTION OF HYDROLOGIC BALANCE:

A. Each plan shall contain a detailed description, with appropriate maps and cross section drawings, of the measures to be taken during and after the proposed surface coal mining operations, in accordance with 19.8.20 NMAC, to ensure the protection of:

(1) the quality of surface and ground water systems, both within the proposed permit and adjacent areas, from the adverse effects of the proposed surface coal mining operations;

(2) the rights of present users of surface and ground water;

(3) the quantity of surface and ground water both within the proposed permit area and adjacent area from adverse effects of the proposed surface coal mining operations, or to provide alternative sources of water in accordance with 19.8.8.806 and 19.8.20.2022 NMAC, where the protection of quantity cannot be ensured; and

(4) water quality by locating openings for underground mines in accordance with 19.8.20.2026 NMAC.

B. The description shall include:

(1) a plan for the control, in accordance with 19.8.20 NMAC, of surface and ground water drainage into, through and out of the proposed permit area;

(2) a plan for the treatment, where required under 19.8.19 through 19.8.28 NMAC and 19.8 NMAC, of surface and ground water drainage from the area to be disturbed by the proposed operations, and proposed quantitative limits on pollutants in discharges subject to 19.8.20.2010 NMAC according to the more stringent of the following:

(a) 19.8.19 through 19.8.28 NMAC and 19.8 NMAC;

(b) other applicable state and federal laws;

(3) for surface mining activities, a plan for the restoration of the approximate recharge capacity of the permit and adjacent areas in accordance with 19.8.20.2019 NMAC; and

(4) a plan for the collection, recording, and reporting of ground and surface water quality and quantity data, according to 19.8.20.2020 NMAC and based on the determination required under Subsection C of 19.8.9.907 NMAC and the analysis of all baseline hydrologic, geologic and other information in the permit application; the plan shall provide for the monitoring of parameters that relate to the suitability of surface and ground water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance set forth in Subsection A of 19.8.9.907 NMAC; it shall identify the quantity and quality parameters to be monitored, sampling frequency, and site locations; it shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance;

(a) ground-water monitoring plan; at a minimum, total dissolved solids or specific conductance corrected to 25 degrees C, pH, total iron, total manganese, and water levels shall be monitored and data submitted to the director every 3 months for each monitoring location; the director may require additional monitoring when necessary;

(b) surface water monitoring plan; at all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations the total dissolved solids or specific conductance corrected to 25 degrees C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored; the monitoring reports shall be submitted to the director every 3 months; the director may require additional monitoring when necessary.

C. The description shall include a determination of the probable hydrologic consequences of the proposed surface coal mining operations on the cumulative impact area and shall address all proposed mining activities associated with the permit area for which a permit is sought, not just those expected to occur during the term of the permit. This determination shall include findings on:

(1) whether adverse impacts may occur to the hydrologic balance;

(2) whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground-water supplies;

(3) whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial, or other legitimate purpose, and;

(4) what impact the proposed operation will have on:

(a) sediment yield from the disturbed area;

(b) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(c) flooding or streamflow alteration;

(d) ground-water and surface-water availability; and

(e) other characteristics as required by the director;

(5) a plan that specifically addresses any potential adverse hydrologic consequences identified under Subsection C of 19.8.9.907 NMAC and shall include preventive and remedial measures to be taken during mining and reclamation operations through bond release to minimize disturbance to the hydrologic balance within the cumulative impact area.

D. All water-quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the 15th edition of "standard methods for the examination of water and wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible.

E. Each plan for underground mining shall contain a detailed description, with appropriate drawings, of permanent entry seals and down-slope barriers designed to ensure stability under anticipated hydraulic heads developed while promoting mine inundation after mine closure for the proposed permit areas.

[11-29-97; 19.8.9.907 NMAC - Rn, 19 NMAC 8.2.9.907, 9-29-2000]

19.8.9.908 RECLAMATION PLAN: POSTMINING LAND USES:

A. Each plan shall contain a detailed description of the proposed use, following reclamation of the land within the proposed permit area for surface mining activities or for underground mining activities, the areas to be affected within the proposed permit area by surface operations or facilities, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, and the relationship of the proposed use to existing land use policies and plans. This description shall explain:

(1) how the proposed postmining, land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(2) for surface mining activities, where range or grazing is the proposed postmining use, the detailed management plans to be implemented;

(3) where a land use different from the pre-mining land use is proposed, all materials needed for approval of the alternative use under 19.8.20.2075 NMAC; and

(4) the consideration which has been given to making all of the proposed surface coal mining operations consistent with surface owner plans and applicable state and local land use plans and programs.

B. The description shall be accompanied by a copy of the comments concerning the proposed use by the legal or equitable owner of record of the surface of the proposed permit area for surface mining activities or for underground mining activities, the areas to be affected within the proposed permit area by surface operations or facilities, and the state and local government agencies which would have to initiate, implement, approve, or authorize the proposed use of the land following reclamation, unless such owners and agencies fail to make such comments within 30 days.

[11-29-97; A, 12-15-99; 19.8.9.908 NMAC- Rn, 19 NMAC 8.2.9.908, 9-29-2000]

19.8.9.909 RECLAMATION PLAN: PONDS, IMPOUNDMENTS, BANKS, DAMS AND EMBANKMENTS:

A. General. Each application shall include a general plan for each proposed sedimentation pond, water impoundment, and coal processing waste bank, dam, or embankment within the proposed permit area.

(1) Each general plan shall:

(a) be prepared by, or under the direction of, and certified by a registered professional engineer, with assistance from experts in related fields such as land surveying, reclamation or mined land rehabilitation;

(b) contain a description, map, and cross section of the structure and its location;

(c) contain preliminary hydrologic and geologic information required to assess the hydrologic impact of the structure;

(d) contain a survey describing the potential effect on the structure from subsidence of the subsurface strata resulting from past underground mining operations if underground mining has occurred; and

(e) contain a certification statement which includes a schedule setting forth the dates that any detailed design plans for structures that are not submitted with the general plan will be submitted to the director; the director shall have approved, in writing, the detailed design plan for a structure before construction of the structure begins.

(2) Each detailed design plan for a structure that meets the U.S. natural resources conservation service class B or C criteria for dams in NRCS technical release No. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", or meets or exceeds the

size or other criteria of the mine safety and health administration, 30 CFR 77.216(a) shall:

(a) be prepared by, or under the direction of, and certified by a qualified registered professional engineer with assistance from experts in related fields such as geology, land surveying, reclamation or mined land rehabilitation;

(b) include any geotechnical investigation, design, and construction requirements for the structure;

(c) describe the operation and maintenance requirements for each structure;
and

(d) describe the timetable and plans to remove each structure, if appropriate.

(3) Each detailed design plan for a structure that does not equal or exceed the size or other criteria in Paragraph (2) of Subsection A of 19.8.9.909 NMAC shall:

(a) be prepared by, or under the direction of, and certified by a qualified registered professional engineer or registered land surveyor except that all coal processing waste dams and embankments covered by 19.8.20.2047 through 2049 NMAC shall be certified by qualified registered professional engineer;

(b) include any design and construction requirements for the structure, including any required geotechnical information;

(c) describe the operation and maintenance requirements for each structure;
and

(d) describe the timetable and plans to remove each structure, if appropriate.

B. Sedimentation ponds. Sedimentation ponds, whether temporary or permanent, shall be designed in compliance with the requirements of 19.8.20.2014 NMAC. Any sedimentation pond or earthen structure which will remain on the proposed permit area as a permanent water impoundment shall also be designed to comply with the requirements of 19.8.20.2017 NMAC. Each plan shall, at a minimum, comply with the requirements of the mine safety and health administration, 30 CFR 77.216-1 and 77.216-2, and the state engineer and shall be submitted to the director as part of the permit application.

C. For impoundments not included in Paragraph (2) of Subsection A of 19.8.9.909 NMAC, the director may establish through the state program approval process, engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Paragraph (3) of Subsection E of 19.8.20.2017 NMAC.

D. Coal processing waste banks. Coal processing waste banks shall be designed to comply with the requirements of 19.8.20.2039 through 2042 NMAC.

E. Coal processing waste dams and embankments. Coal processing waste dams and embankments shall be designed to comply with the requirements of 19.8.20.2047 through 2049 NMAC. Each plan shall be submitted to the director as a part of the permit application, and shall comply with the requirements of the mine safety and health administration, 30 CFR 77.216-1 and 77.216-2 and the state engineer and shall contain the results of a geotechnical investigation of the proposed dam or embankment foundation area, to determine the structural competence of the foundation which will support the proposed dam or embankment structure and the impounded material. The geotechnical investigation shall be planned and supervised by an engineer or engineering geologist, according to the following:

(1) the number, location, and depth of borings and test pits shall be determined using current prudent engineering practice for the size of the dam or embankment, quantity of material to be impounded, and subsurface conditions;

(2) the character of the overburden and bedrock, the proposed abutment sites, and any adverse geotechnical conditions which may affect the particular dam, embankment, or reservoir site shall be considered;

(3) all springs, seepage, and ground water flow observed or anticipated during wet periods in the area of the proposed dam or embankment shall be identified on each plan;

(4) consideration shall be given to the possibility of mudflows, rock debris falls, or other landslides into the dam, embankment, or impounded material;

(5) if the structure meets the class B or C criteria for dams in TR-60 or meets the size or other criteria of 30 CFR Sec. 77.216(a), each plan under Subsections B, C and E of 19.8.9.909 NMAC shall include a stability analysis of the structure; the stability analysis shall be performed by a registered professional engineer and shall include, but not be limited to, strength parameters, pore pressures, and long-term seepage conditions; the plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

[11-29-97; A, 12-15-99; 19.8.9.909 NMAC - Rn, 19 NMAC 8.2.9.909, 9-29-2000]

19.8.9.910 RECLAMATION PLAN: SURFACE MINING NEAR UNDERGROUND MINING:

For surface mining activities within the proposed permit area to be conducted within 500 feet of an underground mine, the application shall describe the measures to be used to comply with 19.8.20.2038.

[11-29-97; 19.8.9.910 NMAC - Rn, 19 NMAC 8.2.9.910, 9-29-2000]

19.8.9.911 DIVERSIONS:

Each application shall contain descriptions, including maps and cross sections, of stream channel diversions and other diversions to be constructed within the proposed permit area to achieve compliance with 19.8.20.2011 and 2012 NMAC.

[11-29-97; 19.8.9.911 NMAC - Rn, 19 NMAC 8.2.9.911, 9-29-2000]

19.8.9.912 PROTECTION OF PUBLIC PARKS AND HISTORIC PLACES:

A. Proposed operations that may have an adverse effect on any publicly owned parks or any places listed on the national register of historic places shall include a plan:

(1) describing the measures to be used to prevent or alleviate adverse impacts, or

(2) designed to minimize adverse impacts when valid existing rights exist or joint agency approval is to be obtained under Subsection E of 19.8.2.202 NMAC.

B. The director may require the applicant to prevent or alleviate impacts to any historic or archeological properties listed on or eligible for listing on the national register of historic places through appropriate mitigation and treatment measures. Appropriate mitigation and treatment measures may be required to be taken after permit issuance provided that the required measures are completed before the properties are affected by any mining operation.

[11-29-97; 19.8.9.912 NMAC - Rn, 19 NMAC 8.2.9.912, 9-29-2000; A, 1-15-2001]

19.8.9.913 RELOCATION OR USE OF PUBLIC ROADS:

Each application shall describe, with appropriate maps and cross sections, the measures to be used to ensure that the interests of the public and landowners affected are protected if, under Subsection D of 19.8.2.202 NMAC, the applicant seeks to have the director approve:

A. conducting the proposed surface coal mining operations within 100 feet of the right-of-way line of any public road, except where mine access or haul roads join that right-of-way; or

B. relocating a public road.

[11-29-97; 19.8.9.913 NMAC - Rn, 19 NMAC 8.2.9.913, 9-29-2000]

19.8.9.914 DISPOSAL OF EXCESS SPOIL FROM SURFACE MINING ACTIVITIES:

A. For surface mining activities, each application shall contain descriptions, including appropriate maps and cross section drawings, of the proposed disposal site and design of the spoil disposal structures according to 19.8.20.2034 through 2037 NMAC. These plans shall describe the geotechnical investigation, design, construction, operation, maintenance, and removal, if appropriate, of the site and structures.

B. Each such application shall contain the results of a geotechnical investigation of the proposed disposal site, including the following:

- (1)** the character of bedrock and any adverse geologic conditions in the disposal area;
- (2)** a survey identifying all springs, seepage and ground water flow observed or anticipated during wet periods in the area of the disposal site;
- (3)** a survey of the potential effects of subsidence of the subsurface strata due to past and future mining operations;
- (4)** a technical description of the rock materials to be utilized in the construction of those disposal structures containing rock chimney cores or underlain by a rock drainage blanket; and
- (5)** a stability analysis including, but not limited to, strength parameters, pore pressures and long-term seepage conditions. These data shall be accompanied by a description of all engineering design assumptions and calculations and the alternatives considered in selecting the specific design specifications and methods.

C. If, under Subsection I of 19.8.20.2034 NMAC, rock-toe buttresses or key-way cuts are required, the application shall include the following:

- (1)** the number, location, and depth of borings or test pits which shall be determined with respect to the size of the spoil disposal structure and subsurface conditions; and
- (2)** engineering specifications utilized to design the rock-toe buttress or key-way cuts which shall be determined in accordance with Paragraph (5) of Subsection B of 19.8.9.914 NMAC.

[11-29-97; 19.8.9.914 NMAC - Rn, 19 NMAC 8.2.9.914, 9-29-2000]

19.8.9.915 DISPOSAL OF UNDERGROUND DEVELOPMENT WASTE:

Each plan shall contain descriptions, including appropriate maps and cross section drawings of the proposed disposal methods and sites for placing underground development waste and excess spoil generated at surface areas affected by surface operations and facilities, according to 19.8.20.2034 through 2037 NMAC. Each plan

shall describe the geotechnical investigation, design, construction, operation, maintenance and removal, if appropriate, of the structures and be prepared according to 19.8.9.914 NMAC.

[11-29-97; 19.8.9.915 NMAC - Rn, 19 NMAC 8.2.9.915, 9-29-2000]

19.8.9.916 TRANSPORTATION FACILITIES:

Each application for a permit to conduct surface coal mining and reclamation operations shall contain plans and drawings for each road, conveyor, or rail system to be constructed, used or maintained within the proposed permit area. Plans and drawings shall include a map, appropriate cross sections, and the following:

- A.** specifications for road widths, road gradients, road surfaces, road cuts, fill embankments, culverts, bridges, drainage ditches, drainage structures and low-water crossings;
- B.** a description of measures to be taken to obtain approval of the director for alteration or relocation of a natural drainage way under Paragraph (1) of Subsection E of 19.8.20.2076 or Paragraph (5) of Subsection C of 19.8.20.2077 NMAC;
- C.** drawings and specifications for roads proposed to be located in channels of intermittent or perennial streams; this includes each ford or low water crossing of intermittent and perennial streams;
- D.** plans and schedules for the removal and reclamation of each road not proposed for retention as part of the post-mining land use;
- E.** plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a registered professional engineer or a qualified registered professional land surveyor, experienced in the design and construction of roads, as meeting all program requirements and current, prudent engineering practices.

[11-29-97; A, 12-15-99; 19.8.9.916 NMAC - Rn, 19 NMAC 8.2.9.916, 8/31/2000; A, 12-31-2007]

19.8.9.917 RETURN OF COAL PROCESSING WASTE TO ABANDONED UNDERGROUND WORKINGS:

- A.** Each plan shall describe the design, operation and maintenance of any proposed coal processing waste disposal facility, including flow diagrams and any other necessary drawings and maps, for the approval of the director and the mine safety and health administration under 19.8.20.2045 NMAC.
- B.** Each plan shall describe the source and quality of waste to be stored, area to be backfilled, percent of the mine void to be filled, method of constructing underground

retaining walls, influence of the backfilling operation on active underground mine operations, surface area to be supported by the backfill, and the anticipated occurrence of surface effects following backfilling.

C. The applicant shall describe the source of the hydraulic transport mediums, method of dewatering the placed backfill, retention of water underground, treatment of water if released to surface streams, and the effect on the hydrologic regime.

D. The plan shall describe each permanent monitoring well to be located in the backfilled area, the stratum underlying the mined coal, and gradient from the backfilled area.

E. The requirements of Subsections A, B, C and D of 19.8.9.917 NMAC shall also apply to pneumatic backfilling operations, except where the operations are exempted by the director from requirements specifying hydrologic monitoring.

[11-29-97; 19.8.9.917 NMAC - Rn, 19 NMAC 8.2.9.917, 9-29-2000; A, 12-31-2007]

19.8.9.918 SUBSIDENCE INFORMATION AND CONTROL PLAN:

A. An application for an underground coal mine shall include the following information:

(1) a topographic map of the permit and adjacent areas at a scale of 1:12,000 or larger, as required by the director, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence;

(2) a narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies;

(3) a survey of the condition of all non-commercial buildings or occupied residential dwellings and associated structures, including a photograph of the exterior of each prior to mining and the name and address of the owner or owners, that may be materially damaged or for which the reasonably foreseeable use may be diminished by subsidence, within the area encompassed by the applicable angle of draw;

(4) a survey of the quantity and quality of all drinking, domestic, and residential water supplies within the permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence;

(5) if the applicant cannot complete the surveys required in Paragraphs (3) and (4) of Subsection A of 19.8.9.918 NMAC because the owner or owners will not allow access, the applicant will notify the owner, in writing, of the effect that denial of access will have as described in Subsection C of 19.8.20.2069 NMAC; and

(6) the applicant must pay for any technical assessment or engineering evaluation used to determine the pre-mining condition or value of such non-commercial buildings or occupied residential dwellings and structures related thereto and the quantity and quality of drinking, domestic, or residential water supplies; the applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner or owners and regulatory authority.

B. If the survey conducted under Subsection A of 19.8.9.918 NMAC shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution, or interruption of such water supplies would occur as a result of mine subsidence, and if the regulatory authority agrees with this conclusion, no further information need be provided under this section.

C. If the survey shows that structures, renewable resource lands, or water supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution, or interruption of protected water supplies, or if the regulatory authority determines that damage, diminution in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:

(1) a description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining, including the size, sequence and timing of the development of underground workings;

(2) a map of the underground workings that describes the location and extent of the areas in which planned-subsidence mining methods will be used and that identifies all areas where the measures described in Paragraphs (4), (5) and (7) of Subsection C of 19.8.9.918 NMAC will be taken to prevent or minimize subsidence and subsidence-related damage; and, when applicable, to correct subsidence-related material damage;

(3) a description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affect the likelihood or extent of subsidence and subsidence-related damage;

(4) a description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures

can be taken to prevent, reduce or correct material damage in accordance with 19.8.20.2069 NMAC;

(5) except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence-related damage, such as, but not limited to:

(a) backstowing or backfilling of voids;

(b) leaving support pillars of coal;

(c) leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

(d) taking measures on the surface to prevent or minimize material damage or diminution in value of the surface;

(6) a description of the anticipated effects of planned subsidence, if any;

(7) for those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to non-commercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner or owners of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs of repair;

(8) a description of the measures to be taken in accordance with 19.8.20.2069 NMAC to replace adversely affected protected water supplies or to mitigate or remedy any subsidence-related material damage to the land and protected structures; and

(9) other information specified by the director as necessary to demonstrate that the operation will be conducted in accordance with 19.8.20.2067, 2068, 2069 and 2070 NMAC.

D. The operator shall submit a detailed plan of the underground workings. The detailed plan shall include maps and descriptions, as appropriate, of significant features of the underground mine, including the size, configuration, and approximate location of pillars and entries, extraction ratios, measures taken to prevent or minimize subsidence and related damage, areas of full extraction, and other information required by the regulatory authority. The detailed plan shall be provided and updated consistent with a schedule approved by the director. Upon request of the operator, information submitted with the detailed plan may be held as confidential, in accordance with the requirements of 19.8.11.1104 NMAC.

[11-29-97; 19.8.9.918 NMAC - Rn, 19 NMAC 8.2.9.918 & A, 9-29-2000]

19.8.9.919 SUPPORT FACILITIES:

Each applicant for a surface coal mining and reclamation permit shall submit a description, plans, and drawings for each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with 19.8.20.2078 and 2079 NMAC for each facility.

[11-29-97; A, 12-15-99; 19.8.9.919 NMAC - Rn, 19 NMAC 8.2.9.919, 9-29-2000]

PART 10: REQUIREMENTS FOR PERMITS FOR SPECIAL CATEGORIES OF MINING

19.8.10.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.10.1 NMAC - N, 9-29-2000]

19.8.10.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.10.2 NMAC - N, 9-29-2000]

19.8.10.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.10.3 NMAC - N, 9-29-2000]

19.8.10.4 DURATION:

Permanent

[19.8.10.4 NMAC - N, 9-29-2000]

19.8.10.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.10.5 NMAC - N, 9-29-2000]

19.8.10.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.10.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.10.7 DEFINITIONS:

[RESERVED]

[19.8.10.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC]

19.8.10.8-19.8.10.999 [RESERVED]:

[19.8.10.8 - 19.8.10.999 NMAC - N, 9-29-2000]

19.8.10.1000 EXPERIMENTAL PRACTICES MINING:

A. Each person who desires to conduct an experimental practice shall submit a permit application for the approval of the director and the director of the office of surface mining. The permit application shall contain appropriate descriptions, maps, plans and data which show:

(1) the nature of the experimental practice;

(2) how use of the experimental practice:

(a) encourages advances in mining and reclamation technology, or

(b) allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities), on an experimental basis, when the results are not otherwise attainable under the act and 19.8 NMAC;

(3) that the mining and reclamation operations proposed for using an experimental practice are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice;

(4) that the experimental practice:

(a) is potentially more or at least as environmentally protective, during and after the proposed mining and reclamation operations, as those required under 19.8.19 through 19.8.28 NMAC and 19.8 NMAC; and

(b) will not reduce the protection afforded public health and safety below that provided by the requirements of 19.8.19 through 19.8.28 NMAC and 19.8 NMAC;

(5) that the applicant will conduct special monitoring with respect to the experimental practice during and after the operations involved; the monitoring program shall:

(a) insure the collection and analysis of sufficient and reliable data to enable the director and the regional director of the office of surface mining to make adequate comparisons with other surface coal mining and reclamation operations employing similar experimental practices; and

(b) include requirements designed to identify, as soon as possible, potential risks to the environment and public health and safety from the use of the experimental practice.

B. Each application shall set forth the environmental protection performance standards of 19.8.19 through 19.8.28 NMAC which will be implemented in the event the objective of the experimental practice is a failure.

C. All experimental practices for which variances are sought shall comply with the public notice requirements of 19.8.11.1100 NMAC.

D. No permit authorizing an experimental practice shall be issued, unless the director first finds, in writing, upon the basis of both a complete application filed in accordance with the requirements of this section and the comments of the director of the office of surface mining that:

(1) the experimental practice meets all of the requirements of Paragraphs (1) through (5) of Subsection A of 19.8.10.1000 NMAC;

(2) the experimental practice is based on a clearly defined set of objectives which can reasonably be expected to be achieved; and

(3) the experimental practice has been specifically approved, in writing by the director of the office of surface mining;

(4) the permit contains conditions which specifically:

(a) limit the experimental practice authorized to that granted by the director and the director of the office of surface mining;

(b) impose enforceable alternative environmental protection requirements;
and

(c) require the person to conduct the periodic monitoring, recording and reporting program set forth in the application, with such additional requirements as the director or the director of the office of surface mining may require.

E. Experimental practices granting variances from the special environmental protection performance standards of Section 69-25A-19 and 69-25A-20 NMSA 1978 of the act applicable to prime farmlands shall be approved only after consultation with U.S. department of agriculture natural resources conservation service.

F. Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety by the director at a frequency set forth in the approved permit, but no less frequently than every 2 1/2 years. After review, the director shall, with consent of the director of the office of surface mining, require by order, supported by written findings, any reasonable revision or modification of the permit provisions necessary to ensure that the operations involved are conducted to protect fully the environment and public health and safety. Copies of the decision of the director shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of 19.8.12 NMAC.

G. Revisions or modifications to an experimental practice shall be processed in accordance with the requirements of 19.8.13.1301 NMAC and approved by the director. Any revisions which propose significant departures in the experimental practice shall, at a minimum, be subject to the requirements of 19.8.11 and 19.8.12 NMAC and to the concurrence by the director of the office of surface mining. Revisions that do not propose significant departures in the experimental practice shall not require concurrence by the director of the office of surface mining.

[11-29-97; 19.8.10.1000 NMAC - Rn, 19 NMAC 8.2.10.1000, 9-29-2000; A, 12-31-2007]

19.8.10.1001 MOUNTAINTOP REMOVAL MINING:

A. Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill except as provided for in Subsection F of 19.8.25.2500 NMAC, by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

B. The director may issue a permit for mountaintop removal mining, without regard to the requirements of 19.8.20.2054 through 2058 NMAC, to restore the lands disturbed by such mining to their approximate original contour, if he first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) the proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if:

(a) after consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the director to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

(b) the applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of 19.8.20.2075 NMAC;

(c) the proposed use would be compatible with adjacent land uses and existing state and local land use plans and programs; and

(d) the director has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any state or federal agency which the director, in his discretion, determines to have an interest in the proposed use;

(2) the applicant has demonstrated that, in place of restoration of the land to be affected to the approximate original contour under 19.8.20.2054 through 2058 NMAC, the operation will be conducted in compliance with the requirements of 19.8.25 NMAC;

(3) the requirements of 19.8.25 NMAC are made a specific condition of the permit;

(4) all other requirements of the act and 19.8 NMAC are met by the proposed operations.

C. Permit reviews.

(1) Any permits incorporating a variance issued under this section shall be reviewed by the director to evaluate the progress and development of mining activities to establish that the operator is proceeding in accordance with the terms of the variance:

(a) within the sixth month preceding the third year from the date of its issuance;

(b) before each permit renewal; and

(c) not later than the middle of each permit term.

(2) Any review required under Paragraph (1) of Subsection C of 19.8.10.1001 NMAC need not be held if the permittee has demonstrated and the director finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the act and 19.8 NMAC.

(3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the director, if he determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the act and 19.8 NMAC.

[11-29-97; 19.8.10.1001 NMAC - Rn, 19 NMAC 8.2.10.1001, 9-29-2000; A, 12-31-2007]

19.8.10.1002 STEEP SLOPE MINING:

A. This section applies to any person who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except:

(1) where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) where a person obtains a permit under the provisions of 19.8.10.1001 NMAC; or

(3) to the extent that a person obtains a permit incorporating a variance under 19.8.10.1003 NMAC.

B. Any application for a permit for surface coal mining and reclamation operations covered by this section shall contain sufficient information to establish that the operations will be conducted in accordance with the requirements of 19.8.26.2601 NMAC.

C. No permit shall be issued for any operations covered by this section, unless the director finds, in writing, that in addition to meeting all other requirements of 19.8.5 through 19.8.13 NMAC, the operation will be conducted in accordance with the requirements of 19.8.26.2601 NMAC.

[11-29-97; 19.8.10.1002 NMAC - Rn, 19 NMAC 8.2.10.1002, 9-29-2000; A, 12-31-2007]

19.8.10.1003 PERMIT INCORPORATING VARIANCES FROM APPROXIMATE ORIGINAL CONTOUR RESTORATION REQUIREMENTS FOR STEEP SLOPE MINING:

A. The director may issue a permit for surface mining activities incorporating a variance from the requirement for restoration of the affected lands to their approximate original contour only if he first finds, in writing, on the basis of a complete application, that all of the following requirements are met:

(1) the applicant has demonstrated that the purpose of the variance is to make the lands to be affected within the permit area suitable for an industrial, commercial, residential, or public use postmining land use;

(2) the proposed use, after consultation with the appropriate land-use planning agencies, if any, constitutes an equal or better economic or public use;

(3) the applicant has demonstrated compliance with the requirements for acceptable alternative postmining land uses of Subsection C of 19.8.20.2075 NMAC;

(4) the applicant has demonstrated that the watershed of lands within the proposed permit area and adjacent areas will be improved by the operations; the watershed will only be deemed improved if:

(a) there will be a reduction in the amount of total suspended solids or other pollutants discharged to ground or surface waters from the permit area as compared to such discharges prior to mining, so as to improve public or private uses of the ecology or such waters; or, there will be reduced flood hazards within the watershed containing the permit area by reduction of the peak flow discharges from precipitation events or thaws;

(b) the total volume of flows from the proposed permit area, during every season of the year, will not vary in a way that adversely affects the ecology of any surface water or any existing or planned use of surface or ground water; and

(c) the environment department approves the plan.

(5) the applicant has demonstrated that the owner of the surface of the lands within the permit area has knowingly requested, in writing, as part of the application, that a variance be granted; the request shall be made separately from any surface owner consent given for the operations under 19.8.7.703 NMAC and shall show an understanding that the variance could not be granted without the surface owner's request.

(6) the applicant has demonstrated that the proposed operations will be conducted in compliance with the requirements of 19.8.26.2602 NMAC;

(7) all other requirements of the act and 19.8 NMAC will be met by the proposed operations.

B. If a variance is granted under this section:

(1) the requirements of 19.8.26.2602 NMAC shall be made a specific condition of the permit;

(2) the permit shall be specifically marked as containing a variance from approximate original contour.

C. Any permits incorporating a variance issued under this section shall be reviewed by the director to evaluate the progress and development of the mining activities, to establish that the operator is proceeding in accordance with the terms of the variance:

(1) within the six month period preceding the third year from the date of its issuance;

(2) before each permit renewal; and

(3) not later than the middle of each subsequent permit term.

D. If the permittee demonstrates to the director at any of the times specified in Subsection C of 19.8.10.1003 NMAC that the operations involved have been and continue to be conducted in compliance with the terms and conditions of the permit, the requirements of the act and 19.8 NMAC, the review required at that time need not be held.

E. The terms and conditions of a permit incorporating a variance under this section may be modified at any time by the director, if he determines that more stringent measures are necessary to insure that the operations involved are conducted in compliance with the requirements of the act and 19.8 NMAC.

F. The director may only grant variances in accordance with this section if it has promulgated specific regulations to govern the granting of variances in accordance with the provisions of this section and additional and more stringent requirements as he deems to be necessary.

[11-29-97; 19.8.10.1003 NMAC - Rn, 19 NMAC 8.2.10.1003, 9-29-2000; A, 12-31-2007]

19.8.10.1004 PRIME FARMLANDS:

A. Application contents for prime farmlands. If land within the proposed permit area is identified as prime farmland under 19.8.8.814 NMAC, the applicant shall submit a plan for the mining and restoration of the land. Each plan shall contain, at a minimum:

(1) a soil survey of at least order 2 of the permit area according to the standards of the national cooperative soil survey and in accordance with the procedures set forth in U.S. department of agriculture handbooks 436 (soil taxonomy, 1975) and 18 (soil survey manual, 1951); the soil survey shall include a description of soil mapping units and a representative soil profile as determined by the U.S. natural resources

conservation service, including, but not limited to, soil-horizon depths, pH, and the range of soil densities for each prime farmland soil unit within the permit area; other representative soil profile descriptions from the locality, prepared according to the standards of the national cooperative soil survey, may be used if their use is approved by the state conservationist, U.S. natural resources conservation service; the director may request the operator to provide information on other physical and chemical soil properties as needed to make a determination that the operator has the technological capability to restore the prime farmland within the permit area to the soil-reconstruction standards of 19.8.24 NMAC;

(2) the location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(3) if applicable, documentation, such as agricultural school studies or other scientific data from comparable areas, that supports the use of other suitable material, instead of the A, B, or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management;

(4) plans for seeding or cropping the final graded disturbed land and the conservation practices to be used to adequately control erosion and sedimentation and restoration of an adequate soil moisture regime, during the period from completion of regrading until release of the performance bond or equivalent guarantee under 19.8.14 NMAC; proper adjustments for seasons must be proposed so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions;

(5) available agricultural school studies or other scientific data for areas with comparable soils, climate, and management (including water management) that demonstrate that the proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining;

(6) current estimated yields under a proper level of management for each soil map unit from the USDA for each crop to be used in determining success of revegetation (19.8.24.2404 NMAC);

(7) in all cases, soil productivity for prime farmlands shall be returned to equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Paragraph (1) of Subsection A of 19.8.10.1004 NMAC.

B. Consultation with secretary of agriculture. Before any permit is issued for areas that include prime farmlands, the director shall consult with the U.S. secretary of agriculture. The U.S. secretary of agriculture shall provide for review and comment of the proposed method of soil reconstruction in the plan submitted under Subsection A of 19.8.10.1004 NMAC. If the U.S. secretary of agriculture considers those methods to be

inadequate, he or she shall suggest revisions resulting in more complete and adequate reconstruction. The U.S. secretary of agriculture has assigned his responsibilities under this section to the administrator of the U. S. natural resources conservation service. The natural resources conservation service shall carry out consultation and review through the state conservationist located in each state.

C. Issuance of permit. A permit for the mining and reclamation of prime farmland may be granted by the director, if he first finds, in writing, upon the basis of a complete application, that:

(1) the approved proposed postmining land use of these prime farmlands will be cropland;

(2) the permit incorporates as specific conditions the contents of the plan submitted under Subsection A of 19.8.10.1004 NMAC, after consideration of any revisions to that plan suggested by the U.S. secretary of agriculture under Subsection B of 19.8.10.1004 NMAC;

(3) the applicant has the technological capability to restore the prime farmland, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(4) the proposed operations will be conducted in compliance with the requirements of 19.8.24 NMAC and other environmental protection performance and reclamation standards for mining and reclamation of prime farmland of the act and 19.8 NMAC.

[11-29-97; 19.8.10.1004 NMAC - Rn, 19 NMAC 8.2.10.1004, 9-29-2000; A, 12-31-2007]

19.8.10.1005 VARIANCES FOR DELAY IN CONTEMPORANEOUS RECLAMATION REQUIRED IN COMBINED SURFACE AND UNDERGROUND MINING OPERATIONS:

A. Application contents for variances. Any person who desires to obtain a variance under this section shall file with the director complete applications for both the surface mining activities and underground mining activities which are to be combined. The mining and reclamation operation plans for these permits shall contain appropriate narratives, maps and plans, which:

(1) show why the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of coal;

(2) show how multiple future disturbances of surface lands or waters will be avoided;

(3) identify the specific surface areas for which a variance is sought and the particular sections of the act and 19.8 NMAC from which a variance is being sought;

(4) show how the activities will comply with 19.8.21 NMAC and other applicable requirements of the act and 19.8 NMAC;

(5) show why the variance sought is necessary for the implementation of the proposed underground mining activities;

(6) provide an assessment of the adverse environmental consequences and damages, if any, that will result if the reclamation of surface mining activities is delayed; and

(7) show how off-site storage of spoil will be conducted to comply with 19.8.20.2034 through 2037 NMAC, the requirements of the act and 19.8 NMAC.

B. Issuance of permit. A permit incorporating a variance under this section may be issued by the director, if he first finds, in writing, upon the basis of a complete application filed in accordance with this section, that:

(1) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining activities;

(2) the proposed underground mining activities are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple future disturbances of surface land or waters;

(3) the applicant has satisfactorily demonstrated that the applications for the surface mining activities and underground mining activities conform to the requirements of the act and 19.8 NMAC and that all other permits necessary for the underground mining activities have been issued by the appropriate authority;

(4) the surface area of surface mining activities proposed for the variance have been shown by the applicant to be necessary for implementing the proposed underground mining activities;

(5) no substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation otherwise required by Paragraph (16) of Subsection B of Section 69-25A-19 NMSA 1978 of the act, 19.8.20 NMAC and 19.8 NMAC;

(6) the operations will, insofar as a variance is authorized, be conducted in compliance with the requirements of 19.8.21 NMAC and 19.8 NMAC;

(7) provisions for off-site storage of spoil will comply with the requirements of Paragraph (22) of Subsection B of Section 69-25A-19 NMSA 1978 of the act, 19.8.20.2034 through 2037 NMAC and 19.8 NMAC;

(8) liability under the performance bond required to be filed by the applicant with the director pursuant to 19.8.14 NMAC, the act and 19.8 NMAC shall be for the duration of the underground mining activities and until all requirements of 19.8.14 NMAC and the act and 19.8 NMAC have been complied with; and

(9) the permit for the surface mining activities contains specific conditions:

(a) delineating the particular surface areas for which a variance is authorized;

(b) identifying the particular requirements of 19.8.21 NMAC, the act and 19.8 NMAC which are to be complied with, in lieu of the otherwise applicable provisions of Subsection B of Section 69-25A-19 NMSA 1978 of the act, 19.8.20 NMAC and 19.8 NMAC; and

(c) providing a detailed schedule for compliance with the particular requirements of 19.8.21 NMAC, the act and 19.8 NMAC identified under Subparagraph (b) of Paragraph (9) of Subsection B of 19.8.10.1005 NMAC.

C. Review of permits containing variances. Variances granted under permits issued under this section shall be reviewed by the director no later than 3 years from the dates of issuance of the permit and any permit renewals.

[11-29-97; 19.8.10.1005 NMAC - Rn, 19 NMAC 8.2.10.1005, 9-29-2000; A, 12-31-2007]

19.8.10.1006 SURFACE COAL MINING AND RECLAMATION OPERATIONS ON AREAS OR ADJACENT TO AREAS INCLUDING ALLUVIAL VALLEY FLOORS:

A. Alluvial valley floor determination.

(1) Before applying for a permit to conduct, or before conducting surface coal mining and reclamation operations within a valley holding a stream or in a location where the adjacent area includes any stream, the applicant shall either affirmatively demonstrate, based on available data, the presence of an alluvial valley floor, or submit to the director the results of a field investigation of the proposed permit area and adjacent area. The field investigations shall include sufficiently detailed geologic, hydrologic, land use, soils and vegetation studies on areas required to be investigated by the director, after consultation with the applicant, to enable the director to make an evaluation regarding the existence of the probable alluvial valley floor in the proposed permit area or adjacent area and to determine which areas, if any, require more detailed study in order to allow the director to make a final determination regarding the existence of an alluvial valley floor. Studies performed during the investigation by the applicant or

subsequent studies as required of the applicant by the director shall include an appropriate combination, adapted to site-specific conditions, of:

(a) mapping of unconsolidated stream-laid deposits holding streams including, but not limited to, geologic maps of unconsolidated deposits, and stream-laid deposits, maps of streams, delineation of surface watersheds and directions of shallow ground water flows through and into the unconsolidated deposits, topography showing local and regional terrace levels, and topography of terraces, flood plains and channels showing surface drainage patterns;

(b) mapping of all lands included in the area in accordance with this paragraph and subject to agricultural activities, showing the area in which different types of agricultural lands, such as flood irrigated lands, pasture lands and undeveloped rangelands exist, and accompanied by measurements of vegetation in terms of productivity and type;

(c) mapping of all lands that are currently or were historically flood irrigated, showing the location of each diversion structure, ditch, dam and related reservoir, irrigated land, and topography of those lands;

(d) documentation that areas identified in this paragraph are, or are not, subirrigated, based on ground water monitoring data, representative water quality, soil moisture measurements, and measurements of rooting depth, soil mottling, and water requirements of vegetation;

(e) documentation, based on representative sampling, that areas identified under this paragraph are, or are not, flood irrigable by a prudent person for sustained agricultural activities, based on stream-flow, water quality, water yield, soils measurements, and topographic characteristics;

(f) analysis of a series of aerial photographs, including color infrared imagery flown at a time of year to show any late summer and fall differences between upland and valley floor vegetative growth and of a scale adequate for reconnaissance identification of areas that may be alluvial valley floors.

(2) Based on the investigations conducted under Paragraph (1) of Subsection A of 19.8.10.1006 NMAC, the director shall make a determination of the extent of any alluvial valley floors within the study area and whether any stream in the study area may be excluded from further consideration as lying within an alluvial valley floor. The director shall determine that an alluvial valley floor exists if he finds that:

(a) unconsolidated stream-laid deposits holding streams are present; and

(b) there is sufficient water to support agricultural activities as evidenced by the existence of flood irrigation in the area in question or its recent historical use; the capability of an area to be flood irrigated by a prudent person for sustained agricultural

activities, based on stream-flow water yield, soils, water quality, and topography; or sub-irrigation of the lands in question, derived from the ground water system of the valley floor.

(3) The requirements of this paragraph shall not apply to applicants who affirmatively establish, to the satisfaction of the director, that the proposed operation shall not affect any area suggested to be an alluvial valley floor which is located outside the permit area or that the proposed operation will not be adjacent to any area suggested to be an alluvial valley floor. For the purposes of this paragraph, the director may rely on information submitted by the applicant which pertains only to the permit area if it establishes the existence of an effective buffer zone between the operation and the area in question so as to establish that such area will not be affected, notwithstanding its possible characterization as an alluvial valley floor.

B. Application contents for operations affecting designated alluvial valley floors.

(1) If land within the proposed permit area or adjacent area is identified as an alluvial valley floor and the proposed mining operation may affect an alluvial valley floor or waters that supply alluvial valley floors, the applicant shall submit a complete application for the proposed mining and reclamation operations, to be used by the director together with other relevant information, including the information required by Subsection A of 19.8.10.1006 NMAC, as a basis for approval or denial of the permit. The complete application shall include detailed surveys and baseline data required by the director for a determination of:

(a) the characteristics of the alluvial valley floor which are necessary to preserve the essential hydrologic functions during and after mining;

(b) the significance of the area to be affected to agricultural activities;

(c) whether the operation will cause, or presents an unacceptable risk of causing, material damage to the quantity or quality of surface or ground waters that supply the alluvial valley floor;

(d) the effectiveness of proposed reclamation with respect to requirements of the act and 19.8 NMAC; and

(e) specific environmental monitoring required to measure compliance with 19.8.23 NMAC during and after mining and reclamation operations.

(2) Information required under this paragraph shall include, but not be limited to:

(a) geologic data, including geologic structure, and surficial geologic maps, and geologic cross-sections;

(b) soils and vegetation data, including a detailed soil survey and chemical and physical analyses of soils, a vegetation map and narrative descriptions of quantitative and qualitative surveys, and land use data, including an evaluation of crop yields;

(c) surveys and data required under this paragraph for areas designated as alluvial valley floors because of their flood irrigation characteristics shall also include, at a minimum, surface hydrologic data, or extrapolation of such data, including streamflow, runoff, sediment yield, and water quality analyses describing seasonal variations field geomorphic surveys and other geomorphic studies;

(d) surveys and data required under this paragraph for areas designated as alluvial valley floors because of their subirrigation characteristics, shall also include, at a minimum, geohydrologic data, or extrapolation of such data, including observation well establishment for purposes of water level measurements, ground water contour maps, testing to determine aquifer characteristics that affect waters supplying the alluvial valley floors, well and spring inventories, and water quality analyses describing seasonal variations and physical and chemical analysis of overburden to determine the effect of the proposed mining and reclamation operations on water quality and quantity;

(e) plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley floors unless the pre-mining land use has been undeveloped rangeland which is not significant to farming and will not materially damage the quantity or quality of water in surface and ground water systems that supply alluvial valley floors;

(f) maps showing farms that could be affected by the mining and, if any farm includes an alluvial valley floor, statements of the type and quantity of agricultural activity performed on the alluvial valley floor and its relationship to the farm's total agricultural activity including an economic analysis; and

(g) such other data as the director may require.

(3) The surveys required by this paragraph should identify those geologic, hydrologic, and biologic characteristics of the alluvial valley floor necessary to support the essential hydrologic functions of an alluvial valley floor. Characteristics which support the essential hydrologic functions and which must be evaluated in a complete application include, but are not limited to:

(a) characteristics supporting the function of collecting water which include, but are not limited to:

(i) the amount and rate of runoff and a water balance analysis, with respect to rainfall, evapotranspiration, infiltration and ground water recharge;

(ii) the relief, slope, and density of the network of drainage channels;

(iii) the infiltration, permeability, porosity and transmissivity of unconsolidated deposits of the valley floor that either constitute the aquifer associated with the stream or lie between the aquifer and the stream; and

(iv) other factors that affect the interchange of water between surface streams and ground water systems, including the depth to ground water, the direction of ground water flow, the extent to which the stream and associated alluvial ground water aquifers provide recharge to, or are recharged by bedrock aquifers;

(b) characteristics supporting the function of storing water which include, but are not limited to:

(i) surface roughness, slope, and vegetation of the channel, flood plain, and low terraces that retard the flow of surface waters;

(ii) porosity, permeability, water-holding capacity, saturated thickness and volume of aquifers associated with streams, including alluvial aquifers, perched aquifers, and other water bearing zones found beneath valley floors; and

(iii) moisture held in soils or the plant growth medium within the alluvial valley floor, and the physical and chemical properties of the subsoil that provide for sustained vegetation growth or cover during extended periods of low precipitation;

(c) characteristics supporting the function of regulating the flow of water which include; but are not limited to:

(i) the geometry and physical character of the valley, expressed in terms of the longitudinal profile and slope of the valley and the channel, the sinuosity of the channel, the cross-section, slopes and proportions of the channels, flood plains and low terraces, the nature and stability of the stream banks and the vegetation established in the channels and along the stream banks and flood plains;

(ii) the nature of surface flows as shown by the frequency and duration of flows of representative magnitude including low flows and floods; and

(iii) the nature of interchange of water between streams, their associated alluvial aquifers and any bedrock aquifers as shown by the rate and amount of water supplied by the stream to associated alluvial and bedrock aquifers (i.e., recharge) and by the rates and amounts of water supplied by aquifers to the stream (i.e., baseflow);

(d) characteristics which make water available and which include, but are not limited to, the presence of land forms including flood plains and terraces suitable for agricultural activities.

C. Alluvial valley floor impact assessment and written findings.

(1) No permit or permit revision application for surface coal mining and reclamation operations shall be approved by the director, unless the application demonstrates and the director finds in writing, on the basis of information set forth in the application that:

(a) the proposed operations would not interrupt, discontinue or preclude farming on an alluvial valley floor, unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floor, or unless the area of an affected alluvial valley floor is small and provides, or may provide, negligible support for production of one or more farms; provided, however, this paragraph does not apply to those lands which were identified in a reclamation plan approved by the New Mexico coal surface mining commission prior to August 3, 1977, for any surface coal and reclamation operation that, in the year preceding August 3, 1977:

(i) produced coal in commercial quantities and was located within or adjacent to alluvial valley floors; or

(ii) obtained specific permit approval by the New Mexico coal surface mining commission to conduct surface coal mining and reclamation operations within an alluvial valley floor;

(b) the proposed operations would not materially damage the quantity and quality of water in surface and underground water systems that supply those alluvial valley floors or portions of alluvial valley floors which are:

(i) included in Subparagraph (a) of Paragraph (1) of Subsection C of 19.8.10.1006 NMAC; or

(ii) outside the permit area of an existing or proposed surface coal mining operation;

(c) the proposed operations would be conducted in accordance with 19.8.23 NMAC and all other applicable requirements of the act and 19.8 NMAC; and

(d) any change in the land use of the lands covered by the proposed permit area from its premining use in or adjacent to alluvial valley floors will not interfere with or preclude the reestablishment of the essential hydrologic functions of the alluvial valley floor.

(2) The significance of the impact of the proposed operations on farming will be based on the relative importance of the vegetation and water of the developed grazed or hayed alluvial valley floor area to the farm's production, or any more stringent criteria established by the director as suitable for site-specific protection of agricultural activities in alluvial valley floors.

(3) Criteria for determining whether a surface coal mining operation will materially damage the quantity or quality of waters, include, but are not limited to:

(a) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor, as measured by using current standard methods. Such concentrations shall not exceed threshold values at which crop yields decrease according to documentation in current scientific publications, unless the applicant demonstrates compliance with Subparagraph (b) of Paragraph (3) of Subsection C of 19.8.10.1006 NMAC;

(b) potential increases in the concentration of total dissolved solids of waters supplied to an alluvial valley floor in excess of those incorporated by reference in Subparagraph (a) of Paragraph (3) of Subsection C of 19.8.10.1006 NMAC shall not be allowed unless the applicant demonstrates, through testing related to the production of crops grown in the locality, that the proposed operations will not cause increases that will result in crop yield decreases;

(c) for types of vegetation not listed in scientific publications, consideration of observed correlation between total dissolved solid concentrations in water and crop yield declines shall be taken into account along with the accuracy of the correlations;

(d) potential increases in the average depth to water saturated zones (during the growing season) located within the root zone of the alluvial valley floor that would reduce the amount of subirrigation land compared to premining conditions;

(e) potential decreases in surface flows that would reduce the amount of irrigable land compared to premining conditions; and

(f) potential changes in the surface or ground water systems that reduce the area available to agriculture as a result of flooding or increased saturation of the root zone.

(4) For the purposes of this paragraph, a farm is one or more land units on which agricultural activities are conducted. A farm is generally considered to be the combination of land units with acreage and boundaries in existence prior to August 3, 1977, or, if established after August 3, 1977, with those boundaries based on enhancement of the farm's agricultural productivity and not related to surface coal mining operations.

[11-29-97; 19.8.10.1006 NMAC - Rn, 19 NMAC 8.2.10.1006, 9-29-2000; A, 12-31-2007]

19.8.10.1007 AUGERING:

A. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing augering operations.

B. Any application for a permit for operations covered by this section shall contain, in the mining and reclamation plan, a description of the augering methods to be used and the measures to be used to comply with 19.8.22 NMAC and demonstrate to the director that auger mining is the best method to recover the maximum coal resource.

C. No permit shall be issued for any operations covered by this section unless the director finds, in writing, that in addition to meeting all other applicable requirements of 19.8.5 through 19.8.13 NMAC, the operation will be conducted in compliance with 19.8.22 NMAC.

[11-29-97; 19.8.10.1007 NMAC - Rn, 19 NMAC 8.2.10.1007, 9-29-2000]

19.8.10.1008 COAL PROCESSING PLANTS OR SUPPORT FACILITIES NOT LOCATED WITHIN THE PERMIT AREA OF A SPECIFIED MINE:

A. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing coal processing plants or support facilities not within a permit area of a specific mine. Any person who operates such a processing plant or support facility shall have obtained a permit from the director in accordance with the requirements of this section.

B. Any application for a permit for operations covered by this section shall contain in the mining and reclamation plan, specific plans, including descriptions, maps and cross-sections of the construction, operation, maintenance and removal of the processing plants and associated support facilities. The plan shall demonstrate that those operations will be conducted in compliance with 19.8.27 NMAC.

C. No permit shall be issued for any operation covered by this section, unless the director finds, in writing, that, in addition to meeting all other applicable requirements of 19.8.5 through 19.8.13 NMAC, the operations will be conducted in compliance with the requirements of 19.8.27 NMAC.

[11-29-97; 19.8.10.1008 NMAC - Rn, 19 NMAC 8.2.10.1008, 9-29-2000]

19.8.10.1009 IN SITU PROCESSING ACTIVITIES:

A. This section applies to any person who conducts or intends to conduct surface coal mining and reclamation operations utilizing in situ processing activities.

B. Any application for a permit for operations covered by this section shall be made according to all requirements of 19.8.5 through 19.8.13 NMAC applicable to underground mining activities. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of 19.8.28 NMAC, including:

(1) delineation of proposed holes and wells and production zone for approval of the director;

(2) specifications of drill holes and casings proposed to be used;

(3) a plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and

(4) plans for monitoring surface and ground water and air quality, as required by the director.

C. No permit shall be issued for operations covered by this section, unless the director first finds, in writing, upon the basis of a complete application made in accordance with Subsection B of 19.8.10.1009 NMAC, that the operation will be conducted in compliance with all requirements of 19.8.5 through 19.8.13 NMAC relating to underground mining activities, and 19.8.20 and 19.8.28 NMAC.

[11-29-97; 19.8.10.1009 NMAC - Rn, 19 NMAC 8.2.10.1009, 9-29-2000]

PART 11: REVIEW, PUBLIC PARTICIPATION, AND APPROVAL OR DISAPPROVAL OF PERMIT APPLICATIONS, TERMS AND CONDITIONS

19.8.11.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.11.1 NMAC- N, 9-29-2000]

19.8.11.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.11.2 NMAC - N, 9-29-2000]

19.8.11.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.11.3 NMAC - N, 9-29-2000]

19.8.11.4 DURATION:

Permanent

[19.8.11.4 NMAC - N, 9-29-2000]

19.8.11.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.11.5 NMAC - N, 9-29-2000]

19.8.11.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.11.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.11.7 DEFINITIONS:

[RESERVED]

[19.8.11.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.11.8-19.8.11.1099 [RESERVED]:

[19.8.11.8 - 19.8.11.1099 NMAC - N, 9-29-2000]

19.8.11.1100 PUBLIC NOTICES OF FILING OF PERMIT APPLICATIONS:

A. An applicant applying for a permit shall place an advertisement in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, at least once a week for four consecutive weeks. The applicant shall place the advertisement in the newspaper at the same time the complete permit application is filed with the director. The advertisement shall contain, at a minimum, the following information:

- (1)** the name and business address of the applicant; and
- (2)** a map or description which shall:

(a) clearly show or describe towns, rivers, streams, or other bodies of water, local landmarks, and any other information, including routes, streets, or roads and

accurate distance measurements, necessary to allow local residents to readily identify the proposed permit area;

(b) clearly show or describe the exact location and boundaries of the proposed permit area;

(c) state the name of the U.S. geological survey 7.5-minute quadrangle map(s) which contains the area shown or described; and

(d) if a map is used, indicate the north point;

(3) the location where a copy of the application is available for public inspection under Subsection E of 19.8.11.1100 NMAC and a description of the information requested by the applicant to be held in confidence by the director;

(4) the name and address of the director to which written comments, objections or requests for informal conferences on the application may be submitted under 19.8.11.1101 through 1103 NMAC; and

(5) if an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate a public road, a concise statement describing the public road, the particular part to be relocated, where the relocation is to occur, and the duration of the relocation.

B. In addition to the requirements of Subsection A of 19.8.11.1100 NMAC, an applicant for a new permit or for a permit revision under 19.8.13.1301 NMAC shall submit , at the time of filing the application, a plan approved by the director to provide notice using at least three of the methods listed below. If the director determines that significant non-English speaking populations live within the general area of the proposed mine, the applicant shall include at least one method that seeks to reach these populations. The notice shall summarize the information listed in, and shall be given prior to the last publication of the notice in, Subsection A of 19.8.11.1100 NMAC. The methods may include:

(1) mailing a notice to the owners of record, as shown by the most recent property tax schedule, of all properties adjacent to the proposed permit area and to the owners of all properties containing a residence located within one-half mile (2640 feet) of the proposed permit area as identified in Subsection F of 19.8.7.701 NMAC;

(2) posting a notice in at least four publicly accessible and conspicuous places, including the entrance to the proposed operation if that entrance is publicly accessible and conspicuous;

(3) publishing a notice in a display ad at least three inches by four inches at a place in the newspaper calculated to give the general public the most effective notice; or

(4) broadcasting public service announcements on radio stations that serve the general permit area.

C. Upon receipt of a complete application for a permit, the director shall issue written notification of:

- (1) the applicant's intention to mine a particularly described tract of land;
- (2) the application number;
- (3) where a copy of the application may be inspected; and
- (4) where comments on the application may be submitted under 19.8.11.1101 NMAC.

D. The written notifications shall be sent to:

- (1) federal, state, tribal and local government agencies with jurisdiction over or an interest in the area of the proposed operations, including, but not limited to, general governmental entities and fish and wildlife and historic preservation agencies;
- (2) governmental planning agencies with jurisdiction to act with regard to land use, air, or water quality planning in the area of the proposed operations;
- (3) sewage and water treatment authorities and water companies, either providing sewage or water services to users in the area of the proposed operations or having water sources or collection, treatment, or distribution facilities located in these areas; and
- (4) the federal or state governmental agencies with authority to issue all other permits and licenses needed by the applicant in connection with operations proposed in the application; and
- (5) all persons on a list maintained by the director of individuals and organizations who have requested notice of applications under the act and who have provided a surface or electronic mail address to the director.

E. Public inspection of the application.

(1) The applicant shall make a full copy of his complete application for a permit available for the public to inspect and copy. This shall be done by filing a copy of the application submitted to the director with the county clerk of the county where the mining is proposed to occur, or if approved by the director, at another equivalent public office, if it is determined that office will be more accessible to local residents than the county courthouse.

(2) The applicant shall file the copy of the complete application under Paragraph (1) of Subsection E of 19.8.11.1100 NMAC by the first date of newspaper advertisement of the application. The applicant shall file any subsequent revision of the application with the public office at the same time the revision is submitted to the director.

(3) The written notification shall be posted on a website maintained by the director after receipt of a complete application.

F. Public meeting. Within 60 days of receipt of a complete application for a new permit or a permit revision, the director shall hold a public meeting at a location near the proposed mining operation.

(1) The public meeting will serve as an opportunity for the director and applicant to inform the public of the proposed action and to provide an opportunity for the public to identify issues and concerns associated with the application.

(2) The director shall give notice at least fifteen days prior to the meeting date in a newspaper of general circulation and on radio stations serving the mine area.

(3) The director or his representative shall keep a record summarizing issues and concerns raised at the meeting.

(4) Any person attending the meeting may submit written comments to the director up to thirty days after the meeting.

[11-29-97; 19.8.11.1100 NMAC - Rn, 19 NMAC 8.2.11.1100, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1101 OPPORTUNITY FOR SUBMISSION OF WRITTEN COMMENTS ON PERMIT APPLICATIONS:

A. Written comments on permit applications may be submitted to the director by the public entities to whom notification is provided under Subsections C and D of 19.8.11.1100 NMAC, with respect to the effects of the proposed mining operations on the environment within their area of responsibility.

B. These comments shall be submitted to the director within 30 days following the last publication of the above notice.

C. The director shall immediately transmit a copy of all such comments for filing and public inspection at the public office where the applicant filed a copy of the application for permit under Subsection E of 19.8.11.1100 NMAC.

D. A copy shall also be transmitted to the applicant.

[11-29-97; 19.8.11.1101 NMAC - Rn, 19 NMAC 8.2.11.1101, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1102 RIGHT TO FILE WRITTEN OBJECTIONS:

A. Any person whose interests are or may be adversely affected or an officer or head of any federal, state, tribal or local governmental agency or authority shall have the right to file written objections to an initial or revised application for a permit with the director within 30 days after the last publication of the newspaper notice required by Subsection A of 19.8.11.1100 NMAC.

B. The director shall immediately upon receipt of any written objections:

- (1)** transmit a copy of them to the applicant; and
- (2)** file a copy for public inspection at the public office where the applicant filed a copy of the application for permit under Subsection E of 19.8.11.1100 NMAC.

[11-29-97; 19.8.11.1102 NMAC - Rn, 19 NMAC 8.2.11.1102, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1103 HEARINGS AND CONFERENCES:

A. Procedure for requests. Any person, whose interests are or may be adversely affected by the issuance, revision or renewal of the permit, or the officer or head of any federal, state, tribal or local government agency or authority may, in writing, request that the director hold an informal conference on any application for a permit. The request shall:

- (1)** briefly summarize the issues to be raised by the requestor at the conference;
- (2)** state whether the requestor desires to have the conference conducted in the locality of the proposed mining operations; and
- (3)** be filed with the director not later than 30 days after the last publication of the newspaper advertisement placed by the applicant under Subsection A of 19.8.11.1100 NMAC.

B. Except as provided in Subsection C of 19.8.11.1103 NMAC, if an informal conference is requested in accordance with Subsection A of 19.8.11.1103 NMAC, or upon the director's own motion, the director shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted according to the following:

(1) if requested under Paragraph (2) of Subsection A of 19.8.11.1103 NMAC, it shall be held in the locality of the proposed mining;

(2) the date, time, and location of the informal conference shall be advertised by the director in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations at least two weeks prior to the scheduled conference;

(3) if requested, in writing, by a conference requestor in a reasonable time prior to the conference, the director may arrange with the applicant to grant parties to the conference access to the permit area for the purpose of gathering information relevant to the conference;

(4) the conference shall be conducted by a representative of the director, who may accept oral or written statements and any other relevant information from any party to the conference; an electronic or stenographic record shall be made of the conference proceedings, unless waived by all the parties; the record shall be maintained and shall be accessible to parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to 19.8.14 NMAC.

C. If all parties requesting the informal conference stipulate agreement before the requested informal conference and withdraw their request, the informal conference need not be held.

D. Informal conferences held in accordance with 19.8.11.1103 NMAC may be used by the director as the public hearing required under Subsection D of 19.8.2.202 NMAC on proposed uses or relocation of public roads.

[11-29-97; 19.8.11.1103 NMAC - Rn, 19 NMAC 8.2.11.1103, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1104 PUBLIC AVAILABILITY OF INFORMATION IN PERMIT APPLICATIONS ON FILE WITH THE DIRECTOR:

A. Information contained in permit applications on file with the director shall be open, upon written request, for public inspection and copying at reasonable times except for:

(1) information pertaining to coal seams, test borings, core samplings, or soil samples in permit applications shall be made available for inspection and copying to any person with an interest which is or may be adversely affected;

(2) information in permit applications which pertains only to the analysis of the chemical and physical properties of the coal to be mined (excepting information regarding mineral or elemental contents of such coal, which are potentially toxic in the environment) shall be kept confidential and not made a matter of public record; and

(3) information in the reclamation plan portions of the application, which is required to be filed with the director under Section 69-25A-12 NMSA 1978, and which is not otherwise a public record, shall be held in confidence by the director upon the written request of the applicant;

(4) information on the nature and location of archaeological resources on the public land and Indian land as required under the Archaeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470);

(5) information required to be kept confidential shall be clearly identified by the applicant and submitted separately from other portions of the application.

B. Information requested to be held as confidential under 19.8.11.1104 NMAC shall not be made publicly available until after notice and opportunity to be heard is afforded both persons seeking and opposing disclosure of the information.

[11-29-97; 19.8.11.1104 NMAC - Rn, 19 NMAC 8.2.11.1104, 9-29-2000; A, 4-28-2006]

19.8.11.1105 REVIEW OF PERMIT APPLICATIONS:

A. Review and consultation.

(1) The director shall review the complete application and written comments, written objections submitted, and records of any informal conference held under 19.8.11.1101 through 1103 NMAC.

(2) The director shall determine the adequacy of the fish and wildlife plan submitted pursuant to 19.8.9.905 NMAC, in consultation with state and federal fish and wildlife management and conservation agencies having responsibilities for the management and protection of fish and wildlife or their habitats which may be affected or impacted by the proposed surface coal mining and reclamation operations.

B. If the director decides to approve the application, he shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of 19.8.14 NMAC.

C. The director shall not issue the permit if any surface coal mining and reclamation operation owned or controlled by either the applicant, or by any person who owns or controls the applicant, is currently in violation of any provision of the act, SMCRA or any federal or state law, rule or regulation pertaining to air or water environmental protection. The director will make this determination based on a review of reasonably available information concerning violation notices and ownership or control links involving the applicant, including information pursuant to 19.8.7.701 and 702 NMAC and 19.8.11.1102 and 1116 NMAC. In the absence of a failure-to-abate cessation order, the director may presume that a notice of violation issued pursuant to 19.8.30.3001 NMAC or under a federal or state program has been or is being corrected to the satisfaction of

the agency with jurisdiction over the violation, where the abatement period for such notice of violation has not yet expired and where as part of the violation information provided pursuant to 19.8.7.702 NMAC, the applicant has provided certification that such violation is in the process of being so corrected. Such presumption shall not apply where evidence to the contrary is set forth in the permit application, or when the notice of violation is issued for a nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists the director shall require the applicant or person who owns or controls the applicant, before the issuance of the permit, to either:

(1) submit to the director, proof which is satisfactory to the director, department or agency which has jurisdiction over such violation that the violation:

(a) has been corrected; or

(b) is in the process of being corrected; or

(2) establish to the director that the applicant or any person owned or controlled by either this applicant or any person who owns or controls the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of that violation; if the administrative or judicial hearing authority either denies a stay applied for in the appeal or affirms the violation, then the applicant shall within 30 days of the judicial action submit proof required under Subparagraph (a) of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

D. Any permit that is issued on the basis of proof submitted under Subparagraph (b) of Paragraph (1) or Paragraph (2) of Subsection C of 19.8.1105 NMAC that a violation is in the process of being corrected, or pending the outcome of an appeal described in Paragraph (2) of Subsection C of 19.8.11.1105 NMAC, shall be conditionally issued.

E. Before any final determination by the director that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violation of the act of such nature, duration, and with such resulting irreparable damage to the environment that indicates an intent not to comply with the provisions of the act, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 19.8.12.1200 NMAC.

F. Final compliance review. After an application is approved, but before the permit is issued, the director shall reconsider its decision to approve the application, based on the compliance review required by Subsection C of 19.8.11.1105 NMAC in light of any new information submitted under Subsection I of 19.8.7.701 NMAC, or Subsection D of 19.8.7.702 NMAC. Upon the applicant's completion of the reporting requirements of Subsection D of 19.8.7.702 NMAC, the director will request a compliance history report from AVS no more than five business days before permit issuance, and will make that report part of the AVS record review required by 19.8.11.1116 NMAC.

[11-29-97; 19.8.11.1105 NMAC - Rn, 19 NMAC 8.2.11.1105, 9-29-2000; A, 4-28-2006; A, 12-31-2007; A, 08-31-2010]

19.8.11.1106 CRITERIA FOR PERMIT APPROVAL OR DENIAL:

No permit or revision application shall be approved, unless the application affirmatively demonstrates and the director finds, in writing, on the basis of information set forth in the application or from information otherwise available, which is documented in the approval and made available to the applicant, that:

A. the permit application is accurate and complete and that all requirements of the act and 19.8 NMAC have been complied with;

B. the applicant has demonstrated that surface coal mining and reclamation operations, as required by the act and 19.8 NMAC, can be feasibly accomplished under the mining and reclamation operations plan contained in the application;

C. the assessment of the probable cumulative hydrological impacts (CHIA) of all anticipated coal mining in the cumulative impact area on the hydrologic balance, as described in Subsection C of 19.8.9.907 NMAC has been made by the director, and the operations proposed under the application have been designed to prevent damage to the hydrologic balance outside the proposed permit area;

D. the proposed permit area is:

(1) not included within an area designated unsuitable for surface coal mining operations under 19.8.3 and 4 NMAC; or

(2) not within an area under study for designation as unsuitable for surface coal mining operations in an administrative proceeding begun under 19.8.4 NMAC, unless the applicant demonstrates that, before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation for which he is applying for a permit; or

(3) not within an area subject to the prohibitions of 19.8.2.201 NMAC.

E. the proposed operations will not adversely affect any publicly-owned parks or places included in the national register of historic places, except as provided for in Subsection A of 19.8.2.201 NMAC;

F. for operations involving the surface mining of coal where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the director the documentation required under Subsection B of 19.8.7.703 NMAC;

G. the applicant has either:

(1) submitted the proof required by Paragraph (1) of Subsection C of 19.8.11.1105 NMAC; or

(2) made the demonstration required by Paragraph (2) of Subsection C of 19.8.11.1105 NMAC;

H. the applicant has submitted proof that all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 have been paid;

I. the applicant or the operator, if other than the applicant, does not control and has not controlled mining operations with a demonstrated pattern of willful violations of the act of such nature, duration, and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of the act;

J. surface coal mining and reclamation operations to be performed under the permit will not be inconsistent with other such operations anticipated to be performed in areas adjacent to the proposed permit area;

K. the applicant will submit the performance bond or other equivalent guarantee required under 19.8.14 NMAC of these rules and regulations, prior to the issuance of the permit;

L. the applicant has, with respect to both prime farmland and alluvial valley floors, obtained either a negative determination or satisfied the requirements of 19.8.10.1004 and 1006 NMAC;

M. the proposed postmining land use of the permit area has been approved by the director in accordance with the requirements of 19.8.20.2073 NMAC;

N. the director has made all specific approvals required under 19.8.19 through 19.8.28 NMAC;

O. the director has found that the activities would not affect the continued existence of endangered or threatened species, indigenous to the state, or any other species protected under the Endangered Species Act of 1973, or result in the destruction or adverse modification of their critical habitats contrary to state or federal law;

P. the director has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the national register of historic places; this finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources or a documented decision that the director has determined that no additional protection measures are necessary.

[11-29-97; 19.8.11.1106 NMAC - Rn, 19 NMAC 8.2.11.1106, 9-29-2000; A, 1-15-2002; A, 4-28-2006; A, 12-31-2007]

19.8.11.1107 IMPROVIDENTLY ISSUED PERMITS: GENERAL PROCEDURES:

A. Permit review. When the director has reason to believe that the director improvidently issued a surface coal mining and reclamation permit the director shall immediately review the circumstances under which the director issued the permit, using the criteria in Subsection B of 19.8.11.1107 NMAC. If the director finds that the director improvidently issued the permit, then the director shall comply with Subsection C of 19.8.11.1107 NMAC.

B. Review criteria. The director shall find that the director improvidently issued a surface coal mining and reclamation permit if:

(1) under the regulatory program's violations review criteria at the time the director issued the permit:

(a) the director should not have issued the permit because of an unabated violation or a delinquent penalty or fee; or

(b) the director issued the permit on the presumption that a notice of violation was in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation, but a cessation order subsequently was issued; and

(2) the violation, penalty or fee:

(a) remains unabated or delinquent; and

(b) is not subject of a good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the responsible agency's satisfaction; and

(3) where the permittee was linked to the violation, penalty or fee through ownership or control under the regulatory program's violations review criteria at the time the director issued the permit, an ownership or control link between the permittee and the person responsible for the violation, penalty or fee still exists, or where the link has been severed, the permittee continues to be responsible for the violation, penalty or fee.

C. When determining what specific unabated violations, delinquent penalties and fees, and ownership and control relationships to which 19.8.11.1107 NMAC will apply, the director shall use the applicable violations review criteria contained in the preamble of the federal register 54 FR 18440-18441.

D. The provisions of 19.8.11.1118 NMAC shall be applicable when the director determines:

(1) whether a violation, penalty or fee existed at the time that it was cited, remains unabated or delinquent, has been corrected, is in the process of being corrected or is the subject of a good faith appeal, and

(2) whether any ownership or control link between the permittee and the person responsible for the violation, penalty or fee existed, still exists or has been severed.

E. Remedial measures. When the director, under Subsection B of 19.8.11.1107 NMAC, finds that because of an unabated violation or a delinquent penalty or fee the director improvidently issued a permit, the director shall use one or more of the following remedial measures:

(1) implement, with the cooperation of the permittee or other person responsible, and of the responsible agency, a plan for abatement of the violation or a schedule for payment of the penalty or fee;

(2) impose on the permit a condition requiring that in a reasonable period of time the permittee or other person responsible abate the violation or pay the penalty or fee;

(3) suspend the permit until the violation is abated or the penalty or fee is paid; or

(4) rescind the permit under 19.8.11.1110 NMAC.

F. If the director decides to suspend the permit, it shall afford at least 30 days written notice to the permittee. If the director decides to rescind the permit, it shall issue a notice in accordance with 19.8.11.1110 NMAC. In either case, the permittee shall be given the opportunity to request administrative review of the notice as provided for in 19.8.12 NMAC. The director's decision shall remain in effect during the appeal's pendency, unless the district court grants temporary relief.

[11-29-97; A, 12-15-99: 19.8.11.1107 NMAC - Rn, 19 NMAC 8.2.11.1107, 9-29-2000; A, 4-28-2006]

19.8.11.1108 CRITERIA FOR PERMIT APPROVAL OR DENIAL: EXISTING STRUCTURES:

A. No application for a permit or revision which proposes to use an existing structure in connection with or to facilitate the proposed surface coal mining and reclamation operation shall be approved, unless the applicant demonstrates and the director finds, in writing, on the basis of information set forth in the complete application that the structure meets the performance standards of the act and 19.8.19 through 28 NMAC.

B. If the director finds that the structure does not meet the requirements of Subsection A of 19.8.11.1108 NMAC, the director shall require the applicant to submit a compliance plan for modification or reconstruction of the structure and shall find prior to the issuance of the permit that:

(1) the modification or reconstruction of the structure will bring the structure into compliance with the design and performance standards of 19.8.19 through 19.8.28 NMAC as soon as possible, but not later than six months after issuance of the permit;

(2) the risk of harm to the environment or to public health or safety is not significant during the period of modification or reconstruction; and

(3) the applicant will monitor the structure to determine compliance with the performance standards of 19.8.19 through 19.8.28 NMAC.

C. Should the director find that the existing structure cannot be reconstructed without causing significant harm to the environment or public health or safety consistent with 19.8.20.2079 NMAC, the applicant will be required to abandon the existing structure. The structure shall not be used for or to facilitate surface coal mining operations after the effective date of issuance of the permanent regulatory program permit. Abandonment of the structure shall proceed on a schedule approved by the director.

[11-29-97; 19.8.11.1108 NMAC - Rn, 19 NMAC 8.2.11.1108, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1109 PERMIT APPROVAL OR DENIAL ACTIONS:

A. The director shall approve, require modification of, or deny all applications for permits under the act and 19.8. NMAC on the basis of:

(1) complete applications for permits and revisions or renewals thereof;

(2) public participation as provided for in 19.8.5 through 19.8.13 NMAC;

(3) compliance with any applicable provisions of 19.8.10 NMAC; and

(4) processing and review of applications as required by 19.8.11 NMAC.

B. The director shall take action as required under Subsection A of 19.8.11.1109 NMAC, within the following times.

(1) Initiation of regulatory programs. Except as provided for in Paragraph (3) of Subsection B of 19.8.11.1109 NMAC and 19.8.5.501 NMAC, a complete application submitted to the director within the time required by Subsection A of 19.8.5.504 NMAC shall be processed by the director so that an application is approved or denied:

(a) within eight months after the date of approval of the state program; and

(b) if an informal conference has been held pursuant to 19.8.11.1103 NMAC within 60 days from the close of the conference.

(2) Subsequent permanent program applications. Except as provided for in Paragraph (3) of Subsection B of 19.8.11.1109 NMAC, a complete application submitted to the director after the time required in Subsection A of 19.8.5.504 NMAC and in accordance with NMAC shall be processed by the director, so that an application is approved or denied within the following times:

(a) if an informal conference has been held under 19.8.11.1103 NMAC within 60 days of the close of the conference; or

(b) if no informal conference has been held under Subsections A through D of 19.8.11.1103 NMAC then within a reasonable time after the receipt by the director of the complete application, the director will process the application; in establishing what is reasonable time in which to approve or deny the application, the director shall take into account the time needed for proper investigation of the proposed permit and adjacent areas; the complexity of the application; and whether written objections to or comments on the complete application have been filed with the director.

(3) Notwithstanding any of the foregoing provisions of 19.8.11.1109 NMAC, no time limit under the act or 19.8.11.1109 NMAC requiring the director to act shall be considered expired from the time the director initiates a proceeding under Subsection E of 19.8.11.1105 NMAC until the final decision of the director.

C. If an informal conference is held under 19.8.11.1103 NMAC, the director shall give his written findings to the permit applicant and to each person who is party to the conference, approving, modifying or denying the application in whole, or in part, and stating the specific reasons therefore in the decision.

D. If no such informal conference, pursuant to Subsections A through D of 19.8.11.1103 NMAC, has been held, the director shall give his written findings to the permit applicant, approving, modifying or denying the application in whole, or in part, and stating the specific reasons in the decision.

E. Simultaneously, the director shall:

(1) give a copy of his decision to:

(a) each person and government official who filed a written objection or comment with respect to the application; and

(b) the regional director of the office of surface mining together with a copy of any permit issued by the director; and

(2) publish a summary of his decision in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations.

F. Within 10 days after the granting of a permit, including the filing of the performance bond or other equivalent guarantee which complies with 19.8.9.14 NMAC, the director shall notify the county clerk of the county where the land to be mined is located that a permit has been issued. The notice shall describe the location of the permit area.

[11-29-97; 19.8.11.1109 NMAC - Rn, 19 NMAC 8.2.11.1109, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1110 IMPROVIDENTLY ISSUED PERMITS: RESCISSION PROCESS:

When the director, according to Paragraph (4) of Subsection E of 19.8.11.1107 NMAC, elects to rescind an improvidently issued permit, the director shall serve on the permittee a notice of suspension and rescission which includes the reasons for the finding of the director under Subsection B of 19.8.11.1107 NMAC and states that:

A. automatic suspension and rescission: after a specified period of time, not to exceed 90 days, the permit automatically will be suspended; the permit shall be rescinded within, but not to exceed, 90 days after such suspension, unless the permittee submits proof, and the director finds, within the 90 day period, consistent with the provisions of 19.8.11.1118 NMAC, that:

(1) the director's findings under Subsection B of 19.8.11.1107 NMAC were erroneous;

(2) the permittee or other person responsible has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

(3) the violation, penalty or fee is the subject of good faith appeal, or of an abatement plan or payment schedule with which the permittee or other person responsible is complying to the satisfaction of the responsible agency; or

(4) since the finding was made, the permittee has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee;

B. cessation of operations: after permit suspension or rescission, the permittee shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the director.

[11-29-97; 19.8.11.1110 NMAC - Rn, 19 NMAC 8.2.11.1110, 9-29-2000; A, 4-28-2006]

19.8.11.1111 PERMIT TERMS:

A. Each permit shall be issued for a fixed term not to exceed 5 years. A longer fixed permit term may be granted, if:

- (1) the application is full and complete for the specified longer term; and
- (2) the applicant shows that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing of equipment and the opening of the operation, and this need is confirmed, in writing, by the applicant's proposed source for the financing.

B. Due diligence.

(1) A permit shall terminate, if the permittee has not begun the surface coal mining and reclamation operation covered by the permit within 3 years of the issuance of the permit.

(2) The director may grant reasonable extensions of time for commencement of these operations, upon receipt of a written statement showing that such extensions of time are necessary, if:

(a) litigation precludes the commencement or threatens substantial economic loss to the permittee, or

(b) there are conditions beyond the control and without the fault or negligence of the permittee.

(3) With respect to coal to be mined for use in a synthetic fuel facility or specified major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time that the construction of the synthetic fuel or generating facility is initiated.

(4) Extensions of time granted by the director under Paragraph (2) of Subsection B of 19.8.11.1111 NMAC shall be specifically set forth in the permit and notice of the extension shall be made to the public.

C. Permits may be suspended, revoked, or modified by the director in accordance with 19.8.10.1000, 1002, 1003 and 1005 NMAC, 19.8.13.1300 NMAC and 19.8.29 through 19.8.31 NMAC.

[11-29-97; 19.8.11.1111 NMAC - Rn, 19 NMAC 8.2.11.1111, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1112 CONDITIONS OF PERMITS: GENERAL AND RIGHT OF ENTRY:

Each permit issued by the director shall ensure that:

A. except to the extent that the director otherwise directs in the permit that specific actions be taken, the permittee shall conduct all surface coal mining and reclamation operations as described in the complete application; and

B. the permittee shall allow the authorized representatives of the secretary of the U.S. department of interior, including, but not limited to, inspectors and fee compliance officers and the director to have the rights of entry provided for in 19.8.29.2900 NMAC; and be accompanied by private persons for the purpose of conducting an inspection in accordance with 19.8.29 NMAC, when the inspection is in response to an alleged violation reported to the director by the private person;

C. the permittee shall conduct surface coal mining and reclamation operations only on those lands specifically designated on the maps submitted under 19.8.8 and 19.8.9 NMAC and approved for the term of the permit and which are subject to the performance bond or other equivalent guarantee in effect pursuant to 19.8.14 NMAC;

D. at least 10 days prior to initial surface disturbance, the permittee shall notify the director, in writing, of his intentions to begin operations;

E. the operator shall pay all reclamation fees required for abandoned mine land reclamation under Section 402 of Public Law 95-87 for coal produced under the permit for sale, transfer or use in the manner required by that section.

[11-29-97; 19.8.11.1112 NMAC - Rn, 19 NMAC 8.2.11.1112, 9-29-2000; A, 4-28-2006; A, 12-31-2007]

19.8.11.1113 CONDITIONS OF PERMITS: ENVIRONMENT, PUBLIC HEALTH AND SAFETY:

Each permit issued by the director shall ensure and contain specific conditions requiring that:

A. the permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from noncompliance with any term or condition of the permit, including, but not limited to:

(1) any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) immediate implementation of measures necessary to comply; and

(3) warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance;

B. the permittee shall dispose of solids, sludge, filter backwash, or pollutants removed in the course of treatment or control of waters or emissions to the air in the manner required by 19.8.19 through 19.8.28 NMAC, the act, and these rules and regulations, and which prevent violation of any other applicable state or federal law;

C. the permittee shall conduct his operations:

(1) in accordance with any measure specified in the permit as necessary to prevent significant, imminent environmental harm to the health or safety of the public; and

(2) utilizing any methods specified in the permit by the director in approving alternative methods of compliance with the performance standards of the act and these rules and regulations, in accordance with the provisions of the act, Subsection M of 19.8.11.1106 NMAC and 19.8.19 through 19.8.28 NMAC.

[11-29-97; 19.8.11.1113 NMAC - Rn, 19 NMAC 8.2.11.1113, 9-29-2000; A, 4-28-2006]

19.8.11.1114 CONFORMANCE OF PERMIT:

The director shall include in the approved permit the following provision: The permittee has expressly undertaken in this permit application to comply with various performance standards and design criteria presently contained in or derived from the New Mexico coal surface mining regulations. Such undertakings are made upon the condition and with the understanding that any amendments to 19.8.11 NMAC shall entitle the permittee to apply for and receive a review of the related permit provision for the purpose of conforming the permit to the amended state regulations or making other appropriate permit amendments. The permittee and the mining and minerals division shall meet within 30 days of request by the permittee or notice by the director for the purpose of considering such amendments to the permit as are appropriate.

[11-29-97; 19.8.11.1114 NMAC - Rn, 19 NMAC 8.2.11.1114, 9-29-2000; A, 4-28-2006; A, 08-31-2010]

19.8.11.1115 VERIFICATION OF OWNERSHIP OR CONTROL APPLICATION INFORMATION:

A. In accordance with Subsection E of 19.8.11.1105 NMAC, prior to the issuance of a permit, the director shall review the information in the application provided pursuant to 19.8.7.701 NMAC to determine that such information, including the identification of the operator and all owners and controllers of the operator, is complete and accurate. In making such determination, the director shall compare the information provided in the application with information from other reasonably available sources, including:

(1) the director's inspection and enforcement records; and

(2) state corporation commission or tax records, to the extent they contain information concerning ownership or control links; and

(3) the applicant/violator system; and

(4) other information or records that may be available to the director.

B. If it appears from the information provided in the application pursuant to Subsections C and D of 19.8.7.701 NMAC that none of the persons identified in the application has had any previous mining experience, the director shall inquire of the applicant and investigate whether any person other than those identified in the application will own or control the operation (as either an operator or other owner or controller).

C. If, as a result of the review conducted under Subsections A and B of 19.8.11.1115 NMAC, the director identifies any potential omission, inaccuracy, or inconsistency in the ownership or control information provided in the application, it shall, prior to making a final determination with regard to the application, contact the applicant and require that the matter be resolved through submission of:

(1) an amendment to the application; or

(2) a satisfactory explanation which includes credible information sufficient to demonstrate that no actual omission, inaccuracy, or inconsistency exists; the director shall also take action in accordance with the provisions of 19.8.30 NMAC, where appropriate.

D. Upon completion of the review conducted under this section, the director shall promptly enter into or update all ownership or control information on AVS.

[11-29-97; 19.8.11.1115 NMAC - Rn, 19 NMAC 8.2.11.1115, 9-29-2000; A, 4-28-2006]

19.8.11.1116 REVIEW OF OWNERSHIP OR CONTROL AND VIOLATION INFORMATION:

A. Following the verification of ownership or control information pursuant to 19.8.11.1115 NMAC, the director shall review all reasonably available information concerning violation notices and ownership or control links involving the applicant to determine whether the application can be approved under 19.8.7.702 NMAC. Such information shall include:

(1) with respect to ownership or control links involving the applicant, all information obtained under 19.8.11.1115 NMAC and 19.8.7.701 NMAC; and

(2) with respect to violation notices, all information obtained under 19.8.7.702 NMAC, information obtained from OSM, including information shown in the AVS, and information from the director's own records concerning violation notices.

B. If the review conducted under Subsection A of 19.8.11.1116 NMAC discloses any ownership or control link between the applicant and any person cited in a violation notice:

(1) the director shall so notify the applicant and shall refer the applicant to the agency with jurisdiction over such violation notice; and

(2) the director shall not approve the application unless and until it determines, in accordance with the provisions of 19.8.11.1117 and 1118 NMAC, that:

(a) all ownership or control links between the applicant and any person cited in a violation notice are erroneous or have been rebutted; or

(b) the violation has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

C. Following the director's decision on the application (including unconditional issuance, conditional issuance, or denial of the permit) or following the applicant's withdrawal of the application, the director shall promptly enter all relevant information related to such decision or withdrawal into AVS.

[11-29-97; 19.8.11.1116 NMAC - Rn, 19 NMAC 8.2.11.1116, 9-29-2000; A, 4-28-2006]

19.8.11.1117 PROCEDURES FOR CHALLENGING OWNERSHIP OR CONTROL LINKS SHOWN IN AVS:

A. Challenging AVS linkage and violation status.

(1) Any applicant or other person shown in AVS in an ownership or control link to any person may challenge such link in accordance with the provisions of Subsection B through Subsection D of 19.8.11.1117 NMAC and 19.8.11.1118 NMAC, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the link.

(2) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a federal violation notice may challenge the status of the violation such notice covers in accordance with the provisions of Subsection B through Subsection D of 19.8.11.1117 NMAC and 19.8.11.1118 NMAC, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the violation's status.

(3) Any applicant or other person shown in AVS in an ownership or control link to any person cited in a state violation notice may challenge the status of the violation covered by such notice in accordance with the state program equivalents to Subsection B through Subsection D of 19.8.11.1117 NMAC and 19.8.11.1118 NMAC for the state that issued the violation notice, unless such applicant or other person is bound by a prior administrative or judicial determination concerning the violation's status.

B. Any applicant or other person who wishes to challenge an ownership or control link shown in AVS or a federal violation's status, and who is eligible to do so under the provisions of Paragraphs (1) or (2) of Subsection A of 19.8.11.1117 NMAC, shall submit a written explanation of the challenge's basis, along with any relevant evidentiary materials and supporting documents, to the director.

C. The director shall review any information the applicant or other person submitted under Subsection B of 19.8.11.1117 NMAC and shall make a written decision whether or not the applicant or other person has shown the ownership or control link is erroneous or rebutted or whether the violation the notice covers remains outstanding, has been corrected, is in the process of being corrected or is the subject of a good faith appeal within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

D. Notification of decision.

(1) If, as a result of the decision the director reached under Subsection C of 19.8.11.1117 NMAC, the director determines that the applicant or other person has shown the ownership or control link is erroneous or rebutted or that the violation the notice covers has been corrected, is in the process of being corrected or is the subject of a good faith appeal, the director shall so notify the applicant or other person and OSM, and shall correct the information in AVS.

(2) If, as a result of the decision the director reached under Subsection C of 19.8.11.1117 NMAC, the director determines that the applicant or other person has not shown the ownership or control link is erroneous or rebutted and that the violation the notice covers remains outstanding, the director shall so notify the applicant or other person and OSM, and update the information in AVS, if necessary.

(a) The director shall serve a copy of the decision on the applicant or other person by certified mail. Service shall be complete upon the notice or mail's tender and shall not be deemed incomplete because of a refusal to accept.

(b) The applicant or other person may appeal the director's decision in accordance with 19.8.12 NMAC. The director's decision shall remain in effect during the appeal's pendency, unless the district court grants temporary relief.

[11-29-97; 19.8.11.1117 NMAC - Rn, 19 NMAC 8.2.11.1117, 9-29-2000; A, 4-28-2006]

19.8.11.1118 STANDARDS FOR CHALLENGING OWNERSHIP OR CONTROL LINKS AND THE STATUS OF VIOLATIONS:

A. The provisions of this section shall apply whenever a person has and exercises a right, under the provisions of 19.8.11.1107, 1110, 1116, or 1117 NMAC or under the provisions of 19.8.12 NMAC, to challenge (1) an ownership or control link to any person and/or (2) the status of any violation covered by a notice.

B. Responsibility for decision-making.

(1) Except as provided in Paragraph (3) of Subsection B of 19.8.11.1118 NMAC:

(a) the director before which an application is pending shall have responsibility for making decisions with respect to ownership or control relationships of the application;

(b) the director that issued a permit shall have responsibility for making decisions with respect to the ownership or control relationships of the permit;

(c) the state director for the state that issued a state violation notice shall have responsibility for making decisions with respect to the ownership or control relationships of the violation;

(d) the regulatory agency that issued a violation notice, whether state or federal, shall have responsibility for making decisions concerning the status of the violation covered by such notice, i.e., whether the violation remains outstanding, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal, within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC.

(2) OSM shall have responsibility for making decisions with respect to the ownership or control relationships of a federal violation notice.

(3) OSM review.

(a) With respect to information shown on AVS, the responsibilities referred to in Paragraph (1) of Subsection B of 19.8.11.1118 NMAC shall be subject to the plenary authority of OSM to review any state regulatory authority decision regarding an ownership or control link.

(b) With respect to ownership or control information which has not been entered into AVS by a state and with respect to information shown on AVS relating to the status of a violation, state regulatory authorities' determinations are subject to OSM's program authority oversight under 30 CFR Parts 733, 842, and 843.

C. Burden of proof.

(1) In any formal or informal review of an ownership or control link or of the status of a violation covered by a violation notice, the responsible agency shall make a prima facie determination or showing that such link exists, existed during the relevant period, and/or that the violation covered by such notice remains outstanding. Once such a prima facie determination or showing has been made, the person challenging such link or the status of the violation shall have the burden of proving by a preponderance of the evidence, with respect to any relevant time period:

(a) that the facts relied upon by the responsible agency to establish ownership or control under the definition of "owned or controlled" or "owns or controls" in Paragraph (8) of Subsection O of 19.8.1.7 NMAC or a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Paragraph (8) of Subsection O of 19.8.1.7 NMAC, do not or did not exist;

(b) that a person subject to a presumption of ownership or control under the definition of "owned or controlled" or "owns or controls" in Paragraph (8) of Subsection O of 19.8.1.7 NMAC, does not or did not in fact have the authority directly or indirectly to determine the manner in which surface coal mining operations are or were conducted, or

(c) that the violation covered by the violation notice did not exist, has been corrected, is in the process of being corrected, or is the subject of a good faith appeal within the meaning of Paragraph (1) of Subsection C of 19.8.11.1105 NMAC; provided that the existence of the violation at the time it was cited may not be challenged under the provisions of 19.8.11.1117 NMAC by a permittee, unless such challenge is made by the permittee within the context of 19.8.11.1108 and 1110 NMAC; by any person who had a prior opportunity to challenge the violation notice and who failed to do so in a timely manner; or by any person who is bound by a prior administrative or judicial determination concerning the existence of the violation.

(2) In meeting the burden of proof set forth in Paragraph (1) of Subsection C of 19.8.11.1118 NMAC, the person challenging the ownership or control link or the status of the violation shall present probative, reliable, and substantial evidence and any supporting explanatory materials, which may include before the responsible agency:

(a) affidavits setting forth specific facts concerning the scope of responsibility of the various owners or controllers of an applicant, permittee, or any person cited in a violation notice; the duties actually performed by such owners or controllers; the beginning and ending dates of such owners' or controllers' affiliation with the applicant, permittee, or person cited in a violation notice; and the nature and details of any transaction creating or severing an ownership or control link; or specific facts concerning the status of the violation;

(b) if certified, copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;

(c) if certified, copies of documents filed with or issued by any state, municipal, or federal governmental agency;

(d) an opinion of counsel, when supported by (1) evidentiary materials; (2) a statement by counsel that he or she is qualified to render the opinion; and (3) a statement that counsel has personally and diligently investigated the facts of the matter or, where counsel has not so investigated the facts, a statement that such opinion is based upon information which has been supplied to counsel and which is assumed to be true.

(3) Before any administrative or judicial tribunal reviewing the decision of the responsible agency, any evidence admissible under the rules of such tribunal.

D. Following any determination by a state director or other state agency, or any decision by an administrative or judicial tribunal reviewing such determination, the director shall review the information in AVS to determine if it is consistent with the determination or decision. If it is not, the director shall promptly inform OSM and request that the AVS information be revised to reflect the determination or decision.

[11-29-97; 19.8.11.1118 NMAC - Rn, 19 NMAC 8.2.11.1118, 9-29-2000; A, 4-28-2006]

19.8.11.1119 POST-PERMIT ISSUANCE REQUIREMENTS AND OTHER ACTIONS BASED ON OWNERSHIP, CONTROL AND VIOLATION INFORMATION:

A. For the purposes of future permit eligibility determinations and enforcement actions, the director shall enter into AVS all:

(1) permit records, within 30 days after the permit is issued or subsequent changes made;

(2) unabated or uncorrected violations, within 30 days after the abatement or correction period for a violation expires;

(3) changes to information initially required to be provided by an applicant under 19.8.7.701 NMAC, within 30 days of receiving notice of a change; and

(4) changes in violation status, within 30 days after abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

B. If, at any time, the director discovers that any person owns or controls an operation with an unabated or uncorrected violation, the director will determine whether enforcement action is appropriate under 19.8.31.3109 NMAC. The director shall enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

C. The director shall serve a preliminary finding of permanent permit ineligibility under Subsection C of Section 69-25A-14 NMSA 1978 on an applicant or operator, if the criteria in Paragraphs (1) and (2) of Subsection C of 19.8.11.1119 NMAC are met. In making a finding under this subsection, the director will only consider control relationships and violations which would make, or would have made, the applicant or operator ineligible for a permit under Subsection C of 19.8.11.1105 NMAC or Subsection I of 19.8.11.1106 NMAC. The director shall make a preliminary finding of permanent permit ineligibility if it finds that:

(1) the applicant or operator controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under Subsection C of Section 69-25A-14 NMSA 1978; and

(2) the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the applicant's or operator's intent not to comply with the act, its implementing regulations, the regulatory program, or the permit.

D. The applicant or operator may request a hearing on a preliminary finding of permanent permit ineligibility as stated in Subsection E of 19.8.11.1105 NMAC.

E. Entry into AVS.

(1) If the applicant or operator does not request a hearing, and the time for seeking a hearing has expired, the director shall enter its finding into AVS.

(2) If the applicant or operator requests a hearing, the director shall enter its finding into AVS only if that finding is upheld on administrative appeal.

F. At any time, the director may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If the director identifies such a person, the director shall issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The director's written preliminary finding shall be based on evidence sufficient to establish a prima facie case of ownership or control.

G. After the director issues a written preliminary finding under Subsection F of 19.8.11.1119 NMAC, the director shall allow the person subject to the preliminary finding 30 days in which to submit any information tending to demonstrate the person's lack of ownership or control. If, after reviewing any information the person submits, the director is persuaded that the person is not an owner or controller, the director shall serve the person a written notice to that effect. If, after reviewing any information the person submits, the director still finds that the person is an owner or controller, or if the person does not submit any information within the 30-day period, the director shall issue a written finding and enter its finding into AVS.

H. If the director identifies the person subject to the preliminary finding as an owner or controller under Subsection G of 19.8.11.1119 NMAC, the person may challenge the finding as provided in 19.8.11.1117 and 1118 NMAC.

[19.8.11.1119 NMAC - N, 08-31-2010]

19.8.11.1120 POST-PERMIT ISSUANCE INFORMATION REQUIREMENTS FOR PERMITTEES:

A. Within 30 days after the issuance of a cessation order in accordance with 19.8.30.3000 NMAC, or a federal cessation order issued in accordance with 30 CFR 843.11, the permittee must provide or update all the information required under Subsection C and D of 19.8.7.701 NMAC.

B. The permittee does not have to submit information under Subsection A of 19.8.11.1120 NMAC if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

C. Within 60 days of any addition, departure, or change in position of any person identified in Subsections C or D of 19.8.7.701 NMAC, the permittee must provide:

- (1) the information required under Subsections C or D of 19.8.7.701 NMAC; and
- (2) the date of any departure.

[19.8.11.1120 NMAC - N, 08-31-2010]

19.8.11.1121 CERTIFYING AND UPDATING EXISTING PERMIT APPLICATION INFORMATION:

A. If the applicant or operator has previously applied for a permit and the required information is already in AVS, then the applicant or operator may update the information as follows:

- (1) if all or part of the information already in AVS is accurate and complete, then the applicant or operator may certify to the director by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date;
- (2) if part of the information in AVS is missing or incorrect, the applicant or operator must submit to the director the necessary information or corrections and swear or affirm, under oath and in writing, that the information the applicant or operator submitted is accurate and complete;

(3) if the applicant or operator can neither certify that the data in AVS is accurate and complete nor make needed corrections, then the applicant or operator must include in his or her permit application the information required under 19.8.7.701 and 702 NMAC.

B. The applicant or operator must swear or affirm, under oath and in writing, that all information he or she provides in an application is accurate and complete.

C. The director may establish a central file to house the applicant's or operator's identity information, rather than place duplicate information in each permit application file. The director shall make the information available to the public upon request.

D. After the director approves an application, but before the director issues a permit, the applicant or operator must update, correct, or indicate that no change has occurred in the information previously submitted under 19.8.7.701 and 702 NMAC and 19.8.11.1121 NMAC.

[19.8.11.1121 NMAC - N, 08-31-2010]

PART 12: ADMINISTRATIVE AND JUDICIAL REVIEW OF DECISION

19.8.12.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.12.1 NMAC - N, 9-29-2000]

19.8.12.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.12.2 NMAC - N, 9-29-2000]

19.8.12.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.12.3 NMAC - N, 9-29-2000]

19.8.12.4 DURATION:

Permanent.

[19.8.12.4 NMAC - N, 9-29-2000]

19.8.12.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.12.5 NMAC - N, 9-29-2000]

19.8.12.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.12.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.12.7 DEFINITIONS:

[RESERVED]

[19.8.12.7 NMAC- N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.12.8-19.8.12.1199 [RESERVED]:

[19.8.12.8 - 19.8.12.1199 NMAC - N, 9-29-2000]

19.8.12.1200 ADMINISTRATIVE REVIEW BY THE DIRECTOR:

A. Within 30 days after the applicant or permittee is notified of the final decision of the director concerning the application for a permit, revision or renewal thereof, application for transfer, sale, or assignment of rights, or concerning an application for coal exploration, or pursuant to Paragraph (2) of Subsection E of 19.8.13.1301 NMAC a decision regarding a permit modification, the applicant, permittee or any person with an interest which is or may be adversely affected may request a hearing on the reasons for the final decision in accordance with this section. Such request shall be in writing and state with reasonable specificity the reasons for the request and objections to the director's decision.

B. The director shall commence the hearing within 30 days of such request. This hearing shall be of record, adjudicatory in nature, and no person who presided at an informal conference under 19.8.11.1103 NMAC shall either preside at the hearing or participate in the decision following the hearing, or in any administrative appeal therefrom.

(1) The director may, under such conditions as he may prescribe, grant such temporary relief as he deems appropriate, pending final determination of the proceeding, if:

(a) all parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

(b) the person requesting that relief shows that there is substantial likelihood that he will prevail on the merits of the final determination of the proceeding;

(c) the relief is not to affect adversely the public health or safety, or cause significant, imminent environmental harm to land, air, or water resources; and

(d) the relief sought is not the issuance of a permit where a permit has been denied, in whole or in part, by the director.

(2) For the purpose of such hearing, the director may administer oaths and affirmation, subpoena witnesses, written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including, but not limited to, site inspections of the land to be affected and other surface coal mining and reclamation operations carried on by the applicant in the general vicinity of the proposed operations.

(a) A verbatim record of each public hearing required by this section shall be made, and a transcript made available on the motion of any party or by order of the director.

(b) Ex parte contacts between representatives of the parties before the director and the director shall be prohibited.

(3) Within the time period specified by section 69-25A-29 NMSA 1978 of the act after the close of the record, the director shall issue and furnish the applicant, and each person who participated in the hearing, with the written findings of fact, conclusions of law, and order of the director with respect to the appeal.

(4) The burden of proof at such hearings shall be on the party seeking to reverse the decision of the director.

[11-29-97; 19.8.12.1200 NMAC - Rn, 19 NMAC 8.2.12.1200, 9-29-2000; A, 7-30-2004]

19.8.12.1201 [RESERVED]

[11-29-97; 19.8.12.1201 NMAC - Rn, 19 NMAC 8.2.12.1201, 9-29-2000; Repealed, 4-28-2006]

19.8.12.1202 JUDICIAL REVIEW:

A. A party to a proceeding before the director who is aggrieved by a director's decision issued after a hearing may obtain a review of that decision by an appeal to the district court pursuant to Section 39-3-1.1 NMSA 1978.

B. A person who is or may be aggrieved by a rule or an amendment or repeal of a rule the commission adopts may appeal to the court of appeals for review pursuant to Subsection B of 69-25A-30 NMSA 1978.

[11-29-97; 19.8.12.1202 NMAC - Rn, 19 NMAC 8.2.12.1202, 9-29-2000; A, 4-28-2006]

19.8.12.1203 FORMAL REVIEW OF NOTICES OF VIOLATION, CESSATION ORDERS AND SHOW CAUSE ORDERS BY THE DIRECTOR:

A. Upon receipt of a notice of violation, civil penalty assessment or cessation order pursuant to 19.8.30.3000, 19.8.30.3001 or 19.8.31 NMAC, or any such notice or order's modification, vacation or termination, a permittee or any person having an interest that such order or notice does or may adversely affect may apply to the director for review of the notice or order within 30 days of the notice or order's receipt or within 30 days of its modification, vacation or termination.

B. The application for review shall be in writing, setting forth the applicant's name, address and telephone number; the applicant's interest and, if the applicant is not the operator, how the order or notice to be reviewed adversely affects it; and generally, the grounds alleged and the relief requested.

C. If the permittee or other interested party does not apply for review in writing, they waive the right to review.

D. The filing of an application for review shall not stay the order or notice, or any order or notice's modification, vacation or termination. Pending the review's completion, the applicant may file with the director a written request that the director grant temporary relief in accordance with Subsection D of Section 69-25A-29 NMSA 1978.

E. The review pursuant to Subsection A of 19.8.12.1203 NMAC shall include such investigation as the director deems appropriate and an opportunity for a hearing at the capitol (or such other place as the applicant may agree), at the applicant's request and within 30 days after receiving the request, to enable the applicant to present information relating to the order or notice's issuance, continuance, modification, vacation or termination.

F. The director or his authorized representative shall hold a hearing at the capitol (or such other place as the permittee may agree) within 30 days after actual notice to the permittee of an order to show cause's issuance pursuant to 19.8.30.3002 NMAC.

G. The director or his authorized representative shall give the operator, permittee or other interested persons written notice of the time, place and date of any hearing this

rule requires at least five days prior to the hearing, except that the director or his authorized representative shall give at least 15 days notice for hearings that Subsection F of 19.8.12.1203 NMAC requires. Any times for holding a hearing may be extended by the parties' agreement.

H. All hearings this section requires shall be of record, stenographically recorded, adjudicatory in nature and conducted in accordance with 19.8.12.1200 NMAC. The inspector issuing or causing to be issued the cessation order, notice of violation or order to show cause shall not participate, directly or indirectly, in the decision making process. A party may not introduce as evidence or use to impeach a witness statements another party makes or evidence another party produces at an informal hearing or conference held pursuant to 19.8.30.3004 NMAC, or at an assessment conference held pursuant to 19.8.31.3106 NMAC.

I. The director, or his authorized representative serving as hearing officer, may hold pre-hearing conferences to facilitate stipulation of facts, delineation of the issues, order of presentation or other appropriate procedural rules and settlement.

J. The director shall issue, and serve upon the parties, a written decision and order, including his reasons and findings of fact, as follows:

(1) within 30 days (unless the director has granted temporary relief pursuant to Subsection D of Section 69-25A-29) of a hearing, and after receiving the report of such investigation conducted pursuant to Subsection B of 19.8.12.1203 NMAC, vacating, affirming, modifying or terminating the issuance, continuance, modification, vacation or termination of the order or notice; and

(2) within 60 days of the hearing held pursuant to Subsection F of 19.8.12.1203 NMAC, quashing, in whole or in relevant part, the order to show cause or suspending or revoking, in whole or relevant part, the permit.

K. The district court may review the director's decision pursuant to Subsection A of Section 69-25A-30 NMSA 1978 and 19.8.12.1202 NMAC.

L. The director may consolidate any hearing this rule requires, to the extent practicable without prejudicing the rights of the person to whom a notice, cessation order or order to show cause is directed, with any other hearing provided for by these rules.

[11-29-97; 19.8.12.1203 NMAC - Rn, 19 NMAC 8.2.12.1203, 9-29-2000; A, 4-28-2006]

19.8.12.1204 PETITIONS FOR AWARD OF LEGAL COSTS AND EXPENSES:

A. Who may file. A person may file a petition for award of costs and expenses including attorneys' fees that person has reasonably incurred as a result of his

participation in an administrative review under the act that results in the director issuing a final order pursuant to 19.8.12.1200 or 19.8.12.1203 NMAC.

B. Where to file; time for filing. The person seeking an award for costs and expenses shall file a petition for an award of costs and expenses including attorneys' fees with the director within 45 days after such order's receipt. A person who fails to timely file the petition may waive the right to such an award.

C. Contents of petition. A petition filed under this section shall include the person's name from whom costs and expenses are sought with the following submitted in support of the petition:

- (1)** an affidavit setting forth in detail all costs and expenses including attorneys' fees the person reasonably incurred for, or in connection with, the person's participation in the proceeding;
- (2)** receipts or other evidence of such costs and expenses; and
- (3)** where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area and the individual's performing the services experience, reputation and ability.

D. Answer. Any person served with a copy of the petition shall have 30 days from the petition's service within which to file an answer to the petition.

E. Who may receive an award. The director may award appropriate costs and expenses including attorneys' fees as follows:

- (1)** from the permittee to any person if the person initiates or participates in any administrative proceeding reviewing enforcement actions upon a finding that a violation of the act, rules or permit has occurred, or that an imminent hazard existed, and the district court or director determines that the person made a substantial contribution to the issues' full and fair determination, except that a person's contribution who did not initiate a proceeding must be separate and distinct from the contribution a person initiating the proceeding made;
- (2)** from the mining and minerals division to a person, other than the permittee or his representative, who initiates or participates in a proceeding under the act, prevails in whole or in significant part and achieves at least some degree of success on the merits, upon a finding that such person substantially contributed to the issues' full and fair determination, except that a person's contribution who did not initiate a proceeding must be separate and distinct from the contribution a person initiating the proceeding made;
- (3)** from the mining and minerals division to a permittee where the permittee demonstrates that the director issued an order of cessation, a notice of violation or an

order to show cause why the director should not suspend or revoke the permit in bad faith and for the purpose of harassing or embarrassing the permittee;

(4) from a person to a permittee where the permittee demonstrates that the person initiated a proceeding or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee; or

(5) from a person to the mining and minerals division where it demonstrates that a person applied for review or any party participated in such a proceeding in bad faith and for the purpose of harassing or embarrassing the mining and minerals division.

F. Awards. An award under these sections may include all costs and expenses, including attorneys' fees and expert witness fees, a party reasonably incurred as a result of initiation or participation in a proceeding under the act; and all costs and expenses, including attorneys' fees and expert witness fees, a party reasonably incurred in seeking the award.

G. Appeals. Any person aggrieved by a director's decision concerning the award of costs and expenses in an administrative proceeding under this act may appeal such award to the district court as set forth in 19.8.12.1202 NMAC.

[19.8.12.1204 NMAC - N, 4-28-2006]

PART 13: PERMIT REVIEWS, REVISIONS AND RENEWALS, AND TRANSFER, SALE AND ASSIGNMENT OF RIGHTS GRANTED UNDER PERMITS

19.8.13.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.13.1 NMAC - N, 9-29-2000]

19.8.13.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.13.2 NMAC - N, 9-29-2000]

19.8.13.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.13.3 NMAC - N, 9-29-2000]

19.8.13.4 DURATION:

Permanent.

[19.8.13.4 NMAC - N, 9-29-2000]

19.8.13.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.13.5 NMAC - N, 9-29-2000]

19.8.13.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.13.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.13.7 DEFINITIONS:

[RESERVED]

[19.8.13.7 NMAC- N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.13.8-19.8.13.1299 [RESERVED]:

[19.8.13.8 - 19.8.13.1299 NMAC - N, 9-29-2000]

19.8.13.1300 DIRECTOR'S REVIEW OF OUTSTANDING PERMITS:

A. The director shall review each permit issued and outstanding during the term of the permit. This review shall occur not later than the middle of the permit term and as required by 19.8.10.1000, 1001, 1003 and 1005 NMAC.

B. For permits of longer than five year terms, a review of the permit shall be no less frequent than the permit midterm or every five years, whichever is more frequent.

C. Each permit which authorizes the use of an experimental practice shall be reviewed in its entirety by the director at a frequency set forth in the approved permit, but no less frequently than every 2 1/2 years. Copies of the decision of the director shall

be sent to the permittee and shall be subject to the provisions for administrative and judicial review of 19.8.12 NMAC.

D. The director may, by order, require reasonable revisions or modification of the permit provisions to ensure compliance with the act and 19.8 NMAC.

E. Copies of the decision of the director shall be sent to the permittee.

F. Any order of the director requiring revision or modification of permits shall be based upon written findings and shall be subject to the provisions for administrative and judicial review of decisions in 19.8.12 NMAC.

[11-29-97; 19.8.13.1300 NMAC - Rn, 19 NMAC 8.2.13.1300, 9-29-2000; A, 7-30-2004]

19.8.13.1301 PERMIT REVISIONS:

A. A revision to a permit shall be obtained:

(1) for changes in the surface coal mining or reclamation operations described in the original application and approved under the original permit, when such changes constitute a significant departure from the method of conducting mining or reclamation operations contemplated by the original permit; significant departures as used herein include, but are not limited to:

(a) significant changes in the permit area boundary;

(b) changes in the method of extracting coal from the earth (e.g. change from surface to underground mine);

(c) experimental practices as that term is used in 19.8.10 NMAC and Section 69-25A-33 NMSA 1978 of the act;

(d) changes which would require a variance under 19.8.10.1003 NMAC;

(e) changes which may have an adverse effect on the environment of a nature not originally covered by the approved permit; or

(f) changes which may have an effect on performance bond requirements.

(2) when required by an order issued under 19.8.13.1300 NMAC;

(3) in order to continue operation after the cancellation or material reduction of the liability insurance policy, capability or self-insurance performance bond, or other equivalent guarantee upon which the original permit was issued; or

(4) as otherwise required by the act and 19.8 NMAC.

B. A permit modification shall be obtained for all other changes to a permit that are not classified as a permit revision.

C. The operator may not implement any permit revision or permit modification before obtaining the director's written approval.

D. The application for revision shall be filed in accordance with the following:

(1) the permittee shall submit the application to the director within the time provided for in Paragraph (2) of Subsection B of 19.8.5.504 NMAC;

(2) applications for all types of revisions of a permit shall contain:

(a) an identification of the permit by permit number or other appropriate reference which is the subject of the revision;

(b) a specific description of the requested change in the terms of the permit;

(c) a specific description of any changes in the mining and reclamation operation which may have an effect on performance bond requirements; and

(d) such other information as may be deemed necessary to the director to determine if the proposed revision will comply with the act and 19.8 NMAC.

E. Hearing and notice requirements.

(1) Permit revision. Any application for a revision shall, at a minimum, be subject to the requirements of 19.8.11 NMAC and 19.8.12 NMAC.

(2) Permit modification.

(a) Within 10 days after the filing of a complete application for a permit modification, the director shall issue a decision approving or denying the application in whole or in part. A written copy of the decision shall be promptly provided to the permittee and to all persons on a list maintained by the director who have requested notice of applications under the act for the specific permit being modified.

(b) Within 30 days after the decision notification required by Subparagraph (a) of Paragraph (2) of Subsection E of 19.8.1301 NMAC, the permittee or any person with an interest which is or may be adversely affected may request a formal hearing in regard to the director's decision, in accordance with 19.8.12.1200 NMAC.

F. An application for a permit revision shall be reviewed by the director to determine whether a new or updated determination of the probable hydrologic consequences as described in Subsection C of 19.8.9.907 NMAC or a new or updated assessment of the

probable cumulative impacts as described in Subsection C of 19.8.11.1106 NMAC shall be required.

G. Any revisions which propose significant departures in the experimental practice shall require concurrence by the director of the office of surface mining. Revisions that do not propose significant departures in the experimental practice shall not require concurrence by the director of the office of surface mining.

H. The director shall approve or disapprove the complete application for revision, in accordance with the requirements of 19.8.11 NMAC and Subsection B of 19.8.5.504 NMAC.

I. Any extensions to the area covered by a permit, except for incidental boundary revisions, shall be made by application for a new permit and shall not be approved under this part.

[11-29-97; 19.8.13.1301 NMAC - Rn, 19 NMAC 8.2.13.1301, 9-29-2000; A, 7-30-2004; A, 12-31-2007]

19.8.13.1302 PERMIT RENEWALS: GENERAL REQUIREMENTS:

A. Any valid, existing permit issued pursuant to the act and 19.8 NMAC shall carry with it the right of successive renewal upon expiration of the term of the permit, in accordance with 19.8.13.1303 through 1305 NMAC. Successive renewal shall be available only for those areas which were specifically approved by the director on the application for the existing permit as within the boundaries of the permit.

B. Permit renewal shall not be available for conducting surface coal mining and reclamation operations on lands beyond the boundaries of the permit area approved under the existing permit. Approval of permits to conduct operations on these lands, including, but not limited to, any remainder of the mine plan area described in the application for the existing permit, shall be obtained in accordance with Paragraph (2) of Subsection B of 19.8.13.1303 NMAC.

[11-29-97; 19.8.13.1302 NMAC - Rn, 19 NMAC 8.2.13.1302, 9-29-2000]

19.8.13.1303 PERMIT RENEWALS: COMPLETE APPLICATIONS:

A. Contents. Complete applications for renewals of a permit shall be made at least 120 days before the expiration of the permit involved. Renewal applications shall include at a minimum:

(1) a statement of the name and address of the permittee, the term of the renewal requested, the permit number, and a description of any changes to the matters set forth in the original application for a permit or prior permit renewal;

(2) a copy of the newspaper notice and proof of publication of same under Subsection A of 19.8.11.1100 NMAC; and

(3) evidence that liability insurance policy or adequate self-insurance under 19.8.14.1414 NMAC will be provided by the applicant for the proposed period of renewal.

B. Processing and review.

(1) Complete applications for renewal shall be subject to the requirements of public notification and participation contained in 19.8.11.1100 through 1103 NMAC.

(2) If a complete application for renewal of a permit includes a proposal to extend the mining and reclamation operation beyond the boundaries authorized in the existing permit, the portion of the complete application for renewal of a valid permit which addresses any new land areas shall be subject to the full standards applicable to new permit applications under the act, 19.8.5 NMAC, 19.8.7 NMAC, 19.8.8 NMAC, 19.8.9 NMAC, 19.8.10 NMAC, 19.8.11 NMAC, 19.8.12 NMAC, 19.8.13 NMAC, 19.8.14 NMAC.

(3) If the surface coal mining reclamation operations authorized under the original permit were not subject to the standards contained in Subparagraphs (a) and (b) of Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act and 19.8.10.1006 NMAC, because the permittee complied with the exceptions to Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act, the portion of the application for renewal of the permit which addresses any new land areas previously identified in the reclamation plan submitted pursuant to 19.8.9 NMAC for the original permit shall not be subject to the standards contained in Subparagraphs (a) and (b) of Paragraph (5) of Subsection B of Section 69-25A-14 NMSA 1978 of the act and 19.8.10.1006 NMAC.

(4) Before finally acting to grant the permit renewal, the director shall require any additional performance bond needed by the permittee to comply with the requirements of Paragraph (4) of Subsection A of 19.8.13.1305 NMAC to be filed with the director.

[11-29-97; 19.8.13.1303 NMAC - Rn, 19 NMAC 8.2.13.1303, 9-29-2000; A, 12-31-2007]

19.8.13.1304 PERMIT RENEWALS: TERMS:

Any permit renewal shall be for a term not to exceed the period of the original permit established under 19.8.11.1111 NMAC.

[11-29-97; 19.8.13.1304 NMAC - Rn, 19 NMAC 8.2.13.1304, 9-29-2000]

19.8.13.1305 PERMIT RENEWALS: APPROVAL OR DENIAL:

A. The director shall, upon the basis of a complete application for renewal and completion of all procedures required under 19.8.13.1303 and 1304 NMAC, issue a renewal of a permit, unless it is established and written findings by the director are made that:

(1) the terms and conditions of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operations are not in compliance with the environmental protection standards under the act and 19.8.19 NMAC through 19.8.28 NMAC;

(3) the requested renewal substantially jeopardizes the operator's continuing responsibility to comply with the act and 19.8 NMAC on existing permit areas;

(4) the operator has not provided evidence that any performance bond required to be in effect for the operations will continue in full force and effect for the proposed period of renewal, as well as any additional bond the director might require pursuant to 19.8.14 NMAC; or

(5) any additional revised or updated information required by the director has not been provided by the applicant.

B. In determining whether to approve or deny a renewal, the burden shall be on the opponents of renewal.

C. The director shall send copies of his decision to the applicant, any persons who filed objections or comments to the renewal, and to any persons who were parties to any informal conference held on the permit renewal.

D. Any person having an interest which is or may be adversely affected by the decision of the director shall have the right to administrative and judicial review set forth in 19.8.12 NMAC.

[11-29-97; 19.8.13.1305 NMAC - Rn, 19 NMAC 8.2.13.1305, 9-29-2000; A, 12-31-2007]

19.8.13.1306 TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS: GENERAL REQUIREMENTS:

No transfer, assignment, or sale of the rights granted under any permit issued pursuant to the act and 19.8 NMAC shall be made without the prior written approval of the director, in accordance with 19.8.13.1306 through 1308 NMAC.

[11-29-97; 19.8.13.1306 NMAC - Rn, 19 NMAC 8.2.13.1306, 9-29-2000]

**19.8.13.1307 TRANSFER, ASSIGNMENT OR SALE OF PERMIT RIGHTS:
OBTAINING APPROVAL:**

A. Any person seeking to succeed by transfer, assignment, or sale to the rights granted by a permit issued shall, pursuant to the act and 19.8 NMAC, prior to the date of such transfer, assignment or sale:

(1) obtain the performance bond coverage of the original permittee by:

(a) obtaining transfer of the original bond;

(b) obtaining a written agreement with the original permittee and all subsequent successors in interest (if any) that the bond posted by the original permittee and all successors shall continue in force on all areas affected by the original permittee and all successors, and supplementing such previous bonding with such additional bond as may be required by the director. If such an agreement is reached, the director may authorize for each previous successor and the original permittee the release of any remaining amount of bond in excess of that required by the agreement;

(c) providing sufficient bond to cover the original permit in its entirety from inception to completion of reclamation operations; or

(d) such other methods as would provide that reclamation of all areas affected by the original permittee is assured in an amount required by 19.8.14 NMAC.

(2) provide the director with an application for approval of such proposed transfer, assignment, or sale, including:

(a) the name and address of the existing permittee;

(b) the name and address of the person proposing to succeed by such transfer, assignment, or sale and the name and address of that person's resident agent;

(c) for surface mining activities, the same information as is required by 19.8.7.701, 702, 703, 704.C, 706 and 707 NMAC for applications for new permits for those activities; or

(d) for underground mining activities, the same information as is required by Subparagraph (c) of Paragraph (2) of Subsection A of 19.8.13.1307 NMAC for applications for new permits for those activities.

(3) obtain the written approval of the director for transfer, assignment or sale of rights according to Subsection C of 19.8.13.1307 NMAC.

B. Public notice and comment period.

(1) The person applying for approval of such transfer, assignment or sale of rights granted by a permit shall advertise the filing of the application in a newspaper of general circulation in the county of the proposed surface coal mining and reclamation operations, indicating the name and address of the applicant, the original permittee, the number and particular geographic location of the permit, and the address to which written comments may be sent under this paragraph.

(2) Any person whose interests are or may be adversely affected, including, but not limited to, the head of any local, state, tribal or federal government agency may submit written comments on the application for approval to the director within 30 days.

C. The director may, upon the basis of the applicant's compliance with the requirements of Subsections A and B of 19.8.13.1307 NMAC, grant written approval for the transfer, sale, or assignment of rights under a permit, if he first finds, in writing, that:

(1) the person seeking approval will conduct the operations covered by the permit in accordance with the criteria specified in the act, 19.8.10 NMAC and 19.8.11.1106 through 1108 NMAC.

(2) the applicant has, in accordance with Paragraph (1) of Subsection A of 19.8.13.1307 NMAC, submitted a performance bond or other guarantee as required by 19.8.14 NMAC and at least equivalent to the bond or other guarantee of the original permittee; and

(3) the applicant will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless and until he has obtained a new permit or a revised permit in accordance with the act and 19.8 NMAC.

(4) the applicant is eligible to receive a permit in accordance with Subsection C of 19.8.11.1105 NMAC.

D. The director shall notify the permittee, the successor in interest, commenters and the director of the office of surface mining of his findings.

E. The successor in interest shall immediately provide notice to the director of the consummation of the transfer, assignment or sale of permit rights.

[11-29-97; 19.8.13.1307 NMAC - Rn, 19 NMAC 8.2.13.1307, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.13.1308 REQUIREMENTS FOR NEW PERMITS FOR PERSONS SUCCEEDING TO RIGHTS GRANTED UNDER A PERMIT:

A. A successor in interest to a permittee who is able to obtain the bond coverage of the original permittee may continue surface coal mining and reclamation operations

according to the approved mining and reclamation plan and permit of the original permittee.

B. Pursuant to Paragraph (3) of Subsection C of 19.8.13.1307 NMAC, any successor in interest seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit shall:

(1) make application for a new permit under 19.8.5 NMAC through 19.8.12 NMAC, if the change involves conducting operations outside the original permit area; or

(2) make application for a revised permit under 19.8.13.1301 NMAC.

[11-29-97; 19.8.13.1308 NMAC - Rn, 19 NMAC 8.2.13.1308, 9-29-2000]

PART 14: GENERAL REQUIREMENTS FOR BONDING OF SURFACE COAL MINING AND RECLAMATION OPERATIONS

19.8.14.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.14.1 NMAC - N, 9-29-2000]

19.8.14.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.14.2 NMAC - N, 9-29-2000]

19.8.14.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.14.3 NMAC - N, 9-29-2000]

19.8.14.4 DURATION:

Permanent.

[19.8.14.4 NMAC - N, 9-29-2000]

19.8.14.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.14.5 NMAC- N, 9-29-2000]

19.8.14.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.14.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.14.7 DEFINITIONS:

[RESERVED]

[19.8.14.7 NMAC- N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.14.8-19.8.14.1399 [RESERVED]:

[19.8.14.8 - 19.8.14.1399 NMAC - N, 9-29-2000]

19.8.14.1400 PROPOSAL FOR BOND:

A. The applicant shall provide a bonding proposal to the director for review and comment following approval of the permit application but prior to permit issuance. The proposal shall include all information required by this part relating to the nature of bond proposed, including a recommendation as to the margin required in Paragraph (1) of Subsection E of 19.8.14.1409 NMAC.

B. The director shall review and accept or reject such proposal within 60 days of receipt of the proposal. Such determination shall be in writing and shall contain the reasons for the director's determination.

[11-29-97; 19.8.14.1400 NMAC - Rn, 19 NMAC 8.2.14.1400, 9-29-2000]

19.8.14.1401 REQUIREMENT TO FILE A BOND:

A. After a permit application under 19.8.5 NMAC through 19.8.13 NMAC has been approved, but before a permit is issued, the applicant shall file with the director, on a form prescribed and furnished by the director, a bond or bonds for performance made payable to the state of New Mexico and conditioned upon the faithful performance of all the requirements of the act, the regulatory program, the permit, and the reclamation plan.

B. Bond coverage requirements.

(1) The bond or bonds shall cover the entire permit area, or an identified increment of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations during the initial term of the permit.

(2) Before surface coal mining and reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file with the director an additional bond or bonds to cover such increments in accordance with this section.

(3) The operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application (under 19.8.5 NMAC through 19.8.13 NMAC), and shall specify the bond amount to be provided for each area or increment.

(4) Independent increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the director become necessary pursuant to 19.8.14.1414 NMAC.

C. An operator shall not disturb any surface areas, succeeding increments, or extend any underground shafts, tunnels or operations prior to acceptance by the director of the required performance bond.

D. The applicant shall file, with the approval of the director, a bond or bonds under one of the following schemes to cover the bond amounts for the permit area as determined in accordance with 19.8.14.1404 NMAC:

(1) a performance bond or bonds for the entire permit area;

(2) a cumulative bond schedule and the performance bond required for full reclamation of the initial area to be disturbed; or

(3) an incremental bond schedule and the performance bond required for the first increment in the schedule.

[11-29-97; 19.8.14.1401 NMAC - Rn, 19 NMAC 8.2.14.1401, 9-29-2000; A, 12-31-2007]

19.8.14.1402 FORM OF THE PERFORMANCE BOND:

The director shall prescribe the form of the performance bond. The director may allow for:

A. a surety bond;

- B.** a collateral bond;
- C.** a self-bond; or
- D.** a combination of any of these bonding methods.

[11-29-97; 19.8.14.1402 NMAC - Rn, 19 NMAC 8.2.14.1402, 9-29-2000]

19.8.14.1403 PERIOD OF LIABILITY:

A. Duration and phased bonding option.

(1) Performance bond liability shall be for the duration of the surface coal mining and reclamation operation and for a period which is coincident with the operator's period of extended responsibility for successful revegetation provided in 19.8.20.2065 NMAC or until achievement of the reclamation requirements of the act, regulatory programs, and permit, whichever is later.

(2) With the approval of the director, a bond may be posted and approved to guarantee specific phases of reclamation within the permit area provided the sum of phase bonds posted equals or exceeds the total amount required under 19.8.14.1405 and 1406 NMAC. The scope of work to be guaranteed and the liability assumed under each phase bond shall be specified in detail.

B. Isolated and clearly defined portions of the permit area requiring extended liability may be separated from the original area and bonded separately with the approval of the director. Such areas shall be limited in extent and not constitute a scattered, intermittent, or checkerboard pattern of failure. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the director.

C. If the director approves a long-term, intensive agricultural post-mining land use, in accordance with Subparagraph (c) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC, the applicable 5 or 10 year period of liability shall commence at the date of initial planting for such long-term agricultural use.

D. Bond liability limitations.

(1) The bond liability of the permittee shall include only those actions which the permittee is obligated to take under the permit, including completion of the reclamation plan, so that the land will be capable of supporting the postmining land use approved under 19.8.20.2075 NMAC.

(2) Implementation of an alternative postmining land use approved under 19.8.20.2075 NMAC which is beyond the control of the permittee, need not be covered

by the bond. Bond liability for prime farmland shall be as specified in Paragraph (2) of Subsection C of 19.8.14.1412 NMAC.

[11-29-97; 19.8.14.1403 NMAC - Rn, 19 NMAC 8.2.14.1403, 9-29-2000; A, 12-31-2007]

19.8.14.1404 DETERMINATION OF BOND AMOUNT:

A. The amount of the bond required for each bonded area shall:

- (1)** be determined by the director;
- (2)** depend upon the requirements of the approved permit and reclamation plan;
- (3)** reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential; and
- (4)** be based on, but not limited to, the estimated cost submitted by the permit applicant.

B. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the state of New Mexico in the event of forfeiture, and in no case shall the total bond initially posted for the entire area under one permit be less than \$10,000.

C. An operator's financial responsibility under 19.8.20.2069 and 2070 NMAC for repairing material damage resulting from subsidence may be satisfied by the liability insurance policy required under 19.8.14.1415 NMAC.

[11-29-97; 19.8.14.1404 NMAC - Rn, 19 NMAC 8.2.14.1404, 9-29-2000]

19.8.14.1405 ADJUSTMENT OF AMOUNT:

A. The amount of the bond or deposit required and the terms of the acceptance of the permittee's bond shall be adjusted by the director from time to time as the area requiring bond coverage is increased or decreased or where the cost of future reclamation changes. The director may specify periodic times or set a schedule for reevaluating and adjusting the bond amount to fulfill this requirement.

B. The director shall:

- (1)** notify the permittee, the surety, and any person with a property interest in collateral who has requested notification under Subsection F of 19.8.14.1410 NMAC of any proposed adjustment to the bond amount; and

(2) provide the permittee an opportunity for an informal conference on the adjustment.

C. A permittee may request reduction of the amount of the performance bond upon submission of evidence to the director proving that the permittee's method of operation or other circumstances reduces the estimated cost for the state of New Mexico to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond release subject to procedures of 19.8.14.1413 NMAC.

D. In the event that an approved permit is revised in accordance with 19.8.5 NMAC through 19.8.13 NMAC, the director shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

[11-29-97; 19.8.14.1405 NMAC - Rn, 19 NMAC 8.2.14.1405, 9-29-2000]

19.8.14.1406 GENERAL TERMS AND CONDITIONS OF BOND:

A. The performance bond shall be in an amount determined by the director as provided in 19.8.14.1405 NMAC.

B. The performance bond shall be payable to the state of New Mexico.

C. The performance bond shall be conditioned upon faithful performance of all the requirements of the act, 19.8.14 NMAC, the regulatory program, and the approved permit, including completion of the reclamation plan.

D. The duration of the bond shall be for the time period provided in 19.8.14.1403 NMAC.

E. Insolvency or bankruptcy.

(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the director and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the director. The director, upon notification received through procedures of Paragraph (1) of Subsection E of 19.8.14.1406 NMAC or from the permittee, shall, in writing, notify the operator who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the operator shall cease coal extraction and shall comply with the provisions of

19.8.20.2074 NMAC and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the director has determined that an acceptable bond has been posted.

[11-29-97; 19.8.14.1406 NMAC - Rn, 19 NMAC 8.2.14.1406, 9-29-2000; A, 12-31-2007]

19.8.14.1407 BONDING REQUIREMENTS FOR UNDERGROUND COAL MINES AND LONG-TERM COAL-RELATED SURFACE FACILITIES AND STRUCTURES:

A. Responsibilities. The director shall require bond coverage, in an amount determined under 19.8.14.1404 NMAC, for long-term surface facilities and structures, and for areas disturbed by surface impacts incident to under-ground mines, for which a permit is required. Specific reclamation techniques required for underground mines and long-term facilities shall be considered in determining the amount of bond to complete the reclamation.

B. Long-term period of liability.

(1) The period of liability for every bond covering long-term surface disturbances shall commence with the issuance of a permit, except that to the extent that such disturbances will occur on a succeeding increment to be bonded, such liability will commence upon the posting of the bond for that increment before the initial surface disturbance of that increment. The liability period shall extend until all reclamation, restoration, and abatement work under the permit has been completed and the bond is released under the provisions of 19.8.14.1412 NMAC, or until the bond has been replaced or extended in accordance with Paragraph (3) of Subsection B of 19.8.14.1407 NMAC.

(2) Long-term surface disturbances shall include long-term coal-related surface facilities and structures, and surface impacts incident to underground coal mining, which disturb an area for a period that exceeds 5 years. Long-term surface disturbances include, but are not limited to: surface features of shafts and slope facilities, coal refuse areas, powerlines, bore-holes, ventilation shafts, preparation plants, machine shops, roads, and loading and treatment facilities.

(3) To achieve continuous bond coverage for long-term surface disturbances, the bond shall be conditioned upon extension, replacement, or payment in full, 30 days prior to the expiration of the bond term.

(4) Continuous bond coverage shall apply throughout the period of extended responsibility for successful revegetation and until the provisions of 19.8.14.1412 NMAC have been met.

C. Bond forfeiture. The director shall take action to forfeit a bond pursuant to this section, if 30 days prior to bond expiration, the operator has not filed:

(1) a performance bond for a new term as required for continuous coverage,
or

(2) a performance bond providing coverage for the period of liability, including the period of extended responsibility for successful revegetation.

[11-29-97; 19.8.14.1407 NMAC - Rn, 19 NMAC 8.2.14.1407, 9-29-2000; A, 12-31-2007]

19.8.14.1408 SURETY BONDS:

A. A surety bond shall be executed by the operator and a corporate surety licensed to do business in the state.

B. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the director. The director shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

[11-29-97; 19.8.14.1408 NMAC - Rn, 19 NMAC 8.2.14.1408, 9-29-2000]

19.8.14.1409 COLLATERAL BONDS:

A. Collateral bonds, except for letters of credit, cash accounts, and real property, shall be subject to the following conditions:

(1) the director shall keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in 19.8.14 NMAC;

(2) the director shall value collateral at its current market value, not at face value;

(3) the director shall require that certificates of deposit be made payable to or assigned to the state of New Mexico, both in writing and upon the records of the bank issuing the certificates; if assigned, the director shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates;

(4) the director shall not accept an individual certificate of deposit in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

B. Letters of credit shall be subject to the following conditions:

(1) the letter may be issued only by a bank organized or authorized to do business in the United States;

(2) letters of credit shall be irrevocable during their terms; a letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the state of New Mexico if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(3) the letter of credit shall be payable to the state of New Mexico upon demand, in part or in full, upon receipt from the director of a notice of forfeiture issued in accordance with 19.8.14.1413 NMAC.

C. Real property posted as a collateral bond shall meet the following conditions:

(1) The applicant shall grant the state of New Mexico a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with state law or otherwise dispose of the property in the event of forfeiture under 19.8.14.1414 NMAC.

(2) In order for the director to evaluate the adequacy of the real property offered to satisfy collateral requirements, the applicant shall submit a schedule of the real property which shall be mortgaged or pledged to secure the obligations under the indemnity agreement. The list shall include:

(a) a description of the property;

(b) the fair market value as determined by an independent appraisal conducted by a qualified appraiser, previously approved by the director; and

(c) proof of possession and title to the real property.

(3) The property may include land which is part of the permit area; however, land pledged as collateral for a bond under this section shall not be disturbed under any permit while it is serving as security under this section.

D. Cash accounts shall be subject to the following conditions:

(1) the director may authorize the operator to supplement the bond through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the state of New Mexico; the total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with 19.8.14.1412 NMAC;

(2) any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the director has approved the payment of interest to the operator;

(3) certificates of deposit may be substituted for a cash account with the approval of the director;

(4) the director shall not accept an individual cash account in an amount in excess of \$100,000 or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

E. Fluctuating collateral value.

(1) If the nature of the collateral proposed to be given as security for a bond is subject to fluctuations in value over time, the director shall require that such collateral have a fair market value at the time of permit approval in excess of the bond amount by a reasonable margin. The amount of such margin shall reflect changes in value anticipated as probable of occurrence over a period of five years, including depreciation, appreciation, marketability and market fluctuation. In any event, the director shall require a margin for legal fees and costs of disposition of the collateral.

(2) The annual report shall report percentage changes in the fair market value of any collateral accepted by the director pursuant to this subsection since the time of the last report.

(3) The bond value of collateral may be evaluated at any time but it shall be evaluated as part of permit renewal and, if necessary, the performance bond amount increased or decreased. In no case shall the bond value of collateral exceed the market value.

F. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the director at the time collateral is offered.

[11-29-97; 19.8.14.1409 NMAC - Rn, 19 NMAC 8.2.14.1409, 9-29-2000; A, 12-31-2007]

19.8.14.1410 SELF-BONDING:

A. The director may accept a self-bond from an applicant for a permit if all of the following conditions are met by the applicant, or its parent corporation guarantor:

(1) the applicant designates a suitable agent to receive service of process in the state.

(2) the applicant has been in continuous operation as a business entity for a period of not less than 5 years. Continuous operation shall mean that business was conducted over a period of 5 years immediately preceding the time of application.

(a) The director may allow a joint venture or syndicate with less than 5 years of continuous operation to qualify under this requirement, if each member of the joint

venture or syndicate has been in continuous operation for at least 5 years immediately preceding the time of application.

(b) When calculating the period of continuous operation, the director may exclude past periods of interruption to the operation of the business entity that were beyond the applicant's control and that do not affect the applicant's likelihood of remaining in business during the proposed surface coal mining and reclamation operations.

(3) The applicant submits financial information in sufficient detail to show that the applicant meets one of the following criteria:

(a) the applicant has a current rating for its most recent bond issuance of "A" or higher as issued by either Moody's investor service or Standard and Poor's corporation;

(b) the applicant has a tangible net worth of at least \$10 million, a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater; or

(c) the applicant's fixed assets in the United States total at least \$20 million, and the applicant has a ratio of total liabilities to net worth of 2.5 times or less, and a ratio of current assets to current liabilities of 1.2 times or greater.

(4) The applicant submits:

(a) financial statements for the most recently completed fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles and containing the accountant's audit opinion or review opinion of the financial statements with no adverse opinion;

(b) unaudited financial statements for completed quarters in the current fiscal year; and

(c) additional unaudited information as requested by the director.

B. The director may accept a written guarantee for an applicant's self-bond from a parent corporation guarantor, if the guarantor meets the conditions of Paragraphs (1) through (4) of Subsection A of 19.8.14.1410 NMAC as if it were the applicant. Such a written guarantee shall be referred to as a "corporate guarantee." The terms of the corporate guarantee shall provide for the following:

(1) if the applicant fails to complete the reclamation plan, the guarantor shall do so or the guarantor shall be liable under the indemnity agreement to provide funds to

the state of New Mexico sufficient to complete the reclamation plan, but not to exceed the bond amount;

(2) the corporate guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the applicant and to the director at least 90 days in advance of the cancellation date, and the director accepts the cancellation;

(3) the cancellation may be accepted by the director if the applicant obtains suitable replacement bond before the cancellation date or if the lands for which the self-bond, or portion thereof, was accepted have not been disturbed.

C. For the director to accept an applicant's self-bond, the total amount of the outstanding and proposed self-bonds of the applicant for surface coal mining and reclamation operations shall not exceed 25 percent of the applicant's tangible net worth in the United States. For the director to accept a corporate guarantee, the total amount of the corporate guarantor's present and proposed self-bonds and guaranteed self-bonds for surface coal mining and reclamation operations shall not exceed 25 percent of the guarantor's tangible net worth in the United States.

D. If the director accepts an applicant's self-bond, an indemnity agreement shall be submitted subject to the following requirements:

(1) the indemnity agreement shall be executed by all persons and parties who are to be bound by it, including the corporate guarantor, and shall bind each jointly and severally;

(2) corporations applying for a self-bond, and parent and non-parent corporations guaranteeing an applicant's self-bond shall submit an indemnity agreement signed by two corporate officers who are authorized to bind their corporations; a copy of such authorization shall be provided to the director along with an affidavit certifying that such an agreement is valid under all applicable federal and state laws; in addition, the guarantor shall provide a copy of the corporate authorization demonstrating that the corporation may guarantee the self-bond and execute the indemnity agreement;

(3) if the applicant is a partnership, joint venture or syndicate, the agreement shall bind each partner or party who has a beneficial interest, directly or indirectly, in the applicant;

(4) pursuant to 19.8.14.1413 NMAC, the applicant or corporate guarantor shall be required to complete the approved reclamation plan for the lands in default or to pay to the state of New Mexico an amount necessary to complete the approved reclamation plan, not to exceed the bond amount.

E. The director may require self-bonded applicants and corporate guarantors to submit an update of the information required under Paragraphs (3) and (4) of

Subsection A of 19.8.14.1410 NMAC within 90 days after the close of each fiscal year following the issuance of the self-bond or corporate guarantee.

F. If at any time during the period when a self-bond is posted, the financial conditions of the applicant or the corporate guarantor change so that the criteria of Paragraph (3) of Subsection A of 19.8.14.1410 NMAC and Subsection C of 19.8.14.1410 NMAC are not satisfied, the permittee shall notify the director immediately and shall within 90 days post an alternate form of bond in the same amount as the self-bond. Should the permittee fail to post an adequate substitute bond, the provisions of Subsection E of 19.8.14.1406 NMAC shall apply.

[11-29-97; 19.8.14.1410 NMAC - Rn, 19 NMAC 8.2.14.1410, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.14.1411 REPLACEMENT OF BONDS:

A. The director may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

B. The director shall not release existing performance bonds until the permittee has submitted, and the director has approved, acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond under 19.8.14.1412 NMAC.

[11-29-97; 19.8.14.1411 NMAC - Rn, 19 NMAC 8.2.14.1411, 9-29-2000; A, 12-31-2007]

19.8.14.1412 REQUIREMENT TO RELEASE PERFORMANCE BONDS:

A. Bond release application.

(1) The permittee may file an application with the director for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the director in order to properly evaluate the completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be established in the mining and reclamation plan approved by the director.

(2) An application for a bond release shall at a minimum contain the following information:

(a) the permittee's name, address and the appropriate permit number;

(b) an accurate legal description of the land sought for bond release (either metes and bounds or precise section, township and range designations);

(c) the location of the area proposed for bond release shown on a USGS 7.5' map, which should also show the permit boundaries;

(d) a brief narrative summarizing the past history of the mine, the type, amount and date of the current bonding instrument, the number of acres included in the bond release application and the portion it represents of the total permit area, a description of the type and dates of the reclamation performed with a summary of the results achieved as they relate to the approved reclamation plan, and any other pertinent information that the applicant or the director may consider appropriate;

(e) a table listing the names, addresses and number of acres held by each of the surface and mineral owners of record in the area proposed for bond release;

(f) copies of letters sent to adjoining landowners, local governmental bodies, tribal governments, planning agencies, sewage and water treatment authorities, and water companies in the locality of the reclamation operation, notifying them of the permittee's intention to seek bond release; and

(g) other maps or other information as may be appropriate or required by the director to locate or characterize the areas proposed for bond release, revegetation, hydrological or other reclamation issues;

(h) the permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of SMCRA, the act, the regulatory program, and the approved reclamation plan; a certification shall be submitted for each application or phase of bond release.

(3) Within 30 days after an application for bond release has been filed with the director, the operator shall submit a copy of an advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the permittee's name, permit number and approval date, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the operator's approved reclamation plan, and the name and address of the director, to whom written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to Subsections F and H of 19.8.14.1412 NMAC.

B. Inspection by director.

(1) Upon receipt of the bond release application, the director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other

factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the director in making the bond release inspection. The director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to Subsection F of 19.8.14.1412 NMAC, or, within 30 days after a public hearing has been held pursuant to Subsection F of 19.8.14.1412 NMAC, the director shall notify in writing the permittee, the surety or other persons with an interest in bond collateral who have requested notification under Subsection F of 19.8.14.1409 NMAC, and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

C. The director may release all or part of the bond for the entire permit area or incremental area if the director is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of phases I, II, and III.

(1) At the completion of phase I, after the operator completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60 percent of the bond or collateral for the applicable area.

(2) At the completion of phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the director shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for operator responsibility in Section 69-25A-19 NMSA 1978 of the act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by Paragraph (10) of Subsection B of Section 69-25A-19 NMSA 1978 of the act and by 19.8.19 NMAC through 19.8.28 NMAC or until soil productivity for prime farmlands has returned to the equivalent levels of yield as non-mined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Paragraph (16) of Subsection B of Section 69-25A-10 NMSA 1978 of the act and 19.8.24 NMAC. Where a silt dam is to be retained as a permanent impoundment pursuant to 19.8.19 NMAC through 19.8.28 NMAC, the phase II portion of the bond may be released under this paragraph so long as provisions for

sound future maintenance by the operator or the landowner have been made with the director.

(3) At the completion of phase III, after the operator has completed successfully all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in 19.8.20.2065 NMAC. However, no bond shall be fully released under provisions of this section until reclamation requirements of the act and the permit are fully met.

D. If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Subsection F of 19.8.14.1409 NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

E. When any application for total or partial bond release is filed with the director, the director shall notify the municipality in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

F. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, tribal or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the director within 30 days after the last publication of the notice required by Paragraph (3) of Subsection A of 19.8.14.1412 NMAC. If written objections are filed and a hearing is requested, the director shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time, and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, or at the location of the director's office, at the option of the objector.

G. For the purpose of the hearing under Subsection F of 19.8.14.1412 NMAC, the director shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion for any party or by order of the director.

H. Without prejudice to the right of an objector or the applicant, the director may hold an informal conference as provided in Subsection B of Section 69-25A-17 NMSA

1978 of the act to resolve such written objections. The director shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The director shall also furnish all parties of the informal conference with a written finding of the director based on the informal conference, and the reasons for said finding.

[11-29-97; 19.8.14.1412 NMAC - Rn, 19 NMAC 8.2.14.1412, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.14.1413 FORFEITURE OF BONDS:

A. If an operator refuses or is unable to conduct reclamation of an unabated violation, if the terms of the permit are not met, or if the operator defaults on the conditions under which the bond was accepted, the director shall take the following action to forfeit all or part of a bond or bonds for any permit area or an increment of a permit area:

(1) send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond, if any, informing them of the determination to forfeit all or part of the bond, including the reasons for the forfeiture and the amount to be forfeited; the amount shall be based on the estimated total cost of achieving the reclamation plan requirements;

(2) advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided; such conditions may include, but are not limited to:

(a) agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule which meets the conditions of the permit, the reclamation plan, and the regulatory program and a demonstration that such party has the ability to satisfy the conditions; or

(b) the director may allow a surety to complete the reclamation plan, or the portion of the reclamation plan applicable to the bonded phase or increment, if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan; except where the director may approve partial release authorized under 19.8.14.1412 NMAC, no surety liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of 19.8.14.1403 NMAC.

B. In the event forfeiture of the bond is required by this section, the director shall:

(1) proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, or if rights of appeal, if any, have not been exercised within a time established by the director, or if such appeal, if taken, is unsuccessful;

(2) use funds collected from bond forfeiture to complete the reclamation plan, or portion thereof, on the permit area or increment, to which bond coverage applies.

C. Upon default on the conditions under which the bond was accepted, the director may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Unless specifically limited, as provided in Subsection B of 19.8.14.1401 NMAC, bond liability shall extend to the entire permit area under conditions of forfeiture.

D. Discrepancies between bond amounts and actual costs of reclamation.

(1) In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The director may complete, or authorize completion of, reclamation of the bonded area in accordance with the permit terms and may recover from the operator all reasonably incurred costs of reclamation in excess of the amount forfeited.

(2) In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the director to the party from whom they were collected.

[11-29-97; 19.8.14.1413 NMAC - Rn, 19 NMAC 8.2.14.1413, 9-29-2000; A, 12-31-2007]

19.8.14.1414 TERMS AND CONDITIONS FOR LIABILITY INSURANCE:

A. The director shall require the applicant to submit as part of its permit application a certificate issued by an insurance company authorized to do business in the United States certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which the permit is sought. Such policy shall provide for personal injury and property damage protection in an amount adequate to compensate any persons injured or property damaged as a result of the surface coal mining and reclamation operations, including the use of explosives, and who are entitled to compensation under the applicable provisions of state law. Minimum insurance coverage for bodily injury and property damage shall be \$300,000 for each occurrence and \$500,000 aggregate.

B. The policy shall be maintained in full force during the life of the permit or any renewal thereof, including the liability period necessary to complete all reclamation operations under 19.8.14 NMAC.

C. The policy shall include a rider requiring that the insurer notify the director whenever substantive changes are made in the policy including any termination or failure to renew.

D. The director may accept from the applicant, in lieu of a certificate for a public liability insurance policy, a commitment to self-insure for bodily injury and property

damage, if the director has approved a self-bond for the applicant in accordance with 19.8.14.1410 NMAC.

[11-29-97; 19.8.14.1414 NMAC - Rn, 19 NMAC 8.2.14.1414, 9-29-2000; A, 12-31-2007]

19.8.14.1415 TERMINATION OF REGULATORY JURISDICTION:

A. The director may terminate regulatory jurisdiction over a reclaimed surface coal mining and reclamation operation, or increment thereof, upon a written finding pursuant to Paragraph (3) of Subsection C of 19.8.14.1412 NMAC that all reclamation requirements imposed on the permittee have been successfully completed or the performance bond has been released.

B. The director shall reassert jurisdiction over a site if it is demonstrated that either the bond release or the written finding for termination of jurisdiction are based upon fraud, collusion, or misrepresentation of a material fact.

[NMAC 8.2.14.1415 - N, 1-15-2002]

PART 15-18: [RESERVED]

PART 19: PERFORMANCE STANDARDS - COAL EXPLORATION

19.8.19.1 ISSUING AUTHORITY:

New Mexico Coal Surface Mining Commission

[19.8.19.1. NMAC - N, 9-29-2000]

19.8.19.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.19.2. NMAC - N, 9-29-2000]

19.8.19.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.19.3. NMAC - N, 9-29-2000]

19.8.19.4 DURATION:

Permanent

[19.8.19.4. NMAC - N, 9-29-2000]

19.8.19.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.19.5. NMAC - N, 9-29-2000]

19.8.19.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.19.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.19.7 DEFINITIONS:

[RESERVED]

[19.8.19.7. NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.19.8-19.8.19.1899 [RESERVED]:

[19.8.19.8 - 19.8.19.1899 NMAC - N, 9-29-2000]

19.8.19.1900 GENERAL RESPONSIBILITY OF PERSONS CONDUCTING COAL EXPLORATION:

A. Each person who conducts coal exploration which substantially disturbs the natural land surface in which 250 tons or less of coal are removed shall file the notice of intention to explore required under 19.8.6.601 NMAC and shall comply with 19.8.19.1902 NMAC.

B. Each person who conducts coal exploration which substantially disturbs the natural land surface and in which more than 250 tons of coal are removed in the area described by the written approval from the director, shall comply with the procedures described in the exploration and reclamation operations plan approved under 19.8.6.603 NMAC and shall comply with 19.8.19.1902 NMAC.

[11-29-97; 19.8.19.1900 NMAC - Rn, 19 NMAC 8.2.19.1900, 9-29-2000; A, 1-15-2002]

19.8.19.1901 REQUIRED DOCUMENTS:

Each person who conducts coal exploration which substantially disturbs the natural land surface and which removes more than 250 tons of coal shall, while in the exploration area, possess written approval from the director for the activities granted under 19.8.6.603 NMAC. The written approval shall be available at the exploration site for review by the director or the office of surface mining upon request.

[11-29-97; 19.8.19.1901 NMAC - Rn, 19 NMAC 8.2.19.1901, 9-29-2000]

19.8.19.1902 PERFORMANCE STANDARDS FOR COAL EXPLORATION:

The performance standards in this section are applicable to coal exploration, which substantially disturbs land surface.

A. Habitats of unique value for fish, wildlife, and other related environmental values and areas identified in Subsection B of 19.8.9.905 NMAC shall not be disturbed during coal exploration.

B. The person who conducts coal exploration shall, to the extent practicable, measure important environmental characteristics of the exploration area during the operations, to minimize environmental damage to the area and to provide supportive information for any permit application that person may submit under 19.8.5 NMAC through 19.8.13 NMAC.

C. Roads and off-road travel.

(1) Vehicular travel on other than established graded and surfaced roads shall be limited by the person who conducts coal exploration to that absolutely necessary to conduct the exploration. Travel shall be confined to graded and surfaced roads during periods when excessive damage to vegetation or rutting of the land surface could result.

(2) Any new road or other transportation facility shall comply with the provisions of Subsections B through F of 19.8.20.2076 and 19.8.20.2077 and 19.8.20.2078 NMAC.

(3) Existing roads or other transportation facilities may be used for exploration in accordance with the following:

(a) all applicable federal, state, and local requirements shall be met;

(b) if the road is significantly altered for exploration, including, but not limited to, change of grade, widening, or change of route, or if use of the road for exploration contributes additional suspended solids to streamflow or runoff, then Subsection G of 19.8.19.1902 NMAC shall apply to all areas of the road which are altered or which result in such additional contributions;

(c) if the road or other transportation facility is significantly altered for exploration activities, the person conducting exploration shall ensure that the requirements of Subsections B through F of 19.8.20.2076 NMAC and 19.8.20.2077 and 19.8.20.2078 NMAC are met for the design, construction, alteration, and maintenance of the road.

(4) Any road or transportation facility that will be retained after exploration activities are complete shall comply with the applicable provisions of 19.8.20.2076, 2077, 2078 or 2079 NMAC, as applicable. Any road that will not be retained will be promptly reclaimed.

D. If excavations, artificial flat areas, or embankments are created during exploration, those areas shall be returned to the approximate original contour promptly after such features are no longer needed for coal exploration.

E. Topsoil shall be removed, stored, and redistributed on disturbed areas as necessary to assure successful revegetation or as required by the director.

F. Revegetation of areas disturbed by coal exploration shall be performed by the person who conducts the exploration, or his agent. If more than 250 tons of coal are removed from the exploration area, all revegetation shall be in compliance with the plan approved by the director and carried out in a manner that encourages prompt vegetative cover and recovery of productivity levels compatible with approved post-exploration land use and in accordance with the following:

(1) all disturbed lands shall be seeded or planted with species of the same aspection native to the disturbed area. If both the pre-exploration and post-exploration land uses are intensive agriculture, planting of the crops normally grown will meet the requirements of this paragraph;

(2) the vegetative cover shall be capable of stabilizing the soil surface in regards to erosion.

G. With the exception of small and temporary diversions of overland flow of water around new roads, drill pads, and support facilities, no ephemeral, intermittent or perennial stream shall be diverted during coal exploration activities. Overland flow of water shall be diverted in a manner that:

(1) prevents erosion;

(2) to the extent possible using the best technology currently available, prevents additional contributions of suspended solids to streamflow or runoff outside the exploration area in accordance with 19.8.20. 2009 through 2026 NMAC and the pertinent state water quality control commission regulations standards; and

(3) complies with all other applicable state or federal requirements.

H. Each exploration hole, borehole, well, or other exposed underground opening created during exploration must meet the requirements of 19.8.20.2001 through 2003 NMAC.

I. All facilities and equipment shall be removed from the exploration area promptly when they are no longer needed for exploration, except for those facilities and equipment that the director determines may remain to:

- (1)** provide additional environmental quality data;
- (2)** reduce or control the on and off-site effects of the exploration activities; or
- (3)** facilitate future surface mining and reclamation operations by the person conducting the exploration under an approved permit.

J. Coal exploration shall be conducted in a manner which minimizes disturbance of the prevailing hydrologic balance, and shall include sediment control measures such as provided in 19.8.20.2013 NMAC of these rules and regulations and the pertinent state water quality control commission standards or sedimentation ponds which comply with 19.8.20.2014 NMAC. The director may specify additional measures which shall be adopted by the person engaged in coal exploration.

K. Toxic or acid-forming materials shall be handled and disposed of in accordance with 19.8.20.2016 and 2056 NMAC. If specified by the director, additional measures shall be adopted by the person engaged in coal exploration.

[11-29-97; 19.8.19.1902 NMAC - Rn, 19 NMAC 8.2.19.1902, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.19.1903 REQUIREMENT FOR A PERMIT:

A. Any person who extracts coal for commercial sale or use during coal exploration operations must obtain a permit for those operations from the director under 19.8.5 NMAC through 19.8.13 NMAC.

B. With the prior written approval of the director, no permit to conduct surface coal mining operations is required for the sale or commercial use of coal extracted during exploration operations if such sale or commercial use is for coal testing purposes only. The person conducting the exploration shall file an application for such approval with the director. The application shall demonstrate that the coal testing is necessary for the development of a surface coal mining and reclamation operation for which a surface coal mining operations permit application is to be submitted in the near future, and that the proposed commercial use or sale of coal extracted during exploration operations is solely for the purpose of testing the coal. The application shall contain the following:

(1) the name of the testing firm and the locations at which the coal will be tested.

(2) If the coal will be sold directly to, or commercially used directly by, the intended end user, a statement from the intended end user; or if the coal is sold indirectly to the intended end user through an agent or broker, a statement from the agent or broker. The statement shall include:

(a) the specific reason for the test, including why the coal may be so different from the intended user's other coal supplies as to require testing;

(b) the amount of coal necessary for the test and why a lesser amount is not sufficient; and

(c) a description of the specific tests that will be conducted.

(3) Evidence that sufficient reserves of coal are available to the person conducting exploration or its principals for future commercial use or sale to the intended end user, or agent or broker of such user identified above, to demonstrate that the amount of coal to be removed is not the total reserve, but is a sampling of a larger reserve.

(4) An explanation as to why other means of exploration, such as core drilling, are not adequate to determine the quality of the coal and/or the feasibility of developing a surface coal mining operation.

[11-29-97; 19.8.19.1903 NMAC - Rn, 19 NMAC 8.2.19.1903, 9-29-2000]

PART 20: PERFORMANCE STANDARDS - SURFACE COAL MINING OPERATIONS

19.8.20.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.20.1 NMAC - N, 9-29-2000]

19.8.20.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.20.2 NMAC - N, 9-29-2000]

19.8.20.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.20.3 NMAC - N, 9-29-2000]

19.8.20.4 DURATION:

Permanent

[19.8.20.4 NMAC - N, 9-29-2000]

19.8.20.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.20.5 NMAC - N, 9-29-2000]

19.8.20.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.20.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.20.7 DEFINITIONS:

[RESERVED]

[19.8.20.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.20.8-19.8.20.1999 [RESERVED]:

[19.8.20.8 - 19.8.20.1999 NMAC - N, 9-29-2000]

19.8.20.2000 SIGNS AND MARKERS:

A. Specification signs and markers required under 19.8.20 NMAC shall:

(1) be posted and maintained by the person who conducts the surface coal mining operations;

(2) be of a uniform design throughout the operation that can be easily seen and read;

(3) be made of durable material; and

(4) conform to local ordinances and codes.

B. Duration of maintenance. Signs and markers shall be maintained during the conduct of all activities to which they pertain.

C. Mine and permit identification signs.

(1) Identification signs shall be displayed at each point of access to the permit area from public roads.

(2) Signs shall show the name, business address, and the telephone number of the person who conducts the surface coal mining operations and the identification number of the current permit authorizing surface coal mining operations.

(3) Signs shall be retained and maintained until after the release of all bonds for the permit area.

D. Perimeter markers. The perimeter of a permit area for surface mining activities or for underground mining activities, the areas to be affected within the permit area by surface operations or facilities shall be clearly marked before the beginning of surface coal mining operations. Access and haul roads leading from public roads that have been constructed, used, reconstructed, improved or maintained for use in coal explorations or surface coal mining and reclamation operations, including use by coal hauling vehicles traveling to transfer, processing, or storage areas shall be marked by a perimeter marker at one mile intervals from the identification required by Paragraph (1) of Subsection C of 19.8.20.2000 NMAC to within one half (1/2) mile of the active working area of a surface or underground coal mining operation.

E. Stream buffer zone markers. Stream buffer zones shall be marked along their boundaries as required under 19.8.20.2025 NMAC.

F. Topdressing markers. Where topdressing is segregated and stockpiled as required under 19.8.20.2006 NMAC the stockpiled material shall be clearly marked.

[11-29-97; 19.8.20.2000 NMAC - Rn, 19 NMAC 8.2.20.2000, 9-29-2000]

19.8.20.2001 CASING AND SEALING OF DRILLED HOLES: GENERAL REQUIREMENTS:

Each exploration hole, other drill or borehole, shaft, well, or other exposed underground opening shall be cased, sealed, or otherwise managed, as approved by the director, to

prevent acid or other toxic drainage from entering ground or surface waters, to minimize disturbance to the prevailing hydrologic balance, and to ensure the safety of people, livestock, fish and wildlife, and machinery in the permit and adjacent area. Each exploration hole, drill hole, shaft or borehole or well that is uncovered or exposed by mining activities within the permit area shall be permanently closed, unless approved for water monitoring, or otherwise managed in a manner approved by the director. Use of a drilled hole or borehole or monitoring well as a water well must meet the provisions of 19.8.20.2021 NMAC. 19.8.20.2021 NMAC does not apply to holes solely used for blasting.

[11-29-97; 19.8.20.2001 NMAC - Rn, 19 NMAC 8.2.20.2001, 9-29-2000]

19.8.20.2002 CASING AND SEALING OF DRILLED HOLES AND UNDERGROUND OPENINGS: TEMPORARY:

A. Each exploration hole, other than drill or boreholes, wells and other exposed underground openings which have been identified in the approved permit application for use to return, underground development waste, coal processing waste or water to underground workings or to be used to monitor ground water conditions, shall be temporarily sealed before actual use and protected during use by barricades, or fences, or other protective devices approved by the director. These devices shall be periodically inspected and maintained in good operating condition by the person who conducts the surface coal mining operations.

B. Each underground mine entry which is temporarily inactive, but has a further projected useful service under the approved permit application, shall be protected by barricades or other covering devices, fenced, and posted with signs, to prevent access into entry and to identify the hazardous nature of the opening. These devices shall be periodically inspected and maintained in good operating conditions by the person who conducts the underground mining activities.

[11-29-97; 19.8.20.2002 NMAC - Rn, 19 NMAC 8.2.20.2002, 9-29-2000]

19.8.20.2003 CASING AND SEALING OF DRILLED HOLES AND UNDERGROUND OPENINGS: PERMANENT:

When no longer needed for monitoring or other use approved by the director upon a finding of no adverse environmental or health and safety effects, or unless approved for transfer as a water well under 19.8.20.2021 NMAC, each exploration hole, other drilled hole or borehole, well, and other exposed underground openings such as shafts, drifts, adits, tunnels or entryways shall be capped, sealed, backfilled, or otherwise properly managed, as required by the director, under 19.8.20.2001 NMAC and consistent with 30 CFR 75.1711. Permanent closure measures shall be designed to prevent access to the mine workings by people, livestock, fish and wildlife, and machinery, and to keep acid or other toxic drainage from entering ground or surface waters.

[11-29-97; 19.8.20.2003 NMAC - Rn, 19 NMAC 8.2.20.2003, 9-29-2000]

19.8.20.2004 TOPDRESSING: GENERAL REQUIREMENTS:

A. Before disturbance of an area, topsoil, subsoils or other approved material suitable as a topdressing to be saved under 19.8.20.2005 NMAC shall be separately removed and segregated from other material.

B. After removal, topdressing shall be immediately redistributed in accordance with 19.8.20.2007 NMAC, stockpiled pending redistribution under 19.8.20.2006 NMAC, or if the permittee can demonstrate that an alternative procedure will provide equal or more protection for the topdressing, the director may, on a case by case basis, approve an alternative.

[11-29-97; 19.8.20.2004 NMAC- Rn, 19 NMAC 8.2.20.2004, 9-29-2000]

19.8.20.2005 TOPSOIL: REMOVAL:

A. Materials to be removed. Topsoil to be used as topdressing shall be removed in a separate layer from the areas to be disturbed, unless use of substitute or supplemental materials is approved by the director in accordance with Subsection E of 19.8.20.2005 NMAC. If use of substitute or supplemental materials is approved, all materials to be redistributed shall be removed.

B. Material to be removed in thin topsoil situations. If the topsoil to be used as topdressing is less than 6 inches, a 6-inch layer that includes the A horizon and the suitable unconsolidated materials immediately below the A horizon or the A horizon and all suitable unconsolidated material if the total available is less than 6 inches, shall be removed and the mixture segregated and redistributed as the surface soil layer, unless topsoil substitutes are approved by the director pursuant to Subsection E of 19.8.20.2005 NMAC.

C. Timing. If topsoil is to be removed, then it shall be removed from areas to be affected by surface operations or major structures, after vegetative cover that would interfere with the use of the topsoil is cleared from portions of those areas that will be disturbed, but before any drilling for blasting, mining, or other surface disturbance of surface lands.

D. Subsoil segregation. The B horizon and portions of the C horizon, if these horizons are present, or other underlying layers demonstrated to have qualities for comparable root development shall be removed and replaced as subsoil, if the director determines that either of these is necessary or desirable to ensure soil productivity consistent with the approved postmining land use.

E. Topsoil substitutes and supplements.

(1) Selected overburden materials may be substituted for or used as a supplement to topsoil, if the director determines that the resulting soil medium is equal to or more suitable for sustaining vegetation than is the available topsoil and the substitute material is the best available to support vegetation. This determination shall be based on:

(a) the results of chemical and physical analyses of overburden and topsoil. These analyses shall include determinations of pH, net acidity or alkalinity, available phosphorus and potassium, texture class and other analyses as required by the director. The director may also require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using these overburden materials.

(b) Methodologies and results of analyses, trials or tests which demonstrate that the proposed substitute material is equal to or more suitable for reclamation and revegetation than is the available topsoil shall be certified by a qualified professional and shall be submitted to the director.

(2) Substituted or supplemental material shall be removed, segregated, and replaced in compliance with the requirements for topsoil under 19.8.20 NMAC.

F. Limits on topsoil removal area. Where the removal of vegetative material, topsoil, or other materials may result in accelerated erosion which may cause air or water pollution:

(1) The size of the area from which topsoil is removed at any one time shall be limited.

(2) The topdressing shall be distributed at a time when the physical and chemical properties of the topdressing can be protected and erosion can be minimized; and

(3) Such other measures shall be taken as the director may approve or require to control erosion.

G. If it is demonstrated to the director that it is technologically infeasible to remove topsoil or topsoil substitutes from particular slopes without endangering equipment operators or without mixing unsuitable material with such topsoil or topsoil substitutes, segregation and utilization of such material shall not be required.

[11-29-97; 19.8.20.2005 NMAC - Rn, 19 NMAC 8.2.20.2005, 9-29-2000]

19.8.20.2006 TOPDRESSING: STORAGE:

A. Topdressing removed under 19.8.20.2005 NMAC shall be stockpiled only when it is impractical to promptly redistribute such materials on regraded areas.

B. Stockpiled materials shall be selectively placed on a stable area within the permit area, not disturbed, and protected from wind and water erosion, unnecessary compaction, and contaminants which lessen the capability of the materials to support vegetation when redistributed.

(1) Protection measures shall be accomplished either by:

(a) an effective cover of non-noxious, quick-growing annual and perennial plants, seeded or planted during the first normal period after removal for favorable planting conditions; or

(b) other methods demonstrated to and approved by the director to provide equal protection.

(2) Unless approved by the director, stockpiled topdressing shall not be moved until required for redistribution on a regraded area.

[11-29-97; 19.8.20.2006 - Rn, 19 NMAC 8.2.20.2006, 9-29-2000]

19.8.20.2007 TOPDRESSING: REDISTRIBUTION:

A. After final grading and before the replacement of topdressing, regraded land shall be scarified or otherwise treated as required by the director to eliminate slippage surfaces and to promote root penetration. If the person who conducts the surface coal mining operations shows, through appropriate tests, and the director approves, that no harm will be caused to the topdressing and vegetation, scarification may be conducted after the placement of topdressing.

B. Topdressing shall be redistributed in a manner that:

(1) achieves an approximate uniform, stable thickness consistent with the approved postmining land uses, contours, and surface water drainage system;

(2) prevents excess compaction of topdressing; and

(3) protects the topdressing from wind and water erosion before and after it is seeded and planted.

[11-29-97; 19.8.20.2007 NMAC - Rn, 19 NMAC 8.2.20.2007, 9-29-2000]

19.8.20.2008 TOPDRESSING: NUTRIENTS AND SOIL AMENDMENTS:

Nutrients and soil amendments in the amount determined by soil tests shall be applied to the redistributed topdressing, so that it supports the approved postmining land use and meets the revegetation requirements of 19.8.20.2060 through 2066 NMAC. All soil analyses shall be performed by a qualified state approved laboratory using standard

methods approved by the director. Methods and results from topdressing analyses shall be submitted to the director.

[11-29-97; 19.8.20.2008 NMAC - Rn, 19 NMAC 8.2.20.2008, 9-29-2000; A, 1-15-2002]

19.8.20.2009 HYDROLOGIC BALANCE: GENERAL REQUIREMENTS:

A. Surface coal mining operations shall be planned and conducted to minimize changes to the prevailing hydrologic balance in both the permit and adjacent areas and prevent material damage outside of the permit area in order to prevent adverse changes in that balance that could result from those operations.

B. Changes in water quality and quantity, in depth to ground water, and in the location of surface water drainage channels shall be minimized so that the approved postmining land use of the permit area is not adversely affected.

C. In no case shall federal and state water quality statutes, regulations, standards, or effluent limitations be violated.

D. Operations shall be conducted to minimize water pollution and, where necessary, sediment ponds or other treatment facilities shall be used to control water pollution.

(1) Each person who conducts surface coal mining operations shall emphasize mining and reclamation practices that prevent or minimize water pollution. Methods listed in Paragraphs (2) and (3) of Subsection D of 19.8.20.2009 NMAC shall be capable of containing or treating all surface flow from the disturbed areas and shall be used in preference to the use of sediment ponds or water treatment facilities.

(2) Acceptable practices to control sediment and minimize water pollution include, but are not limited to:

(a) stabilizing disturbed areas through land shaping, berming, contour furrowing or regrading to final contour;

(b) diverting runoff;

(c) achieving quickly germinating and growing stands of temporary vegetation;

(d) regulating channel velocity of water;

(e) lining drainage channels with rock or revegetation;

(f) mulching;

and **(g)** selectively placing and sealing acid-forming and toxic-forming materials;

(h) selectively placing waste materials in backfill areas.

(3) In addition, unless demonstrated to the director otherwise, all acceptable practices for controlling and minimizing water pollution at underground mines shall include, but not be limited to:

(a) designing mines to prevent gravity drainage of acid waters;

(b) sealing all underground mine openings;

(c) controlling subsidence; and

(d) preventing acid mine drainage.

(4) If the practices listed in Paragraph (2) of Subsection D of 19.8.20.2009 NMAC are not adequate to meet the requirements of Paragraph (1) of Subsection D of 19.8.20.2009 NMAC, the person who conducts surface coal mining operations shall comply with the requirements of 19.8.20.2010 NMAC, unless the director issues a waiver under Subsection E of 19.8.20.2009 NMAC.

E. The director may waive the requirements of 19.8.20.2009 NMAC for regraded areas if the operator can demonstrate to the director that the runoff from the regraded area is as good as or better quality than the waters entering the permit area and erosion from the regraded area has been controlled to the satisfaction of the director.

(1) To provide for baseline data for waters entering the permit area, the operator shall operate and maintain monitoring on all drainages leading into the permit area, in a manner approved by the director, in order to obtain and evaluate occurrences and changes in water quality and quantity during the life of mining operations.

(2) In order to ensure that runoff from the regraded area is in no way a hazard to the environment of the adjacent areas, the waters draining off of the regraded area shall not:

(a) exceed the values of total suspended solids, iron, manganese, pH and those parameters listed in Subparagraph (a) of Paragraph (3) of Subsection E of 19.8.20.2009 NMAC from the baseline analyses from the water entering the permit area;

(b) create an increase in sediment load into the receiving streams;

(c) create any environmental harm or threat to public health and safety; and

(d) degrade, pollute or otherwise diminish the characteristics of existing streams and drainages so as to cause imminent environmental harm to fish and wildlife habitats.

(3) Baseline data shall be collected from waters in drainages entering the permit area and runoff from regraded areas shall be collected during any precipitation event that produces such runoff. The operator shall demonstrate to the director that the runoff from the regraded area has as good as or better chemical quality than the baseline analyses from waters entering the permit area.

(a) In addition to Subparagraph (a) of Paragraph (2) of Subsection E of 19 8.20.2009 NMAC, chemical analysis of the runoff from the regraded area and baseline data from waters entering the permit area shall include, but not limited to, the following parameters:

(TDS)	Arsenic (As)	Phosphorus (P)	Carbonate (CO ₃)
	Boron (B)	Potassium (K)	Bicarbonate (HCO ₃)
	Calcium (Ca)	Selenium (Se)	Nitrate (NO ₃)
	Chloride	Sodium (Na)	Sulfate (SO ₄)
	Cadmium (Cd)	Uranium (U)	Total Dissolved Solids
Ratio (SAR)	Fluoride	Vanadium (V)	Sodium Adsorption
	Lead (Pb)	Radioactivity	
	Magnesium (Mg)	Radium Ra ²²⁶	
		Radium Ra ²²⁸	

(b) The director may require additional tests and analyses as he deems necessary.

(c) If the operator can demonstrate that the analysis of any particular parameter are of little or not significance in the permit or adjacent areas, then such parameter(s) may be waived upon approval by the director.

(4) All analysis shall be submitted to the director within 90 days following sample collection.

(5) Monitoring of regraded areas shall continue in accordance with Subsection E of 19.8.20.2009 NMAC until that portion of the bond is released pursuant to 19.8.14.1412 NMAC.

F. Other treatment facilities shall be designed to treat the 10-year, 24-hour precipitation event unless a lesser design is approved by the director based on terrain, climate, other site-specific conditions and a demonstration by the operator that the effluent limitations of 19.8.20.2010 NMAC will be met. Other treatment facilities shall be designed in accordance with the applicable requirements of 19.8.20.2014 NMAC.

[11-29-97; 19.8.20.2009 NMAC - Rn, 19 NMAC 8.2.20.2009, 9-29-2000; A, 1-15-2002]

19.8.20.2010 HYDROLOGIC BALANCE: WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS:

A. Treatment of disturbed area surface flow.

(1) With the exception of surface flow leaving the disturbed area with respect to which area the operator has complied with the requirements of 19.8.20.2009 NMAC, all surface flow that leaves the disturbed area shall be passed through a sedimentation pond or series of sedimentation ponds or other treatment facilities before leaving the permit area. Any discharge of water from underground workings to surface waters which does not meet the effluent limitations of 19.8.20 NMAC shall also be passed through a sedimentation pond, a series of sedimentation ponds, or a treatment facility before leaving the permit area.

(2) Sedimentation ponds and other treatment facilities shall be maintained until the disturbed area has been regraded and erosion on the regraded area has been controlled.

(3) Sedimentation ponds and treatment facilities for discharges from underground workings shall be maintained until either the discharge continuously meets the effluent limitations of 19.8.20 NMAC without treatment or until the discharge has permanently ceased.

(4) The director may grant exemptions from these requirements only when:

(a) the disturbed drainage area within the total disturbed area is small; and

(b) the person who conducts the surface coal mining operations demonstrates that sedimentation ponds and treatment facilities are not necessary for drainage from the disturbed drainage areas to meet the effluent limitations in Paragraph (8) of Subsection A of 19.8.20.2010 NMAC and the applicable state and federal water quality standards for downstream and receiving waters.

(5) For the purposes of 19.8.20 NMAC only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with 19.8.20 NMAC and the upstream area is not otherwise disturbed by the person who conducts the surface coal mining operations.

(6) Sedimentation ponds required by 19.8.20 NMAC shall be constructed in accordance with 19.8.20.2014 NMAC in appropriate locations before beginning any surface coal mining operations in the drainage area to be affected.

(7) Where the sedimentation pond or series of sedimentation ponds is used so as to result in the mixing of drainage from the disturbed areas with drainage from other areas not disturbed by current surface coal mining and reclamation operations, the permittee shall achieve the effluent limitations set forth below for all of the mixed drainage when it leaves the pond discharge point.

(8) Discharges of water from areas disturbed by surface mining activities and underground mining activities shall be made in compliance with all applicable state and federal water-quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. environmental protection agency set forth in 40 CFR Part 434.

B. A discharge from the disturbed areas is not subject to the effluent limitations of 19.8.20 NMAC, if:

(1) the discharge is demonstrated by the discharger to have resulted from a precipitation event equal to or larger than a 10-year 24-hour precipitation event; and

(2) the discharge is from facilities designed, constructed, and maintained in accordance with the requirements of 19.8.20 NMAC.

C. Adequate facilities shall be installed, operated, and maintained to treat any water discharged from the disturbed area so that it complies with all federal and state laws and regulations and the limitations of 19.8.20 NMAC. If the pH of water to be discharged from the disturbed area is less than 6.0, an automatic lime feeder or other automatic neutralization process approved by the director shall be installed, operated, and maintained. The director may authorize the use of a manual system, if he finds that:

(1) flow is infrequent and presents small and infrequent treatment requirements to meet applicable standards which do not require use of an automatic neutralization process; and

(2) timely and consistent treatment is ensured.

[11-29-97; 19.8.20.2010 NMAC - Rn, 19 NMAC 8.2.20.2010, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

19.8.20.2011 HYDROLOGIC BALANCE: DIVERSIONS AND CONVEYANCE OF OVERLAND FLOW AND SHALLOW GROUND WATER FLOW AND EPHEMERAL STREAMS:

Overland flow, including flow through litter, and shallow ground water flow from undisturbed areas, and flow in ephemeral streams, may be diverted away from disturbed areas by means of temporary or permanent diversions, if required or approved by the director as necessary to minimize erosion, to reduce the volume of water to be treated, and to prevent or remove water from contact with acid-forming or toxic-forming materials. The following requirements shall be met for all diversions and for all collection drains that are used to transport water into water-treatment facilities and for all diversions of overland and shallow ground water flow and ephemeral streams.

A. All diversions shall be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance within the permit and adjacent areas, to prevent material damage outside the permit area and to assure the safety of the public.

B. Temporary diversions shall be constructed to safely pass the peak runoff from a 2-year, 24-hour precipitation event or a larger event as specified by the director.

C. To protect fills and property and to avoid danger to public health and safety, permanent diversions shall be constructed to safely pass the peak runoff from a 10-year, 24-hour precipitation event, or larger as specified by the director. Permanent diversions shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall be used only when approved by the director to prevent seepage or to provide stability.

D. Diversions shall be designed, constructed, and maintained in a manner which prevents additional contributions of suspended solids to streamflow and to runoff outside the permit area, to the extent possible using the best technology currently available. Appropriate sediment control measures for these diversions may include, but not be limited to, maintenance of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

E. No diversion shall be located so as to increase the potential for land slides. No diversion shall be constructed on existing land slides, unless approved by the director.

F. When no longer needed, each temporary diversion shall be removed and the affected land regraded, topdressed, and revegetated in accordance with 19.8.20.2007, 2008, 2054 through 2059, and 2060 through 2066 NMAC.

G. Diversion design shall incorporate the following.

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Rip rap shall be required where necessary to control erosion.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the director, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with 19.8.20.2034 through 2037 NMAC.

(5) Topdressing shall be handled in compliance with 19.8.20.2004 through 2008 NMAC.

H. Diversions shall not be constructed or operated to divert water into underground mines without the approval of the director under 19.8.20.2023 NMAC.

[11-29-97; 19.8.20.2011 NMAC - Rn, 19 NMAC 8.2.20.2011, 9-29-2000]

19.8.20.2012 HYDROLOGIC BALANCE: STREAM CHANNEL DIVERSIONS:

A. Diversions from perennial and intermittent streams within the permit area shall be approved by the director, if he finds that the diversions comply with:

(1) the requirements of Subsection A of 19.8.20.2025 NMAC and Subsection A of 19.8.20.2011 NMAC;

(2) local, state and federal statutes and regulations; and

(3) The diversion will not impair water quantity and quality and will not adversely affect related environmental resources of the stream.

B. When streamflow is allowed to be diverted, the stream channel diversion shall be designed, constructed, and removed in accordance with the following:

(1) The longitudinal profile of the stream, the channel, and the flood-plain shall be designed and constructed to remain stable and to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or to runoff outside the permit area. These contributions shall not be excess of requirements of state or federal law. Erosion control structures

such as channel lining structures, retention basins, and artificial channel roughness structures shall be used in diversions only when approved by the director as being necessary to control erosion. These structures shall be approved for permanent diversions only where they are stable and will require infrequent maintenance.

(2) The combination of channel, bank, and flood-plain configurations shall be adequate to pass safely the peak runoff of a 10-year, 24-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions, or larger events specified by the director. However, the capacity of the channel itself should be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

C. The design and construction of all stream channel diversions of perennial and intermittent streams shall be certified by a qualified registered professional engineer as meeting the performance standards of 19.8.20 NMAC and any design criteria set by the director.

D. When no longer needed to achieve the purpose for which they were authorized, all temporary stream channel diversions shall be removed and the affected land regraded and revegetated, in accordance with 19.8.20.2007, 2008, 2054 through 2058, and 2060 through 2066 NMAC. At the time diversions were removed, downstream water treatment facilities previously protected by the diversion shall be modified or removed to prevent overtopping or failure of the facilities. The requirement shall not relieve the person who conducts the surface coal mining operations from maintenance of a water treatment facility otherwise required under 19.8.20 NMAC or the permit.

E. When permanent diversions are constructed or stream channels restored, after temporary diversions, the operator shall:

(1) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of the stream;

(2) establish or restore the stream to a longitudinal plan and profile, gradient and cross-section, including aquatic habitats (usually a pattern, of riffles, pools, and drops rather than uniform depth) that approximate premining stream channel characteristics.

[11-29-97; 19.8.20.2012 NMAC - Rn, 19 NMAC 8.2.20.2012, 9-29-2000]

19.8.20.2013 HYDROLOGIC BALANCE: SEDIMENT CONTROL MEASURES:

A. Appropriate sediment control measures shall be designed, constructed, and maintained using the best technology currently available to:

(1) prevent, to the extent possible, additional contributions of sediment to streamflow or to runoff outside the permit area;

(2) meet the more stringent of applicable state or federal effluent limitations;
and

(3) minimize erosion to the extent possible.

B. Sediment control measures include practices carried out within and adjacent to the disturbed area. The sedimentation storage capacity of practices in and downstream from the disturbed area shall reflect the degree to which successful mining and reclamation techniques are applied to reduce erosion and control sediment. Sediment control measures consist of the utilization of proper mining and reclamation methods and sediment control practices, singly or in combination. sediment control methods include but are not limited to:

(1) disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading, and prompt revegetation as required in Subsection B of 19.8.20.2060 NMAC;

(2) stabilizing the backfill material to promote a reduction in the rate and volume of runoff, in accordance with the requirements of 19.8.20.2054 NMAC;

(3) retaining sediment within disturbed areas;

(4) diverting runoff away from disturbed areas;

(5) diverting runoff using protected channels or pipes through disturbed areas so as not to cause additional erosion;

(6) using straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds, and other measures that reduce overland flow velocity, reduce runoff volume, or trap sediment;

(7) treating with chemicals; and

(8) for underground operations treating mine drainage in underground sumps.

[11-29-97; 19.8.20.2013 NMAC - Rn, 19 NMAC 8.2.20.2013, 9-29-2000]

19.8.20.2014 HYDROLOGIC BALANCE: SEDIMENTATION PONDS:

A. When required under 19.8.20.2010 NMAC sedimentation ponds shall be used individually or in series and shall:

(1) be constructed and certified before any disturbance of the undisturbed area to be drained into the pond and, in addition, for underground mines prior to any discharge of water to surface waters from underground mine workings.

(2) be located as near as possible to the disturbed area and out of perennial streams, unless approved by the director.

(3) meet all the criteria of 19.8.20 NMAC.

(4) be certified to the director by a qualified registered professional engineer as having been constructed as designed and approved in the permit. Sediment ponds that do not meet the size or other criteria of 30 CFR 77.216(a) shall be certified by either a qualified registered professional engineer or qualified registered professional land surveyor.

(5) be designed, constructed, maintained and inspected in accordance with 19.8.20.2017 NMAC.

(6) be maintained until removal is authorized by the director and the disturbed area has been stabilized and revegetated.

B. Sedimentation ponds shall be designed, constructed and maintained to provide adequate sediment storage volume and provide for periodic sediment removal sufficient to maintain adequate volume for the design event.

C. Sedimentation ponds shall provide the required theoretical detention time for the water inflow or runoff entering the pond from a 10-year, 24-hour precipitation event (design event) plus the average inflow from any underground mine. The operator will comply with the applicable state laws and the regulations of the state engineer pertaining to the detention of water.

D. The water storage resulting from inflow shall be removed by a non-clogging dewatering device, conduit spillway, or other methods approved by the director. Stationary dewatering devices shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume.

E. Each person who conducts surface coal mining operations shall design, construct, and maintain sedimentation ponds to prevent short circuiting to the extent possible.

F. The design, construction, and maintenance of a sedimentation pond or other sediment control measures in accordance with 19.8.20 NMAC shall not relieve the person from compliance with applicable effluent limitations as contained in 19.8.20.2010 NMAC.

G. A sedimentation pond shall include either a combination of principal and emergency spillways or a single spillway configured as specified in Paragraph (1) of Subsection G of 19.8.20.2014 NMAC, designed and constructed to safely pass the applicable design precipitation event specified in Paragraph (2) of Subsection G of

19.8.20.2014 NMAC, except as set forth in Paragraph (3) of Subsection G of 19.8.20.2014 NMAC.

(1) The director may approve a single open-channel spillway that is:

(a) of nonerodible construction and designed to carry sustained flows; or

(b) earth or grass-lined and designed to carry short-term infrequent flows at nonerosive velocities where sustained flows are not expected.

(2) Except as specified in Paragraph (3) of Subsection G of 19.8.20.2014 NMAC, the required design precipitation event for spillways for sedimentation ponds is:

(a) for a sedimentation pond meeting the size or other criteria of mine safety and health administration 30 CFR 77.216(a), a 100-year 6 hour event, or greater event as specified by the director;

(b) for a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), a 25-year 6-hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in Paragraph (1) of Subsection G of 19.8.20.2014 NMAC, the director may approve a sedimentation pond that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor that the sedimentation pond will safely control the design precipitation event, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such a sedimentation pond shall be located where failure would not be expected to cause loss of life or serious property damage. The following design criteria shall apply:

(a) in the case of a sedimentation pond meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the runoff from the probable maximum precipitation of a 6-hour event, or greater event as specified by the director;

(b) in the case of a sedimentation pond not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the runoff of a 100-year, 6-hour event, or greater event as specified by the director.

H. The embankment foundation area shall be cleared of all organic matter, all surfaces sloped to no steeper than 1v:1h and the entire foundation surface scarified.

I. The fill material shall be free of sod, large roots, other large vegetative matter, and frozen soil, and in no case shall coal-processing waste be used.

J. The embankment area shall be compacted properly to ensure against excessive settlement.

K. When a sediment pond is removed, the land on which the pond is located and the affected area shall be regraded and revegetated in accordance with the approved permit.

[11-29-97; 19.8.20.2014 NMAC - Rn, 19 NMAC 8.2.20.2014, 9-29-2000]

19.8.20.2015 HYDROLOGIC BALANCE: DISCHARGE STRUCTURES:

Discharge from sedimentation ponds, permanent and temporary impoundments, coal processing waste dams and embankments, and diversions shall be controlled, by energy dissipators, riprap channels, and other devices, where necessary, to reduce erosion, to prevent deepening or enlargement of stream channels, and to minimize disturbance of the hydrologic balance. Discharge structures shall be designed according to standard engineering design procedures.

[11-29-97; 19.8.20.2015 NMAC - Rn, 19 NMAC 8.2.20.2015, 9-29-2000]

19.8.20.2016 HYDROLOGIC BALANCE: ACID-FORMING AND TOXIC-FORMING SPOIL:

Drainage from acid-forming and toxic-forming spoil into ground and surface water shall be avoided by:

A. identifying, burying, and treating where necessary, spoil which, in the judgment of the director, may be detrimental to vegetation or may adversely affect water quality if not treated or buried;

B. preventing water from coming into contact with acid-forming and toxic-forming spoil in accordance with 19.8.20.2056 NMAC, and other measures as required by the director; and

C. burying or otherwise treating all acid-forming or toxic-forming spoil within 30 days after it is first exposed on the mine site, or within a lesser period required by the director. Temporary storage of the spoil may be approved by the director upon a finding that burial or treatment within 30 days is not feasible and will not result in any material risk of water pollution or other environmental damage. Storage shall be limited to the period until burial or treatment first becomes feasible. Acid-forming or toxic-forming spoil to be stored shall be placed on impermeable material and protected from erosion and contact with surface water.

[11-29-97; 19.8.20.2016 NMAC - Rn, 19 NMAC 8.2.20.2016, 9-29-2000]

19.8.20.2017 HYDROLOGIC BALANCE: PERMANENT AND TEMPORARY IMPOUNDMENTS:

A. Permanent impoundments are prohibited unless authorized by the director, upon the basis of the following demonstrations:

- (1)** the size and configuration of such impoundment will be adequate for its intended purposes;
- (2)** the quality of impounded water will be suitable on a permanent basis for its intended use and, after reclamation, will meet applicable state and federal water quality standards, and discharges from the impoundment will meet applicable effluent limitations and will not degrade the quality of receiving water below applicable state and federal water quality standards;
- (3)** the water level will be sufficiently stable and be capable of supporting the intended use;
- (4)** final grading will provide for adequate safety and access for proposed water users;
- (5)** the impoundment will not result in the diminution of the quality and quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and
- (6)** the impoundment will be suitable for the approved postmining land use.

B. The design of impoundments shall be certified by a qualified registered professional engineer as designed to meet the requirements of 19.8.20 NMAC using current, prudent engineering practices, and any design criteria established by the director. The qualified registered professional engineer shall be experienced in the design and construction of impoundments.

C. An impoundment meeting the size or other criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR 77.216 and 19.8.20 NMAC.

D. All impoundments that meet the class B or C criteria for dams in TR-60 or exceed the size or other criteria of 30 CFR 77.216(a) shall be certified to the director by a qualified registered professional engineer, as having been constructed to comply with the requirements of 19.8.20 NMAC. All dams and embankments that do not meet the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a) shall be certified by either a qualified registered professional engineer or a qualified registered professional land surveyor, except that all coal processing waste dams and embankments covered by 19.8.20.2047 through 2049 NMAC shall be certified by a qualified registered professional engineer. All impoundments shall be certified after construction and prior to the intended use.

E. The following is a list of general requirements that apply to all temporary or permanent impoundments.

(1) Impoundments meeting the class B or C criteria for dams in the U.S. department of agriculture, natural resources conservation service technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", shall comply with the, "minimum emergency spillway hydrologic criteria", table in TR-60 and the requirements of 19.8.20 NMAC.

(2) An impoundment meeting the Class B or C criteria for dams in NRCS technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", or the size or other criteria of 30 CFR 77.216(a) shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(3) Impoundments not included in Paragraph (2) of Subsection E of 19.8.20.2017 NMAC, except for a coal mine waste impounding structure, shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Subsection C of 19.8.9.909 NMAC.

(4) Impoundments meeting the class B or C criteria for dams in NRCS technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", shall comply with the freeboard hydrograph criteria in the "minimum emergency spillway hydrologic criteria" table in TR-60.

(5) Impoundments not included in Paragraph (2) of Subsection E of 19.8.20.2017 NMAC shall have adequate freeboard to resist overtopping by waves and by a sudden increase in stored volume.

(6) Foundations and abutments for an impounding structure shall be stable during all phases of construction and operation, and shall be designed based on adequate and accurate information on the foundation conditions. For an impoundment meeting the class B or C criteria for dams in NRCS technical release no. 60 (210-VI-TR60, Oct. 1985), "earth dams and reservoirs", or the size or other criteria of 30 CFR 77.216(a), foundation investigation, as well as any necessary laboratory testing of foundation material, shall be performed to determine the design requirements for foundation stability.

(7) All vegetative and organic materials shall be removed and foundations excavated and prepared to resist failure. Cutoff trenches shall be installed if necessary to ensure stability.

(8) Slope protection shall be provided to protect against surface erosion where surface runoff enters the impoundment area and protect against sudden drawdown.

(9) Faces of embankments and surrounding areas shall be vegetated, or otherwise stabilized in accordance with accepted design and operational practices.

(10) The vertical portion of any remaining highwall shall be located far enough below the low-water line along the full extend of highwall to provide adequate safety and access for the proposed water users.

(11) Appropriate barriers shall be provided to control seepage along conduits that extend through the embankment.

F. An impoundment shall include either a combination of principal and emergency spillways or a single spillway configured as specified in Paragraph (1) of Subsection F of 19.8.20.2017 NMAC, designed and constructed to safely pass the applicable design precipitation runoff event specified in Paragraph (2) of Subsection F of 19.8.20.2017 NMAC, except as set forth in Paragraph (3) of Subsection F of 19.8.20.2017 NMAC.

(1) The director may approve a single open-channel spillway that is:

(a) of nonerodible construction and designed to carry sustained flows; or

(b) earth- or grass-lined and designed to carry short-term, infrequent flows at non-erosive velocities where sustained flows are not expected.

(2) Except as specified in Paragraph (3) of Subsection F of 19.8.20.2017 NMAC, the required design precipitation event for spillways for impoundments is:

(a) for an impoundment meeting the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the director.

(b) for a temporary impoundment not meeting the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a), a 25-year 6-hour event, or greater event as specified by the director.

(c) for a permanent impoundment not meeting the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a), a 50-year, 6-hour event, or greater event as specified by the director.

(3) In lieu of meeting the requirements in Paragraph (1) of Subsection F of 19.8.20.2017 NMAC, the director may approve a temporary impoundment that relies primarily on storage to control the runoff from the design precipitation event when it is demonstrated by the operator and certified by a qualified registered professional engineer or qualified registered professional land surveyor that the impoundment will safely control the design precipitation event and associated runoff, the water from which shall be safely removed in accordance with current, prudent, engineering practices. Such an impoundment shall be located where failure would not be expected to cause loss of life or serious property damage. The following design criteria shall apply:

(a) in the case of an impoundment meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the runoff of the probable maximum precipitation of a 6-hour event, or greater event as specified by the director, or

(b) in the case of an impoundment not meeting the size or other criteria of 30 CFR 77.216(a), it is designed to control the runoff of a 100-year 6-hour event, or greater event as specified by the director.

G. Except as provided in Paragraph (4) of Subsection G of 19.8.20.2017 NMAC, a qualified registered professional engineer or other qualified professional specialist under the direction of a professional engineer, shall inspect each impoundment as provided in Paragraph (1) of Subsection G of 19.8.20.2017 NMAC. The professional engineer or specialist shall be experienced in the construction of impoundments.

(1) Inspections shall be made regularly during construction, upon completion of construction, and at least yearly until removal of the structure or release of the performance bond.

(2) The qualified registered professional engineer, or qualified registered professional land surveyor as specified in Paragraph (4) of Subsection G of 19.8.20.2017 NMAC, shall promptly after each inspection required in Paragraph (1) of Subsection G of 19.8.20.2017 provide to the director a certified report that the impoundment has been constructed and/or maintained as designed and in accordance with the approved plan and 19.8.20 NMAC. The report shall include discussion of any appearance of instability, structural weakness or other hazardous conditions, depth and elevation of any impounded waters, existing storage capacity, any existing or required monitoring procedures and instrumentation, and any other aspects of the structure affecting stability.

(3) A copy of the report shall be retained at or near the mine site.

(4) A qualified registered professional land surveyor may inspect any temporary or permanent impoundment that does not meet the class B or C criteria for dams in TR-60 or other size criteria of 30 CFR 77.216(a) and certify and submit the report required by Paragraph (2) of Subsection G of 19.8.20.2017 NMAC, except that all coal mine waste impounding structures covered by 19.8.20.2047 through 2049 NMAC shall be certified by a qualified registered professional engineer. The professional land surveyor shall be experienced in the construction of impoundments.

(5) Impoundments meeting the class B or C criteria for dams in TR-60 or subject to 30 CFR 77.216(a) must be examined in accordance with 30 CFR 77.216-3. Other impoundments shall be examined at least quarterly by a qualified person designated by the operator for appearance of structural weakness and other hazardous conditions.

(6) If an impoundment is constructed without an embankment, the director may waive the quarterly examination requirement. Therefore, excavated ponds, haulroad sumps and any impoundment that is built without embankments may be exempt from the requirements of Paragraph (5) of Subsection G of 19.8.20.2017 NMAC with the approval of the director. Any waiver granted under this paragraph shall not relieve the operator of the requirement to maintain impoundments in accordance with the approved plan and 19.8.20 NMAC.

(7) Emergency procedures. If any examination or inspection discloses that a potential hazard exists, the person who examined the impoundment shall promptly inform the director of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures can not be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate agencies that other emergency procedures are required to protect the public.

[11-29-97; A, 12-15-99; 19.8.20.2017 NMAC - Rn, 19 NMAC 8.2.20.2017, 9-29-2000; A, 12-31-2007]

19.8.20.2018 HYDROLOGIC BALANCE: GROUND WATER PROTECTION:

A. Backfilled materials shall be placed so as to minimize contamination of ground water systems with acid, toxic, or otherwise harmful mine drainage, to minimize adverse effects of mining on ground water systems outside the permit area, and to support approved postmining land uses.

B. To control the effects of mine drainage, pits, cuts and other mine excavation or disturbances shall be located, designed, constructed, and utilized in such manner as to prevent or control discharge of acid, toxic, or otherwise harmful mine drainage waters into ground water systems and to prevent adverse impacts on such ground water systems or on approved postmining land uses.

[11-29-97; 19.8.20.2018 NMAC - Rn, 19 NMAC 8.2.20.2018, 9-29-2000]

19.8.20.2019 HYDROLOGIC BALANCE: PROTECTION OF GROUND WATER RECHARGE CAPACITY:

Surface mining activities shall be conducted in a manner that facilitates reclamation which will restore approximate premining recharge capacity, through restoration of the capability of the reclaimed areas as a whole, excluding coal processing waste and underground development waste disposal areas and fills, to transmit water to the ground water system. The recharge capacity shall be restored to a condition which:

A. supports the approved postmining land use;

B. minimizes disturbances to the prevailing hydrologic balance in the permit area and in adjacent areas; and

C. provides a rate of recharge that approximates the premining recharge rate.

[11-29-97; 19.8.20.2019 NMAC - Rn, 19 NMAC 8.2.20.2019, 9-29-2000; A, 12-31-2007]

19.8.20.2020 HYDROLOGIC BALANCE: SURFACE AND GROUND WATER MONITORING:

A. Ground water.

(1) Ground water levels, subsurface flow and storage characteristics and the quality of ground water shall be monitored in a manner approved by the director, to determine the effects of surface coal mining operations on the recharge capacity of reclaimed land and on the quantity and quality of water in ground water systems in the permit and adjacent areas.

(2) When surface coal mining operations may affect the ground water systems which serve as aquifers which significantly ensure the hydrologic balance of water use on or off the permit and adjacent areas, ground water levels and ground water quality shall be periodically monitored. Monitoring shall include measurements from a sufficient number of wells and mineralogical and chemical analyses of aquifer, overburden and spoil that are adequate to reflect changes in ground water quantity and quality resulting from those activities. Monitoring shall be adequate to plan for modification of surface coal mining operations, if necessary, to minimize disturbance of the prevailing hydrologic balance.

(3) The director may specify additional hydrologic tests, including drilling, infiltration tests, and aquifer tests.

(4) Each person shall satisfy any requirements of the water quality control commission regulations.

(5) Ground-water monitoring data shall be submitted every 3 months to the director or more frequently as prescribed by the director. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any ground-water sample indicates noncompliance with the permit conditions, then the operator shall promptly notify the director and immediately take the actions provided for in Subsection A of 19.8.11.1113 NMAC.

(6) Ground-water monitoring shall proceed through mining and continue during reclamation until bond release. The director may modify the monitoring requirements, including the parameters covered and the sampling frequency, if the operator demonstrates, using the monitoring data obtained under this paragraph, that:

(a) the operation has minimized disturbance to the hydrologic balance in the permit and adjacent area and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses, and the water rights of other users have been protected or replaced; or

(b) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Paragraph (4) of Subsection B of 19.8.9.907 NMAC.

(7) If an operator can demonstrate by the use of the determination required under Subsection C of 19.8.9.907 NMAC and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area; then monitoring of that stratum may be waived by the director.

B. Surface water.

(1) Surface water monitoring shall be conducted in accordance with the monitoring program submitted under Paragraph (4) of Subsection B of 19.8.9.907 NMAC and approved by the director. The director shall determine the nature of data, frequency of collection and reporting requirements. Monitoring shall:

(a) be adequate to measure accurately and record water quantity and quality of the discharges from the permit area;

(b) in all cases in which analytical results of the sample collections indicate noncompliance with the permit condition or applicable standard has occurred, result in the person who conducts the surface coal mining operations notifying the director within 5 days. Where a national pollutant discharge elimination system (NPDES) permit effluent limitation noncompliance has occurred, the person who conducts surface coal mining operations shall forward the analytic results concurrently with the written notice of noncompliance;

(c) Any sample results which indicate a permit violation will be reported immediately to the director and the operator shall immediately take the actions provided for in Subsection A of 19.8.11.1113 NMAC.

(d) A copy of the completed reporting form filed to meet NPDES permit requirements; or

(e) A letter identifying the state or federal government official with whom the reporting form was filed to meet NPDES permit requirements and the date of filing.

(2) Surface water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with Subparagraph (c) of Paragraph (3) of Subsection E of 19.8.20.2009 NMAC the director may modify the monitoring

requirements, except those required by the NPDES permitting authority, including the parameters covered and sampling frequency if the operator demonstrates, using the monitoring data obtained under this paragraph, that:

(a) the operator has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and the water rights of other users have been protected or replaced; or

(b) monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under Paragraph (4) of Subsection B of 19.8.9.907 NMAC.

(3) Equipment, structures, and other devices necessary to measure and sample accurately the quality and quantity of surface water discharges from the disturbed area shall be properly installed, maintained, and operated and shall be removed when no longer required.

(4) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123 and 434 and as required by the national pollutant discharge elimination system permitting authority.

[11-29-97; 19.8.20.2020 NMAC - Rn, 19 NMAC 8.2.20.2020, 9-29-2000]

19.8.20.2021 HYDROLOGIC BALANCE: TRANSFER OF WELLS:

A. An exploratory or monitoring well may be transferred by the person who conducts surface coal mining operations for further use as a water well with the prior approval of the director and with such approval as is otherwise required by the state engineer. That person and the surface owner of the lands where the well is located shall jointly submit a written request to the director for that approval.

B. Upon an approved transfer of a well, the transferee shall:

- (1) assume primary liability for damages to persons or property from the well;
- (2) plug the well when necessary, but in no case later than abandonment of the well; and
- (3) assume primary responsibility for compliance with 19.8.20.2001 through 2003 NMAC with respect to the well.

C. Upon an approved transfer of a well, the transferor shall be secondarily liable for the transferee's obligations under Subsection B of 19.8.20.2021 NMAC, until release of the bond or other equivalent guarantee required by 19.8.14 NMAC for the area in which the well is located.

[11-29-97; 19.8.20.2021 NMAC - Rn, 19 NMAC 8.2.20.2021, 9-29-2000]

19.8.20.2022 HYDROLOGIC BALANCE: WATER RIGHTS AND REPLACEMENT:

Any person who conducts surface coal mining operations shall comply with any water replacement plan approved by the state engineer under the Mine Dewatering Act, and shall also comply with applicable statutes and regulations administered by the state engineer.

[11-29-97; 19.8.20.2022 NMAC - Rn, 19 NMAC 8.2.20.2022, 9-29-2000]

19.8.20.2023 HYDROLOGIC BALANCE: DISCHARGE OF WATER INTO AN UNDERGROUND MINE:

Water from the surface or from an underground mine shall not be diverted or otherwise discharged into other underground mine workings, unless the person who conducts the surface coal mining operations demonstrates to the director that this will:

A. abate water pollution or otherwise eliminate public hazards resulting from surface coal mining operations; and

B. be discharged as a controlled flow, meeting the effluent limitations of 19.8.20.2010 NMAC for pH and total suspended solids, except that the pH and total suspended solid limitations may be exceeded, if approved by the director and is limited to:

- (1) coal processing waste;
- (2) fly ash from a coal-fired facility;
- (3) sludge from an acid mine drainage treatments facility;
- (4) flue gas desulfurization sludge;
- (5) inert materials used for stabilizing underground mines; or
- (6) underground mine development wastes.

C. in any event, the discharge from underground mines to surface waters will not cause, result in or contribute to a violation of applicable water quality standards or effluent limitations;

D. minimizes disturbance to the hydrologic balance; and

E. meets with the approval of the mine safety and health administration.

[11-29-97; 19.8.20.2023 NMAC - Rn, 19 NMAC 8.2.20.2023, 9-29-2000]

19.8.20.2024 HYDROLOGIC BALANCE: POSTMINING REHABILITATION OF SEDIMENTATION PONDS, DIVERSIONS, IMPOUNDMENTS AND TREATMENT FACILITIES:

Before abandoning the permit area, the person who conducts the surface coal mining operations shall renovate all permanent sedimentation ponds, diversions, impoundments, and treatment facilities to meet criteria specified in the detailed design plan for the permanent structures and impoundments.

[11-29-97; 19.8.20.2024 NMAC - Rn, 19 NMAC 8.2.20.2024, 9-29-2000]

19.8.20.2025 HYDROLOGIC BALANCE: STREAM BUFFER ZONES:

A. No surface land within 100 feet of a perennial stream or a stream with a biological community determined according to Subsection C of 19.8.20.2025 NMAC shall be disturbed by surface coal mining operations except in accordance with 19.8.20.2011 and 2012 NMAC, unless the director specifically authorizes surface coal mining operations closer to or through such a stream upon finding that:

(1) surface mining activities will not cause or contribute to the violation of applicable state or federal water quality standards, and will not adversely affect the water quantity and quality or other environmental resources of the stream; and

(2) if there will be a temporary or permanent stream-channel diversion, it will comply with 19.8.20.2011 and 2012 NMAC.

B. The area not to be disturbed shall be designated a buffer zone and marked as specified in 19.8.20.2000 NMAC.

C. A stream with a biological community shall be determined by the existence in the stream at any time of an assemblage of two or more species of arthropods or molluscan animal which are:

(1) adapted to flowing water for all or part of their life cycle;

(2) dependent upon a flowing water habitat;

(3) reproducing or can reasonably be expected to reproduce in the water body where they are found; and

(4) longer than 2 millimeters at some stage of the part of their life cycle spent in the flowing water habitat.

[11-29-97; 19.8.20.2025 NMAC - Rn, 19 NMAC 8.2.20.2025, 9-29-2000]

19.8.20.2026 HYDROLOGIC BALANCE: UNDERGROUND MINE ENTRY AND ACCESS DISCHARGES:

A. Surface entries and accesses to underground workings, including adits and slopes, shall be located, designed, constructed, and utilized to prevent or control gravity discharge of water from the mine.

B. Gravity discharge of water from an underground mine, other than a drift mine subject to Subsection C of 19.8.20.2026 NMAC, may be allowed by the director, if it is demonstrated that:

(1) in the case of an untreated discharge:

(a) the discharge, without treatment, satisfies the water effluent limitations of 19.8.20.2010 NMAC and all applicable state and federal water quality standards; and

(b) that discharge will result in changes in the prevailing hydrologic balance that are minimal and approved postmining land uses will not be adversely affected; or

(2) in the case of a treated discharge:

(a) the discharge is conveyed to a treatment facility in the permit area in accordance with Subsection A of 19.8.20.2010 NMAC;

(b) all water from the underground mine discharged from the treatment facility meets the effluent limitations of 19.8.20.2010 NMAC and all other applicable state and federal statutes and regulations; and

(c) consistent maintenance of the treatment facility will occur throughout the anticipated period of gravity discharge.

C. Notwithstanding anything to the contrary in Subsections A and B of 19.8.20.2026 NMAC, for a drift mine first used after the implementation of the permanent state program and located in acid-producing or iron-producing coal seams, surface entries and accesses shall be located in such a manner as to prevent any gravity discharge from the mine.

[11-29-97; 19.8.20.2026 NMAC - Rn, 19 NMAC 8.2.20.2026, 9-29-2000; A, 12-31-2007]

19.8.20.2027 COAL RECOVERY:

Surface coal mining operations shall be conducted so as to maximize the utilization and conservation of the coal while maintaining environmental integrity so that re-affecting the land in the future through surface mining operations is minimized.

[11-29-97; 19.8.20.2027 NMAC - Rn, 19 NMAC 8.2.20.2027, 9-29-2000]

19.8.20.2028 USE OF EXPLOSIVES: GENERAL REQUIREMENTS:

A. Each operator shall comply with all applicable state and federal laws in the use of explosives.

B. Blasts that use more than 5 lbs. of explosive or blasting agent shall be conducted according to the schedule required by 19.8.20.2030 NMAC.

C. Blasters.

(1) No later than twelve (12) months after the blaster certification program required by 19.8.33 NMAC of these regulations has been approved pursuant to 30 CFR Chapter VII, Subchapter C, all blasting operations in surface coal mining operations shall be conducted under the direction of a certified blaster. Before that time, all such blasting operations shall be conducted by competent, experienced persons who understand the hazards involved.

(2) Certificates of blaster certification shall be carried by blasters or shall be on file at the permit area during blasting operations.

(3) A blaster and at least one other person shall be present at the firing of a blast.

(4) Any blaster who is responsible for conducting blasting operations at a blasting site shall:

(a) be familiar with the blasting plan and site-specific performance standards;
and

(b) give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

D. Blast design.

(1) An anticipated blast design shall be submitted if blasting operations will be conducted within:

(a) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(b) 500 feet of an active or abandoned underground mine.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the director.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in 19.8.20.2032 NMAC.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The director may require changes to the design submitted.

[11-29-97; 19.8.20.2028 NMAC - Rn, 19 NMAC 8.2.20.2028, 9-29-2000]

19.8.20.2029 USE OF EXPLOSIVES: PRE-BLASTING SURVEY:

A. At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within 1/2 mile of the permit area how to request a preblasting survey.

B. A resident or owner of a dwelling or structure with 1/2 mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the director, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

C. The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

D. The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the director and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he may submit to both the operator and the director a detailed description of the specific areas of disagreement.

E. Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

[11-29-97; 19.8.20.2029 NMAC - Rn, 19 NMAC 8.2.20.2029, 9-29-2000]

19.8.20.2030 USE OF EXPLOSIVES: BLASTING SCHEDULE:

A. General requirements.

(1) The operator shall conduct blasting operations at times approved by the director and announced in the blasting schedule. The director may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(2) All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the director based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The director may specify more restrictive time periods for blasting.

(3) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within 1/2 mile of the blasting site and document the reason for the unscheduled blast in accordance with 19.8.20.2033 NMAC.

B. Blasting schedule publication and distribution.

(1) The operator shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

(2) The operator shall distribute copies of the schedule to local governments and public utilities and to each local residence within 1/2 mile of the proposed blasting site described in the schedule.

(3) The operator shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

C. Blasting schedule contents. The blasting schedule shall contain, at a minimum:

- (1) name, address, and telephone number of operator.
- (2) identification of the specific areas in which blasting will take place;
- (3) dates and time periods when explosives are to be detonated;
- (4) methods to be used to control access to the blasting area; and
- (5) type and patterns of audible warning and all-clear signals to be used before and after blasting.

[11-29-97; 19.8.20.2030 NMAC - Rn, 19 NMAC 8.2.20.2030, 9-29-2000]

19.8.20.2031 USE OF EXPLOSIVES: BLASTING SIGNS, WARNINGS AND ACCESS CONTROL:

A. Blasting signs. Blasting signs shall meet the specifications of Subsections A and B of 19.8.20.2000 NMAC. The operator shall:

(1) conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) at all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use," which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

B. Warnings. Warning and all-clear signals of different character or pattern, that are audible within a range of 1/2 mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within 1/2 mile of the permit area shall be notified of the meaning of the signals in the blasting schedule.

C. Access control. Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that:

(1) no unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) access to and travel within the blasting area can be safely resumed.

[11-29-97; 19.8.20.2031 NMAC - Rn, 19 NMAC 8.2.20.2031, 9-29-2000]

19.8.20.2032 USE OF EXPLOSIVES: CONTROL OF ADVERSE EFFECTS:

A. General requirements. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

B. Airblasts.

(1) Limits.

(a) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in Subsection E of 19.8.20.2032 NMAC.

Lower frequency limit of measuring system, in Hz (\pm 3 dB)	Maximum Level, in dB
0.1 Hz or lower--flat response ¹	134 peak.
2 Hz or lower--flat response	133 peak.
6 Hz or lower--flat response	129 peak.
C - weighted--slow response ¹	105 peak dBC.

¹Only when approved by the director.

(b) If necessary to prevent damage, the director shall specify lower maximum allowable airblast levels than those of Subparagraph (a) of Paragraph (1) of Subsection B of 19.8.20.2032 NMAC for use in the vicinity of a specific blasting operation.

(2) Monitoring.

(a) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The director may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(b) The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

C. Flyrock. Flyrock travelling in the air or along the ground shall not be cast from the blasting site:

(1) more than one-half the distance to the nearest dwelling or other occupied structure;

(2) beyond the area of control required under Subsection C of 19.8.20.2031 NMAC; or

(3) beyond the permit boundary.

D. Ground vibration.

(1) General. In all blasting operations, except as otherwise authorized in Subsection E of 19.8.20.2032 NMAC, the maximum ground vibration shall not exceed

the values approved in the blasting plan required under 19.8.9.902 NMAC. The maximum ground vibration for protected structures listed in Subparagraph (a) of Paragraph (2) of Subsection D of 19.8.20.2032 NMAC shall be established in accordance with either the maximum peak-particle-velocity limits of Paragraph (2) of Subsection D of 19.8.20.2032 NMAC, the scaled-distance equation of Paragraph (3) of Subsection D of 19.8.20.2032 NMAC, the blasting-level chart of Paragraph (4) of Subsection D of 19.8.20.2032 NMAC, or by the director under Paragraph (5) of Subsection D of 19.8.20.2032 NMAC. All structures in the vicinity of the blasting area, not listed in Subparagraph (a) of Paragraph (2) of Subsection D of 19.8.20.2032 NMAC, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the director.

(2) Maximum peak particle velocity.

(a) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (D) from the blasting site, in feet be applied	Maximum allowable peak particle velocity factor (V max) for ground vibration, in inches/second¹	Scaled- factor to without monitoring²
seismic (Ds)		
0 to 300	1.25	50
301 to 5,000	1.00	55
5,000 and beyond	0.75	65

¹Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

²Applicable to the scaled-distance equation of Subparagraph (a) of Paragraph (3) of Subsection D of 19.8.20.2032 NMAC.

(b) A seismographic record shall be provided for each blast.

(3) Scaled-distance equation. An operator may use the scaled-distance equation, $W=(D/D_s)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and D_s = the scaled-distance factor, which may initially be approved by the director using the values for scaled-distance factor listed in Subparagraph (a) of Paragraph (2) of Subsection D of 19.8.20.2032 NMAC.

(a) The development of a modified scaled-distance factor may be authorized by the director on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of Subparagraph (a) of Paragraph (2) of Subsection D of 19.8.20.2032 NMAC, at a 95-percent confidence level.

(4) Blasting-level chart.

(a) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowance ground vibration.

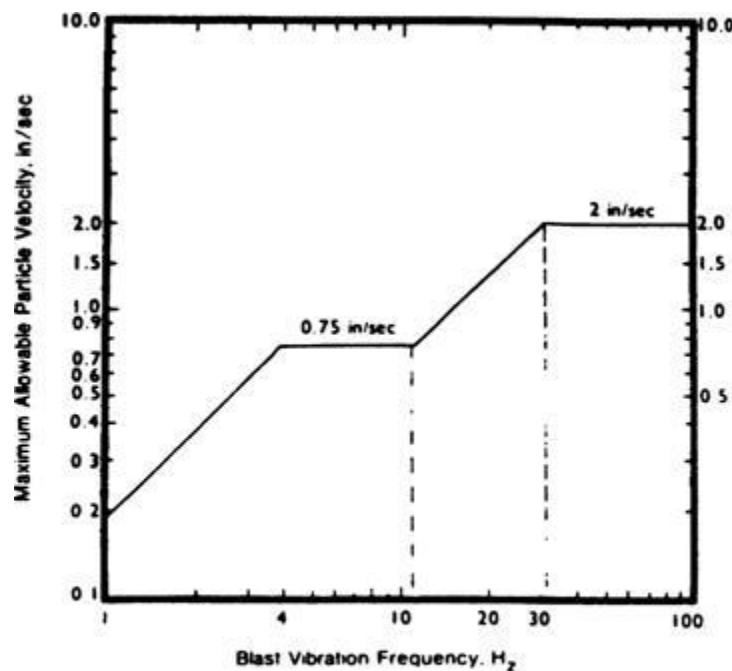


Figure 1. Alternative blasting level criteria.
(Source: Modified from figure B-1,
Bureau of Mines R18507)

(b) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the director before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the director beyond the limits otherwise provided by 19.8.20 NMAC, if determined necessary to provide damage protection.

(6) The director may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

E. The maximum airblast and ground-vibration standards of Subsections B and D of 19.8.20.2032 NMAC shall not apply at the following locations:

(1) at structures owned by the permittee and not leased to another person;

(2) at structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the director before blasting.

[11-29-97; 19.8.20.2032 NMAC - Rn, 19 NMAC 8.2.20.2032, 9-29-2000]

19.8.20.2033 USE OF EXPLOSIVES: RECORDS OF BLASTING OPERATIONS:

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the director and to the public for inspection. Such records shall contain the following data:

A. name of the operator conducting the blast;

B. location, date, and time of the blast;

C. name, signature, and certification number of the blaster conducting the blast;

D. identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in Subsection E of 19.8.20.2032 NMAC;

E. weather conditions, including those which may cause possible adverse blasting effects;

F. type of material blasted;

G. sketches of the blast pattern, including number of holes, burden, spacing, decks, and delay patterns;

H. diameter and depth of holes;

I. types of explosives used;

J. total weight of explosives used per hole;

K. the maximum weight of explosives detonated in an 8-millisecond period;

L. initiation system;

M. type and length of stemming;

N. mats or other protection used;

O. seismographic and airblast records, if required, which shall include:

(1) type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(2) exact location of instrument and the date, time, and distance from the blast;

(3) name of the person and firm taking the reading;

(4) name of the person and firm analyzing the seismographic record; and

(5) the vibration and/or airblast level recorded;

P. reasons and conditions for each unscheduled blast.

[11-29-97; 19.8.20.2033 NMAC - Rn, 19 NMAC 8.2.20.2033, 9-29-2000]

19.8.20.2034 DISPOSAL OF EXCESS SPOIL: GENERAL REQUIREMENTS:

A. Spoil not required to achieve the approximate original contour within the area where overburden has been removed shall be hauled or conveyed to and placed in designated disposal areas within a permit area, if the disposal areas are authorized for such purposes in the approved permit application in accordance with 19.8.20.2034 through 2037 NMAC. The spoil shall be placed in a controlled manner to ensure:

(1) that leachate and surface runoff from the fill will not degrade surface or ground waters or exceed the effluent limitations of 19.8.20.2010 NMAC;

(2) stability of the fill; and

(3) that the land mass designated as the disposal area is suitable for reclamation and revegetation compatible with the natural surroundings.

B. The fill shall be designed using recognized professional standards, certified by a qualified registered professional engineer, and approved by the director.

C. All vegetative and organic materials shall be removed from the disposal area and the topsoil to be used as topdressing shall be removed, segregated, and stored or replaced under 19.8.20.2004 through 2008 NMAC. If approved by the director, organic materials may be used as mulch or may be included in the topdressing to control erosion, promote growth of vegetation, or increase the moisture retention of the soil.

D. Slope protection shall be provided to minimize surface erosion at the site. Diversion design shall conform with the requirements of 19.8.20.2011 NMAC. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

E. The disposal areas shall be located on the most moderately sloping and naturally stable areas available as approved by the director. If such placement provides additional stability and prevents mass movement, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm.

F. Excess spoil shall be transported and placed in a controlled manner in horizontal lifts not exceeding 4 feet in thickness; concurrently compacted as necessary to ensure mass stability and to prevent mass movement during and after construction; graded so that surface and subsurface drainage is compatible with the natural surroundings; and covered with topsoil or substitute material in accordance with 19.8.20.2007 NMAC. The director may approve a design which incorporates placement of excess spoil in horizontal lifts other than 4 feet in thickness when it is demonstrated by the operator and certified by a qualified registered professional engineer that the design will ensure the stability of the fill, will ensure a long-term static factor of 1.5, and will meet all other applicable requirements.

G. The final configuration of the fill must be suitable for postmining land uses approved in accordance with 19.8.20.2075 NMAC except that no depressions or impoundments shall be allowed on the completed fill unless approved by the director pursuant to Subsection C of 19.8.20.2055 NMAC.

H. Terraces may be utilized to control erosion and enhance stability if approved by the director and consistent with Subsection B of 19.8.20.2055 NMAC.

I. Where the pre-existing average slope in the disposal area exceeds 1v:2.8h (36 percent) or such lesser slope as may be designated by the director based on local conditions, the fill shall be designed and constructed using the services of a

professional engineer who shall ensure stability of the fill and the foundation. Where the toe of the spoil rests on a downslope, stability analyses shall be performed in accordance with Subsection C of 19.8.9.909 NMAC to determine the size of rock toe buttresses and key-way cuts.

J. The fill shall be inspected for stability by a registered engineer or other qualified professional specialist experienced in the construction of earth and rockfill embankments at least quarterly throughout construction and during the following critical construction periods:

- (1) removal of all organic material and top-soil to be used as topdressing;
- (2) placement of underdrainage systems;
- (3) installation of surface drainage systems;
- (4) placement and compaction of fill materials; and
- (5) revegetation.

K. The qualified registered professional engineer shall provide the director a certified report within 2 weeks after each inspection that the fill has been constructed and maintained as specified in the design approved by the director. The report shall include appearances of instability, structure weakness, and other hazardous condition. A copy of the report shall be retained at the mine site.

L. The certified report on the drainage system and protective filters shall include color photographs taken during and after construction, but before underdrains are covered with excess spoil. If the underdrain system is constructed in phases, each phase shall be certified separately.

(1) Where excess durable rock spoil is placed in single or multiple lifts such that the underdrain system is constructed simultaneously with excess spoil placement by the natural segregation of dumped materials, in accordance with 19.8.20.2037 NMAC, color photographs shall be taken of the underdrain as the underdrain system is being formed.

(2) The photographs accompanying each certified report shall be taken in adequate size and number with enough terrain or other physical features of the site shown to provide a relative scale to the photographs and to specifically and clearly identify the site.

M. Coal processing wastes shall not be disposed of in head-of-hollow or valley fills, and may only be disposed of in other excess spoil fills, if such waste is:

- (1) placed in accordance with 19.8.20.2042 NMAC;

- (2) demonstrated to be nontoxic and nonacid forming; and
- (3) demonstrated to be consistent with the design stability of the fill.

N. If the disposal area contains springs, natural or manmade water-courses, or wet-weather seeps, an underdrain system consisting of durable rock shall be constructed from the wet areas in a manner that prevents infiltration of the water into the spoil material. The underdrain system shall be protected by an adequate filter and shall be designed and constructed using standard geotechnical engineering methods.

O. The foundation and abutments of the fill shall be stable under all conditions of construction and operation. Sufficient foundation investigation and laboratory testing of foundation materials shall be performed in order to determine the design requirements for stability of the foundation. Analyses of foundation conditions shall include the effect of underground mine workings, if any, upon the stability of the structure.

P. Excess spoil may be returned to underground mine workings, but only in accordance with a disposal program approved by the director and MSHA upon the basis of a plan submitted under 19.8.9.917 NMAC.

[11-29-97; 19.8.20.2034 NMAC - Rn, 19 NMAC 8.2.20.2034, 9-29-2000]

19.8.20.2035 DISPOSAL OF EXCESS SPOIL: VALLEY FILLS:

Valley fills shall meet all of the requirements of 19.8.20.2034 NMAC and the additional requirements of 19.8.20 NMAC.

A. The fill shall be designed to attain a long-term static safety factor of 1.5 based upon data obtained from subsurface exploration, geotechnical testing, foundation design, and accepted engineering analyses.

B. Unless the director finds that a subdrainage system is not required for environmental protection, a subdrainage system for the fill shall be constructed in accordance with the following:

- (1) A system of underdrains constructed of durable rock shall meet the requirements of Paragraph (4) of Subsection B of 19.8.20.2035 NMAC and:
 - (a) be installed along the natural drainage system;
 - (b) extend from the toe to the head of the fill; and
 - (c) contain lateral drains to each area of potential drainage or seepage.

(2) A filter system to insure the proper functioning of the rock underdrain system shall be designed and constructed using standard geotechnical engineering methods.

(3) In constructing the underdrains, the rock size and size of the main underdrain will be designed to meet the conditions at the site as determined by data called for in Subsection A of 19.8.20.2035 NMAC. If site specific engineering design criteria are not submitted, the following criteria will be used. In constructing the underdrains, no more than 10 percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. Rock used in underdrains shall meet the requirements of Paragraph (4) of Subsection B of 19.8.20.2035 NMAC. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
< 1,000,000 yd ³	Sandstone	10	4
< 1,000,000 yd ³	Shale	16	8
> 1,000,000 yd ³	Sandstone	16	8
> 1,000,000 yd ³	Shale	16	16

(4) Underdrains shall consist of nondegradable, non-acid or toxic forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale.

C. Spoil shall be hauled or conveyed and placed in a controlled manner and concurrently compacted as specified by the director, in lifts no greater than 4 feet or less if required by the director to:

- (1) achieve the densities designed to ensure mass stability;
- (2) prevent mass movement;
- (3) avoid contamination of the rock underdrain or rock core; and
- (4) prevent formation of voids.

D. Surface water runoff from the area above the fill shall be diverted away from the fill and into stabilized diversion channels designed to pass safely the runoff from a 100-year, 6-hour precipitation event or larger event specified by the director. Surface runoff

from the fill surface shall be diverted to stabilized channels off the fill which will safely pass the runoff from a 100 year, 6-hour precipitation event. Diversion design shall comply with the requirements of 19.8.20.2011 NMAC.

E. The tops of the fill and any terrace constructed to stabilize the face shall be graded no steeper than 1v:20h (5 percent). The vertical distance between terraces shall not exceed 50 feet.

F. Drainage shall not be directed over the outslope of the fill.

G. The outslope of the fill shall not exceed 1v:2h (50 percent). The director may require a flatter slope.

[11-29-97; 19.8.20.2035 NMAC - Rn, 19 NMAC 8.2.20.2035, 9-29-2000]

19.8.20.2036 DISPOSAL OF EXCESS SPOIL: HEAD OF HOLLOW FILLS:

Disposal of spoil in the head-of-hollow fill shall meet all standards set forth in 19.8.20.2034 and 2035 NMAC and the additional requirements of 19.8.20 NMAC.

A. The fill shall be designed to completely fill the disposal site to the approximate elevation of the ridgeline. A rock-core chimney drain may be utilized instead of the subdrain and surface diversion system required for valley fills. If the crest of the fill is not approximately at the same elevation as the low point of the adjacent ridgeline, the fill must be designed as specified in 19.8.20.2035 NMAC, with diversion of runoff around the fill. A fill associated with contour mining and placed at or near the coal seam, and which does not exceed 250,000 cubic yards may use the rock-core chimney drain.

B. The alternative rock-core chimney drain system shall be designed and incorporated into the construction of head-of-hollow fills as follows:

(1) The fill shall have, along the vertical projection of the main buried stream channel or rill a vertical core of durable rock at least 16 feet thick which shall extend from the toe of the fill to the head of the fill, and from the base of the fill to the surface of the fill. A system of lateral rock underdrains shall connect this rock-core to each area of potential drainage or seepage in the disposal area. Rocks used in the rock-core and underdrains shall meet the requirements of Subsection B of 19.8.20.2035 NMAC.

(2) A filter system to ensure the proper functioning of the rock-core shall be designed and constructed using standard geotechnical engineering methods.

(3) The grading may drain surface water away from the outslope of the fill and toward the rock-core. The maximum slope of the top of the fill shall be 1v:33h (3 percent). Instead of the requirements of Subsection G of 19.8.20.2034 NMAC, a drainage pocket may be maintained at the head of the fill during and after construction, to intercept surface runoff and discharge the runoff through or over the rock drain, if

stability of the fill is not impaired. In no case shall this pocket or sump have a potential for impounding more than 10,000 cubic feet of water. Terraces on the fill shall be graded with a 3- to 5- percent grade toward the fill and a 1- percent slope toward the rock-core.

C. Other drainage control systems that have been demonstrated to provide equivalent stability to the fill as described in Subsections A and B of 19.8.20.2036 NMAC may be approved by the director.

D. The drainage control system shall be capable of passing safely the runoff from a 100-year, 24-hour precipitation event, or larger event specified by the director.

[11-29-97; 19.8.20.2036 NMAC - Rn, 19 NMAC 8.2.20.2036, 9-29-2000]

19.8.20.2037 DISPOSAL OF EXCESS SPOIL: DURABLE ROCK FILLS:

In lieu of the requirements of 19.8.20.2035 and 2036 NMAC, the director may approve alternate methods of disposal of hard rock spoil, including fill placement by dumping in a single lift, on a site specific basis, provided the services of a registered professional engineer experienced in the design and construction of earth and rockfill embankments are utilized and provided the requirements of 19.8.20 NMAC and 19.8.20.2034 NMAC are met. For 19.8.20 NMAC, hard rock spoil shall be defined as rockfill consisting of at least 80 percent by volume of sandstone, limestone, or other rocks that do not slake in water. Resistance of the hard rock spoil to slaking shall be determined by using a slake index and slake durability tests approved by the director.

A. Spoil is to be transported and placed in a specified and controlled manner, which will ensure stability of the fill.

(1) The method of spoil placement shall be designed to ensure mass stability and prevent mass movement in accordance with the additional requirements of 19.8.20 NMAC.

(2) Loads of noncemented clay shale and/or clay spoil in the fill shall be mixed with hard rock spoil in a controlled manner to limit on a unit basis concentrations of noncemented clay shale and clay in the fill. Such materials shall comprise no more than 20 percent of the fill volume as determined by tests performed by a registered professional engineer and approved by the director.

B. Stability analyses.

(1) Stability analyses shall be made by the registered professional engineer. Parameters used in the stability analyses shall be based on adequate field reconnaissance, subsurface investigations, including borings and laboratory tests.

(2) The embankment which constitutes the valley fill or head-of-hollow fill shall be designed with the following factors of safety.

Case Safety	Design Condition	Minimum Factor of
I	End of construction	1.5
II	Earthquake	1.1

C. The design of a head-of-hollow fill shall include an internal drainage system to the extent necessary to ensure continued free drainage of anticipated seepage from precipitation and from springs or wet weather seeps.

(1) Anticipated discharge from springs and seeps and due to precipitation shall be based on records and/or field investigations to determine seasonal variation. The design of the internal drainage system shall be based on the maximum anticipated discharge.

(2) All granular material used for the drainage system shall be free of clay and consist of durable particles such as natural sands and gravel, sandstone, limestone of other durable rock which will not slake in water.

(3) The internal drain shall be protected by a properly designed filter system.

D. Surface water runoff from the areas adjacent to and above the fill shall not be allowed to flow onto the fill and shall be diverted into stabilized channels which are designed to pass safely the runoff from a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of Subsection F of 19.8.20.2011 NMAC.

E. The top surface of the completed fill shall be graded such that the final slope after settlement will be no steeper than 1v:20h (5 percent) toward properly designed drainage channels in natural ground along the periphery of the fill. Surface runoff from the top surface of the fill shall not be allowed to flow over the outslope of the fill.

F. Surface runoff from the outslope of the fill shall be diverted off the fill to properly designed channels which will pass safely a 100-year, 24-hour precipitation event. Diversion design shall comply with the requirements of Subsection F of 19.8.20.2011 NMAC.

G. Terraces or other suitable controls, such as berms, contour furrows, or micro-depressions, shall be constructed on the outslope if required for control of erosion, or terraces for construction of roads included in the approved postmining land use plan. Terraces shall meet the following requirements:

(1) the slope of the outslope between terrace benches shall not exceed 1v:2h (50 percent);

(2) to control surface runoff, each terrace bench shall be graded to a slope of 1v:20h (5 percent) toward the embankment; runoff shall be collected by a ditch along the intersection of each terrace bench and the outslope;

(3) terrace ditches shall have a 5 percent slope toward the channels specified in Subsection F of 19.8.20.2037 NMAC, unless steeper slopes are necessary in conjunction with approved roads.

[11-29-97; 19.8.20.2037 NMAC - Rn, 19 NMAC 8.2.20.2037, 9-29-2000; A, 12-31-2007]

19.8.20.2038 PROTECTION OF UNDERGROUND MINING FROM SURFACE MINING ACTIVITIES:

A. No surface coal mining activities shall be conducted closer than 500 feet to any point of either an active or abandoned underground mine, except to the extent that:

(1) the nature, timing, and sequences of the operations are jointly approved by the director, the mine safety and health administration, and the state mine inspector; and

(2) the activities result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

B. Surface mining activities shall be designed to protect disturbed surface areas, including spoil disposal sites, so as not to endanger any present or future operations of either surface or underground mining activities.

[11-29-97; 19.8.20.2038 NMAC - Rn, 19 NMAC 8.2.20.2038, 9-29-2000]

19.8.20.2039 COAL PROCESSING WASTE BANKS: GENERAL REQUIREMENTS:

A. Coal processing waste banks shall be designed and constructed to meet the requirements of 30 CFR 77.214/77.215, and approved by the director.

B. All coal processing waste other than wastes to be disposed of in the mine workings or excavation, shall be hauled or conveyed and placed in new and existing disposal areas approved by the director for this purpose. These areas shall be within a permit area. The disposal area shall be designed, constructed and maintained:

(1) in accordance with 19.8.20.2034 and 2035 NMAC, 19.8.20 NMAC, and 19.8.20.2040 through 2045 NMAC; and

(2) to prevent combustion.

C. Coal processing waste materials from activities located outside a permit are, such as those activities at other mines or abandoned mine waste piles may be disposed of in the permit area only if approved by the director. Approval shall be based on a showing by the person who conducts surface coal mining operations in the permit area, using hydrologic, geotechnical, physical, and chemical analyses, that disposal of these materials does not:

- (1) adversely affect water quality, water flow or vegetation;
- (2) create public health hazards; or
- (3) cause instability in the disposal areas.

[11-29-97; 19.8.20.2039 NMAC - Rn, 19 NMAC 8.2.20.2039, 9-29-2000]

19.8.20.2040 COAL PROCESSING WASTE BANKS: SITE INSPECTION:

A. All coal processing waste banks shall be inspected, on behalf of the person conducting surface coal mining operations, by a qualified registered professional engineer or other qualified professional specialist under the direction of the professional engineer.

(1) Such inspections shall be made at least quarterly throughout construction and during critical construction periods. Critical construction periods shall include at a minimum:

(a) foundation preparation including the removal of all organic material and topsoil;

(b) placement of underdrains and protective filters systems;

(c) installation of final surface drainage systems; and

(d) the final graded and revegetated facility. Regular inspections by the engineer or specialist shall also be conducted during placement and compaction of coal processing waste materials. More frequent inspections shall be conducted if a danger of harm exists to the public health and safety or the environment. Inspections shall continue until the coal processing waste banks have been finally graded and revegetated or until a later time as required by the director.

(2) Inspections shall include such observations and tests as may be necessary to evaluate the potential hazard to human life and property, to ensure that all organic material and topsoil to be used as topdressing have been removed and that proper construction and maintenance are occurring in accordance with the plan submitted under 19.8.9 NMAC and approved by the director.

(3) The engineer or other approved inspector shall consider steepness of slopes, seepage, and other visible factor which could indicate potential failure, and the results of failure with respect to the threat to human life and property.

(4) Where the plan submitted under 19.8.9 NMAC and approved by the director provides for a subdrainage in accordance with Subsection A of 19.8.20.2041 NMAC, inspections shall be made in accordance with Subsection K of 19.8.20.2034 NMAC.

(5) The qualified registered professional engineer shall provide a certified report to the director promptly after each inspection that the coal processing waste bank has been constructed and maintained as designed and in accordance with the approved plan and 19.8.20 NMAC. The report shall include appearances of instability, structural weakness, and other hazardous conditions.

B. If any inspection discloses that a potential hazard exists, the director shall be informed promptly of the finding and of the emergency procedures formulated for public protection and remedial action. If adequate procedures cannot be formulated or implemented, the director shall be notified immediately. The director shall then notify the appropriate emergency agencies that other emergency procedures are required to protect the public from the coal processing waste area.

[11-29-97; 19.8.20.2040 NMAC - Rn, 19 NMAC 8.2.20.2040, 9-29-2000]

19.8.20.2041 COAL PROCESSING WASTE BANKS: WATER CONTROL MEASURES:

A. Unless the operator demonstrates to the director that embankments can be constructed so as not to impose safety or environmental hazards, a properly designed subdrainage shall be provided, which shall:

- (1) intercept all ground water sources;
- (2) be protected by an adequate filter; and
- (3) be covered so as to protect against the entrance of surface water or leachate from the coal processing waste.

B. All surface drainage from the area above the coal processing waste bank and from the crest and face of the waste disposal area shall be diverted, in accordance with Subsection D of 19.8.20.2035 NMAC.

C. Slope protection shall be provided to minimize surface erosion at the site. All disturbed areas, including diversion ditches that are not riprapped, shall be vegetated upon completion of construction.

D. All water discharged from a coal processing waste bank shall comply with 19.8.20.2009, 2010, 2013, 2014, 2020 and 2023 NMAC.

[11-29-97; 19.8.20.2041 NMAC - Rn, 19 NMAC 8.2.20.2041, 9-29-2000]

19.8.20.2042 COAL PROCESSING WASTE BANKS: CONSTRUCTION REQUIREMENTS:

A. Coal processing waste banks shall be constructed in compliance with 19.8.20.2034 and 2035 NMAC, depending on the location of the waste bank, except to the extent the requirements of those sections are specifically varied in 19.8.2042 NMAC.

B. Following grading of the coal processing waste bank the site shall be covered with a minimum of 4 feet of the best available non-toxic and non-combustible material in accordance with 19.8.20.2056 NMAC, topdressed in accordance with 19.8.20.2007 NMAC and in a manner that does not impede flow from subdrainage systems. The coal processing waste bank shall be revegetated in accordance with 19.8.20.2060 through 2066 NMAC. The director may allow less than 4 feet of cover material based on physical and chemical analyses which show that the requirements of 19.8.20.2060 through 2066 NMAC will be met.

[11-29-97; 19.8.20.2042 NMAC - Rn, 19 NMAC 8.2.20.2042, 9-29-2000]

19.8.20.2043 COAL PROCESSING WASTE: BURNING:

Coal processing waste fires shall be extinguished by the person who conducts the surface coal mining operations, in accordance with a plan approved by the director and the mine safety and health administration. The plan shall contain, at a minimum, provisions to ensure that only those persons authorized by the operator, and who have an understanding of the procedures to be used, shall be involved in the extinguishing operations.

[11-29-97; 19.8.20.2043 NMAC - Rn, 19 NMAC 8.2.20.2043, 9-29-2000]

19.8.20.2044 COAL PROCESSING WASTE: BURNED WASTE UTILIZATION:

Before any burned coal processing waste, other materials, or refuse is removed from a disposal area, approval shall be obtained from the director. A plan for the method of removal, with maps and appropriate drawings to illustrate the proposed sequence of the operation and method of compliance with 19.8.20 NMAC, shall be submitted to the director. Consideration shall be given in the plan to potential hazards, which may be created by removal to persons working or living in the vicinity of the structure. The plan shall be certified by a qualified engineer.

[11-29-97; 19.8.20.2044 NMAC - Rn, 19 NMAC 8.2.20.2044, 9-29-2000]

19.8.20.2045 COAL PROCESSING WASTE: RETURN TO UNDERGROUND WORKINGS:

Coal processing waste may be returned to underground mine workings only in accordance with the waste disposal program approved by the director and MSHA under 19.8.9.917 NMAC.

[11-29-97; 19.8.20.2045 NMAC - Rn, 19 NMAC 8.2.20.2045, 9-29-2000]

19.8.20.2046 DISPOSAL OF NON-COAL WASTES:

A. Non-coal wastes including, but not limited to, grease, lubricants, paints, flammable liquids, garbage, abandoned mining machinery, lumber and other combustibles shall be placed, stored or disposed of in a controlled manner in a designated portion of the permit area in accordance with 19.8.9.907, 19.8.20.2009, 2055, and 2056 NMAC. Placement, storage and disposal shall ensure that leachate and surface runoff do not degrade surface or ground water, fires are prevented, and that the area remains stable and suitable for reclamation and revegetation compatible with the natural surroundings.

B. Final disposal of non-coal wastes shall be in a designated disposal site in the permit area. Disposal sites shall be designed and constructed with appropriate water barriers on the bottom and sides of the designated site. Wastes shall be routinely compacted and covered to prevent combustion and wind-borne waste. When the disposal is completed, a minimum of 2 feet of soil cover shall be placed over the site, slopes stabilized, and revegetation accomplished in accordance with 19.8.20.2060 through 2066 NMAC. Operation of the disposal site shall be conducted in accordance with all local, state, and federal requirements.

C. At no time shall any non-coal waste material be deposited at refuse embankments or impoundment sites, nor shall any excavation for solid waste disposal be located within 8 feet of any coal outcrop or coal storage area.

D. Wastes produced by any operations other than coal mining operations which are disposed of inside the permit area shall be in compliance with Subsections A, B and C of 19.8.20.2046 NMAC and shall also be in compliance with the following:

(1) No wastes shall be imported into the permit area for the purpose of disposal without the approval of the director. The director shall specify procedures for the disposal of each type of such wastes; and

(2) The permittee shall demonstrate to the director that during the life of the mine and after mine closure the disposal of the waste material will not cause the standards of 20.6.2.3103 NMAC of the New Mexico water quality control commission regulations to be exceeded in ground water which has a pre-mining total dissolved

concentration (TDS) of 10,000 mg/1 or less except as provided for at Subsection D of 20.6.2.3109 NMAC.

E. Notwithstanding any other provision in 19.8.20 NMAC, any noncoal mine waste defined as "hazardous waste" under Section 3001 of the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94-580, as amended) and 40 CFR Part 261 shall be handled in accordance with the requirements of Subtitle C and the Hazardous and Solid Waste Amendments (1984) of RCRA, with any implementing regulations, and with the New Mexico hazardous waste management regulations. If the facility becomes subject to RCRA through the treatment, storage and/or disposal of a noncoal hazardous waste, any solid waste at the facility, including exempt coal mine waste, also becomes subject to RCRA through HSWA.

[11-29-97; 19.8.20.2046 NMAC - Rn, 19 NMAC 8.2.20.2046, 9-29-2000]

19.8.20.2047 COAL PROCESSING WASTE: DAMS AND EMBANKMENTS: GENERAL REQUIREMENTS:

A. 19.8.20.2047 through 2049 NMAC apply to dams and embankments, constructed of coal processing waste, or intended to impound coal processing waste, whether they were completed before adoption of 19.8 NMAC or are intended to be completed thereafter.

B. Waste shall not be used in the construction of dams and embankments unless it has been demonstrated to the director that the stability of such a structure conforms with the requirements of Subsection A of 19.8.20.2049 NMAC. It shall also be demonstrated that the use of waste material shall not have a detrimental affect on downstream water quality or the environment due to acid seepage through the dam or embankment. All demonstrations shall be submitted to and approved by the director.

C. Dams and embankments constructed of coal processing waste or intended to impound coal processing waste shall not be retained permanently as part of approved postmining land use.

[11-29-97; 19.8.20.2047 NMAC - Rn, 19 NMAC 8.2.20.2047, 9-29-2000; A, 12-31-2007]

19.8.20.2048 COAL PROCESSING WASTE: DAMS AND EMBANKMENTS: SITE PREPARATION:

A. All trees, shrubs, grasses and other organic material shall be cleared and grubbed from the site, and all combustibles shall be removed in accordance with the requirements of 19.8.20 NMAC and

B. Surface drainage that may cause erosion to the embankment area or the embankment features, whether during construction or after completion, shall be diverted away from the embankment by diversion ditches that comply with the requirements of

Subsections C, D, E, F and G of 19.8.20.2011 NMAC. Adequate outlets for discharge from these diversions shall be in accordance with 19.8.20.2015 NMAC. Diversions that are designed to divert drainage from the upstream area away from the impoundment area or from the surface of the facility that may cause instability or erosion of the impounding structure shall be designed to carry the peak runoff from a 100-year, 6-hour precipitation event. The diversion shall be maintained to prevent blockage, and the discharge shall be in accordance with 19.8.20.2015 NMAC. Sediment control measures shall be provided at the discharge of each diversion ditch before entry into natural watercourses in accordance with 19.8.20.2009 through 2014 NMAC.

[11-29-97; 19.8.20.2048 NMAC - Rn, 19 NMAC 8.2.20.2048, 9-29-2000]

19.8.20.2049 COAL PROCESSING WASTE: DAMS AND EMBANKMENTS: DESIGN AND CONSTRUCTION:

A. The design of each dam and embankment constructed of coal processing waste or intended to impound such waste shall comply with the requirements of Subsections B through G of 19.8.20.2017 NMAC modified as follows:

(1) the maximum water elevation shall be that determined by the freeboard hydrograph criteria contained in the U.S. natural resources conservation service criteria referenced in 19.8.20.2017 NMAC;

(2) the dam and embankment shall have a minimum safety factor of 1.5 for the partial pool with steady seepage saturation conditions, and the seismic safety factor shall be at least 1.2;

(3) the dam or embankment foundation and abutments shall be designed to be stable under all conditions of construction and operation of the impoundment; sufficient foundation investigations and laboratory testing shall be performed to determine the safety factors of the dam or embankment for all loading conditions appearing in Paragraph (2) of Subsection A of 19.8.20.2049 NMAC or the publications referred to in 19.8.20.2017 NMAC and for all increments of construction.

B. Spillways and outlet works shall be designed to provide adequate protection against erosion and corrosion. Inlets shall be protected against blockage.

C. Dams or embankments constructed of, or impounding, coal processing waste shall be designed, constructed and maintained so that at least 90 percent of the water stored during the design precipitation event shall be removed within a 10 day period.

D. Each impounding structure constructed of coal processing waste or intended to impound coal processing waste that meets the criteria of 30 CFR 77.216(a) shall have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control, the

probable maximum precipitation of a 6-hour precipitation event, or greater event as specified by the director.

E. No impounding structure constructed of coal processing waste or intended to impound coal processing waste shall be retained as a permanent impoundment as part of the approved postmining land use.

[11-29-97; 19.8.20.2049 NMAC - Rn, 19 NMAC 8.2.20.2049, 9-29-2000; A, 12-31-2007]

19.8.20.2050 AIR RESOURCES PROTECTION:

A. Fugitive dust. Each person who conducts surface coal mining operations shall plan and employ fugitive dust control measures as an integral part of site preparation, coal mining, and reclamation operations. The director shall approve the control measures appropriate for use in planning, according to applicable federal and state air quality standards, climate, existing air quality in the area affected by mining, and the available control technology.

B. Control measures. The fugitive dust control measures to be used, depending on applicable federal and state air quality standards, climate, existing air quality, size of the operation, and type of operation, shall include, as necessary, but not be limited, to:

- (1)** periodic watering of unpaved roads, with the minimum frequency of watering approved by the director;
- (2)** chemical stabilization of unpaved roads with proper application of nontoxic soil cement or dust palliatives;
- (3)** paving of roads;
- (4)** prompt removal of coal, rock, soil, and other dust-forming debris from roads and frequent scraping and compaction of unpaved roads to stabilize the road surface;
- (5)** restricting the speed of vehicles to reduce fugitive dust caused by travel;
- (6)** revegetating, mulching, or otherwise stabilizing the surface of all areas adjoining roads that are sources of fugitive dust;
- (7)** restricting the travel of unauthorized vehicles on other than established roads;
- (8)** enclosing, covering, watering, or otherwise treating loaded haul trucks and railroad cars, to reduce loss of material to wind and spillage;

(9) substituting of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subjected to wind erosion;

(10) minimizing the area of disturbed land;

(11) prompt revegetation of regraded lands;

(12) use of alternatives for coal-hauling methods, restriction of dumping procedures, wetting of disturbed materials during handling, and compaction of disturbed areas;

(13) planting of special windbreak vegetation at critical points in the permit area;

(14) control of dust from drilling, using water sprays, hoods, dust collectors, or other controls;

(15) restricting the areas to be blasted at any one time to reduce fugitive dust;

(16) restricting activities causing fugitive dust during periods or air stagnation;

(17) extinguishing any areas of burning or smoldering coal and periodically inspecting for burning areas whenever the potential for spontaneous combustion is high;

(18) reducing the period of time between initially disturbing the soil and revegetating or other surface stabilization; and

(19) restricting fugitive dust at spoil and coal transfer and loading points with water sprays, negative pressure systems and baghouse filters, chemicals, or other practices.

C. Additional measures. Where the director determines that application of fugitive dust control measures listed in Subsection B of 19.8.20.2050 NMAC is inadequate, the director may require additional measures and practices as necessary.

D. Monitoring. Air monitoring equipment shall be installed and monitoring shall be conducted in accordance with the air monitoring plan required under 19.8.9.904 NMAC and approved by the director.

[11-29-97; 19.8.20.2050 NMAC - Rn, 19 NMAC 8.2.20.2050, 9-29-2000; A, 12-31-2007]

19.8.20.2051 PROTECTION OF FISH, WILDLIFE AND RELATED ENVIRONMENTAL VALUES:

A. Any person conducting surface coal mining operations shall, to the extent possible using the best technology current available, minimize disturbances and

adverse impacts of the operations on fish, wildlife, and related environmental values, and achieve enhancement of such resources where practicable.

B. No surface coal mining operations or reclamation shall be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed either by the secretary of the U.S. department of the interior, or by the New Mexico game and fish department, or which are likely to result in the destruction or adverse modification of designated critical habitats of such species in violation of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The operator shall promptly report to the director any state-or federally-listed endangered or threatened species within the permit area of which the operator becomes aware. Upon notification, the director shall consult with appropriate state and federal fish and wildlife agencies, and, after consultation, shall identify whether, and under what conditions, the operator may proceed.

C. No surface coal mining operations or reclamation shall be conducted in a manner which would result in the unlawful taking of a bald or golden eagle, its nests, or any of its eggs. The operator shall promptly report to the director any golden or bald eagle nest within the permit area of which the operator becomes aware. Upon notification, the director shall consult with the U.S. fish and wildlife service and also, where appropriate, the state fish and wildlife agency, and after consultation shall identify whether, and under what conditions, the operator may proceed.

D. A person who conducts surface coal mining operations shall ensure that the design and construction of electric power lines and other transmission facilities used for or incidental to the surface coal mining operations on the permit areas are in accordance with the guidelines set forth in "environmental criteria for electric transmission system" (USDI, USDA (1970)), or in alternative guidance manuals approved by the director. Distribution lines shall be designed and constructed in accordance with REA bulletin 61-10, "powerline contacts by eagles and other large birds", or in alternative guidance manuals approved by the director.

E. Each person who conducts surface coal mining operations shall, to the extent possible using the best technology currently available:

(1) locate and operate haul and access roads so as to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;

(2) fence roadways where specified by the director to guide locally important wildlife to roadway underpasses or overpasses; construction of other necessary passageways may be required by the director; no new barrier shall be created in known and important wildlife migration routes;

(3) fence, cover, or use other appropriate methods to exclude wildlife from ponds which contain hazardous concentrations of toxic-forming materials;

(4) restore, enhance where practicable or avoid disturbance to habitats of unusually high value for fish and wildlife;

(5) restore, enhance where practicable, or maintain natural riparian vegetation on the banks of streams, lakes, and other wetland areas;

(6) afford protection to aquatic communities by avoiding stream channels as required in 19.8.20.2025 and 2070 NMAC or restoring stream channels as required in 19.8.20.2012 NMAC;

(7) not use persistent pesticides on the area during surface coal mining and reclamation operations, unless approved by the director;

(8) to the extent possible prevent, control, and suppress range, forest, and coal fires which are not approved by the director as part of a management plan;

(9) if fish and wildlife habitat is to be a primary or secondary postmining land use, the operator shall in addition to the requirements of 19.8.20.2060 through 2066 NMAC of these regulations:

(a) select plant species to be used on reclaimed areas, based on the following criteria:

(i) their proven nutritional value for fish life; and

(ii) their uses as cover for fish and wildlife; and

(iii) their ability to support and enhance fish and wildlife habitat after release of bonds; and

(b) distribute plant groupings to maximize benefit to fish and wildlife; plants should be grouped and distributed in a manner which optimizes edge effect, cover and other benefits for fish and wildlife;

(10) where cropland is to be the alternative postmining land use and where appropriate for wildlife and crop management practices, intersperse the fields with trees, hedges or fence rows throughout the harvested area to break up large blocks of monoculture and to diversify habitat types for birds and other animals; wetlands shall be preserved or created rather than drained or otherwise permanently abolished; and

(11) where the primary land use is to be residential, public service, or industrial land use, intersperse reclaimed lands with greenbelt utilizing species of grass, shrubs and trees useful as food and cover for birds and small animals, unless such greenbelt are inconsistent with the approved postmining land use.

[11-29-97; 19.8.20.2051 NMAC - Rn, 19 NMAC 8.2.20.2051, 9-29-2000]

19.8.20.2052 SLIDES AND OTHER DAMAGE:

A. For surface mining activities, unless demonstrated to and approved by the director that equivalent stability can be obtained through other technology, an undisturbed natural barrier shall be provided beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for such distance as may be determined by the director as is needed to assure stability. The barrier shall be retained in place to prevent slides and erosion.

B. At any time a slide occurs which may have a potential adverse affect on public property, health, safety, or the environment, the person who conducts the surface coal mining operations shall notify the director by the fastest available means and comply with any remedial measures required by the director.

[11-29-97; 19.8.20.2052 NMAC - Rn, 19 NMAC 8.2.20.2052, 9-29-2000]

19.8.20.2053 CONTEMPORANEOUS RECLAMATION:

Reclamation efforts, including, but not limited to, backfilling, grading, topdressing replacement and revegetation, of all land that is disturbed by surface coal mining operations shall occur as contemporaneously as practicable with mining operations.

[11-29-97; 19.8.20.2053 NMAC - Rn, 19 NMAC 8.2.20.2053, 9-29-2000]

19.8.20.2054 BACKFILLING AND GRADING: GENERAL REQUIREMENTS:

A. Timing of backfilling and grading.

(1) Contour mining. Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The director may grant additional time or distance for rough backfilling and grading if the permittee can demonstrate, on the basis of the materials submitted under Paragraph (3) of Subsection B of 19.8.9.906 NMAC, that additional time or distance is necessary.

(2) Open pit mining. Rough backfilling and grading shall occur in accordance with the time schedule approved by the director, on the basis of the materials submitted under Paragraph (3) of Subsection B of 19.8.9.906 NMAC, which shall establish in specific increments the period between removal of coal and completion of backfilling and grading.

(3) Strip mining. Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The director may grant additional time or distance for rough backfilling and grading if the permittee can, on the basis of the materials submitted under Paragraph (3) of Subsection B of 19.8.9.906 NMAC, that additional time or distance is necessary; and

(4) Surface areas disturbed incident to underground mining activities shall be backfilled and graded in accordance with the time schedule approved by the director as a condition of the permit.

(5) Final pit at completion of mining. Rough backfilling and grading shall occur in accordance with a time schedule approved by the director based on materials submitted under Paragraph (3) of Subsection B of 19.8.9.906 NMAC.

B. Method for backfilling and grading.

(1) Except as specifically exempted in 19.8.20 NMAC, all disturbed areas shall be returned to their approximate original contour. All spoil shall be transported, backfilled, compacted (where advisable to insure stability or to prevent leaching) and graded to eliminate all spoil piles, depressions and highwalls except:

(a) as provided for in Paragraph (2) of Subsection A of 19.8.20.2055 NMAC;

(b) if small depressions are needed in order to retain moisture to assist revegetation as authorized by the director pursuant to Subsection C of 19.8.20.2055 NMAC.

(2) Backfilled material shall be placed to minimize adverse effects on ground water, minimize off-site effects, and to support the approved postmining land use.

(3) The postmining graded slopes needed not be of uniform slope.

(4) Cut-and-fill terraces may be used only in those situations expressly identified in 19.8.20.2055 NMAC.

[11-29-97; A, 12-15-99; 19.8.20.2054 NMAC - Rn, 19 NMAC 8.2.20.2054, 9-29-2000]

19.8.20.2055 BACKFILLING AND GRADING: GENERAL GRADING REQUIREMENTS:

A. The final graded slopes shall not exceed in grade either the approximate premining slopes, or any lesser slopes approved by the director based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform but shall approximate the general nature of the premining topography. The person who conducts surface coal mining operations shall, at a minimum:

(1) retain all overburden and spoil on the solid portion of existing or new benches; and

(2) backfill and grade to the most moderate slope possible, to eliminate the highwall which does not exceed either the angle of repose or such lesser slope as is

necessary to achieve a minimum static safety factor of 1.3. In all cases the highwall shall be eliminated unless retention of portions of the highwall is approved by the director, if the operator demonstrates that:

- (a)** it will have a static safety factor of 1.3;
 - (b)** it will not pose a hazard to persons or wildlife in the area;
 - (c)** it will be backfilled to cover the uppermost minable coal seam to a minimum depth of 4 feet;
 - (d)** the retained portion left standing shall not exceed pre-existing cliff lengths. However, the director may require shorter lengths.
 - (e)** it is necessary to replace cliff type habitats that existed in the natural topography prior to mining; and
 - (f)** the ends of the highwall portions left standing will be contoured into the surrounding topography with slopes of 3:1 or less. Retention of any portion of the highwall must be approved by the director.
- (3)** spoil, except excess spoil disposed of in accordance with 19.8.20.2034 through 2037 NMAC, shall be returned to the mined-out area.
- (4)** spoil and waste materials shall be compacted where advisable to ensure stability or to prevent leaching of toxic materials.
- (5)** spoil may be placed on the area outside the mind-out area in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met:
- (a)** all vegetative and organic material shall be removed from the area.
 - (b)** the topsoil on the area shall be removed, segregated, stored and redistributed in accordance with 19.8.20.2005 through 2007 NMAC.
 - (c)** the spoil shall be backfilled and graded on the area in accordance with the requirements of 19.8.20 NMAC.

B. On approval by the director in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed, if the terraces are compatible with the approved postmining land use and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed 20 feet, unless specifically approved by the director as necessary for stability, erosion control, or roads included in the approved postmining land use plan.

(2) The vertical distance between terraces shall be as specified by the director, to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope shall not exceed 1v:3h (33 1/3 percent). Outslopes which exceed 1v:3h (33 1/3 percent) may be approved if they provide adequate control over erosion and closely resemble the surface configuration of land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on the terrace only when approved by the director.

C. Small depressions may be constructed, if they:

(1) are approved by the director to minimize erosion, conserve soil moisture, create or enhance wildlife habitat, or promote vegetation;

(2) do not restrict normal access; and

(3) are not inappropriate substitutes for lower grades on the reclaimed lands.

D. All surface coal mining operations on slopes averaging above 20 degrees, or on lesser slopes that the director defines as steep slopes shall meet the provisions of 19.8.26 NMAC.

E. All final grading preparation of overburden before replacement of topdressing and placement of topdressing, shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation, or placement along the contour is hazardous to equipment operators, then grading, preparation, or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topdressing which will minimize slippage.

F. Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of 19.8.20.2054 through 2058 NMAC, except as provided in 19.8.20 NMAC.

G. The requirements of Subsection A of 19.8.20.2055 NMAC requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the director to be insufficient to completely backfill the reaffected or enlarged highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

(1) all spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area; reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area;

(2) the backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

(3) any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment; the operator shall demonstrate, to the satisfaction of the director, that the highwall remnant is stable;

(4) spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety to the environment.

[11-29-97; 19.8.20.2055 NMAC - Rn, 19 NMAC 8.2.20.2055, 9-29-2000]

19.8.20.2056 BACKFILLING AND GRADING: COVERING COAL AND ACID- AND TOXIC-FORMING MATERIALS:

A. Exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during surface coal mining and reclamation operations shall be adequately covered with non-toxic and non-combustible materials, or treated, to control the impact on surface and ground water in accordance with 19.8.20.2009 NMAC to prevent sustained combustion, and to minimize adverse effects on plant growth and the approved postmining land use.

B. Where necessary to protect against adverse effects on plant growth and the approved post-mining land use from upward migration of salts, exposure by erosion, formation of acid or toxic seeps, to provide an adequate depth for plant growth, or otherwise to meet local conditions, the director shall specify thicker amounts of cover using non-toxic material, or special compaction and isolation from ground water contact.

C. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

[11-29-97; 19.8.20.2056 NMAC - Rn, 19 NMAC 8.2.20.2056, 9-29-2000; A, 12-31-2007]

19.8.20.2057 BACKFILLING AND GRADING: THIN OVERBURDEN:

A. The provisions of 19.8.20.2057 NMAC apply only where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and coal bed prior to removing the coal and only when surface mining activities cannot be carried out to comply with 19.8.20.2054 NMAC to achieve the approximate original contour.

B. In surface mining activities carried out continuously in the same limited pit area for more than 1 year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials over the permit area is demonstrated to be insufficient to achieve the approximate original contour of the lands disturbed, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(1) haul or convey, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, to achieve a static safety factor of 1.3, and to provide adequate drainage and long-term stability of the regraded areas and cover all acid-forming and toxic-forming materials.

(2) except as provided in Paragraph (2) of Subsection A of 19.8.20.2055 NMAC, eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the director may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) haul or convey, backfill, grade, and revegetate in accordance with 19.8.20.2060 through 2066 NMAC, to achieve an ecologically sound land use compatible with the prevailing use in unmined areas surrounding the permit area; and

(4) haul or convey, backfill, and grade, to ensure impoundments are constructed only where:

(a) it has been demonstrated to the director's satisfaction that all requirements of 19.8.20.2009 through 2024 NMAC have been met; and

(b) the impoundments have been approved by the director as suitable for the approved postmining land use and as meeting the requirements of 19.8.20 NMAC and all other applicable federal and state laws and regulations.

[11-29-97; 19.8.20.2057 NMAC - Rn, 19 NMAC 8.2.20.2057, 9-29-2000; A, 1-15-2002]

19.8.20.2058 BACKFILLING AND GRADING: THICK OVERBURDEN:

A. The provisions of 19.8.20.2058 NMAC apply only where the overburden thickness times the swell factor exceeds the combined thickness of the overburden and coal bed prior to removing the coal and only when surface mining activities cannot be carried out to comply with 19.8.20.2054 NMAC to achieve the approximate original contour.

B. In surface mining activities where the volume of spoil over the permit area is demonstrated to be more than sufficient to achieve the approximate original contour, surface mining activities shall be conducted to meet, at a minimum, the following standards:

(1) haul or convey, backfill, and grade all spoil and wastes, not required to achieve the approximate original contour of the permit area, to the lowest practicable grade, to achieve a static factor of safety of 1.3 and cover all acid-forming and other toxic-forming materials;

(2) haul or convey, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in accordance with 19.8.20.2034 through 2037 NMAC;

(3) haul or convey, backfill, and grade excess spoil and wastes to maintain the hydrologic balance, in accordance with 19.8.20.2009 through 2025 NMAC and to provide long-term stability by preventing slides, erosion and water pollution;

(4) haul or convey, backfill, grade and revegetate wastes and excess spoil to achieve an ecologically sound land use approved by the director as compatible with the prevailing land uses in unmined areas surrounding the permit area;

(5) except as provided for in Paragraph (2) of Subsection A of 19.8.20.2055 NMAC and Paragraph (1) of Subsection B of 19.8.20.2053 NMAC, eliminate all highwalls and depressions by backfilling with spoil and suitable waste materials; and

(6) meet the revegetation requirements of 19.8.20.2060 through 2066 NMAC for all disturbed areas.

[11-29-97; Rn, 19.8.20.2058 NMAC - 19 NMAC 8.2.20.2058, 9-29-2000; A, 1-15-2002]

19.8.20.2059 REGRADING OR STABILIZING RILLS AND GULLIES:

A. All exposed surface areas shall be protected and stabilized to effectively control erosion and air pollution attendant to erosion.

B. Rills and gullies, which form in areas that have been regraded and topsoiled and which either (1) disrupt the approved postmining land use or the re-establishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams shall be filled, regraded, or otherwise stabilized; topsoil shall be replaced; and the areas shall be reseeded or replanted.

C. If it can be demonstrated to the director through acceptable data, that erosion rates on the reclaimed and revegetated area are equal to or less than the erosion rates of surrounding undisturbed land under proper management of equal area, slope, soil type and depth, and that the rills and gullies will not affect compliance with all applicable parts of 19.8 NMAC, the director may waive the requirement of Subsection B of 19.8.20.2059 NMAC.

[11-29-97; 19.8.20.2059 NMAC - Rn, 19 NMAC 8.2.20.2059, 9-29-2000]

19.8.20.2060 REVEGETATION: GENERAL REQUIREMENTS:

A. Each person who conducts surface coal mining operations shall establish on all affected land a diverse, effective, and permanent vegetative cover of the same aspection native to the area of disturbed land or species that supports the approved postmining land use. For areas designated as prime farmland, the requirements of 19.8.24 NMAC shall apply.

B. All revegetation shall be in compliance with the plans submitted under 19.8.9.906 NMAC and 19.8.9.908 NMAC, as approved by the director in the permit, and carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with the approved postmining land use.

(1) All disturbed land, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a permanent vegetative cover of the same aspection native to the area of disturbed land.

(2) The vegetative cover shall be capable of stabilizing the soil surface from erosion.

(3) Vegetative cover shall be considered of the same aspection when it consists of a mixture of species of equal or superior utility for the approved postmining land use, when compared with the utility of naturally occurring vegetation during each season of the year.

(4) If both the premining and postmining land uses are cropland, the reclaimed land shall have the capability of meeting or exceeding the pre-mining crop production.

C. The re-established plant species shall:

(1) be compatible with the approved postmining land use;

(2) have the same seasonal characteristics of growth as the original vegetation;

(3) be capable of self-regeneration and plant succession;

(4) be compatible with the plant and animal species of the area; and

(5) meet the requirements of applicable state and federal seed, poisonous and noxious plant, and introduced species laws or regulations.

[11-29-97; 19.8.20.2060 NMAC - Rn, 19 NMAC 8.2.20.2060, 9-29-2000]

19.8.20.2061 REVEGETATION: USE OF INTRODUCED SPECIES:

Introduced species may be substituted for native species only if approved by the director under the following conditions:

A. after appropriate field trials have demonstrated that the introduced species are desirable and necessary to achieve the approved postmining land use;

B. the species are necessary to achieve a quick, temporary, and stabilizing cover that aids in controlling erosion; and measures to establish permanent vegetation are included in the approved plan submitted under Paragraph (3) of Subsection B of 19.8.9.906 and 19.8.9.908;

C. introduced species must meet the requirements of Subsection C of 19.8.20.2060 NMAC;

D. the species meet the requirements of applicable state and federal seed, poisonous and noxious plant, and introduced species laws or regulations.

[11-29-97; 19.8.20.2061 NMAC - Rn, 19 NMAC 8.2.20.2061, 9-29-2000]

19.8.20.2062 REVEGETATION: TIMING:

Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected. When necessary to effectively control erosion, any disturbed area shall be seeded and planted, as contemporaneously as practicable with the completion of backfilling and grading, with a temporary cover of small grains, grasses, or legumes until a permanent cover is established.

[11-29-97; 19.8.20.2062 NMAC - Rn, 19 NMAC 8.2.20.2062, 9-29-2000]

19.8.20.2063 REVEGETATION: MULCHING AND OTHER SOIL STABILIZING PRACTICES:

A. Suitable mulch and other soil stabilizing practices shall be used on all regraded and topdressed areas to control erosion, promote germination of seeds, or increase the moisture retention capacity of the soil. The director may, on a case-by-case basis, suspend the requirement for mulch, if the permittee can demonstrate that alternative procedures will achieve the requirements of 19.8.20.2065 NMAC and do not cause or contribute to air or water pollution.

B. When required by the director mulches shall be mechanically or chemically anchored to the soil surface to assure effective protection of the soil and vegetation.

C. Annual grasses and grains may be use alone, as in situ mulch, or in conjunction with another mulch, when the director determines that they will provide adequate soil

erosion control and will later be replaced by perennial species approved for the postmining land use.

D. Chemical soil stabilizers alone, or in combination with appropriate mulches, may be used in conjunction with vegetative covers approved for the postmining land use.

[11-29-97; 19.8.20.2063 NMAC - Rn, 19 NMAC 8.2.20.2063, 9-29-2000]

19.8.20.2064 REVEGETATION: GRAZING:

When the approved postmining land use is range or pasture land, the operator shall demonstrate to the director, that the reclaimed land has the capability of supporting livestock grazing at rates approximately equal to that for similar non-mined lands for at least two of the last four full years of liability required under Subsection B of 19.8.20.2065 NMAC.

[11-29-97; 19.8.20.2064 NMAC - Rn, 19 NMAC 8.2.20.2064 & A, 9-29-2000]

19.8.20.2065 REVEGETATION: STANDARDS FOR SUCCESS:

A. Success of revegetation shall be measured by techniques identified in the director's "coal mine reclamation program vegetation standards", as approved by the director after consultation with appropriate state and federal agencies. Comparison of ground cover and productivity shall be made on the basis of reference areas or technical standards developed using an historic record of premining conditions.

B. Liability period, ground cover and productivity standards, and normal husbandry practices.

(1) Ground cover and productivity of living plants on the revegetated area within the permit area shall be equal to the ground cover and productivity of living plants on the approved reference area or to technical standards developed in accordance with the "coal mine reclamation program vegetation standards", as approved by the director. The period of extended responsibility under the performance bond requirements of 19.8.14 NMAC begins after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the director in accordance with Paragraph (6) of Subsection B of 19.8.20.2065 NMAC.

(2) In areas of more than 26.0 inches average annual precipitation, the period of liability under the performance bond requirements of 19.8.14 NMAC shall continue for not less than five full years. Ground cover and productivity shall equal or exceed the approved standard for two of the last four years of the responsibility period.

(3) In areas of less than or equal to 26.0 inches average annual precipitation, the period of liability under the performance bond requirements of 19.8.14 NMAC shall continue for not less than 10 full years. Ground cover and productivity shall equal the

approved standard for at least two of the last four years, starting no sooner than year eight of the responsibility period.

(4) For purposes of Paragraphs (1), (2) and (3) of Subsection B of 19.8.20.2065 NMAC, the average annual precipitation can be determined either:

(a) by interpolation, using standard techniques, from mean annual precipitation map, page 97, "the national atlas of the United States", U.S. department of the interior, geological survey, 1970; or from "climatic atlas of the United States", U.S. department of commerce, national oceanic and atmospheric administration, 1974; or from long-term precipitation averages from climatological data, U.S. department of commerce, national oceanic and atmospheric administration; or from other official records; or

(b) based on at least 10 years of continuous and reliable precipitation records from stations located in or adjacent to the permit area.

(5) The ground cover and productivity of the revegetated area shall be considered equal if they are at least 90 percent of the ground cover and productivity of the reference area with 90 percent statistical confidence, or ground cover, productivity, or shrubland stocking are at least 90 percent of the standards developed under Subsection A of 19.8.20.2065 NMAC for an historic record. Exceptions may be authorized by the director under the following standards:

(a) for previously mined areas that were not reclaimed to the requirements of 19.8.20 NMAC, as a minimum the ground cover of living plants shall not be less than can be supported by the best available topdressing in the reaffected area, shall not be less than the ground cover existing before redisturbance, and shall be adequate to control erosion;

(b) for areas to be developed for industrial or residential use less than 2 years after regrading is completed, the ground cover of living plants shall not be less than required to control erosion; and

(c) for areas to be used for cropland, success in revegetation of cropland shall be determined on the basis of crop production from the mined area as compared to approved reference areas or other technical guidance procedures; crop production from the mined area shall be equal to or greater than that of the approved standard for two of the last four growing seasons of the 5 or 10 year liability period established in Paragraphs (1), (2) and (3) of Subsection B of 19.8.20.2065 NMAC, starting no sooner than year eight of the 10-year liability period; the applicable 5 or 10 year period of responsibility for revegetation shall commence at the date of initial planting of the crop being grown;

(d) on areas to be developed for fish and wildlife management, recreation, shelterbelts or forestland, success of vegetation shall be determined on the basis of

tree, shrub, or half-shrub stocking and ground cover; the tree, shrub, or half-shrub stocking shall meet the standards described in 19.8.20.2066 NMAC; vegetative ground cover shall not be less than that required by the director under Subsections A and B of 19.8.20.2065 NMAC to meet the post mining land use; 19.8.20.2065 NMAC shall determine the responsibility period and the frequency of ground cover measurement.

(6) The director has the discretion to approve selective husbandry practices without extending the period of responsibility for revegetation success or bond liability. Husbandry practices are those activities that can be expected to continue as part of the post mining land use, and are employed within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, to control disease, pest and vermin and appropriate pruning, reseeding, and transplanting activities. Practices may also be allowed that will not reduce the probability of permanent revegetative success if they are discontinued after the liability period expires. Any practice the director determines to be augmented seeding, fertilization or irrigation shall not be considered a husbandry practice.

C. The person who conducts surface coal mining operations shall:

(1) maintain any necessary fences and proper management practices; and

(2) conduct periodic measurements of vegetation, soils, and water prescribed or approved by the director, to identify conditions during the applicable period of liability specified in Subsection B of 19.8.20.2065 NMAC.

[11-29-97; A, 12-15-99; 19.8.20.2065 NMAC - Rn, 19 NMAC 8.2.20.2065 & A, 9-29-2000; A, 12-31-2007]

19.8.20.2066 REVEGETATION: TREE AND SHRUB STOCKING:

19.8.20.2066 NMAC sets forth forest resource conservation standards for reforestation operations to ensure that a cover of commercial tree species, noncommercial tree species, shrubs, or half-shrubs is established for the development of fish and wildlife habitat, recreation, shelterbelts or forestry after surface coal mining operations. Trees and shrubs used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use.

A. At a minimum, at the time of final bond release, at least 80 percent of all trees and shrubs used to determine revegetation success has been in place for at least 60 percent of the applicable minimum period of responsibility.

B. Stocking, i.e., the number of stems per unit area, will be determined using the following criteria:

(1) root crown or root sprouts more than 1 foot in height shall count as one toward meeting the stocking requirements; where multiple stems occur only the tallest stem will be counted;

(2) a countable tree or shrub means a tree that can be used in calculating the degree of stocking under the following criteria:

(a) the tree or shrub shall be in place at least 2 growing seasons;

(b) the tree or shrub shall be alive and healthy; and

(c) the tree or shrub shall have at least one-third of its length in live crown;

(3) rock areas, which replace similar natural features, permanent road and surface water drainage ways on the revegetated area shall not require stocking.

C. The following are the minimum performance standards for areas where commercial forest land is the approved postmining land use:

(1) the area shall have a minimum stocking of trees or shrubs as determined by the state forester on a permit specific basis;

(2) a minimum of 75 percent of countable trees or shrubs shall be commercial tree species;

(3) the number of trees or shrubs and the ground cover shall be determined using procedures described in Subparagraph (d) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC and Subsection B of 19.8.20.2066 NMAC and the sampling methods approved by the director;

(4) upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that the stocking of trees and shrubs and the groundcover on the revegetated area satisfies 19.8.20.2065 and 2066 NMAC.

D. The following are the minimum performance standards for areas where woody plants are used for wildlife management, recreation, shelter belts, or forest uses other than commercial forest land:

(1) an inventory of trees, half-shrubs and shrubs shall be conducted to comply with 19.8.8.808 NMAC and 19.8.20.2060 NMAC according to methods approved by the director after consultation with and approval by the state forester and the department of game and fish; this inventory shall contain, but not be limited to:

(a) site quality;

- (b) stand size;
- (c) stand condition;
- (d) site and species relations; and
- (e) appropriate forest land utilization considerations.

(2) the stocking of trees, half-shrubs, shrubs, and the ground cover established on the revegetated area shall approximate the inventory pursuant to Subparagraph (d) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC and Paragraph (1) of Subsection D of 19.8.20.2066 NMAC and shall utilize local and regional recommendations regarding species composition, spacing and planting arrangement and shall be approved the director in consultation with and approval of the appropriate state agency responsible for the administration of forestry and wildlife programs, on a permit specific basis;

(3) upon expiration of the 5 or 10 year responsibility period and at the time of request for bond release, each permittee shall provide documentation showing that:

(a) the woody plants established on the revegetated site are equal to or greater than 90 percent of the stocking of live woody plants of the same life form ascertained pursuant to Subsection B of 19.8.20.2066 NMAC with 90 percent statistical confidence, using an appropriate (parametric or nonparametric) one-tail test with a 10 percent alpha error; and

(b) the groundcover on the revegetated area satisfies Subparagraph (d) of Paragraph (5) of Subsection B of 19.8.20.2065 NMAC; species diversity, aspection and regenerative capacity of the vegetation of the revegetated area shall be evaluated on the basis of the results which could reasonably be expected using the revegetation methods described in the mining and reclamation plan.

[11-29-97; 19.8.20.2066 NMAC - Rn, 19 NMAC 8.2.20.2066, 9-29-2000; A, 12-31-2007]

19.8.20.2067 SUBSIDENCE CONTROL: GENERAL REQUIREMENTS:

A. The permittee must either adopt measures consistent with known technology that prevent subsidence from causing material damage to the extent technologically and economically feasible, maximize mine stability, and maintain the value and reasonably foreseeable use of surface lands or adopt mining technology that provides for planned subsidence in a predictable and controlled manner.

B. If a permittee employs mining technology that provides for planned subsidence in a predictable and controlled manner, the permittee must take necessary and prudent measures, consistent with the mining method employed, to minimize material damage to the extent technologically and economically feasible to non-commercial buildings and

occupied residential dwellings and structures related thereto except that measures required to minimize material damage to such structures are not required if:

(a) the permittee has the written consent of their owners, or;

(b) unless the anticipated damage would constitute a threat to health or safety, the costs of such measures exceed the anticipated costs of repair.

C. Nothing in 19.8.20 NMAC prohibits the standard method of room-and-pillar mining.

D. The person engaged in underground mining activities shall comply with all provisions of the subsidence control plan prepared pursuant to 19.8.9.918 NMAC and approved by the director.

[11-29-97; 19.8.20.2067 NMAC - Rn, 19 NMAC 8.2.20.2067, 9-29-2000]

19.8.20.2068 SUBSIDENCE CONTROL: PUBLIC NOTICE:

The mining schedule shall be distributed by mail to all owners of property and residents residing within the permit area above the underground workings and adjacent areas. Each such person shall be notified by mail at least six months prior to mining beneath his property or residence. The notification shall contain, at a minimum:

A. identification of specific areas in which mining will take place;

B. dates that specific areas will be undermined; and

C. the location or locations where the operator's subsidence control plan may be examined.

[11-29-97; 19.8.20.2068 NMAC - Rn, 19 NMAC 8.2.20.2068, 9-29-2000; A, 12-31-2007]

19.8.20.2069 SUBSIDENCE CONTROL: SURFACE OWNER PROTECTION:

A. The permittee must correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence damage.

B. The permittee must promptly replace any drinking, domestic or residential water supply that is contaminated, diminished or interrupted by underground mining activities conducted after October 24, 1992, if the affected well or spring was in existence before the date the regulatory authority received the permit application for the activities causing the loss, contamination or interruption. The baseline hydrologic information required in

19.8.9.907 NMAC will be used to determine the impact of mining activities upon the water supply.

C. The permittee must promptly repair, or compensate the owner for, material damage resulting from subsidence caused to any non-commercial building or occupied residential dwelling or associated structures that existed at the time of mining. If repair option is selected, the permittee must fully rehabilitate, restore or replace the damaged structure. If compensation is selected, the permittee must compensate the owner of the damaged structure for the full amount of the decrease in value resulting from the subsidence-related damage. The permittee may provide compensation by the purchase, before mining, of a non-cancelable premium-prepaid insurance policy. The requirements of Subsection C of 19.8.20.2069 NMAC apply only to subsidence-related damage caused by underground mining activities conducted after October 24, 1992.

D. The permittee must, to the extent required under applicable provisions of state law, either correct material damage resulting from subsidence caused to any structures or facilities not protected by Subsection C of 19.8.20.2069 NMAC by repairing the damage or compensate the owner of the structures or facilities for the full amount of the decrease in value resulting from the subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged structures or facilities. Compensation may be accomplished by the purchase before mining of a non-cancelable premium-prepaid insurance policy.

[11-29-97; 19.8.20.2069 NMAC - Rn, 19 NMAC 8.2.20.2069, 9-29-2000]

19.8.20.2070 SUBSIDENCE CONTROL: REBUTTAL PRESUMPTION OF CAUSATION FOR DAMAGE FROM SUBSIDENCE:

A. If damage to any non-commercial building or occupied residential dwelling or associated structure occurs as a result of earth movement within an area determined by projecting a specified angle of draw from the outermost boundary of any underground mine workings to the surface of the land, a rebuttal presumption exists that the permittee caused the damage. The presumption will normally apply to a 30 degree angle of draw. A state regulatory authority may amend its program to apply the presumption to a different angle of draw if the regulatory authority shows in writing that the angle has a more reasonable basis than the 30 degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations.

B. A permittee or permit applicant may request that the presumption apply to a different angle of draw. The director may approve a request to vary from the 30-degree angle of draw based on a site-specific analysis submitted by an applicant. To establish a site-specific angle of draw, an applicant must demonstrate and the director must determine in writing that the proposed angle of draw has a more reasonable basis than the standard in Subsection A of 19.8.20.2070 NMAC, based on a site-specific geotechnical analysis of the potential surface impacts of the mining operation.

C. If the permittee was denied access to the land or property for the purpose of conducting the pre-subsidence survey in accordance with Subsection A of 19.8.9.918 NMAC, no rebuttal presumption will exist.

D. The presumption will be rebutted if, for example, the evidence establishes that:

- (1)** the damage predated the mining in question;
- (2)** the damage was proximately caused by some other factor or factors and was not proximately caused by subsidence; or,
- (3)** the damage occurred outside the surface area within which subsidence was actually caused by the mining in question.

E. In any determination whether damage to protected structures was caused by subsidence from underground mining, all relevant and reasonably available information will be considered by the regulatory authority.

[11-29-97; N, 12-15-99; 19.8.20.2070 NMAC - Rn, 19 NMAC 8.2.20.2070, 9-29-2000]

19.8.20.2071 SUBSIDENCE CONTROL: BUFFER ZONES:

A. Underground mining activities shall not be conducted beneath or adjacent to any perennial stream or impoundment having a storage volume of 20 acre-feet or more, unless the director, on the basis of detailed subsurface information, determines that subsidence will not cause material damage, or a reduction in a reasonably foreseeable use, to streams, water bodies and associated structures. If subsidence causes material damage, then measures will be taken to the extent technologically and economically feasible to correct the damage and to prevent additional subsidence from occurring. The director may suspend the underground mining until the subsidence control plan is modified to ensure prevention of further material damage to such features or facilities.

B. Underground mining activities beneath any aquifer, perennial stream or water body that serves as a significant source of water supply to a public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata. The director will prohibit mining in the vicinity of the aquifer or limit the percentage of coal extraction to protect the aquifer and other water supply, unless a finding can be made, based on detailed documentation, that subsidence will not cause material damage to, or reduce the reasonably foreseeable use of these features.

C. Underground mining activities shall not be conducted beneath or in close proximity to any public buildings, including but not limited to churches, schools, hospitals, courthouses and government offices, unless the director, on the basis of detailed subsurface information, determines that subsidence from those activities will

not cause material damage, or reduce a reasonably foreseeable use, to these structures and specifically authorizes the mining activities.

D. The director shall suspend underground coal mining under urbanized areas, cities, towns, and communities and adjacent to industrial or commercial buildings, major impoundments or perennial streams, if imminent danger is found to inhabitants of urbanized areas, cities, towns or communities.

[11-29-97; Rn, 19 NMAC 8.2.20.2070, 12-15-99; 19.8.20.2071 NMAC - Rn, 19 NMAC 8.2.20.2071 & A, 9-29-2000]

19.8.20.2072 SUBSIDENCE CONTROL: ADJUSTMENT OF BOND AMOUNT FOR SUBSIDENCE DAMAGE:

A. When subsidence-related material damage occurs to land, structures or facilities, or contamination, diminution, or interruption to a water supply protected under Subsections A through D of 19.8.20.2069 NMAC, the director must require the permittee to obtain additional performance bond in the amount of the estimated cost of the repairs if the permittee will be repairing, or in the amount of the decrease in value if the permittee will be compensating the owner, or in the amount of the estimated cost to replace the protected water supply if the permittee will be replacing the water supply, until the repair, compensation, or replacement is completed. If repair, compensation, or replacement is completed within 90 days of the occurrence of damage, no additional bond is required. The regulatory authority may extend the 90-day time frame, but not to exceed one year, if the permittee demonstrates and the regulatory authority finds in writing that subsidence is not complete, that not all probable subsidence-related material damage has occurred to lands or protected structures, or that not all reasonably anticipated changes have occurred affecting the protected water supply, and that therefore it would be unreasonable to complete within 90 days the repair of the subsidence-related material damage to lands or protected structures, or the replacement of protected water supply.

B. [RESERVED]

[11-29-97; N, 12-15-99; 19.8.20.2072 NMAC - Rn, 19 NMAC 8.2.20.2072, 9-29-2000]

19.8.20.2073 CESSATION OF OPERATIONS: TEMPORARY:

A. Each person who conducts surface coal mining operations shall effectively secure surface facilities and support and maintain any surface access openings to underground operations in areas in which there are no current operations, but in which operations are to be resumed under an approved permit. Temporary abandonment shall not relieve a person of his obligation to comply with any provisions of the approved permit.

B. Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface coal mining operations shall submit to the director a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres, and for underground mines the horizontal and vertical extent of subsurface strata which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished and identification of the backfilling, regrading, revegetation, environmental monitoring, underground opening closures, and water treatment activities that will continue in the temporary cessation.

C. At the director's discretion, the permittee may be directed to take other reasonable actions consistent with 19.8 NMAC to ensure the protection of public safety and the environment while the operation is under temporary cessation.

D. No temporary cessation of mining and reclamation operations shall extend beyond the current permit term, unless the director approves an extension of the temporary cessation during the permit renewal process conducted in accordance with 19.8.13 NMAC.

E. To continue under a temporary cessation beyond an existing permit term, the permittee must demonstrate that the mining operation has a reasonable expectation of continuing operations.

F. A temporary cessation may not be used to justify a lengthy delay to final reclamation or to preserve facilities beyond what may be considered appropriate for its use in association with an existing permit.

[11-29-97; Rn, 19 NMAC 8.2.20.2071, 12-15-99; 19.8.20.2073 NMAC - Rn, 19 NMAC 8.2.20.2073, 9-29-2000; A, 7-30-2004]

19.8.20.2074 CESSATION OF OPERATIONS: PERMANENT:

A. Persons who cease surface coal mining operations permanently shall close or backfill or otherwise permanently reclaim all affected areas, in accordance with 19.8.2074 NMAC and the permit approved by the director.

B. All underground openings, equipment, structures, or other facilities not required for monitoring, unless approved by the director as suitable for the postmining land use or environmental monitoring, shall be removed and the affected land reclaimed.

C. [RESERVED]

D. [RESERVED]

E. [RESERVED]

F. [RESERVED]

[11-29-97; Rn, 19 NMAC 8.2.20.2072, 12-15-99; 19.8.20.2074 NMAC - Rn, 19 NMAC 8.2.20.2074, 9-29-2000]

19.8.20.2075 POSTMINING LAND USE:

A. General. All surface land areas affected shall be restored in a timely manner:

(1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining; or

(2) to higher or better uses achievable under criteria and procedures of 19.8.2075 NMAC.

B. Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of a use which the land was capable of supporting prior to all previous mining, that is compatible with the surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within 5 years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

C. Prior to the release of lands from the permit area in accordance with 19.8.14.1413 NMAC, the permit area shall be restored in a timely manner, either to conditions capable of supporting the uses they were capable of supporting before any mining or to conditions capable of supporting approved alternative land uses. Alternative land uses may be approved by the director after consultation with the landowner or the land management agency having jurisdiction over the land if the following criteria are met:

(1) The proposed postmining land use is compatible with adjacent land use and, where applicable, with existing local, state, or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall be submitted to the director no less than 60 days prior to

the proposed land use change. Any required approval including any necessary zoning or other changes required for land use by local, state or federal land management agencies is obtained and remains valid throughout the surface coal mining operations.

(2) Specific plans are prepared and submitted to the director which show the feasibility of the postmining land use as related to projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and will be sustained. The director may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provisions of any necessary public facilities shall be ensured as evidenced by letters of commitment from parties other than the person who conducts surface coal mining operations, as appropriate, to provide the public facilities in a manner compatible with the plans submitted under 19.8.9.908 NMAC. The letters shall be submitted to the director no less than 60 days prior to the proposed land use change.

(4) Specific and feasible plans are submitted to the director which show that financing, attainment and maintenance of the postmining land use are feasible.

(5) Plans for the postmining land use are designed under the general supervision of a registered professional engineer or other appropriate professional who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use will neither present actual or probable hazard to public health or safety nor will it pose any actual or probable threat of water flow diminution or pollution.

(7) The use will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish, wildlife and related environmental values and threatened or endangered plants is obtained from the director, and appropriate state and federal fish and wildlife management agencies have been provided a 60-day period in which to review the plan.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state and local laws are reviewed by the director to ensure that:

(a) there is sufficient water available and committed to maintain crop production; and

(b) topdressing quality and depth are sufficient to support the proposed use.

D. [RESERVED]

E. [RESERVED]

[11-29-97; Rn, 19 NMAC 8.2.20.2073, 12-15-99; 19.8.20.2075 NMAC - Rn, 19 NMAC 8.2.20.2075, 9-29-2000]

19.8.20.2076 ROADS: GENERAL:

A. Road classification system.

(1) Each road shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is:

(a) used for transporting coal or spoil, except for the portions of those roads located within coal spoil and coal processing waste disposal areas;

(b) frequently used for access or other purposes for a period in excess of six (6) months, with the exception of those roads the sole surface coal mining operation use of which is for exploration purposes; or

(c) to be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road

B. Performance standards. Roads shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(1) control or prevent erosion, siltation and the air pollution attendant to erosion by vegetating or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practice;

(2) control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) neither cause nor contribute to, directly or indirectly, the violation of state or federal water quality standards applicable to receiving waters;

(5) minimize the diminution to or degradation of the quality or quantity of surface and ground-water systems;

(6) refrain from significantly altering the normal flow of water in streambeds or drainage channels;

(7) prevent or control damage to public or private property; and

(8) use nonacid- or nontoxic-forming substances in road surfacing.

C. Design and construction limits and establishment of design criteria. To ensure environmental protection and safety appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, and any necessary design criteria established by the director.

D. Location.

(1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the director in accordance with 19.8.20.2009 through 2012, and 2025 NMAC.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

E. Maintenance.

(1) A road shall be maintained throughout its life to meet the performance standards of 19.8.20 NMAC and any additional criteria specified by the director.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as practical after the damage has occurred.

F. Reclamation. A road not to be retained for use under an approved postmining land use shall be reclaimed immediately after it is no longer needed for mining and reclamation operations, including:

(1) closing the road to traffic;

(2) removing all bridges and culverts;

(3) restoring the natural drainage patterns;

(4) reshaping all cut and fill slopes to be compatible with the postmining land use and to complement the drainage pattern, of the surrounding terrain, and

(5) scarifying or ripping the roadbed; replacing topsoil or substitute material; and revegetating disturbed surfaces in accordance with 19.8.20.2005 through 2008 and 2060 through 2066 NMAC.

(6) removing or otherwise disposing of road surfacing materials that are incompatible with the postmining land use and revegetation requirements; and

(7) protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion.

[11-29-97; Rn, 19 NMAC 8.2.20.2074, 12-15-99; 19.8.20.2076 NMAC - Rn, 19 NMAC 8.2.20.2076, 9-29-2000]

19.8.20.2077 PRIMARY ROADS:

Primary roads shall meet the requirements of 19.8.20.2076 NMAC and the additional requirements of 19.8.20.2077 NMAC.

A. Certification. The design and construction or reconstruction of primary roads shall be certified by a qualified registered professional engineer as meeting:

- (1) the requirements of 19.8.20.2076 NMAC;
- (2) current, prudent engineering practices; and
- (3) any design criteria established by the director; and
- (4) shall include a statement that the road has been constructed or reconstructed as designed and in accordance with the approved plan; and
- (5) at a minimum, a static factor of safety of 1.3 for all embankments.

B. Location.

(1) To minimize erosion, a primary road is to be located, insofar as practical, on the most stable available surfaces.

(2) Stream fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the director as temporary routes during periods of road construction.

C. Drainage control.

(1) Each primary road shall be designed, constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to, bridges, ditches, cross drains, and ditch relief drains. The drainage control system

described in Paragraphs (1) through (6) of Subsection C of 19.8.20.2077 NMAC shall be designed to pass the peak runoff safely from a 10-year, 6-hour precipitation event or such greater event as may be specified by the director.

(2) Drainage pipes and culverts shall be constructed and maintained to avoid plugging or collapse and erosion at inlets and outlets.

(3) Drainage ditches shall be designed and maintained to prevent uncontrolled drainage over the road surface and embankment. Trash racks and debris basins shall be installed in the drainage ditches where debris from the drainage area may impair the functions of drainage and sediment control structures.

(4) Culverts shall be designed, installed, and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road.

(5) Natural stream channels shall not be altered or relocated without the prior approval of the director in accordance with 19.8.20.2009 - 2012 and 2025 NMAC.

(6) Except as provided in Paragraph (2) of Subsection B of 19.8.20.2077 NMAC, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed, and maintained using current, prudent engineering practices. Low water crossings shall be designed, constructed, and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

D. Surfacing. The surfacing of primary roads shall be rock, crushed gravel, asphalt, or other material approved by the director as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

E. Maintenance. Routine maintenance for primary roads shall include repairs to the road surface, blading, filling potholes, and replacing surfacing material. It shall also include, as necessary, revegetation, brush removal, and minor reconstruction of road segments.

[11-29-97; Rn, 19 NMAC 8.2.20.2075, 12-15-99; 19.8.20.2077 NMAC - Rn, 19 NMAC 8.2.20.2077, 9-29-2000]

19.8.20.2078 OTHER TRANSPORTATION FACILITIES:

Railroad loops, spurs, sidings, surface conveyor systems, chutes, aerial tramways, or other transportation facilities shall be designed, constructed or reconstructed, and maintained and the area restored, to:

A. prevent, to the extent possible using the best technology currently available:

- (1) damage to fish, wildlife, and related environmental values; and
- (2) additional contributions of suspended solids to streamflow or runoff outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law;

- B. control and minimize diminution or degradation of water quality and quantity;
- C. control and minimize erosion and siltation;
- D. control and minimize air pollution; and
- E. prevent damage to public or private property.

[11-29-97; Rn, 19 NMAC 8.2.20.2076, 12-15-99; 19.8.20.2078 NMAC - Rn, 19 NMAC 8.2.20.2078, 9-29-2000]

19.8.20.2079 SUPPORT FACILITIES AND UTILITY INSTALLATIONS:

A. Support facilities required for, or used incidentally to, the operation of the mine, including, but not limited to, mine buildings, coal loading facilities at, or near, the mine site, coal storage facilities, equipment storage facilities, fuel storage facilities, chemical and lubricant storage facilities, fan buildings, hoist buildings, preparation plants, sheds, shops, and other buildings, shall be designed, constructed or reconstructed, and located to prevent or control erosion and siltation, water pollution and damage to public or private property. Support facilities shall be designed, constructed or reconstructed, maintained, and used in a manner which prevents to the extent possible using the best technology currently available damage to fish, wildlife, and related environmental values and additional contributions of suspended solids to streamflow outside the permit area. Any such contributions shall not be in excess of limitations of state or federal law.

B. All surface coal mining operations shall be conducted in a manner which minimizes damage, destruction, or disruption of services provided by oil, gas, and water wells, oil, gas, and coal-slurry pipelines; railroads; electric and telephone lines; and water and sewage lines which pass over, under or through the permit area, unless otherwise approved by the owner of those facilities and the director.

[11-29-97; Rn, 19 NMAC 8.2.20.2077, 12-15-99; 19.8.20.2079 NMAC - Rn, 19 NMAC 8.2.20.2079, 9-29-2000]

PART 21: SPECIAL PERFORMANCE STANDARDS - CONCURRENT SURFACE AND UNDERGROUND MINING

19.8.21.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.21.1 NMAC - N, 9-29-2000]

19.8.21.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.21.2 NMAC - N, 9-29-2000]

19.8.21.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.21.3 NMAC - N, 9-29-2000]

19.8.21.4 DURATION:

Permanent

[19.8.21.4 NMAC - N, 9-29-2000]

19.8.21.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.21.5 NMAC - N, 9-29-2000]

19.8.21.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.21.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.21.7 DEFINITIONS:

[RESERVED]

[19.8.21.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.21.8-19.8.21.2099 [RESERVED]:

[19.8.21.8 - 19.8.21.2099 NMAC - N, 9-29-2000]

19.8.21.2100 APPLICABILITY:

A variance under this part applies only to those specific areas within the permit area that the person conducting combined surface and underground mining operations has shown to be necessary for implementing the proposed concurrent operations and that the director has approved in the permit under 19.8.10.1005 NMAC. The variance is effective for any particular portion of the permit area only for the time necessary to facilitate and to complete the authorized underground mining activities.

[11-29-97; 19.8.21.2100 NMAC- Rn, 19 NMAC 8.2.21.2100, 9-29-2000]

19.8.21.2101 COMPLIANCE WITH VARIANCE TERMS:

A. Each person who conducts operations under a variance issued under 19.8.10.1005 NMAC shall comply with all applicable requirements of this part and the act and these rules and regulations except to the extent that:

(1) a delay in compliance with these requirements is specifically authorized by the variance issued under the permit; and

(2) the delay in compliance is necessary to achieve the purposes for which the variance was granted.

B. Each person who conducts operations under a variance issued under 19.8.10.1005 NMAC shall comply with each requirement of the variance as set forth in the permit.

[11-29-97; 19.8.21.2101 NMAC- Rn, 19 NMAC 8.2.21.2101, 9-29-2000]

19.8.21.2102 ADDITIONAL PERFORMANCE STANDARDS:

In addition to the requirements of 19.8.20 NMAC, each person who conducts combined surface and underground mining operations shall comply with the following:

A. A 500-foot barrier pillar of coal shall be maintained between the surface and underground mining activities in any one seam. The director and the mine safety and health administration, and the state mine inspector, may, however, approve a lesser distance, after finding by the director that mining at a lesser distance will result in:

(1) improved coal resources recovery;

(2) abatement of water pollution; or

(3) elimination of hazards to the health and safety of the public.

B. The vertical distance between combined surface and underground mining activities working separate seams shall be sufficient to provide for the health and safety of the workers and to prevent surface water from entering the underground workings.

C. No combined activities shall reduce the protection provided public health and safety below the level of protection required for those activities if conducted without a variance.

[11-29-97; 19.8.21.2102 NMAC- Rn, 19 NMAC 8.2.21.2102, 9-29-2000]

PART 22: SPECIAL PERFORMANCE STANDARDS - AUGER MINING

19.8.22.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.22.1 NMAC - N, 9-29-2000]

19.8.22.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.22.2 NMAC - N, 9-29-2000]

19.8.22.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.22.3 NMAC - N, 9-29-2000]

19.8.22.4 DURATION:

Permanent

[19.8.22.4 NMAC - N, 9-29-2000]

19.8.22.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.22.5 NMAC - N, 9-29-2000]

19.8.22.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.22.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.21.7 DEFINITIONS:

[RESERVED]

[19.8.22.6 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.22.8-19.8.22.2199 [RESERVED]:

[19.8.22.8 - 19.8.22.2199 NMAC - N, 9-29-2000]

19.8.22.2200 AUGER MINING: ADDITIONAL PERFORMANCE STANDARDS:

A. Any auger mining associated with surface mining operations shall be conducted to maximize recoverability of mineral reserves remaining after the mining activities are completed. Each person who conducts auger mining operations shall leave areas of undisturbed coal to provide access for removal of those reserves by future underground mining activities, unless the director determines that the coal reserves have been depleted or are limited in thickness or extent to the point that it will not be practicable to recover the remaining coal reserves. The director shall make such determination only upon presentation of appropriate technical evidence by the operator. Undisturbed areas of coal shall be left in unmined sections which:

(1) are a minimum of 250 feet wide at any point between each group of auger openings to the full depth of the auger hole;

(2) are no more than 2,500 feet apart, measured from the center of one section to the center of the next section, unless a greater distance is set forth in the permit application under 19.8.10.1007 NMAC and approved by the director; and

(3) for multiple seam mining, shall have a width of at least 250 feet plus 50 feet for each subjacent workable coal seam. The centers of all unmined sections shall be aligned vertically.

B. No auger hole shall be made closer than 500 feet in horizontal distance to any abandoned or active underground mine workings, except as approved in accordance with 19.8.20.2038 NMAC.

C. In order to prevent pollution of surface and ground water and to reduce fire hazards, each auger hole, except as provided in Subsection D of 19.8.22.2200 NMAC, shall be plugged so as to prevent the discharge of water from the hole and access of air to the coal, as follows:

(1) each auger hole discharging water containing toxic-forming or acid-forming material shall be plugged within 72 hours after completion by backfilling and compacting noncombustible and impervious material into the hole to a depth sufficient to form a water-tight seal or the discharge shall be treated commencing within 72 hours after completion to meet applicable effluent limitations and water quality standards under 19.8.20.2010 NMAC, until the hole is properly sealed; and

(2) each auger hole not discharging water shall be sealed as in Paragraph (1) of Subsection C of 19.8.22.2200 NMAC, to close the opening within 30 days following completion.

D. An auger hole need not be plugged, if the director finds:

(1) impoundment of the water which would result from plugging the hole may create a hazard to the environment or public health or safety; and

(2) drainage from the auger hole will not pose a threat of pollution to surface water and will comply with the requirements of 19.8.20.2009 and 2010 NMAC.

E. The director shall prohibit auger mining if he determines that:

(1) adverse water quality impacts cannot be prevented or corrected;

(2) fill stability cannot be achieved;

(3) the prohibition is necessary to maximize the utilization, recoverability or conservation of the solid fuel resources; or

(4) subsidence resulting from auger mining may disturb or damage powerlines, pipelines, buildings, or other facilities.

[11-29-97; 19.8.22.2200 NMAC- Rn, 19 NMAC 8.2.22.2200, 9-29-2000]

PART 23: SPECIAL PERFORMANCE STANDARDS - OPERATIONS IN ALLUVIAL VALEY FLOORS

19.8.23.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.23.1 NMAC - N, 9-29-2000]

19.8.23.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.23.2 NMAC - N, 9-29-2000]

19.8.23.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.23.3 NMAC - N, 9-29-2000]

19.8.23.4 DURATION:

Permanent

[19.8.23.4 NMAC - N, 9-29-2000]

19.8.23.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.23.5 NMAC - N, 9-29-2000]

19.8.23.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.23.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.23.7 DEFINITIONS:

[RESERVED]

[19.8.23.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.23.8-19.8.23.2299 [RESERVED]:

[19.8.23.8 - 19.8.23.2299 NMAC - N, 9-29-2000]

19.8.23.2300 ALLUVIAL VALLEY FLOORS: ESSENTIAL HYDROLOGIC FUNCTIONS:

A. Surface coal mining and reclamation operations shall be conducted to preserve, throughout the mining and reclamation process, the essential hydrologic functions of alluvial valley floors not within an affected area. These functions shall be preserved by maintaining those geologic, hydrologic and biologic characteristics that support those functions.

B. Surface coal mining and reclamation operations shall be conducted to reestablish, throughout the mining and reclamation process, the essential hydrologic functions of alluvial valley floors within an affected area. These functions shall be reestablished by reconstructing those geologic, hydrologic and biologic characteristics that support those functions.

C. The characteristics that support the essential hydrologic, functions of alluvial valley floors are those in Paragraph (3) of Subsection B of 19.8.10.1006 NMAC and those other geologic, hydrologic, or biologic characteristics identified during premining investigations or monitoring conducted during the surface coal mining and reclamation operation.

[11-29-97; 19.8.23.2300 NMAC- Rn, 19 NMAC 8.2.23.2300, 9-29-2000]

19.8.23.2301 ALLUVIAL VALLEY FLOORS: PROTECTION OF FARMING AND WATER SUPPLIES:

A. Surface coal mining and reclamation operations shall not interrupt, discontinue, or preclude farming on alluvial valley floors, unless:

(1) the premining land use is undeveloped rangeland which is not significant to farming; or

(2) the area of affected alluvial valley floor is small and provides or may provide negligible support for production from one or more farms.

B. If environmental monitoring shows that a surface coal mining operation is interrupting, discontinuing, or precluding farming on alluvial valley floors, the operation shall cease until remedial measures are taken by the person who conducts the operation. The remedial measures shall be approved by the director prior to the resumption of mining.

C. Surface coal mining and reclamation operations shall not cause material damage to the quality or quantity of water in surface or underground water systems that supply alluvial valley floors. If environmental monitoring shows that the surface coal mining operation is causing material damage to water that supplies alluvial valley floors, the mining operations shall cease until remedial measures are taken by the person who

conducts the operation. The remedial measures shall be approved by the director prior to the resumption of mining operations.

D. Subsections A and B of 19.8.23.2301 NMAC do not apply to those lands which were identified in a reclamation plan approved by the state prior to August 3, 1977 for any surface coal mining and reclamation operation that, in the year preceding August 3, 1977:

(1) produced coal in commercial quantities and was located within or adjacent to an alluvial valley floor, or

(2) obtained specific permit approval by the New Mexico coal surface mining commission to conduct surface coal mining and reclamation operations within an alluvial valley floor.

[11-29-97; 19.8.23.2301 NMAC- Rn, 19 NMAC 8.2.23.2301, 9-29-2000]

19.8.23.2302 ALLUVIAL VALLEY FLOORS: PROTECTION OF AGRICULTURAL USES:

Surface coal mining and reclamation operations shall be conducted to ensure that the agricultural utility and the level of productivity of alluvial valley floors in affected areas are reestablished.

[11-29-97; 19.8.23.2302 NMAC- Rn, 19 NMAC 8.2.23.2302, 9-29-2000]

19.8.23.2303 ALLUVIAL VALLEY FLOORS: MONITORING:

A. An environmental monitoring system shall be installed, maintained and operated by the permittee on all alluvial valley floors during surface coal mining and reclamation operations and continued until all bonds are released in accordance with 19.8.14 NMAC. The monitoring system shall provide sufficient information to allow the director to determine that:

(1) the agricultural utility and production of the alluvial valley floor not within the affected area is being preserved;

(2) the potential agricultural utility and production on the alluvial valley floor within the affected area has been reestablished;

(3) the important characteristics supporting the essential hydrologic functions of the alluvial valley floor in the affected area have been reestablished after mining; and

(4) the important characteristics supporting the essential hydrologic functions of an alluvial valley floor in areas not affected are preserved during and after mining.

B. Monitoring shall be performed at adequate frequencies, to indicate long-term trends that could affect agricultural use of the alluvial valley floor.

C. Monitoring shall be performed during operations, to identify characteristics of the alluvial valley floor not identified in the permit application and to evaluate the importance of all characteristics.

D. All monitoring data collected and analyses thereof shall routinely be made available to the director.

[11-29-97; 19.8.23.2303 NMAC- Rn, 19 NMAC 8.2.23.2303, 9-29-2000]

PART 24: SPECIAL PERFORMANCE STANDARDS - OPERATIONS ON PRIME FARMLAND

19.8.24.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.24.1 NMAC - N, 9-29-2000]

19.8.24.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979)

[19.8.24.2 NMAC - N, 9-29-2000]

19.8.24.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.24.3 NMAC - N, 9-29-2000]

19.8.24.4 DURATION:

Permanent

[19.8.24.4 NMAC - N, 9-29-2000]

19.8.24.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.24.5 NMAC - N, 9-29-2000]

19.8.24.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.24.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.24.7 DEFINITIONS:

[RESERVED]

[19.8.24.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.24.8-19.8.24.2399 [RESERVED]:

[19.8.24.8 - 19.8.24.2399 NMAC - N, 9-29-2000]

19.8.24.2400 PRIME FARMLAND: SPECIAL REQUIREMENTS:

Surface coal mining and reclamation operations conducted on prime farmland shall meet the following requirements:

A. a permit shall be obtained for those operations under 19.8.10.1004 NMAC;

B. soil materials to be used in the reconstruction of the prime farmland soil shall be removed before drilling, blasting or mining, in accordance with 19.8.24.2401 NMAC and in a manner that prevents mixing or contaminating these materials with undesirable material; where removal of soil materials results in erosion that may cause air and water pollution, the director shall specify methods to control erosion of exposed overburden;

C. the aggregate total prime farmland acreage shall not be decreased from that which existed prior to mining; water bodies, if any, to be constructed during mining and reclamation operations must be located within the post-reclamation non-prime farmland portions of the permit area; the creation of any such water bodies must be approved by the regulatory authority and the consent of all affected property owners within the permit area must be obtained.

[11-29-97; 19.8.24.2400 NMAC- Rn, 19 NMAC 8.2.24.2400, 9-29-2000; A, 1-15-2002]

19.8.24.2401 PRIME FARMLAND: SOIL REMOVAL:

A. Surface coal mining and reclamation operations on prime farmland shall be conducted to:

(1) separately remove the entire A horizon or other suitable soil material which will create a final soil having a greater productive capacity than that which existed prior to mining;

(2) separately remove the B horizon of the soil, a combination of B horizon and underlying C horizon, or other suitable soil material that will create a reconstructed soil of equal or greater productive capacity than that which existed before mining;

(3) separately remove the underlying C horizons, other strata, or a combination of horizons or other strata to be used instead of the B horizon; when replaced, these combinations shall be equal to, or more favorable for plant growth than the B horizon.

B. The minimum depth of soil and soil material to be removed for use in reconstruction of prime farmland soils shall be sufficient to meet the soil replacement requirements of Subsection A of 19.8.24.2403 NMAC.

[11-29-97; 19.8.24.2401 NMAC- Rn, 19 NMAC 8.2.24.2401, 9-29-2000]

19.8.24.2402 PRIME FARMLAND: SOIL STOCKPILING:

If not utilized immediately the A horizon or other suitable soil materials specified in Paragraph (1) of Subsection A of 19.8.24.2401 NMAC and the B horizon or other suitable soil materials specified in Paragraphs (2) and (3) of Subsection A of 19.8.24.2401 NMAC shall be stored separately from each other and from spoil. These stockpiles shall be placed within the permit area where they are not disturbed or exposed to excessive water or wind erosion before the stockpiled horizons can be redistributed. Stockpiles in place for more than 30 days shall meet the requirements of 19.8.20.2006 NMAC.

[11-29-97; 19.8.24.2402 NMAC- Rn, 19 NMAC 8.2.24.2402, 9-29-2000]

19.8.24.2403 PRIME FARMLAND: SOIL REPLACEMENT:

Surface coal mining and reclamation operations on prime farmland shall be conducted according to the following:

A. the minimum depth of soil and soil material to be reconstructed for prime farmland shall be 48 inches, or a depth equal to the depth of a subsurface horizon in the natural soil that inhibits root penetration, whichever is shallower; the director shall specify a depth greater than 48 inches, wherever necessary to restore productive capacity due to uniquely favorable soil horizons at greater depths; soil horizons shall be considered as inhibiting root penetration if their densities, chemical properties, or water

supplying capacities restrict or prevent penetration by roots of plants common to the vicinity of the permit area and have little or no beneficial effect on soil productive capacity;

B. replace soil material only on land which has been first returned to final grade and scarified according to 19.8.20.2054 through 2058 NMAC, unless site-specific evidence is provided and approved by the director showing that scarification will not enhance the capability of the reconstructed soil to achieve equivalent or higher levels of yield;

C. replace the soil horizons or other suitable soil material in a manner that avoids excessive compaction;

D. replace the B horizon or other suitable material specified in Paragraphs (2) and (3) of Subsection A of 19.8.24.2401 NMAC to the thickness needed to meet the requirements of Subsection A of 19.8.24.2401 NMAC;

E. replace the A horizon or other suitable soil materials specified in Paragraph (1) of Subsection A of 19.8.24.2401 NMAC as the final surface soil layer; this surface soil layer shall equal or exceed the thickness of the original soil, as determined in 19.8.10.1004 NMAC, and be replaced in a manner that protects the surface layer from wind and water erosion before it is seeded or planted;

F. apply nutrients and soil amendments as needed to quickly establish vegetative growth.

[11-29-97; 19.8.24.2403 NMAC- Rn, 19 NMAC 8.2.24.2403, 9-29-2000]

19.8.24.2404 PRIME FARMLAND: REVEGETATION:

Each person who conducts surface coal mining and reclamation operations on prime farmland shall meet the following revegetation requirements during reclamation:

A. following soil replacement, that person shall establish a vegetative cover capable of stabilizing the soil surface with respect to erosion; all vegetation shall be in compliance with the plan approved by the director under 19.8.10.1004 NMAC and carried out in a manner that encourages prompt vegetative cover and recovery of productive capacity; the timing and mulching provisions of 19.8.20.2062 and 2063 NMAC shall be met;

B. within a time period specified in the permit, but not to exceed 10 years after completion of backfilling and rough grading, any portion of the permit area which is prime farmland must be used for crops commonly grown, such as corn, alfalfa, permanent pasture grain, sorghum, wheat, oats, barley, or other crops on surrounding prime farmland; the crops may be grown in rotation with any or pasture crops as defined for cropland; the director may approve a crop use of perennial plants for hay, where this

is a common long-term use of prime farmland soils in the surrounding area; the level of management shall be equivalent to that on which the target yields are based;

C. measurement of success in prime farmland revegetation will be determined based upon the techniques approved in the permit by the director under 19.8.10.1004 NMAC; as a minimum, the following standards shall be met:

(1) average annual crop production shall be determined based upon a minimum of 3 years data; crop production shall be measured for the three years immediately prior to release of bond according to 19.8.14 NMAC;

(2) revegetation on prime farmland shall be considered achieved when the average yield during the measurement period equals or exceeds the average yield of the reference crop established for the same period for non-mined soils of the same or similar texture or slope phase of the soil series in the surrounding area under equivalent management practices;

(3) the reference crop on which restoration of soil productivity is proven shall be selected from the crops most commonly produced on the surrounding prime farmland; where row crops are the dominant crops grown on prime farmland in the area, the row crop requiring the greatest rooting depth shall be chosen as one of the reference crops;

(4) reference crop yields for a given crop season are to be determined from:

(a) the current yield records of representative local farms in the surrounding area, with concurrence by the U.S. natural resources conservation service; or

(b) the average county yields recognized by the U.S. department of agriculture, which have been adjusted by the U.S. natural resources conservation service for local yield variation within the county that is associated with differences between non-mined prime farmland soil and all other soils that produce the reference crop.

(5) under either procedure in Paragraph (4) of Subsection C of 19.8.24.2404 NMAC, the average reference crop yield may be adjusted, with the concurrence of the U.S. natural resources conservation service for:

(a) disease, pest, and weather-induced seasonal variations; or

(b) differences in specific management practices where the overall management practices of the crops being compared are equivalent;

(6) a statistically valid sampling technique at a 90-percent or greater statistical confidence level shall be used as approved by the director in consultation with U.S. natural resources conservation service.

[11-29-97; 19.8.24.2404 NMAC- Rn, 19 NMAC 8.2.24.2404, 9-29-2000; A, 12-31-2007]

PART 25: SPECIAL PERFORMANCE STANDARDS - MOUNTAIN TOP REMOVAL

19.8.25.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.25.1 NMAC - N, 9-29-2000]

19.8.25.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Section 69-25A-1 et. Seq. (1979).

[19.8.25.2 NMAC - N, 9-29-2000]

19.8.25.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-25A-1 et. seq. (1979).

[19.8.25.3 NMAC - N, 9-29-2000]

19.8.25.4 DURATION:

Permanent.

[19.8.25.4 NMAC - N, 9-29-2000]

19.8.25.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.25.5 NMAC - N, 9-29-2000]

19.8.25.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.25.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.25.7 DEFINITIONS:

[RESERVED]

[19.8.25.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.25.8-19.8.25.2499 [RESERVED]:

[19.8.25.8 - 19.8.25.2499 NMAC - N, 9-29-2000]

19.8.25.2500 MOUNTAIN TOP REMOVAL: PERFORMANCE STANDARDS:

Surface coal mining activities may be conducted under a variance from the requirement of this part for restoring affected areas to their approximate original contour, if:

- A.** the director grants the variance under a permit in accordance with 19.8.10.1001 NMAC;
- B.** the activities involve the mining of an entire coal seam running through the upper fraction of a mountain, ridge, or hill, by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining;
- C.** an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed and approved for the affected land;
- D.** the alternative land use requirements of 19.8.20.2073 NMAC are met;
- E.** all applicable requirements of this part, the act and 19.8.1 through 19.8.35 NMAC, other than the requirement to restore affected areas to their approximate original contour, are met;
- F.** an outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden, are retained to prevent slides and erosion, except that the director may permit an exemption to the retention of the coal barrier requirement if the following conditions are satisfied:
 - (1)** the proposed mine site was mined prior to May 3, 1978, and the toe of the lowest seam has been removed;
 - (2)** a coal barrier adjacent to a head-of-hollow fill may be removed after the elevation of a head-of-hollow fill attains the elevation of the coal barrier if the head-of-hollow fill provides the stability otherwise ensured by the retention of a coal barrier; or

(3) the operator demonstrates to the director, and the director determines that no outcrop barrier is necessary to prevent slides and erosion.

G. the final graded slopes on the mined area are less than 1v:5h, so as to create a level plateau or gently rolling configuration, and the outcrops of the plateau do not exceed 1v:2h except where engineering data substantiates, and the director finds, in writing, and includes in the permit under 19.8.10.1001 NMAC, that a minimum static safety factor of 1.5 will be attained;

H. the resulting level or gently rolling contour is graded to drain inward from the outslope, except at specified points where it drains over the outslope in stable and protected channels. The drainage shall not be through or over a valley fill or head-of-hollow fill;

I. natural watercourse below the lowest coal seam mined are not damaged;

J. all waste and acid-forming or toxic-forming materials, including the strata immediately below the coal seam, are covered with non-toxic spoil to prevent pollution and achieve the approved postmining land use; and

K. spoil is placed on the mountaintop bench as necessary to achieve the postmining land use approved under Paragraphs (3) and (4) of Subsection A of 19.8.25.2500 NMAC. All excess spoil material not retained on the mountaintop shall be placed in accordance with 19.8.20.2020 and 2034 through 2037 NMAC.

[11-29-97; 19.8.25.2500 NMAC- Rn, 19 NMAC 8.2.25.2500, 9-29-2000]

PART 26: SPECIAL PERFORMANCE STANDARDS - OPERATIONS ON STEEP SLOPES

19.8.26.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.26.1 NMAC - N, 9-29-2000]

19.8.26.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.26.2 NMAC - N, 9-29-2000]

19.8.26.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.26.3 NMAC - N, 9-29-2000]

19.8.26.4 DURATION:

Permanent.

[19.8.26.4 NMAC - N, 9-29-2000]

19.8.26.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.26.5 NMAC - N, 9-29-2000]

19.8.26.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.26.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.26.7 DEFINITIONS: [RESERVED]

[19.8.26.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.26.8-19.8.26.2599 [RESERVED]

[19.8.26.8 NMAC - 19.8.26.2599 NMAC - N, 9-29-2000]

19.8.26.2600 APPLICABILITY:

A. Any surface coal mining and reclamation operations on steep slopes shall meet the requirements of this part.

B. The standards of this part do not apply to mining conducted on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area, or to operations covered by 19.8.25 NMAC.

[11-29-97; 19.8.26.2600 NMAC -Rn, 19 NMAC 8.2.26.2600, 9-29-2000]

19.8.26.2601 STEEP SLOPES: PERFORMANCE STANDARDS:

Surface coal mining and reclamation operations subject to this part shall comply with requirements of 19.8.5 NMAC and the following, except to the extent a variance is approved under 19.8.26.2602 NMAC.

A. Materials not allowed on downslopes.

(1) The person engaged in surface coal mining and reclamation operations shall prevent the following materials from being placed or allowed to remain on the downslope:

(a) spoil;

(b) waste materials, including waste mineral matter;

(c) debris, including that from clearing the grubbing of haul road construction;
and

(d) abandoned or disabled equipment.

(2) Nothing in this subsection shall prohibit the placement of material in road embankments located on the downslope, so long as the materials used and embankment design comply with the requirements of 19.8.20.2076 through 2078 NMAC and the material is moved and placed in a controlled manner.

B. The highwall shall be completely covered with compacted spoil and the disturbed area graded to comply with the provisions of 19.8.20.2054 through 2059 NMAC including, but not limited to, the return of the site, to the approximate original contour. The person who conducts the surface coal mining and reclamation operations must demonstrate to the director, using standard geotechnical analysis, that the minimum static factor of safety for the stability of all portions of the reclaimed land is at least 1.3.

C. Land above the highwall shall not be disturbed, unless the director finds that the disturbance facilitates compliance with environmental protection standards of this part and the disturbance is limited to that necessary to facilitate compliance.

D. Material in excess of that required by the grading and backfilling provisions of Subsection B of 19.8.26.2601 NMAC shall be disposed of in accordance with the requirements of 19.8.20.2034 through 2037 NMAC.

E. Woody materials shall not be buried in the backfilled area unless the director determines that the proposed method for placing woody material beneath the highwall will not deteriorate the stable condition of the backfilled area as required in Subsection B of 19.8.26.2601 NMAC. Woody materials may be chipped and distributed over the surface of the backfill as mulch, if special provision is made for their use and approved by the director.

F. Unlined or unprotected drainage channels shall not be constructed on backfills unless approved by the director as stable and not subject to erosion.

[11-29-97; 19.8.26.2601 NMAC - Rn, 19 NMAC 8.2.26.2601, 9-29-2000; A, 12-31-2007]

19.8.26.2602 STEEP SLOPES: LIMITED VARIANCES:

Persons may be granted variances from the approximate original contour requirements of Subsection B of 19.8.26.2601 NMAC for steep slope surface coal mining and reclamation operations, if the following standards are met and a permit incorporating the variance is approved under 19.8.10.1003 NMAC.

A. The highwall shall be completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3 using standard geotechnical analyses.

B. The watershed control of the area within which the mining occurs shall be improved by reducing the peak flow from precipitation or thaw and reducing the total suspended solids or other pollutants in the surface water discharge during precipitation or thaw. The total volume of flow during every season of the year shall not vary in a way that adversely affects the ecology of any surface water or any existing or planned public or private use of surface or ground water.

C. Land above the highwall may be disturbed only to the extent that the director deems appropriate and approves as necessary to facilitate compliance with the provisions of this part and if the director finds that the disturbance is necessary to:

- (1) blend the solid highwall and the backfilled material;
- (2) control surface runoff; or
- (3) provide access to the area above the highwall.

D. The landowner of the permit area has requested, in writing, as part of the permit application under 19.8.10.1003 NMAC, that the variance be granted.

E. The operations are conducted in full compliance with a permit issued in accordance with 19.8.10.1003 NMAC.

F. Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the act and these rules and regulations shall be placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with 19.8.20.2034 through 2037 and 2054 and 2055 NMAC.

[11-29-97; 19.8.26.2602 NMAC -Rn, 19 NMAC 8.2.26.2602, 9-29-2000]

19.8.26.2603 STEEP SLOPES: MULTIPLE SEAM:

In multiple-seam steep slope affected areas, spoil not required to reclaim and restore the permit area may be placed on a pre-existing bench, if approved by the director and if the following requirements are met:

- A.** all excess spoil must be hauled, placed, and retained on the solid bench;
- B.** the spoil must be graded to the most moderate slope so as to eliminate the existing highwall to the extent possible with the available spoil;
- C.** the fill must comply with 19.8.20.2034, 2035, or 2036 NMAC and the other requirements of 19.8.19 NMAC through 19.8.28 NMAC;
- D.** the bench on which the spoil is to be placed must have been created and abandoned due to coal mining prior to August 3, 1977.

[11-29-97; 19.8.26.2603 NMAC - Rn, 19 NMAC 8.2.26.2603, 9-29-2000]

PART 27: SPECIAL PERFORMANCE STANDARDS - COAL PROCESSING PLANTS AND SUPPORT FACILITIES NOT LOCATED AT OR NEAR THE MINE SITE OR NOT WITHIN THE PERMIT AREA FOR A MINE

19.8.27.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.27.1 - N, 9-29-2000]

19.8.27.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.27.2 - N, 9-29-2000]

19.8.27.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979)

[19.8.27.3 - N, 9-29-2000]

19.8.27.4 DURATION:

Permanent.

[19.8.27.4 - N, 9-29-2000]

19.8.27.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.27.5 - N, 9-29-2000]

19.8.27.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.27.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.27.7 DEFINITIONS:

[RESERVED]

[19.8.27.7 - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.27.8-19.8.27.2699 [RESERVED]:

[19.8.27.8 - 19.8.27.2699 NMAC - N, 9-29-2000]

19.8.27.2700 APPLICABILITY:

Each person who conducts surface coal mining and reclamation operations, which includes the operation of a coal processing plant or support facility which is not located within the permit area for a specific mine, shall obtain a permit in accordance with 19.8.10.1008 NMAC to conduct those operations and comply with 19.8.27.2701 NMAC.

[11-29-97; 19.8.27.2700 NMAC - Rn, 19 NMAC 8.2.27.2700, 9-29-2000]

19.8.27.2701 COAL PROCESSING PLANTS: PERFORMANCE STANDARDS:

Construction, operation, maintenance, modification, reclamation, and removal activities at operations covered by this part shall comply with the following:

A. signs and markers for the coal processing plant, coal processing waste disposal area, and water treatment facilities shall comply with 19.8.20.2000 NMAC;

B. roads, transport, and associated structures shall be constructed, maintained, and reclaimed in accordance with 19.8.20.2076 through 2078 NMAC;

C. any stream or channel realignment shall comply with 19.8.20.2012 NMAC;

D. if required by the director, any disturbed area related to the coal processing plant or associated facilities shall have sediment control structures, in compliance with 19.8.20.2013 and 2014 NMAC, and all discharges from these areas shall meet the requirements of 19.8.20.2010 NMAC and any other applicable state or federal law;

E. permanent impoundments associated with coal processing plants shall meet the requirements of 19.8.20.2017 and 2024 NMAC; dams constructed of or impounding coal processing waste shall comply with 19.8.20.2047 through 2049 NMAC;

F. use of water wells shall comply with 19.8.20.2021 NMAC and water rights shall be protected in accordance with 19.8.20.2022 NMAC;

G. disposal of coal processing waste, solid waste, and any excavated materials shall comply with 19.8.20.2034 through 2037 and 2039 through 2046 NMAC;

H. discharge structures for diversions and sediment control structures shall comply with 19.8.20.2015 NMAC;

I. air pollution control measures associated with fugitive dust emissions shall comply with 19.8.20.2050 NMAC;

J. fish, wildlife and related environmental values shall be protected in accordance with 19.8.20.2051 NMAC;

K. slide areas and other surface areas shall comply with 19.8.20.2052 NMAC;

L. adverse effects upon or resulting from nearby underground coal mining activities shall be minimized by appropriate measures including, but not limited to, compliance with 19.8.20.2023 and 2038 NMAC;

M. reclamation shall include proper topdressing handling procedures, revegetation, and abandonment, in accordance with 19.8.20.2024, 2053 through 2059, 2060 through 2066, and 2071 through 2073 NMAC;

N. conveyors, buildings, storage bins or stockpiles, water treatment facilities, water storage facilities, and any structure or system related to the coal processing plant shall comply with 19.8.20 NMAC;

O. any coal processing plant or associated structures located on prime farmland shall meet the requirements of 19.8.24 NMAC.

[11-29-97; 19.8.27.2701 NMAC - Rn, 19 NMAC 8.2.27.2701, 9-29-2000; A, 12-31-2007]

PART 28: SPECIAL PERFORMANCE STANDARDS - IN SITU PROCESSING

19.8.28.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.28.1 - N, 9-29-2000]

19.8.28.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.28.2 - N, 9-29-2000]

19.8.28.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.28.3 - N, 9-29-2000]

19.8.28.4 DURATION:

Permanent.

[19.8.28.4 - N, 9-29-2000]

19.8.28.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.28.5 - N, 9-29-2000]

19.8.28.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.28.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.28.7 DEFINITIONS:

[RESERVED]

[19.8.28.7 - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.28.8-19.8.28.2799 [RESERVED]:

[19.8.28.8 - 19.8.28.2799 NMAC - N, 9-29-2000]

19.8.28.2800 IN SITU PROCESSING: PERFORMANCE STANDARDS:

A. The person who conducts in situ processing activities shall comply with 19.8.20 NMAC and this section.

B. In situ processing activities shall be planned and conducted to minimize disturbance to the prevailing hydrologic balance by:

(1) avoiding discharge of fluids into holes or wells, other than as approved by the director;

(2) injecting process recovery fluids only into geologic zones or intervals approved as production zones by the director;

(3) avoiding annular injection between the wall of the drill hole and the casing;
and

(4) preventing discharge of process fluid into surface waters.

C. Each person who conducts in situ processing activities shall submit for approval as part of the application for permit under 19.8.10.1009 NMAC and follow after approval, a plan that ensures that all acid-forming, toxic-forming, or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard and caused by the mining and recovery process are promptly treated, confined, or disposed of, in a manner that prevents contamination of ground and surface waters, damage to fish, wildlife and related environmental values, and threats to the public health and safety.

D. Each person who conducts in situ processing activities shall prevent flow of the process recovery fluid:

(1) horizontally beyond the affected area identified in the permit; and

(2) vertically into overlying or underlying aquifers.

E. Each person who conducts in situ processing activities shall restore the quality of affected ground water in the permit and adjacent area, including ground water above and below the production zone, to the approximate premining levels or better, to ensure that the potential for use of the ground water is not diminished.

[11-29-97; 19.8.28.2800 NMAC - Rn, 19NMAC 8.2.28.2800, 9-29-2000]

19.8.28.2801 IN SITU PROCESSING: MONITORING:

A. Each person who conducts in situ processing activities shall monitor the quality and quantity of surface and ground water and the subsurface flow and storage characteristics in a manner approved by the director under 19.8.20.2020 NMAC to measure changes in the quantity and quality of water in surface and ground water systems in the permit and adjacent areas.

B. Air and water quality monitoring shall be conducted in accordance with monitoring programs approved by the director as necessary according to appropriate federal and state air and water quality standards.

[11-29-97; 19.8.28.2801 NMAC - Rn, 19NMAC 8.2.28.2801, 9-29-2000]

PART 29: INSPECTIONS

19.8.29.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.29.1 - N, 9-29-2000]

19.8.29.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.29.2 - N, 9-29-2000]

19.8.29.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.29.3 - N, 9-29-2000]

19.8.29.4 DURATION:

Permanent.

[19.8.29.4 - N, 9-29-2000]

19.8.29.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.29.5 - N, 9-29-2000]

19.8.29.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.29.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.29.7 DEFINITIONS:

[RESERVED]

[19.8.29.7 - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.29.8-19.8.29.2899 [RESERVED]:

[19.8.29.8 - 19.8.29.2899 - N, 9-29-2000]

19.8.29.2900 INSPECTIONS:

A. The director through his duly authorized representative shall conduct an average of at least one partial inspection per month and one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of an operator's compliance with some of the permit conditions and requirements under the act and 19.8 NMAC, and includes collection of evidence of any violations observed. Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected. Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: Provided that any indication of a condition, practice or violation constituting cause for issuance of a cessation order under 19.8.30.3000 NMAC shall be investigated on site immediately. And provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of this part. A complete

inspection is an on-site review of an operator's compliance with all permit conditions and requirements within the entire area disturbed or affected by the operations, and includes collection of evidence with respect to every violation.

B. The director, through his duly authorized representative shall conduct periodic inspections of all inactive surface coal mining operations and exploration sites required to comply, in whole or in part, with the act and 19.8 NMAC, including collection of evidence with respect to every violation of any condition of the exploration approval or surface coal mining and reclamation operation permit, or any requirement of this act or 19.8 NMAC. At least one complete inspection per calendar quarter shall be conducted on inactive surface coal mining operations. For purposes of this part, an inactive surface coal mining operation is one for which the director has received the written notice provided for under 19.8.20.2073 NMAC, or reclamation of phase II as defined in Paragraph (2) of Subsection C of 19.8.14.1412 NMAC has been completed.

C. Permits issued under 19.8.11 NMAC shall be inspected quarterly until notice required by Subsection D of 19.8.11.1112 NMAC has been received by the director. Upon receipt of notice, or as determined necessary by the director, inspections will be conducted as required under Subsection A of 19.8.29.2900 NMAC.

D. The inspections shall be carried out on an irregular basis so as to monitor compliance at all operations, shall occur without prior notice except for necessary on-site meetings and include the prompt filing of inspection reports adequate to enforce the requirements and carry out the terms and conditions of the act and 19.8 NMAC.

E. The authorized representatives of the director without advance notice and upon presentation of appropriate credentials:

(1) shall have the right of entry to, upon or through any coal exploration site, surface coal mining and reclamation operations or any premises in which any records required to be maintained under the act or 19.8 NMAC are located; and

(2) may at reasonable times, and without delay, have access to and copy any records, inspect any monitoring equipment or method of operation required under the act.

F. The inspections shall be in accordance with Subsection D of 69-25A-21 and Subsection E of 69-25A-25 NMSA 1978 of the act, except that a search warrant is required to enter a building to inspect if the permittee or operator does not consent to entry.

G. "Abandoned site" means a surface coal mining and reclamation operation for which the regulatory authority has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The regulatory authority or OSM has issued at least one notice of violation or the initial program equivalent, and either:

(a) is unable to serve the notice despite diligent efforts to do so; or

(b) the notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(3) The regulatory authority:

(a) is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(b) is taking action pursuant to Section 518(e), 518(f), 521(a)(4) or 521(c) of SMCRA or counterparts included in the act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted and bonded:

(a) the permit has either expired or been revoked; and

(b) the regulatory authority has initiated and is diligently pursuing forfeiture of, or has forfeited, any available performance bond.

H. In lieu of the inspection frequency established in Subparagraphs (a) and (b) of Paragraph (1) of Subsection H of 19.8.29.2900 NMAC, the regulatory authority shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per quarter.

(1) In selecting an alternate inspection frequency authorized under Subsection H of 19.8.29.2900 NMAC, the regulatory authority shall first conduct a complete inspection of the abandoned site and provide public notice under Paragraph (2) of Subsection H of 19.8.29.2900 NMAC. Following the inspection and public notice, the regulatory authority shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(a) how the site meets each of the criteria under the definition of an abandoned site under Subsection G of 19.8.29.2900 NMAC and thereby qualifies for a reduction in inspection frequency;

(b) whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to become, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(c) the extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(d) the degree to which erosion and sediment control is present and functioning;

(e) the extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(f) the extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(g) based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under Paragraph (1) of Subsection H of 19.8.29.2900 NMAC shall be provided as follows:

(a) the regulatory authority shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments;

(b) the public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

[11-29-97; 19.8.29.2900 NMAC - Rn, 19 NMAC 8.2.29.2900, 9-29-2000; A, 1-15-2002; A, 12-31-2007]

19.8.29.2901 CITIZEN'S REQUEST FOR INSPECTION:

A. A citizen may request an inspection by furnishing a signed written statement or an oral report followed by a signed, written statement giving the director reason to believe that a violation, condition, or practice referred to in Subsection B of 19.8.29.2901 NMAC exists and setting forth a phone number and address where the citizen can be contacted.

B. The director shall immediately conduct an inspection to enforce any requirement of the act, 19.8 NMAC, or any condition of a permit or an exploration approval imposed under the act and 19.8 NMAC when the representative has reason to believe, on the basis of information available to him (other than information resulting from a previous inspection), that there exists a violation of the act, 19.8 NMAC, or any condition of a permit or exploration approval, or that there exists any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources.

C. The identity of any person supplying information to the director relating to a possible violation or imminent danger or harm shall remain confidential with the director if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under state law.

D. If an inspection is conducted as a result of information provided to the director by a citizen as described in Subsection A of 19.8.29.2901 NMAC, the citizen shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the director during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he supplied information, but only if he is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

E. Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the citizen's written statement, the director shall send the citizen the following:

(1) if an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection or an explanation of why no enforcement action was taken;

(2) if no inspection was conducted, an explanation of the reason why; and

(3) an explanation of the citizen's right, if any, to informal review of the action or inaction of the director under 19.8.29.2903 NMAC.

F. The director shall give copies of all materials in Paragraphs (1) and (2) of Subsection E of 19.8.29.2901 NMAC within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the citizen shall be removed unless disclosure of the citizen's identity is permitted under Subsection C of 19.8.29.2901 NMAC.

G. Nothing in this part shall be construed to create any greater degree of liability upon the operator for the safety of the person or property of a private citizen accompanying the authorized representative of the director than may exist under common law.

[11-29-97; 19.8.29.2901 NMAC - Rn, 19 NMAC 8.2.29.2901, 9-29-2000]

19.8.29.2902 REVIEW OF ADEQUACY AND COMPLETENESS OF INSPECTION:

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the director in writing of any alleged failure on his part to make adequate and complete or periodic inspections as provided in 19.8.29.2900 NMAC. The notification shall include sufficient information to create a reasonable belief that 19.8.29.2900 NMAC is not being complied with and to demonstrate that the person is or may be adversely affected. The director shall within 15 days of receipt of the notification determine whether 19.8.29.2900 NMAC is being complied with, and if not shall immediately order an inspection to remedy the noncompliance. The director shall also furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

[11-29-97; 19.8.29.2902 NMAC - Rn, 19 NMAC 8.2.29.2902, 9-29-2000]

19.8.29.2903 REVIEW OF DECISION NOT TO INSPECT OR ENFORCE:

A. Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the director to review informally the decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for an inspection under 19.8.29.2901 NMAC. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

B. The director shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the citizen shall not be disclosed unless confidentiality has been waived or disclosure is required under state law.

C. Informal review under this part shall not affect any right to informal review under 69-25A-29 NMSA 1978 of the act or to a citizen's suit under 69-25A-24 NMSA 1978 of the act.

[11-29-97; 19.8.29.2903 NMAC - Rn, 19 NMAC 8.2.29.2903, 9-29-2000]

19.8.29.2904 AVAILABILITY OF RECORDS:

Copies of all records, reports, inspection materials, or information obtained by the director shall be made immediately available to the public in the manner provided for by the state statutes providing for inspection of public records, Sections 14-2-1 through 14-2-3 NMSA 1978.

[11-29-97; 19.8.29.2904 NMAC - Rn, 19 NMAC 8.2.29.2904, 9-29-2000]

PART 30: ENFORCEMENT

19.8.30.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.30.1 NMAC - N, 9-29-2000]

19.8.30.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.30.2 NMAC - N, 9-29-2000]

19.8.30.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.30.3 NMAC - N, 9-29-2000]

19.8.30.4 DURATION:

Permanent.

[19.8.30.4 NMAC - N, 9-29-2000]

19.8.30.5 EFFECTIVE DATE:

November 29, 1997 unless a later date is cited at the end of a section.

[19.8.30.5 NMAC - N, 9-29-2000]

19.8.30.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.30.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.30.7 DEFINITIONS:

[RESERVED]

[19.8.30.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.30.8-19.8.30.2999 [RESERVED]:

[19.8.30.8 - 19.8.30.2999 NMAC - N, 9-29-2000]

19.8.30.3000 CESSATION ORDERS:

A. The director, or his duly authorized representative shall immediately order a cessation of coal exploration operations or surface coal mining and reclamation operations or relevant portions thereof, if he determines, on the basis of an inspection, any conditions or practices exist or that any permittee is in violation of any requirements of the act, 19.8 NMAC or any permit condition, which condition, practice or violation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources.

B. Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources unless such operations are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations.

C. If the cessation order will not completely abate the imminent danger or harm in the most expeditious manner possible, the inspector shall impose affirmative obligations to abate the condition, practice or violation, specifying the time by which the abatement shall be accomplished. If affirmative obligations to abate are imposed, the inspector

may consider suggestions by the operator concerning the economic and technological feasibility, in determining the most expeditious means of abatement and the period for correction of the condition, practice or violation causing an imminent danger to the health or safety of the public or significant environmental harm to land, air or water resources.

D. The director, or his duly authorized representative, shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations or relevant portions thereof, if he finds that a violation has not been abated within the period specified in a notice of violation issued under 19.8.30.3001 NMAC. The cessation order shall specify measures deemed necessary by the inspector to abate the violations in the most expeditious manner possible.

E. A cessation order shall be effective upon prompt delivery to the permittee or his agent. The order shall remain in effect until the condition, practice or violation has been abated or until vacated, modified or terminated in writing by the director or his duly authorized representative. A cessation order shall be in writing, signed by the director or his duly authorized representative, and shall set forth with reasonable specificity:

(1) the nature of the violation, including a citation to the requirement allegedly violated and the imminent danger or harm allegedly involved;

(2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

(3) the time established for abatement, if appropriate, including the time for meeting any interim steps; and

(4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

F. Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

G. The director, or his duly authorized representative may modify, terminate or vacate a cessation order for a good cause, provided that no cessation order may be vacated because of inability to comply. The director may extend the time for abatement if he determines that good cause exists and that the failure to abate within the time previously set forth was not caused by lack of diligence on the part of the person to whom the cessation order was issued.

H. The director or his duly authorized representative shall terminate a cessation order by written notice to the person to whom the order was issued, when he determines that all conditions, practices or violations listed in the order have been

abated. Termination shall not affect the right to assess civil penalties for violations included in the order.

I. A modification of an order shall result in the commencement of a new period within which to abate. However, before any extension in the total abatement time is granted, the requirements of Subsection F of 19.8.30.3000 NMAC must be complied with.

J. A cessation order which requires cessation of mining, expressly or by implication, shall expire within thirty (30) days after it has been served unless a hearing has been held within that time, or unless the cessation order has been previously terminated, modified, or vacated in writing. The hearing shall be held on site or within such reasonable proximity as will permit viewing of the site during the course of the hearing. A cessation order shall not expire as provided above if the condition, practice, or violation in question has been abated or if the hearing has been waived or postponed at the request of the permittee. Expiration of the cessation order for failure to hold a hearing within thirty (30) days from notice of issuance does not affect the right of the director to assess any civil penalty for violations giving rise to such cessation order.

K. The hearing shall be conducted in accordance with the notice and hearing requirements of 19.8.30.3003 NMAC and 19.8.30.3004 NMAC governing informal hearings.

L. Within sixty days after issuing a cessation order, the director shall notify in writing any person who has been identified under Subsection F of 19.8.11.1119 NMAC, Subsection C of 19.8.7.701 NMAC and Subsection D of 19.8.7.701 NMAC as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

[11-29-27; 19.8.30.3000 NMAC - Rn, 19 NMAC 8.2.30.3000, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

19.8.30.3001 NOTICES OF VIOLATION:

A. The director, through his duly authorized representative shall issue a notice of violation if, on the basis of an inspection, he determines a violation of any requirement of the act, 19.8 NMAC or any permit or exploration approval condition which does not create an imminent danger or harm for which a cessation order must be issued under 19.8.30.3000 NMAC.

B. A notice of violation shall be in writing, signed by the director or by his duly authorized representative and shall set forth with reasonable specificity:

(1) the nature of the violation, including a citation to the requirement allegedly violated;

- (2) the remedial action required which may include interim steps;
- (3) a reasonable time, but not more than ninety days for abatement, which may include time for accomplishment of interim steps;
- (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies; and
- (5) a notice of opportunity for review pursuant to 19.8.12.1203 NMAC.

C. The director or his authorized representative may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in Subsection D of 19.8.30.3001 NMAC. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

D. Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

- (1) where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;
- (2) where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he has no other effective legal remedy;
- (3) where the permittee cannot abate within 90 days due to a labor strike;
- (4) where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or
- (5) where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

E. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

F. If any of the conditions in Subsection D of 19.8.30.3001 NMAC exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of Subsections C and D of 19.8.30.3001 NMAC. In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his concurrence or disapproval in the file.

G. Any determination made under Subsection F of 19.8.30.3001 NMAC shall contain a notice of opportunity for review pursuant to 19.8.12.1203 NMAC.

H. No extension granted under Subsection F of 19.8.30.3001 NMAC may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of Subsection F of 19.8.30.3001 NMAC.

I. The director or his duly authorized representative shall terminate a notice of violation by written notice to the person to whom it was issued, when the director determines that all violations listed in the notice of violation have been abated.

J. Failure-to-abate cessation order.

(1) If the director or his duly authorized representative finds that a violation has not been abated within expiration of the time originally fixed or subsequently extended, he shall immediately issue an order of cessation of coal surface mining and reclamation operations, or coal exploration or the portion of operations relevant to the violation as provided in 19.8.30.3000 NMAC.

(2) If the director or his duly authorized representative finds an interim step has not been accomplished within the time originally fixed or subsequently extended he may immediately issue an order of cessation of coal surface mining and reclamation operations, or coal exploration or the portions of operations relevant to the violation as provided in 19.8.30.3000 NMAC.

K. A notice of violation which requires cessation of mining, expressly or by necessary implication, shall not be effective to cause cessation of mining following thirty (30) days after it is served unless an informal public hearing has been held within that time. The public hearing shall be on site within such reasonable proximity as will permit

viewing of the site during the course of the hearing. The hearing on a notice of violation shall be conducted in accordance with the notice and hearing requirements of 19.8.30.3003 NMAC and 19.8.30.3004 NMAC governing informal hearings.

L. A notice of violation shall not be vacated simply by virtue of the fact that the condition, practice, or violation in question has been abated or if the hearing has been waived or postponed at the request of the permittee. Termination of a notice of violation by the director or expiration of a notice of violation for failure to hold a public hearing within thirty (30) days shall not affect the director's right to assess civil penalties for the violation mentioned in the notice.

[11-29-27; 19.8.30.3001 NMAC - Rn, 19 NMAC 8.2.30.3001, 9-29-2000; A, 12-31-2007]

19.8.30.3002 PERMIT SUSPENSION OR REVOCATION:

A. When on the basis of an inspection the director determines that a pattern of violations of any requirements of the act, 19.8 NMAC or any permit conditions exist or has existed and if the director also finds that such violations are caused by the unwarranted failure of the permittee to comply with such requirements or conditions or that such violations are willfully caused by the permittee, the director shall, except as otherwise provided in Subsection E of 19.8.30.3002 NMAC, issue an order to a permittee requiring him to show cause as to why the permit should not be suspended or revoked. The order shall be in writing, signed by the director and shall set forth with reasonable specificity:

- (1)** the nature of the violations, including a citation to the requirements or conditions allegedly violated;
- (2)** the conduct alleged to justify the finding that such violations are the result of the permittee's unwarranted failure or were willful; and
- (3)** the opportunity for a hearing to be held pursuant to Subsection E of 69-25A-29 NMSA 1978 of the act.

B. For purposes of determining the propriety of an order to show cause why a permit should not be suspended or revoked, the following definitions shall apply:

- (1)** Willful violation means an act or omission which violates the requirements of the act, 19.8 NMAC or any permit condition, committed by a person who intends the result which actually occurs.
- (2)** Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of any requirement of the act, or 19.8 NMAC or any permit condition, due to indifference, lack of diligence or lack of reasonable care or the failure to abate any violation of a permit, the act or 19.8 NMAC due to indifference, lack of diligence or lack of reasonable care. Violations by any person conducting

surface coal mining operations on behalf of the permittee shall be attributed to the permittee unless the permittee establishes by clear and convincing evidence, that the acts were not within the scope of employment or agency.

(3) The director may determine that a pattern of violations exists or has existed, based upon two (2) or more inspections of the permit area within any twelve month period, after considering:

(a) the number and seriousness of violations cited on more than one occasion of the same or related requirements of the act, 19.8 NMAC or the permit;

(b) the number and seriousness of violations cited on more than one occasion of different requirements of the act; and

(c) the extent to which the violations are isolated departures from lawful conduct.

C. The director shall determine that a pattern of violations exists, if he finds that there were violations of the same or related requirements of the act, the permit or 19.8 NMAC during three or more inspections of the permit area within any twelve month period.

D. Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to this section.

E. The director may decline to issue a show cause order, or may vacate an outstanding show cause order, if he finds that, taking into account exceptional factors present in the particular case, it would be demonstratively unjust to issue or to fail to vacate the show cause order. The basis for this finding shall be fully explained and documented in the records of the case, provided that no show cause order or order revoking or suspending a permit may be vacated because it is subsequently determined that the director or his duly authorized representative did not have information sufficient to justify an inspection for any condition, practice or violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably expect it to cause a significant imminent environmental harm to land, air or water resources.

[11-29-27; 19.8.30.3002 NMAC - Rn, 19 NMAC 8.2.30.3002, 9-29-2000; A, 12-31-2007]

19.8.30.3003 SERVICE OF NOTICES OF VIOLATION AND CESSATION ORDERS:

A. A notice of violation or cessation order shall be served on the person to whom it is directed or his designated agent promptly after issuance as follows.

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry by the director's duly authorized representative, appears to be in charge of the coal exploration or surface coal mining and reclamation operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be a supervisory employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

B. A show cause order may be served on the person to whom it is issued in either manner provided in Subsection A of 19.8.30.3003 NMAC.

C. Designation by any person of an agent for service of notices and orders shall be made in writing to the director.

D. The director shall cause copies of notices and order to be furnished to any person having an interest in the coal exploration, surface coal mining and reclamation operation or the permit area, such as the owner of the fee, a corporate officer of the permittee or entity conducting coal exploration, or the bonding company when so requested in writing.

E. Upon request, the director shall furnish copies of notices and orders and all documents relating to inspection and enforcement actions to the director of the office of surface mining reclamation and enforcement, pertaining to coal exploration operations and surface coal mining and reclamation operations which are subject to the provisions of a state-federal cooperative agreement.

[11-29-27; 19.8.30.3003 NMAC - Rn, 19 NMAC 8.2.30.3003, 9-29-2000; A, 08-31-2010]

19.8.30.3004 INFORMAL HEARINGS:

A. Within ten (10) days of service of a notice of violation under 19.8.30.3001 NMAC or cessation order under 19.8.30.3001 NMAC, the person to whom the notice or order was issued may require an informal hearing by notifying the director, in writing, of his request for such hearing. The director may, for good cause shown, extend the time for requesting a notice of a hearing provided that the total time for request including any such extension, does not exceed fifteen (15) days from service of notice or order.

B. The right to an informal hearing, as provided in this section, shall be deemed waived if the person to whom notice of violation or cessation order is given fails to

request in writing such hearing within ten (10) days or if granted by the director, within any additional extension of time after service of the notice or order.

C. Within five days after the close of an informal hearing the director may affirm, modify or vacate the notice or order in writing. The decision shall be sent to the person to whom the notice or order was issued, or any person who filed a report which led to the notice or order.

D. At the request of the operator to whom the notice or order is given, the hearing on a notice of violation or cessation order may be delayed until a proposed civil penalty assessment is served in accordance with 19.8.31.3105 NMAC. In any event, the director may, at an informal hearing, resolve the amount of a civil penalty with the agreement of the operator, notwithstanding that no proposed civil penalty assessment has yet been served in accordance with 19.8.31.3105 NMAC.

[11-29-27; 19.8.30.3004 NMAC - Rn, 19 NMAC 8.2.30.3004, 9-29-2000; A, 08-31-2010]

PART 31: PENALTIES

19.8.31.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.31.1 NMAC - N, 9-29-2000]

19.8.31.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.31.2 NMAC - N, 9-29-2000]

19.8.31.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.31.3 NMAC - N, 9-29-2000]

19.8.31.4 DURATION:

Permanent.

[19.8.31.4 NMAC - N, 9-29-2000]

19.8.31.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.31.5 NMAC - N, 9-29-2000]

19.8.31.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.31.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.31.7 DEFINITIONS:

[RESERVED]

[19.8.31.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.31.8-19.8.31.3099 [RESERVED]:

[19.8.31.8 - 19.8.31.3099 NMAC - N, 9-29-2000]

19.8.31.3100 CIVIL PENALTIES: ASSESSMENT:

A. The director shall review each notice of violation and cessation order in accordance with the assessment procedures described in this part to determine whether a civil penalty will be assessed, the amount of the penalty and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

B. The director shall assess a penalty for each cessation order.

C. The director may assess a penalty for each violation. In determining whether to assess a penalty, the director shall consider the factors listed in 19.8.31.3101 NMAC. Normally, a penalty will be assessed when a violation is assigned 31 points or more.

[11-29-97; 19.8.31.3100 NMAC - Rn, 19 NMAC 8.2.31.3100, 9-29-2000]

19.8.31.3101 POINT SYSTEM FOR PENALTIES:

A. The director shall use the point system described in this section to determine the amount of the penalty, and, in the cases of notices of violation, whether a mandatory penalty should be assessed as provided in 19.8.31.3100 NMAC.

B. Points shall be assigned as follows.

(1) History of previous violations. The director shall assign up to 25 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(a) a violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year;

(b) no violation for which the notice or order has been vacated shall be counted; and

(c) a violation, not resulting in a civil penalty assessment shall not receive more than 50% of the points than would have been assigned if the violation had resulted in an assessment.

(2) Seriousness. The director shall assign up to 25 points based on the seriousness of the violation, as follows:

(a) Foreseeability of occurrence. The director shall assign up to 10 points based on the foreseeability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Foreseeability of Occurrence	Points
None	0
Insignificant	1-2
Unlikely	3-5
Likely	6-9
Clearly	10

(b) Extent of potential or actual damage. The director shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(i) if the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the director shall assign zero to seven points, depending on the duration and extent of the damage or impact;

(ii) if the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the director shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(c) Alternative. In the case of a violation of an administrative requirement, such as a requirement to keep records, the director shall, in lieu of Subparagraphs (a) and (b) of Paragraph (2) of Subsection B of 19.8.31.3101 NMAC, assign up to 10 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence.

(a) The director shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(i) a violation which occurs through no negligence shall be assigned no penalty points for negligence;

(ii) a violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence; or

(iii) a violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(b) In determining the degree of negligence involved in a violation the number of points to be assigned, the following definitions apply:

(i) no negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care;

(ii) negligence means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the act or 19.8 NMAC due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit, the act or 19.8 NMAC due to indifference, lack of diligence, or lack of reasonable care;

(iii) a greater degree of fault than negligence means reckless, knowing, or intentional conduct.

(c) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued unless he establishes, by clear and convincing evidence, that the acts were not within the scope of employment or agency.

(4) Good faith in attempting to achieve compliance.

(a) The director shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of Good Faith	Points
Rapid compliance	-1 to -15
Use of additional equipment or labor	-1 to -25
Normal compliance	<u>0</u>

(Total not to exceed -25)

(b) The following definitions shall apply under Subparagraph (a) of Paragraph (4) of Subsection B of 19.8.31.3101 NMAC:

(i) rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement;

(ii) use of additional equipment or labor means rapid compliance and the employment of equipment and/or labor in amounts and at a cost greater than would normally be employed;

(iii) normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(c) If the consideration of these criteria is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and shall be reassessed after the violation has been abated.

[11-29-97; 19.8.31.3101 NMAC - Rn, 19 NMAC 8.2.31.3101, 9-29-2000]

19.8.31.3102 DETERMINATION OF PENALTY AMOUNT:

The director shall determine the amount of any civil penalty by converting the total number of points assigned under 19.8.31.3101 NMAC to a dollar amount which falls within the range of penalties contained in the following schedule:

<u>Points</u>	<u>Dollars</u>	<u>Points</u>	<u>Dollars</u>
1	10-30	37	1700-1800
2	30-50	38	1800-1900
3	50-70	39	1900-2000
4	70-90	40	2000-2100
5	90-110	41	2100-2200
6	110-130	42	2200-2300
7	130-150	43	2300-2400
8	150-170	44	2400-2500
9	170-190	45	2500-2600
10	190-210	46	2600-2700
11	210-230	47	2700-2800
12	230-250	48	2800-2900
13	250-270	49	2900-3000
14	270-290	50	3000-3100
15	290-310	51	3100-3200
16	310-330	52	3200-3300
17	330-350	53	3300-3400
18	350-370	54	3400-3500
19	370-390	55	3500-3600
20	390-410	56	3600-3700

21	410-430	57	3700-3800
22	430-450	58	3800-3900
23	450-470	59	3900-4000
24	470-500	60	4000-4100
25	500-600	61	4100-4200
26	600-700	62	4200-4300
27	700-800	63	4300-4400
28	800-900	64	4400-4500
29	900-1000	65	4500-4600
30	1000-1100	66	4600-4700
31	1100-1200	67	4700-4800
32	1200-1300	68	4800-4900
33	1300-1400	69	4900-5000
34	1400-1500	70 and above	5000
35	1500-1600		
36	1600-1700		

[11-29-97; 19.8.31.3102 NMAC - Rn, 19 NMAC 8.2.31.3102, 9-29-2000]

19.8.31.3103 ASSESSMENT OF SEPARATE VIOLATION FOR EACH DAY:

A. The director may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the director shall consider the factors listed in 19.8.31.3101 NMAC and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points, the director shall assess a civil penalty for a minimum of two separate days.

B. Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$750 shall be assessed for each day, not exceeding thirty (30) days for each such violation, during which such failure continues, except that, if the person to whom the notice or order was issued initiates review proceedings with respect to the violation, the abatement period shall be extended as follows:

(1) if suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under Subsection D of 69-25A-29 NMSA 1978 of the act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the director issues a final order with respect to the violation in question; and

(2) if the person to whom the notice or order was issued initiated review proceedings under Section 69-25A-30 NMSA 1978 of the act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to Subsection B of Section 69-25A-30 NMSA 1978 of the act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court not subject to appeal.

[11-29-97; 19.8.31.3103 NMAC - Rn, 19 NMAC 8.2.31.3103, 9-29-2000; A, 08-31-2010]

19.8.31.3104 WAIVER OF USE OF FORMULA TO DETERMINE CIVIL PENALTY:

A. The director, upon his own initiative or upon written request received with 15 days of service of a notice of civil penalty assessment, may waive the use of the formula contained in 19.8.31.3101 NMAC to set the civil penalty, if he determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjustified. However, the director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the act, 19.8 NMAC or any conditions of any permit or exploration approval. The basis of every waiver shall be fully explained and documented in the records of the case.

B. If the director waives the use of the formula, he shall use the criteria set forth in Subsection A of Section 69-25A-22 NMSA 1978 of the act, to determine the appropriate penalty. When the director has elected to waive the use of the formula, he shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

[11-29-97; 19.8.31.3104 NMAC - Rn, 19 NMAC 8.2.31.3104, 9-29-2000]

19.8.31.3105 PROCEDURE FOR CIVIL PENALTY ASSESSMENT:

A. Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the director and to the inspector who issued the notice of violation or cessation order. The director or his authorized representative shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

B. The director shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order. If the mail is tendered at the address of that person set forth in the sign required under Subsection C of 19.8.20.2000 NMAC or at any address at which that person is in fact located, and he refuses to accept delivery of or to collect such mail, the requirements of this subsection shall be deemed to have been complied with upon such tender. Failure by the director to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed:

(1) proves actual prejudice as a result of the delay; and

(2) makes a timely objection to the delay; an objection shall be timely only if made in the normal course of administrative and judicial review.

C. Unless a conference has been requested, the director or his representative shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The director shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in Subsection B of 19.8.31.3105 NMAC within 30 days after the date the violation is abated.

D. Consolidation of hearings. If the director proposes an assessment or reassessment prior to the running of the time for requesting an informal hearing pursuant to 19.8.30.3004 NMAC, any conference requested pursuant to 19.8.31.3106 NMAC may be consolidated with such informal hearing procedure upon a determination by the director that consolidation is appropriate.

[11-29-97; 19.8.31.3105 NMAC - Rn, 19 NMAC 8.2.31.3105, 9-29-2000; A, 12-31-2007]

19.8.31.3106 PROCEDURE FOR ASSESSMENT CONFERENCE:

A. The director shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom the notice or order was issued, if the request is received within 15 days from the date of the proposed assessment or reassessment is served.

B. Conference format and timing.

(1) The director shall assign a conference officer to hold the assessment conference who shall not be the inspector signing the notice or order. The conference shall be informal in nature and not be governed by the rules for adjudicatory hearings found in 19.8.12 NMAC. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. A failure by the director to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The director shall post notice of the time and place of the conference at his office at least five (5) days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information in the violation. Within 30 days after the conference is held, the conference officer shall either:

(a) settle the issues, in which case a settlement agreement shall be prepared by the conference officer and signed by the director and by the person assessed; or

(b) affirm, raise, lower or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than \$500 shall not be final and binding until approved by the director.

C. The conference officer shall promptly serve the person assessed with a notice of his action in the manner provided in Subsection B of 19.8.31.3105 NMAC and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

D. Settlement agreements.

(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the director within 30 days after the date of signing, the director shall order the civil penalty fixed at an amount determined to be appropriate, in light of the criteria set forth in 19.8.31.3101 NMAC and relevant information received at any assessment conference.

E. The conference officer may terminate the conference when he determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

F. The conference officer may, if persuaded by the information presented, modify or vacate a notice of violation, with the approval of the director.

G. At formal review proceedings under 69-25A-29 NMSA 1978 of the act no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

[11-29-97; 19.8.31.3106 NMAC - Rn, 19 NMAC 8.2.31.3106, 9-29-2000; A, 12-31-2007]

19.8.31.3107 REQUEST FOR HEARING:

A. The person charged with the violation may contest the proposed penalty or the alleged violation by submitting a petition and an amount equal to the proposed penalty, or, if a conference has been held, the reassessed or affirmed penalty to the director to be held in escrow as provided in Subsection B of 19.8.31.3107 NMAC within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding commenced under 19.8.31.3108 NMAC.

B. All funds submitted under Subsection A of 19.8.31.3107 NMAC shall be held in escrow pending completion of the administrative and judicial review process, at which time the director shall disburse them as provided 19.8.31.3108 NMAC.

C. The request for hearing and any hearing procedure shall be governed by 19.8.12.1203 NMAC and any contest of a proposed penalty may, unless inconsistent with the timing of a hearing on a notice of violation or cessation order, be combined with any such proceeding under 19.8.12.1203 NMAC.

[11-29-97; 19.8.31.3107 NMAC - Rn, 19 NMAC 8.2.31.3107, 9-29-2000; A, 1-15-2002]

19.8.31.3108 FINAL ASSESSMENT AND PAYMENT OF PENALTY:

A. If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in 19.8.31.3107 NMAC, the proposed assessment shall become a final order of the director and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

B. If any party requests judicial review of a final order of the director, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to Subsection C of 19.8.31.3108 NMAC, the escrowed funds shall be released to the director in payment of the penalty, and the escrow shall end.

C. If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed, the director shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the rate established by the U.S. department of treasury pursuant to Section 6621(b) of the internal revenue code, whichever is greater.

D. If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the director within 15 days after the order is mailed to such person.

[11-29-97; 19.8.31.3108 NMAC - Rn, 19 NMAC 8.2.31.3108, 9-29-2000; A, 12-31-2007]

19.8.31.3109 INDIVIDUAL CIVIL PENALTIES:

A. Except as provided in Subsection B of 19.8.31.3109 NMAC, the director may assess an individual civil penalty against any corporate director, officer or agent of a corporate permittee who knowingly and willfully authorized, ordered or carried out a violation of a permit condition, or a failure or refusal to comply with any order issued under the act.

B. The director shall not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee until a cessation order has been issued by the director to the corporate permittee for the violation, and the cessation order has remained unabated for 30 days.

[11-29-97; 19.8.31.3109 NMAC - Rn, 19 NMAC 8.2.31.3109, 9-29-2000; A, 08-31-2010]

19.8.31.3110 AMOUNT OF INDIVIDUAL CIVIL PENALTY:

A. In determining the amount of an individual civil penalty assessed under 19.8.31.3109 NMAC, the director shall consider the criteria specified in Section 69-25A-22 NMSA 1978, including:

(1) the individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operations;

(2) the seriousness of the violation, failure or refusal (as indicated by the extent the environment and any hazard to the health or safety of the public; and

(3) the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

B. The penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation and the director may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the

date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the director until abatement or compliance is achieved.

[11-29-97; 19.8.31.3110 NMAC - Rn, 19 NMAC 8.2.31.3110, 9-29-2000; A, 12-31-2007]

19.8.31.3111 PROCEDURE FOR ASSESSMENT OF INDIVIDUAL CIVIL PENALTY:

A. The director shall serve on each individual to be assessed an individual civil penalty a notice or proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.

B. The notice of proposed individual civil penalty assessment shall become a final order of the director 30 days after service upon the individual unless:

(1) the individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review in accordance with 19.8.12.1203 NMAC; or

(2) the director and the individual or responsible corporate permittee agree within 30 days of service of the notice or proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.

C. Service. For purposes of this section, service is sufficient if it would satisfy SCRA 1986, 1-004 for service of a summons and complaint.

[11-29-97; 19.8.31.3111 NMAC - Rn, 19 NMAC 8.2.31.3111, 9-29-2000]

19.8.31.3112 PAYMENT OF PENALTY:

A. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty shall be due upon issuance of the final order.

B. If an individual named in a notice of proposed individual civil penalty assessment files for review in accordance with 19.8.12.1203 NMAC, the penalty shall be due upon issuance of a final administrative order affirming, increasing or decreasing the proposed penalty.

C. Where the director and the corporate permittee or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the director stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.

[11-29-97; 19.8.31.3112 NMAC - Rn, 19 NMAC 8.2.31.3112, 9-29-2000]

19.8.31.3113 CRIMINAL PENALTIES:

Under Section 69-25A-22 NMSA 1978, the director may request the attorney general to pursue criminal penalties against any person who:

A. willfully and knowingly violates a condition of the permit;

B. willfully and knowingly fails or refuses to comply with:

(1) any order issued under 69-25A-25 or 69-25A-30 NMSA 1978; or

(2) any order incorporated into a final decision issued by the director under the act (except for those orders specifically excluded under Subsection E of 69-25A-22 NMSA 1978); or

C. knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed with or required to be maintained by the director, or any order or decision issued by the director under the act.

[19.8.31.3113 NMAC - N, 08-31-2010]

PART 32: SMALL OPERATOR ASSISTANCE PROGRAM

19.8.32.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.32.1 NMAC - N, 9-29-2000]

19.8.32.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.32.2 NMAC - N, 9-29-2000]

19.8.32.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.832.3 NMAC - N, 9-29-2000]

19.8.32.4 DURATION:

Permanent.

[19.8.32.4 NMAC - N, 9-29-2000]

19.8.32.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.32.5 NMAC - N, 9-29-2000]

19.8.32.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.32.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.32.7 DEFINITIONS:

[RESERVED]

[19.8.32.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.32.8-19.8.32.3199 [RESERVED]:

[19.8.32.8 - 19.8.32.3199 NMAC N, 9-29-2000]

19.8.32.3200 ELIGIBILITY FOR ASSISTANCE:

An applicant is eligible for assistance if he:

A. intends to apply for a permit pursuant to the act;

B. establishes that his probable total actual and attributed production from all locations during any consecutive 12-month period either during the term of his permit or during the first 5 years after issuance of his permit, whichever period is shorter, will not exceed 300,000 tons. Production from the following operations shall be attributed to the applicant:

(1) the pro rata share, based upon percentage of ownership of applicant, of coal produced by operations in which the applicant owns more than a 10 percent interest;

(2) the pro rata share, based upon percentage of ownership of applicant, of coal produced in other operations by persons who own more than 10 percent of the applicant's operation;

(3) all coal produced by operations owned by persons who directly or indirectly control the applicant by reason of direction of the management;

(4) all coal produced by operations owned by members of the applicant's family and the applicants' relatives, unless it is established that there is no direct or indirect business relationship between or among them.

C. is not restricted in any manner from receiving a permit under the permanent regulatory program; and

D. does not organize or reorganize his company solely for the purpose of obtaining assistance under the SOAP.

[11-29-97; 19.8.32.3200 NMAC - Rn, 19 NMAC 8.2.32.3200, 9-29-2000; A, 1-15-2002]

19.8.32.3201 FILING FOR ASSISTANCE:

Each application for assistance shall include the following information:

A. a statement of the operator's intent to file a permit application;

B. the names and addresses of:

(1) the permit applicant; and

(2) the operator if different from the applicant;

C. a schedule of the estimated total production of coal from the proposed permit area and all other locations from which production is attributed to the applicant under 19.8.32.3200 NMAC; the schedule shall include for each location:

(1) the operator or company names under which coal is or will be mined;

(2) the permit number and mine safety and health administration (MSHA) number;

(3) the registration number issued by the state mine inspector;

(4) the actual coal production during the year preceding the year for which the applicant under 19.8.32.3200 NMAC, and

(5) the estimated coal production and any production which may be attributed to the applicant for each year of the proposed permit;

D. a description of:

(1) the proposed method of coal mining;

(2) the anticipated starting and termination dates of mining operations;

(3) the number of acres of land to be affected by the proposed mining operation; and

(4) a general statement on the probable depth and thickness of the coal resource including a statement of reserves in the permit area and the method by which they were calculated;

E. a U.S. geological survey topographic map at a scale of 1:24,000 or larger or other topographic map of equivalent detail which clearly shows:

(1) the area of land to be affected;

(2) the location of any existing or proposed test borings; and

(3) the location and extent of known workings of any underground mines.

F. copies of documents which show that:

(1) the applicant has a legal right to enter and commence mining within the permit area; and

(2) a legal right of entry has been obtained for the director and laboratory personnel to inspect the lands to be mined and adjacent areas to collect environmental data or to install necessary instruments.

[11-29-97; 19.8.32.3201 NMAC - Rn, 19 NMAC 8.2.32.3201, 9-29-2000]

19.8.32.3202 APPLICATION APPROVAL AND NOTICE:

A. If the director finds the applicant eligible, he shall inform the applicant in writing that the application is approved.

B. If the director finds the applicant ineligible, he shall inform the applicant in writing that the application is denied and shall state the reasons for denial.

[11-29-97; 19.8.32.3202 NMAC - Rn, 19 NMAC 8.2.32.3202, 9-29-2000]

19.8.32.3203 PROGRAM SERVICES AND DATA REQUIREMENTS:

A. To the extent possible with available funds, the director shall select and pay a qualified laboratory to make the determination and statement and provide other services referenced in Subsection B of 19.8.32.3203 NMAC for eligible operators who request assistance.

B. The director shall determine the data needed for each applicant or group of applicants. Data collected and the results provided to the director shall be sufficient to satisfy the requirements for:

(1) the determination of the probable hydrologic consequences of the surface mining and reclamation operations in the proposed permit area and adjacent areas, including the engineering analyses and designs necessary for the determination in accordance with Subsection C of 19.8.9.907 NMAC and any other applicable provisions of 19.8 NMAC;

(2) the drilling and statement of the results of test borings or core samplings for the proposed permit area in accordance with 19.8.8.803 NMAC and any other applicable provisions of 19.8.1 through 19.8.35 NMAC;

(3) the development of cross-section maps and plans required by 19.8.8.813 NMAC;

(4) the collection of archaeological and historic information and related plans required by 19.8.8.801 NMAC and 19.8.9.912 NMAC and any other archaeological and historic information required by the regulatory authority;

(5) pre-blast surveys required by Subsection E of 19.8.9.902 NMAC; and

(6) the collection of site-specific resources information, the production of protection and enhancement plans for fish and wildlife habitats required by 19.8.8.809 NMAC and 19.8.9.905 NMAC, and information and plans for any other environmental values required by the regulatory authority under SMCRA and the act.

C. Data collection and analysis may proceed concurrently with the development of mining and reclamation plans by the operator.

D. Data collected under this program shall be made publicly available in accordance with the New Mexico Public Record Act. The director shall develop procedures for interstate coordination and exchange of data.

[11-29-97; 19.8.32.3203 NMAC - Rn, 19 NMAC 8.2.32.3203, 9-29-2000; A, 1-15-2002]

19.8.32.3204 QUALIFIED LABORATORIES:

A. Basic qualifications. To be designated a qualified laboratory, a firm shall demonstrate that it:

- (1)** is staffed with experienced, professional or technical personnel in the fields applicable to the work to be performed;
- (2)** has adequate space for material preparation and cleaning and sterilizing equipment and has stationary equipment, storage, and space to accommodate workloads during peak periods;
- (3)** meets applicable federal or state safety and health requirements;
- (4)** has analytical, monitoring and measuring equipment capable of meeting applicable standards; and
- (5)** has the capability of collecting necessary field samples and making hydrologic field measurements and analytical laboratory determinations by acceptable requirements of 19.8.8.802 NMAC, 19.8.8.804 NMAC and Subsection C of 19.8.9.907 NMAC and any other applicable provisions of this part; other appropriate methods or guidelines for data acquisition may be approved by the director;
- (6)** has the capability of performing services for either the determination or statement referenced in Subsection B of 19.8.32.3204 NMAC.

B. Subcontractors. Subcontractors may be used to provide some of the required services provided their use is identified at the time a determination is made that a firm is qualified and they meet requirements specified by the director.

C. Disqualification. The director shall disqualify a designated laboratory if that laboratory is interested, directly or indirectly in an applicant for small operator assistance.

[11-29-97; 19.8.32.3204 NMAC - Rn, 19 NMAC 8.2.32.3204, 9-29-2000]

19.8.32.3205 ALLOCATION OF FUNDS:

The director shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide services pursuant to this part.

[11-29-97; 19.8.32.3205 NMAC - Rn, 19 NMAC 8.2.32.3205, 9-29-2000]

19.8.32.3206 APPLICANT LIABILITY:

A. The applicant shall reimburse the director for the cost of the services rendered pursuant to this part if:

(1) the applicant submits false information, fails to submit a permit application within 1 year from the date of receipt of the approved laboratory report, or fails to mine after obtaining a permit;

(2) the director finds that the applicant's actual and attributed annual production of coal for all locations exceeds 300,000 tons during any consecutive 12-month period either during the term of the permit for which assistance is provided or during the first 5 years after issuance of the permit whichever is shorter, or

(3) the permit is sold, transferred, or assigned to another person and the transferee's total actual and attributed production exceeds the 300,000 tons annual production limit during any consecutive 12-month period of the remaining term of the permit. Under this paragraph the applicant and its successor are jointly and severally obligated to reimburse the director.

B. The director may waive the reimbursement obligation if he finds that the applicant at all times acted in good faith.

[11-29-97; 19.8.32.3206 NMAC - Rn, 19 NMAC 8.2.32.3206, 9-29-2000; A, 1-15-2002]

PART 33: TRAINING AND CERTIFICATION OF BLASTERS

19.8.33.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.33.1 NMAC - N, 9-29-2000]

19.8.33.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.33.2 NMAC - N, 9-29-2000]

19.8.33.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.33.3 NMAC - N, 9-29-2000]

19.8.33.4 DURATION:

Permanent.

[19.8.33.4 NMAC - N, 9-29-2000]

19.8.33.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.33.5 NMAC - N, 9-29-2000]

19.8.33.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.33.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.33.7 DEFINITIONS:

Blaster means a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part. Persons working under the direct supervision of a certified blaster need not be certified.

[11-29-97; 19.8.33.7 NMAC - Rn, 19 NMAC 8.2.33.3300, 9-29-2000]

[Other Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.33.8-19.8.33.3300 [RESERVED]:

[19.8.33.8 - 19.8.33.3300 NMAC - N, 9-29-2000]

19.8.33.3301 RESPONSIBILITY:

The director shall require blasters who are directly responsible for use of explosives in a surface coal mining operation to be certified within 12 months after approval of this section as part of the state program. Persons responsible solely for receiving, handling, transportation, drilling, or loading explosives need not be certified; individuals responsible for the conduct of blasting operations must be certified.

[11-29-97; 19.8.33.3301 NMAC - Rn, 19 NMAC 8.2.33.3301, 9-29-2000]

19.8.33.3302 ESTABLISHMENT OF BLASTER TRAINING PROGRAM:

A. Persons seeking to become certified as blasters shall receive training including, but not limited to the technical aspects of blasting operations and state and federal laws governing the storage, transportation and use of explosives; and

B. persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives shall receive direction and on-the-job training from a blaster.

C. The director shall identify courses available to train persons responsible for the use of explosives in surface coal mining operations. The courses shall provide training and discuss practical applications of:

(1) explosives, including:

(a) selection of the type of explosive to be used;

(b) determination of the properties of explosives which will produce desired results at an acceptable level of risk; and

(c) handling, transportation, and storage;

(2) blast designs, including:

(a) geologic and topographic considerations;

(b) design of a blast hole, with critical dimensions;

(c) pattern design, field layout, and timing of blast holes; and

(d) field applications;

(3) loading blastholes, including priming and boosting;

(4) initiation systems and blasting machines;

(5) blasting vibrations, airblast and flyrock, including:

(a) monitoring techniques, and

(b) methods to control adverse affects;

(6) secondary blasting applications;

(7) current federal and state rules applicable to the use of explosives;

(8) blast records;

- (9) schedules;
- (10) preblasting survey, including:
 - (a) availability;
 - (b) coverage; and
 - (c) use of in-blast design;
- (11) blast-plan requirements;
- (12) certification and training;
- (13) signs, warning signals, and site control;
- (14) unpredictable hazards, including:
 - (a) lightning;
 - (b) stray currents;
 - (c) radio waves; and
 - (d) misfires.

[11-29-97; 19.8.33.3302 NMAC - Rn, 19 NMAC 8.2.33.3302, 9-29-2000]

19.8.33.3303 QUALIFICATION:

A. The director shall ensure that candidates for blaster certification are examined by reviewing and verifying the:

- (1) competence of persons directly responsible for the use of explosives in surface coal mining operations through a written examination in technical aspects of blasting and state and federal laws governing the storage, use, and transportation of explosive; and
- (2) practical field experience of the candidates as necessary to qualify a person to accept the responsibility for blasting operations in surface coal mining operations; such experience shall demonstrate that the candidate possesses a minimum of one year of practical field experience and knowledge of blasting techniques, understands the hazards involved in the use of explosives, and otherwise has exhibited a pattern of conduct consistent with the acceptance of responsibility for blasting operations.

B. Applicants for blaster certification shall be examined, at a minimum, in the topics set forth in 19.8.33.3302 NMAC and receive a minimum score of 80%.

[11-29-97; 19.8.33.3303 NMAC - Rn, 19 NMAC 8.2.33.3303, 9-29-2000]

19.8.33.3304 CERTIFICATION:

A. Issuance of certification. The director shall certify for a period of four years, those candidates examined and found to be competent and to have the necessary experience to accept responsibility for blasting operations in surface coal mining operations.

B. Suspension and revocation.

(1) The director, when practicable, following written notice and opportunity for a hearing, may, and upon a finding of willful conduct, shall suspend or revoke the certification of a blaster during the term of the certification or take other necessary action for any of the following reasons:

(a) non-compliance with any order of the regulatory authority;

(b) unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(c) violation of any provision of the state or federal explosives laws or regulations; or

(d) providing false information or a misrepresentation to obtain certification;

(e) non-compliance with the provisions of the New Mexico Parental Responsibility Act, Sections 40-5A-1 et. seq. NMSA 1978. An applicant for a new certification or recertification shall provide their social security number to the director.

(2) If advance notice and opportunity for hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

(3) Upon notice of a revocation, the blaster shall immediately surrender to the regulatory authority the revoked certificate.

C. Recertification. The director shall require reexamination, training, and a demonstration of continued blaster competency at a maximum interval of four years.

D. Protection of certification. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the certifying authority.

E. Conditions. The director shall specify conditions for maintaining certification which shall include the following:

(1) a blaster shall immediately exhibit his or her certificate to any authorized representative of the director upon request;

(2) blasters' certifications shall not be assigned or transferred; and

(3) blasters shall not delegate their responsibility to any individual who is not a certified blaster.

[11-29-97; 19.8.33.3304 NMAC - Rn, 19 NMAC 8.2.33.3304, 9-29-2000]

PART 34: EXEMPTION FOR COAL EXTRACTION INCIDENTAL TO THE EXTRACTION OF OTHER MINERALS

19.8.34.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.34.1 NMAC - N, 9-29-2000]

19.8.34.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.34.2 NMAC - N, 9-29-2000]

19.8.34.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.34.3 NMAC - N, 9-29-2000]

19.8.34.4 DURATION:

Permanent.

[19.8.34.4 NMAC - N, 9-29-2000]

19.8.34.5 EFFECTIVE DATE:

November 29, 1997, unless a later date is cited at the end of a section.

[19.8.34.5 NMAC - N, 9-29-2000]

19.8.34.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.33.6 NMAC - N, 9-29-2000; A, 1-15-2002]

19.8.34.7 DEFINITIONS:

[RESERVED]

[19.8.34.7 NMAC - N, 9-29-2000]

[Definitions for this part can be found in 19.8.1.7 NMAC.]

19.8.34.8-19.8.34.3399 [RESERVED]:

[19.8.34.8 - 19.8.34.3399 NMAC - N, 9-29-2000]

19.8.34.3400 SCOPE:

This part implements the exemption contained in Paragraph (1) of Subsection P of Section 69-25A-3 NMSA 1978 concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

[11-29-97; 19.8.34.3400 NMAC - Rn, 19 NMAC 8.2.34.3400, 9-29-2000; A, 12-31-2007]

19.8.34.3401 DEFINITIONS:

As used in this part, the following terms have the meaning specified, except where otherwise indicated:

A. Cumulative measurement period means the period of time over which both cumulative production and cumulative revenue are measured.

(1) For purposes of determining the beginning of the cumulative measurement period, subject to approval by the director, the operator must select and consistently use one of the following:

(a) for mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(b) for mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(2) For annual reporting purposes pursuant to 19.8.34.3409 NMAC, the end of the period for which cumulative production and revenue is calculated is either:

(a) for mining areas where coal or other minerals were extracted prior to October 1, 1995, and every October 1 thereafter; or

(b) for mining areas where extraction of coal or other minerals commenced on or after October 1, 1995, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

B. Cumulative production means the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by 19.8.34.3407 NMAC.

C. Cumulative revenue means the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

D. Mining area means an individual excavation site or pit from which coal, other minerals and overburden are removed.

E. Other minerals means any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

[11-29-97; 19.8.34.3401 NMAC - Rn, 19 NMAC 8.2.34.3401, 9-29-2000; A, 12-31-2007]

19.8.34.3402 APPLICATION REQUIREMENTS AND PROCEDURES:

A. New operations.

(1) Any person who plans to commence or continue coal extraction after October 1, 1995, in reliance on the incidental mining exemption shall file a complete application for exemption with the director for each mining area.

(2) No person may commence coal extraction based upon the exemption until the director approves such application, except as provided in Paragraph (3) of Subsection E of 19.8.34.3402 NMAC.

B. Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to October 1, 1995, may continue mining operations for 60 days after October 1, 1995. Coal extraction may not

continue after such 60 day period unless that person files an administratively complete application or exemption with the director. If an administratively complete application is filed within 60 days the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the director makes an administrative decision on such application.

C. Additional information. The director shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

D. Public comment period. Following publication of the newspaper notice required by Subsection I of 19.8.34.3403 NMAC, the director shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

E. Exemption determination.

(1) No later than 90 days after filing of an administratively complete application, the director shall make a written determination whether, and under what conditions, the persons claiming the exemption are exempt under this part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the director at that time.

(3) If the director fails to provide an applicant with the determination as specified in Paragraph (1) of Subsection E of 19.8.34.3402 NMAC, an applicant who has not begun may commence coal extraction pending a determination on the application unless the director issues an interim finding, together with reasons therefore, that the applicant may not begin coal extraction.

F. Administrative review.

(1) Any adversely affected person may request administrative review of a determination under Subsection E of 19.8.34.3402 NMAC within 30 days of the notification of such determination in accordance with procedures established under 19.8.12.1200 NMAC.

(2) A petition for administrative review filed under 19.8.12.1200 NMAC shall not suspend the effect of a determination under Subsection E of 19.8.34.3402 NMAC.

[11-29-97; 19.8.34.3402 NMAC - Rn, 19 NMAC 8.2.34.3402, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

19.8.34.3403 CONTENTS OF APPLICATIONS FOR EXEMPTION:

An application for exemption shall include at a minimum:

- A.** the name and address of the applicant;
- B.** a list of the minerals sought to be extracted;
- C.** estimates of annual production of coal and the other minerals within each mining area over the anticipated life of the mining operation;
- D.** estimated annual revenues to be derived from bona fide sales of coal and other minerals to be extracted within the mining area;
- E.** where coal or the other minerals are to be used rather than sold, estimated annual fair market values at the time of projected use of the coal and other minerals to be extracted from the mining area;
- F.** the basis for all annual production, revenue, and fair market value estimates;
- G.** a description, including county, township if any, and boundaries of the land, of sufficient certainty that the mining areas may be located and distinguished from other mining areas;
- H.** an estimate to the nearest acre of the number of acres that will compose the mining area over the anticipated life of the mining operation;
- I.** evidence of publication in a newspaper of general circulation in the county of the mining area, of a public notice that an application for exemption has been filed with the director (the public notice must identify the persons claiming the exemption and must contain a description of the proposed operation and its locality that is sufficient for interested persons to identify the operation);
- J.** representative stratigraphic cross-section(s) based on test borings or other information identifying and showing the relative position, approximate thickness and density of the coal and each other mineral to be extracted for commercial use or sale and the relative position and thickness of any material, not classified as other minerals, that will also be extracted during the conduct of mining activities;
- K.** a map of appropriate scale which clearly identifies the mining area;
- L.** a general description of mining and mineral processing activities for the mining area;

M. a summary of sales commitments and agreements for future delivery, if any, which the applicant has received for other minerals to be extracted from the mining area, or a description of potential markets for such minerals;

N. if the other minerals are to be commercially used by the applicant, a description specifying the use;

O. for operations having extracted coal or other minerals prior to filing an application for exemption, in addition to the information required above, the following information must also be submitted:

(1) any relevant documents the operator has received from the director documenting its exemption from the requirements of 69-25A-1 through 35 NMSA 1978;

(2) the cumulative production of the coal and other minerals from the mining area; and

(3) estimated tonnages of stockpiled coal and other minerals; and

P. any other information pertinent to the qualification of the operation as exempt.

[11-29-97; 19.8.34.3403 NMAC - Rn, 19 NMAC 8.2.34.3403, 9-29-2000; A, 12-31-2007]

19.8.34.3404 PUBLIC AVAILABILITY OF INFORMATION:

A. Except as provided in Subsection B of 19.8.34.3404 NMAC, all information submitted to the director under this part shall be made immediately available for public inspection and copying at the local offices of the director until at least three years after expiration of the period during which the subject mining area is active.

B. The director may keep information submitted under this part confidential if the person submitting it requests in writing, at the time of submission, that it be kept confidential and the information concerns trade secrets or is privileged commercial or financial information of the persons intending to conduct operations under this part.

C. Information requested to be held as confidential under Subsection B of 19.8.34.3404 NMAC shall not be made publicly available until after notice and opportunity to be heard is afforded persons both seeking and opposing disclosure of the information.

[11-29-97; 19.8.34.3404 NMAC - Rn, 19 NMAC 8.2.34.3404, 9-29-2000; A, 12-31-2007]

19.8.34.3405 REQUIREMENTS FOR EXEMPTIONS:

A. Activities are exempt from the requirements of 69-25A-1 through 35 NMSA 1978 if all of the following are satisfied:

(1) the cumulative production of coal extracted from the mining area determined annually as described in this subsection does not exceed 16 2/3 percent of the total cumulative production of coal and other minerals removed during such period for purposes of bona fide sale or reasonable commercial use;

(2) coal is produced from a geological stratum lying above or immediately below the deepest stratum from which other minerals are extracted for the purposes of bona fide sale or reasonable commercial use;

(3) the cumulative revenue derived from the coal extracted from the mining area determined annually shall not exceed 50 percent of the total cumulative revenue derived from the coal and other minerals removed for purposes of bona fide sale or reasonable commercial use; if the coal extracted or the minerals removed are used by the operator or transferred to a related entity for use instead of being sold in a bona fide sale, then the fair market value of the coal or other minerals shall be calculated at the time of use or transfer and shall be considered rather than revenue.

B. Persons seeking or that have obtained an exemption from the requirements of the act shall comply with the following:

(1) each other mineral upon which an exemption under this part is based must be a commercially valuable mineral for which a market exists or which is mined in bona fide anticipation that a market will exist for the mineral in the reasonably foreseeable future, not to exceed twelve months from the end of the current period for which cumulative production is calculated; a legally binding agreement for the future sale of other minerals is sufficient to demonstrate the above standard;

(2) if either coal or other minerals are transferred or sold by the operator to a related entity for its use or sale, the transaction must be made for legitimate business purposes.

[11-29-97; 19.8.34.3405 NMAC - Rn, 19 NMAC 8.2.34.3405, 9-29-2000; A, 12-31-2007]

19.8.34.3406 CONDITIONS OF EXEMPTION AND RIGHT OF INSPECTION AND ENTRY:

A person conducting activities covered by this part shall:

A. maintain, on-site or at other locations available to the authorized representative of the director and the secretary of the interior, information necessary to verify the exemption including, but not limited to, commercial use and sales information, extraction tonnages, and a copy of the exemption application and exemption approved by the director;

B. notify the director upon the completion of the mining operation or permanent cessation of all coal extraction activities; and

C. conduct operations in accordance with the approved application or when authorized to extract coal under Subsection B of 19.8.34.3402 NMAC or Paragraph (3) of Subsection E of 19.8.34.3402 NMAC prior to submittal or approval of an exemption application, in accordance with the standards of this part.

D. Authorized representatives of the director and the secretary of the interior shall have the right to conduct inspections of operations claiming exemption under this part.

E. Each authorized representative of the director and the secretary of the interior conducting an inspection under this part:

(1) shall have a right of entry to, upon, and through any mining and reclamation operations without advance notice or a search warrant, upon presentation of appropriate credentials;

(2) may, at reasonable times and without delay, have access to and copy any records relevant to the exemption; and

(3) shall have a right to gather physical and photographic evidence to document conditions, practices or violations at a site.

F. No search warrant shall be required with respect to any activity under Subsections D and E of 19.8.34.3406 NMAC, except that a search warrant may be required for entry into a building.

[11-29-97; 19.8.34.3406 NMAC - Rn, 19 NMAC 8.2.34.3406, 9-29-2000; A, 12-31-2007]

19.8.34.3407 STOCKPILING OF MINERALS:

A. Coal. Coal extracted and stockpiled may be excluded from the calculation of cumulative production until the time of its sale, transfer to a related entity or use:

(1) up to an amount equaling a 12-month supply of the coal required for future sale, transfer or use as calculated based upon the average annual sales, transfer and use from the mining area over the two preceding years; or

(2) for a mining area where coal has been extracted for a period of less than two years, up to an amount that would represent a 12-month supply of the coal required for future sales, transfer or use as calculated based on the average amount of coal sold, transferred or used each month.

B. Other minerals.

(1) The director shall disallow all or part of an operator's tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if the operator fails to maintain adequate and verifiable records of the mining area of origin,

the disposition of stockpiles or if the disposition of the stockpiles indicates the lack of commercial use or market for the minerals.

(2) The director may only allow an operator to utilize tonnages of stockpiled other minerals for purposes of meeting the requirements of this part if:

(a) the stockpiling is necessary to meet market conditions or is consistent with generally accepted industry practices; and

(b) except as provided in Paragraph (3) of Subsection B of 19.8.34.3407 NMAC, the stockpiled other minerals do not exceed a 12-month supply of the mineral required for future sales as approved by the director on the basis of the exemption application.

(3) The director may allow an operator to utilize tonnages of stockpiled other minerals beyond the 12-month limit established in Paragraph (2) of Subsection B of 19.8.34.3407 NMAC if the operator can demonstrate to the director's satisfaction that the additional tonnage is required to meet future business obligations of the operator, such as may be demonstrated by a legally binding agreement for future delivery of the minerals.

(4) The director may periodically revise the other mineral stockpile tonnage limits in accordance with the criteria established by Paragraphs (2) and (3) of Subsection B of 19.8.34.3407 NMAC based on additional information available to the director.

[11-29-97; 19.8.34.3407 NMAC - Rn, 19 NMAC 8.2.34.3407, 9-29-2000; A, 12-31-2007]

19.8.34.3408 REVOCATION AND ENFORCEMENT:

A. Responsibility of the director. The director shall conduct an annual compliance review of the mining area utilizing the annual report submitted pursuant to 19.8.34.3409 NMAC, an on-site inspection and any other information available to the director.

B. If the director has reason(s) to believe that a specific mining area was not exempt under the provisions of this part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the director shall notify the operator that the exemption may be revoked and the reason(s) therefor. The exemption will be revoked unless the operator demonstrates to the director within 30 days that the mining area in question should continue to be exempt.

C. Director's finding and administrative review.

(1) If the director finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the director shall revoke the

exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the director shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under 19.8.12.1200 NMAC.

(3) A petition for administrative review filed under 19.8.12.1200 NMAC shall not suspend the effect of a decision whether to revoke an exemption.

D. Direct enforcement.

(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of these regulations which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of these regulations which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of these regulations with regard to conditions, areas and activities existing at the time of revocation or denial.

[11-29-97; 19.8.34.3408 NMAC - Rn, 19 NMAC 8.2.34.3408, 9-29-2000; A, 12-31-2007; A, 08-31-2010]

19.8.34.3409 REPORTING REQUIREMENTS:

A. Annual report.

(1) Following approval by the director of an exemption for a mining area, the person receiving the exemption shall, for each mining area, file a written report annually with the director containing the information specified in Subsection B of 19.8.34.3409 NMAC.

(2) The report shall be filed no later than 30 days after the end of the 12-month period as determined in accordance with the definition of "cumulative measurement period" in 19.8.34.3401 NMAC.

(3) The information in the report shall cover:

(a) annual production of coal and other minerals and annual revenue derived from coal and other minerals during the preceding 12-month period; and

(b) the cumulative production of coal and other minerals and the cumulative revenue derived from coal and other minerals.

B. For each period and mining area covered by the report, the report shall specify:

(1) the number of tons of extracted coal sold in bona fide sales and total revenue derived from such sales;

(2) the number of tons of coal extracted and used or transferred by the operator or related entity and the estimated total fair market value of such coal;

(3) the number of tons of coal stockpiled;

(4) the number of tons of other commercially valuable minerals extracted and sold in bona fide sales and total revenue derived from such sales;

(5) the number of tons of other commercially valuable minerals extracted and used or transferred by the operator or related entity and the estimated total fair market value of such minerals; and

(6) the number of tons of other commercially valuable minerals removed and stockpiled by the operator.

[11-29-97; 19.8.34.3409 NMAC - Rn, 19 NMAC 8.2.34.3409, 9-29-2000; A, 12-31-2007]

PART 35: VALID EXISTING RIGHTS

19.8.35.1 ISSUING AGENCY:

New Mexico Coal Surface Mining Commission.

[19.8.35.1 NMAC - N, 1-15-2002]

19.8.35.2 SCOPE:

All persons subject to the New Mexico Surface Mining Act, NMSA 1978, Sections 69-25A-1 et. Seq. (1979).

[19.8.35.2 NMAC - N, 1-15-2002]

19.8.35.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 69-25A-1 et. seq. (1979).

[19.8.35.3 NMAC - N, 1-15-2002]

19.8.35.4 DURATION:

Permanent.

[19.8.35.4 NMAC - N, 1-15-2002]

19.8.35.5 EFFECTIVE DATE:

January 15, 2002, unless a later date is cited at the end of a section.

[19.8.35.5 NMAC - N, 1-15-2002]

19.8.35.6 OBJECTIVE:

The objective of Parts 1 - 35 of Chapter 8 is to establish regulations to implement the New Mexico Surface Mining Act as directed in NMSA 1978, Section 69-25A-5 (1979). These regulations are intended to ensure proper reclamation through permitting for operations subject to the New Mexico Surface Mining Act, in accordance with provisions and standards outlined in the New Mexico Surface Mining Act.

[19.8.35.6 NMAC - N, 1-15-2002]

19.8.35.7 DEFINITIONS:

A. VALID EXISTING RIGHTS (VER) means a set of circumstances under which a person may, subject to regulatory authority approval, conduct surface coal mining operations on lands where 19.8.2.201 NMAC would otherwise prohibit such operations. Possession of valid existing rights only confers an exception from the prohibitions of 19.8.2.201 NMAC. A person seeking to exercise valid existing rights must comply with all other pertinent requirements of the act, 19.8 NMAC and SMCRA.

(1) Property rights demonstration. Except as provided in Subsection D of 19.8.35.7 NMAC, a person claiming valid existing rights must demonstrate that a legally binding conveyance, lease, deed, contract, or other document vests that person, or a predecessor in interest, with the right to conduct the type of surface coal mining operations intended. This right must exist at the time that the land came under the protection of 19.8.2.201 NMAC. Other applicable state statutory or case law will govern interpretation of documents relied upon to establish property rights, unless federal law provides otherwise.

(2) Except as provided in Subsection D of 19.8.35.7 NMAC, a person claiming valid existing rights also must demonstrate compliance with one of the following standards:

B. GOOD FAITH/ALL PERMITS STANDARD. All permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith effort to obtain all necessary permits and authorizations had been made, before the land came under the protection of 19.8.2.201 NMAC. At a minimum, an application must have been submitted for any permit required under 19.8 NMAC.

C. NEED FOR AND ADJACENT STANDARD. The land is needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained, or a good faith attempt to obtain all permits and authorizations had been made, before the land came under the protection of 19.8.2.201 NMAC. To meet this standard, a person must demonstrate that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 19.8.2.201 NMAC. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of 19.8.2.201 NMAC when the permit for the original operation was issued by the director or when the good faith effort to obtain all necessary permits for the original operation was made. The director may consider the following factors when evaluating whether a person meets this standard:

(1) The extent to which coal supply contracts or other legal and business commitments that predate the time that the land came under the protection of 19.8.2.201 NMAC depend upon use of that land for surface coal mining operations.

(2) The extent to which plans used to obtain financing for the operation before the land came under the protection of 19.8.2.201 NMAC rely upon use of that land for surface coal mining operations.

(3) The extent to which investments in the operation before the land came under the protection of 19.8.2.201 NMAC rely upon use of that land for surface coal mining operations.

(4) Whether the land lies within the area identified on the life-of-mine map submitted under Subsection C of 19.8.8.812 NMAC before the land came under the protection of 19.8.2.201 NMAC.

D. ROADS. A person who claims valid existing rights to use or construct a road across the surface of lands protected by 19.8.2.201 NMAC must demonstrate that one or more of the following circumstances exist if the road is included within the definition of "surface coal mining operations" in Paragraph (20) of Subsection S of 19.8.1.7 NMAC:

(1) the road existed when the land upon which it is located came under the protection of 19.8.2.201 NMAC, and the person has a legal right to use the road for surface coal mining operations;

(2) a properly recorded right of way or easement for a road in that location existed when the land came under the protection of 19.8.2.201 NMAC, and, under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations;

(3) a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 19.8.2.201 NMAC;

(4) a valid existing right exists under Paragraphs (1) and (2) of Subsection A of 19.8.35.7 NMAC.

[19.8.35.7 NMAC - N, 1-15-2002]

19.8.35.8 SUBMISSION AND PROCESSING OF REQUESTS FOR VER DETERMINATIONS:

A. The director will be responsible for making a determination on valid and existing rights for lands protected under 19.8.2.201 NMAC, with the exception of federal lands in protected features listed in Subsection F of 19.8.2.201 NMAC. A determination on valid existing rights not subject to the review of the director would be the responsibility of OSM.

B. A request for a valid and existing right must be submitted to the director, consistent with the provisions of Subsection A of 19.8.35.8 NMAC, if the request concerns the operation of a surface coal mine on the basis of valid existing rights under 19.8.2.201 NMAC or wish to confirm the right to do so. This request may be submitted before preparing and submitting an application for a permit or boundary revision for the land.

[19.8.35.8 NMAC - N, 1-15-2002]

19.8.35.9 REQUIREMENTS FOR A VER PROPERTY RIGHTS DEMONSTRATION:

A. A demonstration of property rights under the definition of valid existing rights in Paragraph (1) of Subsection A of 19.8.35.7 NMAC must be provided to the director if the request relies upon the good faith/all permits standard or the needed for and adjacent standard identified in Paragraph (2) of Subsection A of 19.8.35.7 NMAC. This demonstration must include the following:

(1) a legal description of the land to which the request pertains;

(2) complete documentation of the character and extent of the current interests in the surface and mineral estates of the land to which the request pertains;

(3) a complete chain of title for the surface and mineral estates of the land to which the request pertains;

(4) a description of the nature and effect of each title instrument that forms the basis for the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

(5) a description of the type and extent of surface coal mining operations that the requester claim the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with New Mexico property law;

(6) complete documentation of the nature and ownership, as of the date that the land came under the protection of 19.8.2.201 NMAC, of all property rights for the surface and mineral estates of the land to which the request pertains;

(7) names and addresses of the current owners of the surface and mineral estates of the land to which the request pertains;

(8) if the coal interests have been severed from other property interests, it must be documented that the owners of other property interests in the land to which the request pertains have been notified and provided reasonable opportunity to comment on the validity of the property rights claims;

(9) any comments received in response to the notification provided under Paragraph (8) of Subsection A of 19.8.35.9 NMAC.

B. Requirements for good faith/all permits standard. If a request relies upon the good faith/all permits standard in Subsection B of 19.8.35.7 NMAC, a submittal must include information required by Subsection A of 19.8.35.8 NMAC. The following information about permits, licenses, and authorizations for surface coal mining operations on the land to which the request pertains must also be submitted:

(1) approval and issuance dates and identification numbers for any permits, licenses, and authorizations that the requester for VER or a predecessor in interest obtained before the land came under the protection of 19.8.2.201 NMAC;

(2) application dates and identification numbers for any permits, licenses, and authorizations for which the requester or a predecessor in interest submitted a request before the land came under the protection of 19.8.2.201 NMAC;

(3) an explanation of any other good faith effort that the person making the VER or a predecessor in interest made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of 19.8.2.201 NMAC.

C. Requirements for needed for and adjacent standard. If a request relies upon the needed for and adjacent standard in Subsection C of 19.8.35.7 NMAC, the information required under Subsection A of 19.8.35.9 NMAC must be submitted. In addition, the requester must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of 19.8.2.201 NMAC.

D. Requirements for standards for mine roads. If a request relies upon one of the standards for roads in Paragraphs (1) through (3) of Subsection D of 19.8.35.7 NMAC, the requester must submit satisfactory documentation that:

(1) the road existed when the land upon which it is located came under the protection of 19.8.2.201 NMAC, and the person making the VER request has a legal right to use the road for surface coal mining operations;

(2) a properly recorded right of way or easement for a road in that location existed when the land came under the protection of 19.8.2.201 NMAC, and, under the document creating the right of way or easement, and under any subsequent conveyances, the person making the VER request has a legal right to use or construct a road across that right of way or easement to conduct surface coal mining operations; or

(3) a valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of 19.8.2.201 NMAC.

[19.8.35.9 NMAC - N, 1-15-2002]

19.8.35.10 INITIAL REVIEW OF A VER REQUEST:

A. The director must conduct an initial review to determine whether a VER request includes all applicable components of the submission requirements of 19.8.35.9 NMAC. This review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

B. If a request does not include all applicable components of the submission requirements of 19.8.35.9 NMAC, the director must notify the applicant and establish a reasonable time for submission of the missing information.

C. When a request includes all applicable components of the submission requirements of 19.8.35.9 NMAC, the director must implement the notice and comment requirements of 19.8.35.11 NMAC.

D. If the person making the VER does not provide information that the director requests under Subsection B of 19.8.35.10 NMAC within the time specified or as

subsequently extended, the director must issue a determination that the requester has not demonstrated valid existing rights, as provided in Subsection D of 19.8.35.12 NMAC.

[19.8.35.10 NMAC - N, 1-15-2002]

19.8.35.11 NOTICE AND COMMENT REQUIREMENTS AND PROCEDURES VER REQUEST:

A. When the person making the VER request satisfies the completeness requirements of 19.8.35.10 NMAC, the person requesting the VER must publish a notice for two consecutive weeks in a newspaper of general circulation in the county in which the land is located. An affidavit of publication will be provided to the director after the notice has been published. Each notice must include:

- (1) the location of the land to which the request pertains;
- (2) a description of the type of surface coal mining operations planned;
- (3) a reference to and brief description of the applicable standard(s) under the definition of valid existing rights in 19.8.2.102 NMAC;

(a) if the request relies upon the good faith/all permits standard or the needed for and adjacent standard in Paragraph (2) of Subsection A of 19.8.35.7 NMAC, the notice also must include a description of the property rights that the person making the VER claims and the basis for the claim;

(b) if a request relies upon the standard in Paragraph (1) of Subsection D of 19.8.35.7 NMAC, the notice also must include a description of the basis by which the person making the VER request claims that the road existed when the land came under the protection of 19.8.2.201 NMAC; in addition, the notice must include a description of the basis of the claim by which the person making the VER request has a legal right to use that road for surface coal mining operations;

(c) if a request relies upon the standard in Paragraph (2) of Subsection D of 19.8.35.7 NMAC, the notice also must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of 19.8.2.201 NMAC; in addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the person making the VER request has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations;

(4) if a request relies upon one or more of the standards in Paragraph (2) of Subsections A of 19.8.35.7 NMAC , and Paragraphs (1) and (2) of Subsection D of 19.8.35.7 NMAC, a statement that the director will not make a decision on the merits of

a request if, by the close of the comment period under this notice or the notice required by Subsection C of 19.8.35.12 NMAC, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of a claim;

(5) a description of the procedures that the director will follow in processing a request;

(6) the closing date of the comment period, which must be a minimum of 30 days after the publication date of the notice;

(7) a statement that interested persons may obtain a 30-day extension of the comment period upon request;

(8) the name and address of the director's office where a copy of the request is available for public inspection and to which comments and requests for extension of the comment period should be sent.

B. The director must promptly provide a copy of the notice required under Subsection A of 19.8.35.11 NMAC to:

(1) all reasonably locatable owners of surface and mineral estates in the land included in a request;

(2) the owner of the feature causing the land to come under the protection of 19.8.2.201 NMAC, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 19.8.2.201 NMAC. For example, both the landowner and the state historic preservation officer must be notified if surface coal mining operations would adversely impact any site listed on the national register of historic places. As another example, both the surface owner and the national park service must be notified if the request includes non-federal lands within the authorized boundaries of a unit of the national park system.

C. The letter transmitting the notice required under Subsection B of 19.8.35.11 NMAC must provide a 30-day comment period, starting from the date of service of the letter, and specify that another 30 days are available upon request. The director may grant additional time for good cause upon request. The director need not consider comments received after the closing date of the comment period.

[19.8.35.11 NMAC - N, 1-15-2002]

19.8.35.12 HOW A DECISION ON A VER REQUEST WILL BE MADE:

A. The director must review the materials submitted under 19.8.35.8 NMAC, comments received under 19.8.35.11 NMAC, and any other relevant, reasonably

available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the director must notify the requester in writing, explaining the inadequacy of the record and requesting submittal, within a specified reasonable time, of any additional information that the director deems necessary to remedy the inadequacy.

B. Once the record is complete and adequate, the director must determine whether the requester has demonstrated valid existing rights. The decision document must explain how the requester has satisfied or has not satisfied all applicable elements of the definition of valid existing rights in 19.8.35.7 NMAC. It must contain findings of fact and conclusions, and it must specify the reasons for the conclusions.

C. Impact of property rights disagreements. This subsection applies only when a request relies upon one or more of the standards in Paragraph (2) of Subsection A of 19.8.35.7 NMAC, or Paragraphs (1) and (2) of Subsection D of 19.8.35.7 NMAC.

(1) The director must issue a determination that the requester has not demonstrated valid existing rights if the requester's property rights claims are the subject of pending litigation in a court or administrative body with jurisdiction over the property rights in question. The director will make this determination without prejudice, meaning that the requester may resubmit the request once the property rights dispute is finally adjudicated. This paragraph applies only to situations in which legal action has been initiated as of the closing date of the comment period under Subsection A of 19.8.35.11 NMAC or Subsection B of 19.8.35.11 NMAC.

(2) If the record indicates disagreement as to the accuracy of the requester's property rights claims, but this disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, the agency must evaluate the merits of the information in the record and determine whether the requester has demonstrated that the requisite property rights exist under Paragraph (1) of Subsection A of 19.8.35.7 NMAC, or Paragraphs (1) or (2) of Subsection D of 19.8.35.7 NMAC of the definition of valid existing rights as appropriate. The director must then proceed with the decision process under 19.8.35.12 NMAC.

D. The director must issue a determination that the requester has not demonstrated valid existing rights if the requester does not submit information that the director requests under Subsection B of 19.8.35.10 NMAC or Subsection A of 19.8.35.12 NMAC within the time specified or as subsequently extended. The director will make this determination without prejudice, meaning that the requester may file a revised request at any time.

E. After making a determination, the director must:

(1) provide a copy of the determination, together with an explanation of appeal rights and procedures, to the requester, to the owner or owners of the land to which the determination applies, to the owner of the feature causing the land to come

under the protection of 19.8.2.201 NMAC, and, when applicable, to the director with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 19.8.2.201 NMAC;

(2) the director will publish a notice of the determination in a newspaper of general circulation in the county in which the land is located; OSM will publish the determination, together with an explanation of appeal rights and procedures, in the federal register if the determination includes federal lands within an area listed in 19.8.2.201 NMAC.

[19.8.35.12 NMAC - N, 1-15-2002; A, 12-31-2007]

19.8.35.13 ADMINISTRATIVE AND JUDICIAL REVIEW OF A VER DETERMINATION:

A determination that the requester has or does not have valid existing rights is subject to administrative and judicial review under 19.8.12.1200 NMAC and 19.8.12.1202 NMAC.

[19.8.35.13 NMAC - N, 1-15-2002; A, 08-31-2010]

19.8.35.14 AVAILABILITY OF RECORDS FOR VER REQUESTS AND DETERMINATIONS:

The director must make a copy of the VER request available to the public under Subsection E of 19.8.11.1100 NMAC. In addition, the director must make records associated with the VER request, and any subsequent determination under 19.8.35.12 NMAC, available to the public in accordance with the requirements and procedures of New Mexico Inspection of Public Records Act NMSA 1978 14-2 et seq.

[19.8.35.14 NMAC - N, 1-15-2002; A, 12-31-2007]

PART 36: NEW MEXICO COAL SURFACE MINING REGULATIONS [CSMC 1979-1]

19.8.36.1 ISSUING AGENCY:

Coal Surface Mining Commission.

[Recompiled 6/4/02]

19.8.36.2 SCOPE:

[RESERVED]

[Recompiled 6/4/02]

19.8.36.3 STATUTORY AUTHORITY:

[Recompiled 6/4/02]

19.8.36.4 DURATION:

[RESERVED]

[Recompiled 6/4/02]

19.8.36.5 EFFECTIVE DATE:

[Filed February 12, 1985]

[Recompiled 6/4/02]

19.8.36.6 OBJECTIVE:

[RESERVED]

[Recompiled 6/4/02]

19.8.36.7 DEFINITIONS: INITIAL REGULATORY PROGRAM:

A. DEFINITIONS (700.5): These definitions except as otherwise provided for in this section shall apply to Sections 15 through 38 [now 19.8.36.7 NMAC, and 19.8.36.22 NMAC through 19.8.36.44 NMAC]. *Corresponding section number of federal regulations is in parenthesis.

(1) Auger mining means a method of mining coal at a cliff or highwall by drilling holes laterally into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

(2) Coal means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by A.S.T.M. designation 0-338-66.

(3) Director means the director, office of surface mining reclamation and enforcement, or his representative.

(4) Federal lands means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the lands and without regard to the agency having responsibility for management thereof, except Indian lands; provided, that for the purposes of the Act lands or mineral interests east of the one-hundredth meridian west longitude owned by the United States and entrusted to or managed by the Tennessee Valley Authority are not subject to sections 714 (Surface Owner Protection); and 715 (Federal Lessee Protection) of the Act.

(5) Imminent danger to the health and safety to the public means the existence of any condition or practice, or any violation of a permit or other requirement of the Act in a surface coal mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.

(6) Office means the office of surface mining reclamation and enforcement established under Title II of the Act.

(7) Operator means any person engaged in coal mining.

(8) Permit means a permit to conduct surface coal mining and reclamation operations issued by the state under state law.

(9) Permittee means any individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization holding a permit to conduct surface coal mining and reclamation operations issued by the state under state law.

(10) Person means an individual, partnership, association, society, joint stock company, firm, company, corporation, or other business organization.

(11) Secretary means the secretary of the Interior or his representative.

(12) Significant, imminent environmental harm to land, air or water resources is determined as follows:

(a) An environmental harm is any adverse impact on land, air or water resources, including but not limited to plant and animal life.

(b) An environmental harm is imminent if a condition, practice or violation exists which is causing such harm or may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under section 521(a)(3) of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

(13) State program means a program established by a state pursuant to section 503 of the Act to regulate surface coal mining and reclamation operations on lands within such state in accord with the requirements of the Act and regulations issued by the secretary under the Act.

(14) State regulatory authority means the department or agency in each state which has primary responsibility at the State level for administering the Act under both the initial and permanent regulatory programs.

(15) Surface coal mining operations means: (a) activities conducted on the surface of lands in connection with a surface coal mine or subject to the requirements of Section 516 surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining, the uses of explosives and blasting and in situ distillation or restoring, leaching or other chemical or physical processing, and the cleaning, concentrating or other processing or preparation, loading of coal for interstate commerce at or near the mine site; provided however, that such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed $16 \frac{2}{3}$ per centum of the tonnage of minerals removed for purposes of commercial use or sale or coal exploration subject to Section 512 of the Act; and (b) the areas upon which such activities occur or where such activities disturb the natural land surface. Such area shall also include any adjacent land, the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stock piles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities or other property or material on the surface, resulting from or incident to such activities.

(16) Surface coal mining and reclamation operations means surface coal mining operations and all activities necessary and incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

(17) Ton means 2,000 pounds avoirdupois (.90718 metric ton).

(18) Approval of the state regulatory authority means approval by the chief of the bureau of surfacemining unless such approval is subsequently withdrawn by the commission.

B. DEFINITIONS (710.5): As used throughout the initial regulatory program the following terms have the specified meanings unless otherwise indicated:

(1) Acid drainage means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

(2) Acid-forming materials means earth materials that contain sulfide mineral or other materials which, if exposed to air, water or weathering processes, will cause acids that may create acid drainage.

(3) Alluvial valley floors means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

(4) Approximate original contour means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the regulatory authority determines that they are in compliance with Section 715.17.

(5) Aquifer means a zone, stratum or group of strata that can store and transmit water in sufficient quantities for a specific use.

(6) Combustible material means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

(7) Compaction means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

(8) Disturbed area means those lands that have been affected by surface coal mining and reclamation operations. "Disturbed area" is synonymous with the words "affected area" used in Section 1 through 37 [19.8.36.8 NMAC through 19.8.36.43 NMAC].

(9) Diversion means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

(10) Downslope means the land surface between a valley floor and the projected outcrop of the lowest coalbed being mined along each highwall.

(11) Embankment means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

(12) Essential hydrologic functions means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and groundwater, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.

(13) Flood irrigation means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.

(14) Groundwater means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

(15) Highwall means the face of exposed overburden and coal in an open cut of surface or for entry to an underground coal mine.

(16) Hydrologic balance means the relationship between the quality and quantity of inflow to, outflow from, and storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation and the change in ground and surface water storage.

(17) Hydrologic regime means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface and returns to the atmosphere as vapor by means of evaporation and transpiration.

(18) Impoundment means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment or waste.

(19) Intermittent or perennial stream means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of groundwater discharge or surface runoff. The term does not include an ephemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

(20) Introduced species means a species which does not occur naturally in an area.

(21) Leachate means a liquid that has percolated through soil, rock or waste and has extracted dissolved or suspended materials.

(22) Native species means a species which either originated in an area or became naturalized and occurs naturally in an area.

(23) Noxious plants means species that have been included on official state lists of noxious plants for the state in which the operation occurs.

(24) Overburden means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

(25) Outslope means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

(26) Productivity means the vegetative yield produced by a unit area for a unit of time.

(27) Recharge capacity means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

(28) Roads means access and haul roads constructed, used, reconstructed, improved or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing or storage areas. The term includes any such road used and not graded to approximate original contour within 45 days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all federal, state, county, or local roads are excluded.

(29) Recurrence interval means the precipitation event expected to occur, on the average, once in a specified interval. For example, the ten-year 24-hour precipitation event would be that 24-hour precipitation event expected to be exceeded on the average once in ten years. Magnitude of such events are as defined by the national weather service technical paper no. 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

(30) Runoff means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

(31) Safety factor means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

(32) Sediment means undissolved organic and inorganic material transported or deposited by water.

(33) Sedimentation pond means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

(34) Slope means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v to 5h=20 percent=11.3 degrees).

(35) Soil horizons means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

(a) A horizon. The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(b) B horizon. The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(c) C horizon. The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

(36) Spoil means overburden that has been removed during surface mining.

(37) Stabilize means any method used to control movement of soil, spoil piles or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting or revegetating.

(38) Subirrigation means irrigation of plants with water delivered to the roots from underneath.

(39) Surface water means water, either flowing or standing, on the surface of the earth.

(40) Suspended solids means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

(41) Toxic-forming materials means earth materials or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

(42) Toxic-mine drainage means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure or impair biota commonly present in the area that might be exposed to it.

(43) Valley fill and head-of-hollow fill means a structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any degree any natural stream channel other than those minor channels located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. Such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located farther downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

(44) Waste means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning or concentrating of coal.

(45) Water table means upper surface of a zone of saturation, where the body of groundwater is not confined by an overlying impermeable zone.

[Recompiled 6/4/02]

19.8.36.8 PERMIT APPLICATION - FEES:

A permit application accompanied by a written mining plan and signed by the operator shall be filed with the director of the mining and minerals division of the energy and minerals department (hereinafter director) along with the application and initial acreage fees required by Section 69-25-8 NMSA 1978, or such other application fee which may be subsequently established by regulation of the commission pursuant to Section 10 (A), Laws of 1979, Chapter 291.

[Recompiled 6/4/02]

19.8.36.9 MINING PLAN:

The mining plan prepared by the operator for approval by the Director shall set forth the following information:

A. a statement of the operator's name and address and the name and address of the person designated by the operator to receive service;

B. a description of the affected area;

C. the owner of the affected area;

D. the owner of the coal to be mined;

E. an estimate of the acreage to be affected during the operator's first year of the operation; for operators conducting mining operations on February 29, 1972, acreage shall be computed from that date;

F. a topographical map or maps of the area to be affected prepared on a scale suitable to facilitate interpretation showing the following:

(1) an outline and total acreage of the permit area and of the area anticipated to be affected by the mining operations;

(2) the location of any areas within the permit area which were affected prior to February 29, 1972, provided, however, that mining plans submitted for underground permits shall show the location of any areas within the permit area which were affected prior to May 4, 1978;

(3) drainage on and away from the affected area, showing direction and an estimate of the quantity of flow of water in drainways and natural surface water courses and streams (intermittent or flowing) discharging onto and receiving discharge from the affected area in its original character and as it is anticipated to be during mining and following reclamation;

(4) surface topography at an appropriate contour interval;

(5) location of land to become affected area during the first calendar year next succeeding February 29, 1972, in the case of operators conducting mining operations on that date or the location of land to become affected area during the year immediately succeeding the issuance of a permit in the case of operators requiring a permit before commencing operations;

(6) date the map was prepared or updated;

(7) north point; and

(8) name of United States geological survey quadrangle, if any, covering the same area.

G. a diagrammatic sketch comparing the physiographic features of the area prior to mining operations, with a projection of the physiographic features of the affected area after reclamation;

H. the present use of the land to be mined and the surface owner's proposed end use of the affected area including, as may be known, current and planned uses of surrounding land which by proximity may influence or guide the choice of end use in the affected area;

I. a summary of the climatological (including as available temperature ranges on a monthly basis, a statement of the annual rainfall for the preceding ten years in the area to be mined and maximum and minimum annual rainfall, if possible, on a monthly basis), topographical, soil, water, agricultural and wildlife data and other factors that influence the current use of the affected areas and will influence the proposed use of the reclaimed land;

J. an estimate of any water to be stored, diverted or used and any resulting pollutants;

K. a description of the soil types and analyses of the soils in the area to be affected prepared in conformance with professionally accepted standards (National Cooperative Soil Survey's Basic System of Soil Classification);

L. an estimate, on the basis of presently available information, of the range of depths of surface mining operations for which the operator requests the permit;

M. an estimate of the anticipated volume of overburden to be removed and its placement;

N. an estimate of the acreage to be affected on an annual basis;

O. the depth of the topsoil in the affected area before any mining takes place;

P. the efforts which will be made to remove and preserve topsoil prior to mining;

Q. a detailed proposal and time schedule for grading the affected area; the grading schedule shall be set out graphically on a separate copy of the topographical map;

R. a description of the existing vegetation in the area to be affected and a description of the vegetation as it is anticipated to be following reclamation, including a description of the general type or species of plant to be initially utilized in the revegetation procedure, together with estimates of planting times and growths to maturity;

S. a detailed proposal and time schedule for revegetating the affected area;

T. the type and quantity of any organic material or soil conditioner to be introduced in the affected area prior to or during planting;

U. a tentative statement of the operator's present plan with respect to revegetation and reclamation efforts not otherwise set forth in the proposed mining plan;

V. the location where waste materials will be deposited and the period of time for depositing waste materials in a given location prior to grading;

W. any comments which the operator feels may be desirable, including comments on any anticipated reclamation problems; and a statement that the operator shall comply with all of the general performance standards contained in these regulations.

[Recompiled 6/4/02]

19.8.36.10 SUBMISSION AND APPROVAL OF MINING PLAINS:

A. At least 50 days prior to submitting a permit application accompanied by a mining plan, the operator shall file with the director a notice of its intent to do so. The notice

shall include all of the information required by Section 2 [now 19.8.36.9 NMAC] above along with such other information as the operator may consider necessary or useful to the director.

B. Within 15 days after receipt of a notice of intent to submit a mining plan, the director shall establish the date and place of a hearing on the environmental impact of the proposed mining plan. The hearing shall be held in the county in which the mining is to be carried out.

C. Notice of the hearing on the environmental impact of the mining plan shall be given at least 20 days prior to the hearing, printed in a paper of general circulation in the county or counties in which the mining is to be carried out. The notice shall state the name of the operator, the area to be covered by the mining plan, the time and place of the hearing, and where the proposed mining plan and accompanying information shall be available for inspection and copying by the public at reasonable times.

D. Reasonable effort shall be made by the director to give notice to all persons who have made a written request for advance notice of environmental impact hearings.

E. Any person desiring to present evidence or give testimony at the environmental impact hearing on a proposed mining plan shall file a request to do so with the director at least ten days prior to the hearing. The director will transmit a copy of the request to the operator at least five days prior to the hearing. The request shall contain the name and address of the person desiring to participate and a plain and concise statement of the nature of the person's interests.

F. Any person who has filed a timely request to participate in a hearing on the environmental impact of a proposed mining plan shall be given reasonable time at the hearing to submit relevant evidence, data and views and shall be allowed to call and examine witnesses, introduce exhibits, cross-examine witnesses and submit rebuttal evidence.

G. The director may designate a hearing officer to take evidence at the hearing on the environmental impact of a proposed mining plan. The hearing officer so designated will preside and will have authority to direct the hearing, to examine witnesses and to make such rulings on evidence as may be necessary. The director shall maintain a verbatim record of said hearing and such record shall be a part of the record of the permit application hearing.

H. Within ten days after receipt of a permit application accompanied by a mining plan, the director shall establish a date for the permit application hearing to be held in Santa Fe.

I. Notice of the permit application hearing shall be given to the operator at least 15 days prior to the hearing.

J. Permit application hearings shall be conducted in accordance with the procedures set out in Section 8 [now 19.8.36.15 NMAC].

[Recompiled 6/4/02]

19.8.36.11 MINING PLAN AMENDMENTS:

For good cause shown, mining plans may be amended with the approval of the director. Upon request of the operator and upon 15 days notice to the operator, the director shall set a hearing on any proposal to amend a mining plan. The hearing shall be conducted in accordance with the procedures set out in Section 8 [now 19.8.36.15 NMAC].

[Recompiled 6/4/02]

19.8.36.12 OTHER APPROVALS:

Applications by operators to the director for approval shall be deemed to be application for extension of time to permit compliance with the requirement of obtaining such approval and the pendency of such application shall entitle the operator so applying to continue operations in accordance with these regulations in the absence of such approval while such application is pending and until such application is acted upon.

[Recompiled 6/4/02]

19.8.36.13 ANNUAL REPORTS:

A. Within 60 days after the end of the operator's mining year, the operator shall submit to the director two copies of a report, setting out in detail all measures taken to effect reclamation of the affected area. The report will be typewritten and signed by the operator. The report shall include the following information:

- (1) a statement of the operator's name, address and permit number;
- (2) the number of acres of affected area resulting from operations during the preceding mining year;
- (3) the number of acres for which grading was commenced during the preceding mining year and the location thereof;
- (4) the number of acres for which grading was completed during the preceding mining year and the location thereof;
- (5) the number of acres for which revegetation was commenced during the preceding mining year and the location thereof;

(6) an enumeration of the various types of vegetation planted and the location thereof;

(7) the number of acres for which revegetation had been completed during the preceding mining year and the location thereof;

(8) an appraisal of the success of any revegetation efforts;

(9) in the event of any failure of revegetation efforts, an explanation, if possible, of that failure;

(10) an analysis of the soil in the areas to be revegetated;

(11) a statement of the type and quantity of any organic material or soil conditioners introduced into the affected area prior to or during planting;

(12) a statement of the extent of any efforts made to replace topsoil;

(13) a statement of any reuse of the land which has taken place after the land has been reclaimed; and

(14) any other information about the operator's reclamation efforts which he feels would be of assistance to the director.

B. Accompanying the report, the operator shall submit a map prepared at the same scale as the map submitted with the mining plan or a suitable overlay showing the following:

(1) the outline of the permit area;

(2) the outline of the affected area;

(3) an outline of that portion of the affected area resulting from mining operations during the preceding mining year; and

(4) the location of the operator's grading efforts during the preceding mining year to enable the director to correlate the grading data given in the annual report.

[Recompiled 6/4/02]

19.8.36.14 ANNUAL FEE:

Each operator shall pay an annual fee of \$20.00 per acre of affected area resulting from his mining operations during the preceding mining year. The annual fee shall accompany the annual report.

[Recompiled 6/4/02]

19.8.36.15 PROCEEDINGS BEFORE THE DIRECTOR:

In the hearings provided for in Subsection 3 J and Section 4 of this Rule 79-1 [now Subsection J of 19.8.36.10 NMAC and 19.8.36.11 NMAC] and in Laws, 1979, Chapter 291, as being adjudicatory in nature:

A. the director may designate a hearing officer to take evidence at the hearing; the hearing officer so designated will preside and will have authority to direct the hearing, to administer oaths and to make such rulings on evidence and procedures as may be necessary.

B. the director shall maintain a verbatim record of the hearing and the record in the proceeding shall include:

- (1) all notices, pleadings, motions and intermediate rulings;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings thereon;
 - (5) proposed findings and conclusions; and
 - (6) the director's decision.
- (7) the costs of a transcript, if required by the director, shall be paid by the applicant.

C. irrelevant, immaterial or unduly repetitious evidence shall be excluded; the rules of evidence applicable in an administrative adjudicatory proceeding shall be followed; the director shall give effect to the rules of privilege recognized by law; objections to evidentiary offers may be made and shall be noted in the record; subject to these requirements, when a hearing of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

D. the parties to the proceeding and the director may call and examine witnesses, introduce exhibits, cross-examine witnesses and submit rebuttal evidence.

E. official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the director, but whenever the director takes official notice of a fact, the noticed fact shall be stated before or during the hearing, and a party shall, on timely request, be afforded an opportunity to show to the contrary.

F. prior to the entry of the director's decision, the parties shall be afforded a reasonable opportunity to submit proposed findings of fact and conclusions of law.

G. the director must hear the evidence or read the record; the decision shall include a statement of findings and conclusions upon all material issues of fact and of law, together with the appropriate order, sanction, relief or denial thereof; findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

H. within five days after the decision is rendered, the director shall give a copy thereof to the operator.

I. the effective date of any notice or order issued pursuant to Section 25 of the Surface Mining Act by the director may be stayed by the commission during the statutory period within which an appeal might be filed, and in the event of an appeal therefrom during the pendency of such an appeal, the commission may, in the exercise of its discretion, require a supersedeas bond in an amount sufficient to alleviate any environmental injury to the affected land.

[Recompiled 6/4/02]

19.8.36.16 REVIEW OF DIRECTOR'S DECISIONS:

A. Any person who is or may be aggrieved by the decision of the director may appeal the director's decision by filing a notice of appeal with the chairman of the commission within 30 days of the date of the director's decision. The notice of appeal shall include a short concise statement of the decision appealed from and the reason for appeal.

B. Upon receipt of the notice of appeal, the chairman of the commission shall call a meeting of the commission within 30 days of the date the notice of appeal is filed to conduct a hearing on the appeal. The appealing party shall be given notice by the commission of the time and place of the hearing at least 20 days in advance of the convening.

C. The hearing shall be held by the commission at the time and place specified in the notice to the appealing party. At the hearing, the matter involved in the director's decision from which the appeal has been taken will be heard in accordance with the procedures set forth in Section 8 [now 19.8.36.15 NMAC], except as inconsistent with Section 29 of the Surface Mining Act.

D. The commission's decision may affirm, set aside, amend reverse, or remand the director's decision for further proceedings or may compel action unlawfully withheld or unreasonably delayed.

[Recompiled 6/4/02]

19.8.36.17 SERVICE:

Any notice, decision or other document required to be served by these regulations may be served either personally or by certified or registered mail, return receipt requested, directed to the operator or other person required to be served at his last known address as shown by the director's records. Where service is by certified or registered mail, the document will be considered served on the date borne by the return receipt showing delivery to the addressee or refusal of the addressee to accept the document.

[Recompiled 6/4/02]

19.8.36.18 SPECIAL DEFINITION OF MINING YEAR:

An operator's "mining year" shall be the calendar year.

[Recompiled 6/4/02]

19.8.36.19 BOND:

Whenever the director contemplates that it may be necessary to insure compliance under the provisions of the Act, or any regulation or mining plan requirement, he shall give notice of intention to require bond, its condition and amount, to the operator and the operator shall be given opportunity to respond to the proposed bond. In the event the operator does not agree on the necessity, or the terms, conditions or amount of any proposed bond, the director shall provide the operator the opportunity for a hearing thereupon under the procedures of Section 8 [now 19.8.36.15 NMAC] of these regulations.

[Recompiled 6/4/02]

19.8.36.20 AMENDMENT OF PERMITS:

For good cause shown, mining permits may be amended upon approval of the director. The director may, in the exercise of his discretion, order a public hearing upon reasonable notice to the permittee and the public. Such hearing shall be conducted in accordance with the provisions of Section 8 [now 19.8.36.15 NMAC] of these regulations.

[Recompiled 6/4/02]

19.8.36.21 INTERIM PERIOD PERMITS:

A. Permits issued pursuant to this Rule 79-1 [now 19.8.36 NMAC], preceding the date which occurs eight months following the date upon which the state program is approved, within the meaning of Section 503 of the Surfacemining Control and Reclamation Act of 1977, shall be deemed to be determined a permit issued pursuant to

Laws 1972, Chapter 68, and regulations that relate thereto. Such permits shall be subject to the performance standards set forth in Sections 16 through 38 of this Rule 79-1[now 19.8.36.22 NMAC through 19.8.36.44 NMAC].

B. Notwithstanding the foregoing subsection, and following the approval of a permanent state program, the director may issue permits pursuant to Section 9 of the Surface Mining Act.

[Recompiled 6/4/02]

19.8.36.22 GENERAL PERFORMANCE STANDARDS: GENERAL OBLIGATIONS (715.11):

A. Authorizations to operate. A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine shall be available for inspection at or near the mine site.

B. Mine maps. Any person conducting surface coal mining and reclamation operations on and after May 3, 1978, shall submit two copies of an accurate map of the mine and permit area at a scale of 1:6000 or larger. The map shall show as of May 3, 1978, the lands from which coal has not yet been removed and the lands and structures which have been used or disturbed to facilitate mining. One copy of the mine map shall be submitted to the state regulatory authority and one copy shall be submitted to the regional director, OSM, before July 3, 1978.

[Recompiled 6/4/02]

19.8.36.23 GENERAL PERFORMANCE STANDARDS: SIGNS AND MARKERS (715.12):

A. Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

B. Mine and permit identification signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address and telephone number of the permittee and identification numbers of current mining and reclamation permit. Such signs shall not be removed until after release of all bonds.

C. Perimeter markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers or by other means approved by the regulatory authority.

D. Buffer zone markers. Buffer zones as defined in Section 715.17 shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.

E. Blasting signs. If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

F. Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled according to Section 715.16(c), the stockpiled material shall be marked. Markers shall remain in place until the material is removed.

[Recompiled 6/4/02]

19.8.36.24 GENERAL PERFORMANCE STANDARDS:POSTMINING USE OF LAND (715.13):

A. General. All disturbed areas shall be restored in a timely manner (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses achievable under criteria and procedures of paragraph (d) of this Section [now Subsection D of 19.8.36.24 NMAC].

B. Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

C. Land-use categories. Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of paragraph (d) [now Subsection D of 19.8.36.24 NMAC] of this Section and all other applicable environmental protection performance standards of this chapter.

- (1) Heavy industry. Manufacturing facilities, powerplants, airports or similar facilities.
- (2) Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels or similar facilities.
- (3) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities and other servicing structures and appurtenances.
- (4) Residential. Single-and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than five percent of the total land area of housing capacity, associated open space and minor vehicle parking and recreation facilities supporting the housing.
- (5) Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.
- (6) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.
- (7) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.
- (8) Forest land. Land with at least a 25 percent tree canopy or land at least ten percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.
- (9) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation or water supply.
- (10) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.
- (11) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

D. Criteria for approving alternative postmining use of land. An alternative postmining land use shall be approved by the regulatory authority, after consultation with the landowner or the land-management agency having jurisdiction over state or federal lands, if the following criteria are met. Proposals to remove an entire coal seam

running through the upper part of a mountain, ridge, or hill must also meet these criteria in addition to the requirements of Section 716.3 of this chapter.

(1) The proposed land use is compatible with adjacent land use and, where applicable, with existing local, state or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The permittee shall obtain any required approval of local, state or federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The regulatory authority may require appropriate demonstrations to show that the planned procedures are feasible, reasonable and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the permittee, as appropriate, to provide them in a manner compatible with the permittee's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the permittee as appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a professional engineer registered in the state of New Mexico, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the regulatory authority and appropriate state and federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable

Federal, State, and local laws, shall be reviewed by the regulatory authority to assure that:

(a) There is a firm written commitment by the permittee or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable.

(b) There is sufficient water available and committed to maintain crop production; and

(c) Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The regulatory authority has provided by public notice not less than 45 days nor more than 60 days for interested citizens and local, state and federal agencies to review and comment on the proposed land use.

[Recompiled 6/4/02]

19.8.36.25 GENERAL PERFORMANCE STANDARDS: BACKFILLING AND GRADING (715.14):

In order to achieve the approximate original contour, the permittee shall, except as provided in this section, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials) and grade all spoil material to eliminate all highwalls, spoil piles and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this section. The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraph (a) [now Subsection A of 19.8.36.25 NMAC].

A. Slope measurements.

(1) To determine the natural slopes of the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the regulatory authority in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending 100 linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the regulatory authority. Where the area has been previously mined, the measurements shall extend at least 100 feet beyond the limits of mining disturbances as determined by the regulatory authority to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from

topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the regulatory authority. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

B. Final graded slopes.

(1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to Paragraph (a)(1) [now Paragraph 1 of Subsection A of 19.8.36.25 NMAC] and approved by the regulatory authority or any lesser slope specified by the regulatory authority based on consideration of soil, climate or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform. The requirements of this paragraph may be modified by the regulatory authority where the mining is re-affecting previously mined lands that have not been restored to the standards of this section and sufficient spoil is not available to return to the slope determined according to Paragraph (a)(1) [now Paragraph 1 of Subsection A of 19.8.36.25 NMAC]. Where such modifications are approved, the permittee shall, as a minimum, be required to:

(a) retain all overburden and spoil on the solid portion of existing or new benches; and

(b) backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.

(2) On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under Section 715.13, and are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(a) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability, erosion control or roads included in the approved postmining land use plan.

(b) The vertical distance between terraces shall be as specified by regulatory authority to prevent excessive erosion and to provide long-term stability.

(c) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved if they have a minimum

static safety factor of more than 1.5 and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(d) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

(3) All operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority defines as a steep slope shall meet the provisions of Section 716.2 of this Chapter.

C. Mountaintop removal. The requirements of this paragraph and of Section 716.3 shall apply to surface mining operations which remove entire coal seams in the upper part of a mountain, ridge, or hill by removing all of the overburden, and where the requirements for achieving the approximate original contour of this section cannot be met. Final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 (or higher factors specified by the regulatory authority) will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles and depressions except as provided in Paragraphs (d) and (e) [now Subsections D and E of 19.8.36.25 NMAC] of this section shall be eliminated. All mountaintop removal operations shall in addition meet the provisions of Section 716.3 of this Chapter.

D. Small depressions. The requirement of this section to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the regulatory authority to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grade on the reclaimed lands. Depressions approved under this section shall have a holding capacity of less than one cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by Paragraph (e) [now Subsection E of 19.8.36.25 NMAC] of this Section and by Section 715.17.

E. Permanent impoundments. Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use (Section 715.13) and protection of the hydrologic balance (Section 715.17) are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to Section 715.15 of this part. Impoundments shall not be used to meet the requirements of Paragraph (j) [now Subsection J of 19.8.36.25 NMAC] of this Section.

F. Definition of thin and thick restored overburden. The thin overburden provisions of Paragraph (g) [now Subsection G of 19.8.36.25 NMAC] of this section may apply only

where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of Paragraph (h) [now Subsection H of 19.8.36.25 NMAC] of this section may apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area. The provisions of Paragraph (g) and (h) [now Subsection G and H of 19.8.36.25 NMAC] apply only when operations cannot be carried out to comply with the requirements of Paragraph (a) [now Subsection A of 19.8.36.25 NMAC] of this section to achieve the approximate original contour.

G. Thin overburden. In surface coal mining operations carried out continuously in the same limited pit area for more than one year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet, at a minimum, the following standards:

(1) Transport, backfill and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(2) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the regulatory authority may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Transport, backfill, grade and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(4) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the regulatory authority's satisfaction that all requirements of Section 715.17 have been met and that the impoundments have been approved by the regulatory authority as meeting the requirements of this Part and all other applicable federal and state regulations.

H. Thick overburden. In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet at a minimum the following standards:

(1) Transport, backfill and grade all spoil and wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.

(2) Deposit, backfill and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with this part.

(3) Transport, backfill and grade excess spoil and wastes to maintain the hydrologic balance in accordance with this part and to provide long-term stability.

(4) Transport, backfill, grade and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(5) Eliminate all highwalls and depressions except as stated in Paragraph (e) [now Subsection E of 19.8.36.25 NMAC] of this Section by backfilling with spoil and suitable waste materials.

I. Regrading or stabilizing rills and gullies. When rills or gullies deeper than nine inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to Section 715.20. The regulatory authority shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

J. Covering coal and acid-forming, toxic-forming, combustible and other waste materials; stabilizing backfilled materials; and using waste material for fill.

(1) Cover all exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the regulatory authority that are exposed, used or produced during mining shall be covered with a minimum of four feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth or to otherwise meet local conditions, the regulatory authority shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of Section 715.17 of this Part.

(2) Stabilization. Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with Section 715.17 and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the regulatory authority before the toxic materials are covered.

(3) Use of waste materials as fill. Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the regulatory authority by hydrogeological means and chemical and physical analyses that

use of these materials will not adversely affect water quality, water flow and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

K. Grading along the contour. All final grading, preparation of overburden before replacement of topsoil and placement of topsoil, in accordance with Section 715.16 shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators then grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

[Recompiled 6/4/02]

19.8.36.26 GENERAL PERFORMANCE STANDARDS: DISPOSAL OF SPOIL AND WASTE MATERIALS IN AREAS OTHER THAN THE MINE WORKINGS OR EXCAVATIONS (715.15):

A. Disposal of spoil in other than valley or head-of-hollow fills. Spoil not required to achieve the approximate original contour shall be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of this part, are met:

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority as suitable for construction of fills in accordance with the requirements of this paragraph.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the regulatory authority. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a professional engineer, registered in the state of New Mexico and approved by the regulatory authority.

(4) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope designated by the regulatory authority based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(5) The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the

underdrains in such a manner that infiltration of the water into the spoil pile will be prevented.

(6) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to Section 715.16 before the material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.

(7) The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the fill must be suitable for postmining land uses approved in accordance with Section 715.13. Terraces shall not be constructed unless approved by the regulatory authority.

(8) If any portion of the fill interrupts, obstructs or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be designed and constructed in accordance with the requirements of Paragraph (b) [now Subsection B of 19.8.36.26 NMAC] of this Section.

(9) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of under-drainage systems, and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority.

B. Disposal of spoil in valley or head-of-hollow fills. Waste material must not be disposed of in valley or head-of-hollow fills. Spoil to be disposed of in natural valleys must be placed in accordance with the following requirements:

(1) The disposal areas shall be within the permit area, and they must be approved by the regulatory authority as suitable for construction of fills in accordance with the requirements of Paragraph (b) [now Subsection B of 19.8.36.26 NMAC].

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill. Where possible, spoil shall be placed above a natural terrace, bench or berm, if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a professional engineer registered in the State of New Mexico and approved by the regulatory authority.

(4) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to Section 715.16 of this Part before the material is placed in the disposal area. However, if approved by the regulatory authority, organic material may be used as mulch or may be included in the topsoil.

(5) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope designated by the regulatory authority based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(6) A system of underdrains constructed of durable rock shall be installed along the natural drainage system, shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, no more than ten percent of the rock may be less than 12 inches in size and no single rock may be larger than 25 percent of the width of the drain. No rock shall be used in underdrains if it tends to easily disintegrate and thereby clog the drain or if it is acid-forming or toxic-forming. The minimum size of the main underdrain shall be:

Total amount of Fill material	Predominant type of fill Material	Minimum size of drain in feet	
		Width	Height
Less than 1 million yd ³ .	Sandstone--	10	4
Do-----	Shale-----	16	8
More than 1 million yd ³ .	Sandstone-----	16	8
Do-----	Shale-----	16	8

(7) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the regulatory authority in lifts that are less than four feet thick in order to achieve the densities designed to ensure mass stability, to

prevent mass movement, to avoid contamination of the rock underdrain and to prevent formation of voids. The final configuration of the fill must be suitable for postmining land uses approved in accordance with Section 715.13.

(8) Terraces shall be constructed to stabilize the face of the fill. The outslope of each terrace shall not exceed 50 feet in length and the width of the terrace shall not be less than 20 feet.

(9) The tops of the fill and each terrace shall be graded no steeper than 1v:20h (five percent) and shall be constructed to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the outslope of the fill unless approved by the regulatory authority.

(10) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into water courses.

(11) The outslope of the fill shall not exceed 1v:2h (50 percent). The regulatory authority may require a flatter slope.

(12) The fill shall be inspected for stability by a professional engineer registered in the State of New Mexico or other qualified professional specialist during critical construction periods and at least quarterly throughout construction to assure removal of all organic material and topsoil, placement of underdrainage systems and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been constructed as specified in the design approved by the regulatory authority.

[Recompiled 6/4/02]

19.8.36.27 GENERAL PERFORMANCE STANDARDS: TOPSOIL HANDLING (715.16):

To prevent topsoil from being contaminated by spoil or waste materials, the permittee shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of Paragraph (b) [now Subsection B of 19.8.36.27 NMAC] of this section on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled and protected from wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution.

A. Topsoil removal. All topsoil to be salvaged shall be removed before any drilling for blasting, mining or other surface disturbance.

(1) All topsoil shall be removed unless use of alternative materials is approved by the regulatory authority in accordance with Subparagraph (4) [now Paragraph 4 of Subsection A of 19.8.36.27 NMAC]. Where the removal of topsoil results in erosion that may cause air or water pollution, the regulatory authority shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

(2) All of the A horizon of the topsoil as identified by soil surveys shall be removed according to Paragraph (a) [now Subsection A of 19.8.36.27 NMAC] and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than six inches, a six-inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than six inches) shall be removed and the mixture segregated and replaced as the surface soil layer.

(3) Where necessary to obtain soil productivity consistent with postmining land use, the regulatory authority may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil.

(4) Selected overburden materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation, and if all the following requirements are met:

(a) The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class and water-holding capacity, and such other analyses as required by the regulatory authority. The regulatory authority also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

(b) The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.

(c) The alternative material is removed, segregated and replaced in conformance with this Section.

B. Topsoil Redistribution.

(1) Regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) Topsoil shall be redistributed in a manner that:

(a) achieves an approximate uniform thickness consistent with the postmining land uses;

(b) prevents excess compaction of the spoil and topsoil; and

(c) protects the topsoil from wind and water erosion before it is seeded and planted.

C. Topsoil storage. If the permit allows storage of topsoil, the stockpiled topsoil shall be placed on a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiles shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetative cover as defined in Section 715.20(g) or by other methods demonstrated to provide equal protection such as snow fences, chemical binders and mulching. Unless approved by the regulatory authority, stockpiled topsoil shall not be moved until required for redistribution on a disturbed area.

D. Nutrients and soil amendments. Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the surface soil layer so that it will support the postmining requirements of Section 715.13 and the revegetation requirements of Section 715.20.

[Recompiled 6/4/02]

19.8.36.28 GENERAL PERFORMANCE STANDARDS: PROTECTION OF THE HYDROLOGIC SYSTEM (715.17):

The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal mining and reclamation operations, both on-and off-site. Changes in water quality and quantity, in the depth to groundwater, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable federal and state statutes and regulations are not violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment,

the permittee shall operate and maintain the necessary water-treatment facilities for as long as treatment is required.

[Recompiled 6/4/02]

19.8.36.29 GENERAL PERFORMANCE STANDARDS: WATER QUALITY STANDARDS AND EFFLUENT LIMITATIONS (715.17)(a):

¹The standards in this section will be enjoined to the extent that they supersede, amend, repeal or modify the provisions of the Federal Water Pollution Control Act and its regulations.

A. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met the water quality requirements of this section and the revegetation requirements of Section 715.20 have been met. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this section only, disturbed area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with Paragraph (e) [now Subsection E of 19.8.36.29 NMAC] of this section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable Federal and State laws and regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS IN MILLIGRAMS PER LITER

mg/1, Except For pH

Average of		
Daily values		
Effluent	Maximum	for 30
Characteristics	allowable ¹	consecutive

discharge days¹

Iron, total-----	7.0	3.5
Manganese, total-----	4.0	2.0
Total suspended solids	70.0	35.0
pH ²	Within the----- range 6.0 to 9.0.	

¹Based on representative sampling.

²Where the applications of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a ten-year 24-hour frequency event will not be subject to the effluent limitations of Paragraph (a) [now Subsection A of 19.8.36.29 NMAC].

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state laws or regulations or the limitations of Paragraph (a) [now Subsection A of 19.8.36.29 NMAC]. If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated and maintained. If the regulatory authority finds (1) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and (2) that the mine normally produces less than 500 tons of coal per day, then the regulatory authority may approve the use of a manual system if the permittee ensures consistent and timely treatment.

B. Surface-water monitoring.

(1) The permittee shall submit for approval by the regulatory authority a surface-water monitoring program which meets the following requirements:

(a) Provides adequate monitoring of all discharge from the disturbed area.

(b) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese and total suspended solids and, if requested by the regulatory authority, any other parameter characteristic of the discharge.

(c) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(d) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(e) Provides a regular report of all measurements to the regulatory authority within 60 days of sample collection unless violations of permit conditions occur in which case the regulatory authority shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. ' 1251-1-378), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the reporting requirements if the data meet the sampling frequency and other requirements of this paragraph.

(2) After disturbed areas have been regraded and stabilized in accordance with this Part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this section to minimize disturbance to the prevailing hydrologic balance and with the requirements of this part to attain the approved postmining land use. These data shall provide a basis for approval by the regulatory authority for removal of water quality or flow control systems and for determining when the requirements of this Section are met. The regulatory authority shall determine the nature of data, frequency of collection and reporting requirements.

(3) Equipment, structures and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained and operated and shall be removed when no longer required.

C. Diversion and conveyance of overland flow away from disturbed areas. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger

event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate state and federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval, or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the regulatory authority.

(3) Diversions shall be designed, constructed and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable state or federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures and detention basins.

D. Stream channel diversions.

(1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the regulatory authority and they are in compliance with local, state, and federal statutes and regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

(a) The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable state or federal law. Erosion control structures such as channel lining structures, retention basins and artificial channel roughness structures shall be used only when approved by regulatory agency for temporary diversions where necessary or for permanent diversions where they are stable and will require only infrequent maintenance.

(b) Channel, bank and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten-year recurrence interval for temporary diversions and a 100-year recurrence interval for permanent diversions, or larger events as specified by the regulatory authority.

(c) Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate state and federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of Section 715.14 and Section 715.20. At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent overtopping or failure of the facilities.

(3) Buffer zone. No land within 100 feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the regulatory authority specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in Section 715.12.

E. ² Sediment control measures. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. ²The standards in Section 715.17(e) will be preliminarily enjoined.

(1) Sediment control measures include practices carried out within and adjacent to the disturbed area. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods, and sediment control practices (singly or in combination) including but not limited to:

(a) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading and timely revegetation.

(b) Consistent with the requirements of Section 715.14 and Section 715.15 shaping the backfill material to promote a reduction of the rate and volume of runoff.

(c) Retention of sediment within the pit and disturbed area.

(d) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area.

(e) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocity, reduce runoff volume or entrap sediment.

(f) Sedimentation ponds.

(2) Sedimentation ponds, may be used individually or in series, should be located as near as possible to the disturbed area and where possible out of major stream courses, and shall (either individually or in series) meet the following criteria:

(a) Sedimentation ponds must provide 24-hour theoretical detention time for the inflow or runoff entering the ponds from a ten-year, 24-hour precipitation event. Runoff diverted, in accordance with Paragraphs (c) and (d) [now Subsections C and D of 19.8.36.29 NMAC] of this Section, away from the disturbed drainage areas need not be considered in sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures and on-site sediment control practices shall be considered.

(b) Upon approval of the regulatory authority theoretical detention time may be reduced to not less than ten hours, as demonstrated by the permittee, equal to the improvement in sedimentation removal efficiency as a result of pond design including but not limited to pond configuration, inflow-outflow facilities and their relative location, baffles to decrease inflow velocity and short circuiting, a surface area sufficient to achieve the sediment trap efficiency necessary to meet effluent limitations (Sec. 715.17 (a)) and sediment control measures provided in Section 715.17 (e)(1).

(c) The regulatory authority may approve a detention time less than the time required by Paragraph (e)(2) (i) or (ii) [now Subparagraphs a and b of Paragraph 2 of Subsection E of 19.8.36.29 NMAC] of this section, when the permittee has demonstrated that the size distribution or the specific gravity of the suspended matter or the utilization of chemical treatment or flocculation are such that the effluent limitations can be met. The detention time shall be stipulated.

(3) An additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the regulatory authority, the sediment storage volume may be reduced in an amount, as demonstrated by the permittee, equal to the sediment removed by other appropriate sediment control measures such as those identified in Paragraph (e)(1) [now Paragraph 1 of Subsection E of 19.8.36.29 NMAC] of this section, or by lesser sediment yields as evidenced by empirical data for runoff characteristics.

(4) Ponds may be of the permanent pool or self-dewatering type. Dewatering-type ponds shall use siphon or other dewatering methods approved by the regulatory authority to prevent discharges of pollutants within the design flow.

(5) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval, or larger event as specified by the regulatory authority.

(6) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent

limitations. Sediment removal shall be done in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and groundwater quality. Sediment that has been removed from sedimentation ponds and that meets the requirements for topsoil may be redistributed over graded areas in accordance with Section 715.16.

(7) If a sedimentation pond has an embankment that is more than 20 feet in height, as measured from the downstream toe of the embankment to the top of the embankment, or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year six-hour precipitation event, or larger event as specified by the regulatory authority.

(b) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 of maximum design flood elevation of the pool to ensure embankment slope stability.

(c) The minimum top width of the embankment shall not be less than the quotient of $H+35/5$ where H is the height of the embankment as measured from the downstream toe to the top of the embankment.

(d) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(8) All ponds shall be designed and inspected under the supervision of, and certified after construction by a professional engineer registered in the state of New Mexico.

(9) All ponds, including those not meeting the size or other criteria of 'Section 77.216(a) of this title, shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in' Section 77.216-3 of this title.

(10) All ponds shall be removed and the affected land regraded and revegetated consistent with the requirements of Section 715.14 and Section 715.20, unless the regulatory authority approves retention of the ponds pursuant to Paragraph (k) [now Subsection K of 19.8.36.29 NMAC] of this Section.

F. Discharge structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

G. Acid and toxic materials. Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by:

(1) Identifying, burying and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of Section 715.14(j).

(2) Preventing or removing water from contact with toxic-producing deposits.

(3) Burying or otherwise treating all toxic or harmful materials within 30 days, if such materials are subject to wind and water erosion, or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to Section 715.17(g) (4), and Section 715.18 shall apply.

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with Section 715.14(j).

(5) Casing, sealing or otherwise managing boreholes, shafts, wells and auger holes or other more or less horizontal holes to prevent pollution of surface or groundwater and to prevent mixing of groundwaters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless the boreholes have been approved for use in monitoring.

(6) Taking such other actions as required by the regulatory authority.

H. Groundwater.

(1) Recharge capacity of reclaimed lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the groundwater system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to Paragraph (h) (3) [now Paragraph 3 of Subsection H of 19.8.36.29 NMAC] of this section to ensure operations conform to this requirement.

(2) Groundwater systems. Backfilled materials shall be placed to minimize adverse effects on groundwater flow and quality, to minimize offsite effects, and to support the approved postmining land use. The permittee shall be responsible for

performing monitoring according to Paragraph (h)(3) [now Paragraph 3 of Subsection H of 19.8.36.29 NMAC] of this section to ensure operations conform to this requirement.

(3) Monitoring. Groundwater levels, infiltration rates, subsurface flow and storage characteristics, and the quality of groundwater shall be monitored in a manner approved by the regulatory authority to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in groundwater systems at the mine area and in associated off-site areas. When operations are conducted in such a manner that may affect the groundwater system, groundwater levels and groundwater quality shall be periodically monitored using wells that can adequately reflect changes in groundwater quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the groundwater system. As specified and approved by the regulatory authority, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with Subparagraphs (1) and (2) [now Paragraphs 1 and 2 of Subsection H of 19.8.36.29 NMAC] of this paragraph.

I. Water rights and replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately resulting from surface coal mine operation by the permittee.

J. Alluvial valley floors west of the 100th meridian west longitude.

(1) Surface coal mining operations conducted in or adjacent to alluvial valley floors shall be planned and conducted so as to preserve the essential hydrologic functions of these alluvial valley floors throughout the mining and reclamation process. These functions shall be preserved by maintaining or reestablishing those hydrologic and biologic characteristics of the alluvial valley floor that are necessary to support the functions. The permittee shall provide information to the regulatory authority as required in Paragraph (j)(3) [now Paragraph 3 of Subsection J of 19.8.36.29 NMAC] of this section to allow identification of essential hydrologic functions and demonstrate that the functions will be preserved. The characteristics of an alluvial valley floor to be considered include, but are not limited to:

(a) The longitudinal profile (gradient), cross-sectional shape and other channel characteristics of streams that have formed within the alluvial valley floor and that provide for maintenance of the prevailing conditions of surface flow;

(b) Aquifers (including capillary zones and perched water zones) and confining beds within the mined area which provide for storage, transmission and regulation of natural groundwater and surface water that supply the alluvial valley floors;

(c) Quantity and quality of surface and groundwater that supply alluvial valley floors;

(d) Depth to and seasonal fluctuations of groundwater beneath alluvial valley floors;

(e) Configuration and stability of the land surface in the flood plain and adjacent low terraces in alluvial valley floors as they allow or facilitate irrigation with flood waters or subirrigation and maintain erosional equilibrium; and

(f) Moisture-holding capacity of soils (or plant growth medium) within the alluvial valley floors, and physical and chemical characteristics of the subsoil which provide for sustained vegetation growth or cover through dry months.

(2) Surface coal mining operations located west of the 100th meridian west longitude shall not interrupt, discontinue or preclude farming on alluvial valley floors and shall not materially damage the quantity or quality of surface or groundwater that supplies these valley floors unless the premining land use has been undeveloped rangeland which is not significant to farming on the alluvial valley floors or unless the area of affected alluvial valley floor is small and provides negligible support for the production from one or more farms. This Subparagraph (2) [now Paragraph 2 of Subsection J of 19.8.36.29 NMAC] does not apply to those surface coal mining operations that:

(a) Were in production in the year preceding August 3, 1977, were located in or adjacent to an alluvial valley floor, and produced coal in commercial quantities during the year preceding August 3, 1977; or

(b) Had specific permit approval by the state regulatory authority before August 3, 1977, to conduct surface coal mining operations for an area within an alluvial valley floor.

(3)

(a) Before surface mining and reclamation operations authorized under Paragraph (j)(2) [now Paragraph 2 of Subsection J of 19.8.36.29 NMAC] of this section may be issued a new, revised or amended permit, the permittee shall submit, for regulatory authority approval, detailed surveys and baseline data to establish standards against which the requirements of Paragraph (j)(1) [now Paragraph 1 of Subsection J of 19.8.36.29 NMAC] of this section may be measured and from which the degree of material damage to the quantity and quality of surface and groundwater that supply the alluvial valley floors may be assessed. The surveys and data shall include--

(i) A map, at a scale determined by the regulatory authority, showing the location and configuration of the alluvial valley floor;

(ii) Baseline data covering a full water year for each of the hydrologic functions identified in Paragraph (j)(1) [now Paragraph 1 of Subsection J of 19.8.36.29 NMAC] of this section;

(iii) Plans showing how the operation will avoid, during mining and reclamation, interruption, discontinuance or preclusion of farming on the alluvial valley floors and will not materially damage the quantity or quality of water in surface and groundwater systems that supply such valley floors;

(iv) Historic land use data for the proposed permit area and for farms to be affected; and

(v) Such other data as the regulatory authority may require.

(b) Surface mining operations which qualify for the exceptions in Paragraph (j)(2) [now Paragraph 2 of Subsection J of 19.8.36.29 NMAC] of this section are not required to submit the plans prescribed in (i)(C) [now Sub-subparagraph (iii) of Subparagraph a of Paragraph 3 of Subsection J of 19.8.36.29 NMAC] of this subparagraph.

(4) The holder of a federal coal lease or the fee holder of any coal deposit located within or adjacent to an alluvial valley floor west of the 100th meridian west from which coal was not produced in commercial quantities between August 3, 1976, and August 3, 1977, and for which no specific permit by the appropriate state or federal regulatory authority to conduct surface coal mining operations in the alluvial valley floors has been obtained, may be entitled to an exchange of the federal coal lease for a lease of other federal coal deposits under section 510(b)(5) of the Act or to the conveyance by the secretary of fee title to other available federal coal deposits in exchange for the fee title to such deposits under Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743), if the secretary determines that substantial financial and legal commitments were made by the operator prior to January 1, 1977, in connection with surface coal mining operations on such lands.

(5) The secretary may, if he determines that the person is qualified for an exchange of federal coal leases under the provisions of section 510(b)(5) of the Act or a conveyance of other federal coal deposits under section 206 of the Federal Land Policy and Management Act, take appropriate steps to complete the exchange of lands. The secretary may require the person to submit additional information and a formal application for exchange.

K. Permanent impoundments. The permittee may construct, if authorized by the regulatory agency pursuant to this paragraph and Section 715.13, permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with Section 715.13 and Section 715.14 in addition to the following requirements:

- (1) The size of the impoundment is adequate for its intended purposes.
- (2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566 (16 U.S.C.1006).
- (3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable federal and state law.
- (4) The level of water will be reasonably stable.
- (5) Final grading will comply with the provisions of Section 715.14 and will provide adequate safety and access for proposed water users.
- (6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational or domestic uses.

L. Hydrologic impact of roads.

(1) General. Access and haul roads and associated bridges, culverts, ditches and road rights-of-way shall be constructed, maintained and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable state or federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of Section 715.14 and Section 715.20, unless retention of a road is approved as part of a postmining land use under Section 715.13 as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(2) Construction.

(a) All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossing shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with Paragraph (d) [now Subsection D of 19.8.36.29 NMAC] of this section.

(b) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion.

(i) The overall sustained grade shall not exceed 1v:10h (ten percent).

(ii) The maximum grade greater than ten percent shall not exceed 1v:6.5h (15 percent) for more than 300 feet.

(iii) There shall not be more than 300 feet of grade exceeding ten percent within each 1,000 feet.

(c) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than one year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of Paragraph (a) [now Subsection A of 19.8.36.29 NMAC] of this Section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this Section unless otherwise specified by the regulatory authority.

(d) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) Maintenance.

(a) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(b) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

M. Hydrologic impacts of other transport facilities. Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to

the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable State or Federal law.

N. Discharge of waters into underground mines. Surface and groundwaters shall not be discharged or diverted into underground mine workings.

[Recompiled 6/4/02]

19.8.36.30 GENERAL PERFORMANCE STANDARDS: DAMS CONSTRUCTED OF WASTE MATERIAL (715.18):

A. General. No waste material shall be used in existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this Section.

B. Construction of dams:

(1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this Section, and also including those dams that do not meet the size or other criteria of Section 77.216 (a) of this Title, shall be approved by the regulatory authority before construction and shall contain the minimum plan requirements established by the mining enforcement and safety administration pursuant to Section 77.216-2 of this title.

(3) Construction requirements are as follows:

(a) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.

(b) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least three feet to avoid overtopping by wind and wave action.

(c) Dams shall have minimum safety factors as follows:

Case	Loading Condition	Minimum Safety Factor
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I-----End of construction-----
--1.3

II-----Partial pool with steady seepage saturation
1.5

III-----Steady seepage from spillway or decant crest.
1.5

IV-----Earthquake (cases II and III with seismic loading).
1.0

(d) The dam, foundation and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in Paragraph (b)(3)(iii) [now Subparagraph c Paragraph 3 of Subsection B of 19.8.36.30 NMAC] of this Section and for all increments of construction.

(e) Seepage through the dam, foundation and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution or erosion of material by loss into cracks, joints and cavities. This may require the use of impervious blankets, previous drainage zones or blankets, toe drains, relief wells or dental concreting of jointed rock surface in contact with embankment materials.

(f) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(g) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within ten days.

(h) During construction of dams subject to this section, the structures shall be periodically inspected by a professional engineer registered in the state of New Mexico to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a professional engineer registered in the state of New Mexico experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(i) A permanent identification marker, at least six feet high that shows the dam number assigned pursuant to' Section 77-216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this section.

(4) All dams, including those not meeting the size or other criteria of Section 77.216 (a) of this title, shall be routinely inspected by a professional engineer registered in the state of New Mexico, or someone under the supervision of a registered professional engineer, in accordance with mining enforcement and safety administration regulations pursuant to Section 77.216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this Section shall be certified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual certification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (Section 715.13).

[Recompiled 6/4/02]

19.8.36.31 GENERAL PERFORMANCE STANDARDS: USE OF EXPLOSIVES (715.19):

A. General.

(1) The permittee shall comply with all applicable local, state and federal laws and regulations and the requirements of this section in the storage, handling, preparation and use of explosives.

(2) Blasting operations that use more than the equivalent of 5 pounds of TNT shall be conducted according to a time schedule approved by the regulatory authority.

(3) All blasting operations shall be conducted by experienced, trained and competent persons who understand the hazards involved. Persons working with explosive materials shall:

(a) Have demonstrated a knowledge of, and a willingness to comply with safety and security requirements;

(b) Be capable of using mature judgement in all situations;

(c) Be in good physical condition and not addicted to intoxicants, narcotics or other similar types of drugs;

(d) Possess current knowledge of the local, state and federal laws and regulations applicable to his work; and

(e) Have obtained a certificate of completion of training and qualification as required by state law or the regulatory authority.

B. Preblasting survey.

(1) On the request to the regulatory authority of a resident or owner of a manmade dwelling or structure that is located within one-half mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the regulatory authority.

(2) Personnel approved by the regulatory authority shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines and wells and other water systems shall be limited to surface condition and other readily available data. Special attention shall be given to the preblasting condition of wells and other water systems used for human, animal or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in Paragraph (e) [now Subsection E of 19.8.36.31 NMAC] of this Section which should be incorporated into the the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the regulatory authority.

C. Public notice of blasting schedule. At least 10 days, but not more than 20 days before beginning a blasting program in which explosives that use more than the equivalent of 5 pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every 3 months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting site and the time periods when blasting will occur. The blasting schedule shall contain at a minimum:

(1) Identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than 300 acres with a generally contiguous border;

(2) Dates and times when explosives are to be detonated expressed in not more than 4-hour increments;

(3) Methods to be used to control access to the blasting area;

(4) Types of audible warnings and all-clear signals to be used before and after blasting; and

(5) A description of possible emergency situations (defined in Paragraph (e)(1)(ii) of this Section) [now Subparagraph b of Paragraph 1 of Subsection E of 19.8.36.31 NMAC], which have been approved by the regulatory authority, when it may be necessary to blast at times other than those described in the schedule.

D. Public notice of changes to blasting schedules. Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in Paragraph (c) [now Subsection C of 19.8.36.31 NMAC] of this Section. If the change involves only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

E. Blasting procedures.

(1) General.

(a) All blasting shall be conducted only during the daytime hours, defined as sunrise until sunset. Based on public requests or other considerations, including the proximity to residential areas, the regulatory authority may specify more restrictive time periods.

(b) Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions or operator or public safety requires unscheduled detonation.

(c) Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by Section 715.12.

(d) Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least 10 minutes before each blast and until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.

(e) Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

(f) Airblast shall be controlled such that it does not exceed 128 decibel linear-peak at any manmade dwelling or structure located within one-half mile of the permit area.

(g) Except where lesser distances are approved by the regulatory authority (based upon a preblasting survey or other appropriate investigations) blasting shall not be conducted within:

(i) 1,000 feet of any building used as a dwelling, school, church, hospital or nursing facility;

(ii) 500 feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil collection lines or water and sewage lines; and

(iii) 500 feet of an underground mine not totally abandoned except with the concurrence of the mining enforcement and safety administration.

(2) Blasting standards.

(a) Blasting shall be conducted to prevent injury to persons, damage to public or private property, outside the permit area, adverse impacts on any underground mine and change in the course, channel or availability of ground or surface waters outside the permit area.

(b) In all blasting operations, except as otherwise stated, the maximum peak particle velocity of the ground motion in any direction shall not exceed 1 inch per second

at the immediate location of any dwelling, public building, school, church or commercial or institutional building. The regulatory authority may reduce the maximum peak particle velocity allowed if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

(c) The maximum peak particle velocity of ground motion does not apply to property inside the permit area that is owned or leased by the permittee.

(d) An equation for determining the maximum weight of explosives that can be detonated within any 8 millisecond period is given in Paragraph (v) [now Subparagraph e of Paragraph 2 of Subsection E of 19.8.36.31 NMAC]. If the blasting is conducted in accordance with this equation, the regulatory authority will consider the vibrations to be within the 1 inch per second limit.

(e) The maximum weight of explosives to be detonated within any 8 millisecond period shall be determined by the formula

$$W = (D/60)^2$$

where W=the maximum weight of explosives, in pounds, that can be detonated in any 8 millisecond period, and D=the distance, in feet, to the nearest dwelling, school, church or commercial or institutional building.

For distances between 350 and 5,000 feet, solution of the equation results in the following maximum weight:

Distance, in feet (D):	Maximum weight, in pounds (W):
350-----	34
400-----	44
500-----	69
600-----	100
700-----	136
800-----	178
900-----	225
1,000-----	278
1,100-----	336

1,200-----	400
1,300-----	469
1,400-----	544
1,500-----	625
1,600-----	711
1,700-----	803
1,800-----	900
1,900-----	1,002
2,000-----	1,111
2,500-----	1,736
3,000-----	2,500
3,500-----	3,402
4,000-----	4,444
4,500-----	5,625
5,000-----	6,944

(f) If on a particular site the peak particle velocity continuously exceeds one-half inch per second after a period of 1 second following the maximum ground particle velocity, the regulatory authority shall require the blasting procedures to be revised to limit the ground motion.

(3) Seismograph measurements.

(a) where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of 1 inch per second is not exceeded, the equation in Paragraph (v) [now Subparagraph e of Paragraph 2 of Subsection E of 19.8.36.31 NMAC] need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot.

(b) The use of a modified equation to determine maximum weight of explosives for blasting operations at a particular site may be approved by the regulatory authority on receipt of a petition accompanied by reports including seismograph records

of test blasting on the site. However, in no case shall the regulatory authority approve the use of a modified equation where the peak particle velocity limit of 1 inch per second required in Paragraph (e)(2)(ii) [now Subparagraph b of Paragraph 2 of Subsection E of 19.8.36.31 NMAC] of this Section would be exceeded.

(c) The regulatory authority may require a seismograph recording of any or all blasts.

(4) Records of blasting operations. A record of each blast, including seismograph reports, shall be retained for at least 3 years and shall be available for inspection by the regulatory authority and the public on request. The record shall contain the following data:

(a) Name of permittee, operator or other person conducting the blast;

(b) Location, date and time of blast;

(c) Name, signature and license number of blaster-in charge;

(d) Direction and distance, in feet, to nearest dwelling, school, church or commercial or institutional building neither owned or leased by the permittee;

(e) Weather conditions;

(f) Type of material blasted;

(g) Number of holes, burden and spacing;

(h) Diameter and depth of holes;

(i) Types of explosives used;

(j) Total weight of explosives used;

(k) Maximum weight of explosives detonated within any 8 millisecond period;

(l) Maximum number of holes detonated within any 8 millisecond period;

(m) Methods of firing and type of circuit;

(n) Type and length of stemming;

(o) If mats or other protections were used;

(p) Type of delay detonator used and delay periods used;

(q) Seismograph records, where required, including:

- (i) Seismograph reading, including exact location of seismograph and its distance from the blast;
- (ii) Name of person taking the seismograph reading; and
- (iii) Name of person and firm analyzing the seismograph record.

[Recompiled 6/4/02]

19.8.36.32 GENERAL PERFORMANCE STANDARDS: REVEGETATION (715.20):

A. General.

(1) The permittee shall establish on all land that has been disturbed, a diverse, effective and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to Section 715.13. For areas designated as prime farmland, the reclamation procedures of Section 716.7 shall apply.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre-and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

(3) On federal lands, the surface management agency shall be consulted for approval prior to revegetation regarding what species are selected, and following revegetation, to determine when the area is ready to be used.

B. Use of introduced species. Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary and stabilizing cover. Such species substitution shall be approved by the regulatory authority. Introduced species shall meet applicable state and federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

C. Timing of revegetation. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas of roads that are approved under Section 715.13 as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small grains, grasses or legumes to control erosion until an adequate permanent cover is established. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded topsoil and overburden materials as specified in Section 715.14, additional regrading or other stabilization practices will be required before seeding and planting.

D. Mulching. Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds and to increase the moisture retention of the soil. Mulch shall be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation. Mulch means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing micro-climatic conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the regulatory authority that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use. Where supplemental irrigation is required by the regulatory authority during the initial plant establishment period, if the operator can prove to the satisfaction of the regulatory authority that permanent revegetation equal to or better than that which would result from the use of mulch will result, the requirement for mulch may be eliminated if approved by the regulatory authority.

E. Methods of revegetation.

(1) The permittee shall use technical publications or the results of laboratory and field tests approved by the regulatory authority to determine the varieties, species, seeding rates and soil amendment practices essential for establishment and self-regeneration of vegetation. The regulatory authority shall approve species selection and planting plans.

(2) Where hayland, pasture or range is to be the postmining land use, the species of grasses, legumes, browse, trees or forbes for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective and permanent vegetative cover with the seasonal variety, succession, distribution and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedlings are established and can sustain managed grazing. The regulatory authority in consultation with the permittee and the landowner or in concurrence with the governmental land-managing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs or woody plants to provide a diverse, effective and permanent vegetation cover with the seasonal variety, succession and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate State and Federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

F. Standards for measuring success of revegetation.

(1) Success of revegetation shall be measured on the basis of reference areas approved by the regulatory authority. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils slope, aspect and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved postmining land use of the area to be mined. The regulatory authority shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two growing seasons. The ground cover shall not be considered equal if it is less than 90 percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the regulatory authority for:

(a) Previously mined areas that were not reclaimed to the standards required by this chapter prior to the effective date of these regulations. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance;

(b) Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion. As used in this paragraph, immediately means less than 2 years after regrading has been completed for the area to be used; and

(c) Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two growing seasons. Production shall not be considered equal if it is less than 90 percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity, distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under Paragraph (e) [now Subsection E of 19.8.36.32 NMAC] of this Section.

G. Seeding of stockpiled topsoil. Topsoil stockpiled in compliance with Section 715.16 must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions or protected by other approved measures as specified in Section 715.16.

[Recompiled 6/4/02]

19.8.36.33 SPECIAL PERFORMANCE STANDARDS: GENERAL OBLIGATIONS (716.1):

All surface coal mining and reclamation operations subject to this part shall comply with the applicable special performance standards in this part. Such operations shall also comply with all general performance standards in Part 715 of this chapter unless specifically exempted in this part from the requirements of Part 715.

[Recompiled 6/4/02]

19.8.36.34 SPECIAL PERFORMANCE STANDARDS: STEEP-SLOPE MINING (716.2):

The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed 20 degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the regulatory authority after consideration of soils, climate, the method of operation, geology and other regional characteristics, shall meet the following performance standards. The standards of this section do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or pre-dominantly flat area; or where the mining is governed by Section 716.3.

A. Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

B. The highwall shall be completely covered with spoil and the disturbed area graded to comply with the provisions of Section 715.14 of this chapter. Land above the highwall shall not be disturbed unless the regulatory authority finds that the disturbance will facilitate compliance with the requirements of this Section.

C. Material in excess of that required to meet the provisions Section 715.14 of this chapter shall be disposed of in accordance with the requirements of Section 715.15 of this chapter.

D. Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the regulatory authority.

[Recompiled 6/4/02]

19.8.36.35 SPECIAL PERFORMANCE STANDARDS: MOUNTAINTOP REMOVAL (716.3):

A. Surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction of a mountain, ridge or hill by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of Section 715.14 of this chapter for achieving approximate original contour, if the following requirements are met:

- (1) An industrial, commercial, agricultural, residential or public facility (including recreational facilities) use is proposed for the affected land.
- (2) The alternative land use criteria in Section 715.13(d) of this chapter are met and the proposal is approved by the regulatory authority.
- (3) All other applicable requirements of Part 715 of this chapter can be met.

B. Surface coal mining and reclamation operations conducted under this Section shall comply with the following standards:

- (1) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden shall be retained to prevent slides and erosion.
- (2) The final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the regulatory authority finds that a minimum static safety factor of 1.5 will be attained.
- (3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the outslope in protected stable channels.
- (4) Damage to natural watercourses below the area to be mined shall be prevented.
- (5) Spoil shall be placed on the mountaintop bench as is necessary to achieve the postmining land use approved under Section 715.13 of this chapter. All excess spoil material not retained on the mountaintop shall be placed in accordance with the standards of Section 715.15 of this chapter.

C.

(1) All permits giving approval for mountaintop removal shall be reviewed not more than 3 years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the regulatory authority finds that all operations are proceeding in accordance with the terms of the permit and applicable requirements of the Act and the regulations of this Part. The terms of the permit shall be in accordance with the requirements of the Act and the regulations of this Part.

(2) The terms of a permit for mountaintop removal may be modified by the regulatory authority if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural water courses, avoid water pollution or to assure successful revegetation.

[Recompiled 6/4/02]

19.8.36.36 SPECIAL PERFORMANCE STANDARDS: PRIME FARMLANDS (716.7):³

³ - Enforcement of these provisions promulgated pursuant to Sections 510(d) and 515(b)(7) of the federal act will be enjoined to the extent they impose performance standards on operations that are exempt from these requirements pursuant to Section 510(d)(2).

A. Applicability.

(1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of Part 715 of this chapter in addition to the special requirements of this Section. Prime farmlands are those lands defined in Paragraph (b) [now Subsection B of 19.8.36.36 NMAC] of this Section that have been used for the production of cultivated crops, including nurseries, orchards and other speciality crops, and small grains for at least 5 years out of the 20 years preceding the date of the permit application.

(2) The requirements of this Section are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this Section regarding actions to be taken before a permit is issued. Permit renewals or revisions shall include only those areas that:

(a) Were in the original permit area or in a mining plan approved prior to August 3, 1977; or

(b) Are contiguous and under State regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.

B. Definition. Prime farmland means those lands that meet the applicability requirements in Paragraph (a) [now Subsection A of 19.8.36.36 NMAC] of this section and the specific technical criteria prescribed by the secretary of agriculture as published in the FEDERAL REGISTER on August 23, 1977. These criteria are included here for convenience. Terms used in this section are defined in U.S. department of agriculture publications: Soil Taxonomy, Agriculture Handbook 436; Soil Survey Manual. Agriculture Handbook 18; Rainfall-Erosion Losses From Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland soils must meet all of the following criteria:

(1) The soils have:

(a) Aquic, udic, ustic or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches or in the root zone, if the root zone is less than 40 inches deep, to produce the commonly grown crops in 7 or more years out of 10; or

(b) Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (a dependable water supply is one in which enough water is available for irrigation in 8 out 10 years for the crops commonly grown); or

(c) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality.

(2) The soils have a temperature regime that is frigid, mesic, thermic or hyperthermic (pergelic and cryic regimes are excluded). These are soils that at a depth of 20 inches have a mean annual temperature higher than 32 degrees F. In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47 degrees F in soils that have no O horizon the mean summer temperature is higher than 59 degrees F.

(3) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage and oilseed crops common to the area to be grown.

(5) The soils can be managed so that, in all horizons within a depth of 40 inches or in the root zone if the root zone is less than 40 inches deep during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15.

(6) The soils are not flooded frequently during the growing season (less often than once in 2 years).

(7) The soils have a product of K (erodibility factor) x percent slope of less than 2.0 and a product of I (soil erodibility) x C (climatic factor) not exceeding 60.

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper 20 inches and the mean annual soil temperature at a depth of 20 inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.

(9) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches.

C. Identification of prime farmland. Prime farmland shall be identified on the basis of soil survey submitted by the applicant. The regulatory authority also may require data on irrigation drainage, flood control, and subsurface water management. The requirement for submission of soil surveys may be waived by the regulatory authority if the applicant can demonstrate according to the procedures in Paragraph (d) [now Subsection D of 19.8.36.36 NMAC] of this Section that no prime farmlands are involved. Soil surveys shall be conducted according to standards of the National Cooperative Soil Survey which include the procedures set forth in U.S. department of agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual) , and shall include:

(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with Paragraph (b) [now Subsection B of 19.8.36.36 NMAC] of this Section;

(2) A map designating the exact location and extent of the prime farmland;
and

(3) A description of each soil mapping unit.

D. Negative determination of prime farmland. The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations:

(1) Lands within the proposed permit boundaries have been used for the production of cultivated crops for less than 5 years out of 20 years preceding the date of the permit application.

(2) The slope of all land within the permit area is 10 percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality and the average annual precipitation is 14 inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in Paragraph (a) [now Subsection A of 19.8.36.36 NMAC] of this Section is submitted to the regulatory authority by a qualified person other than the applicant, and is approved by the regulatory authority.

E. Plan for restoration of prime farmland. The applicant shall submit to the regulatory authority a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the regulatory authority in judging the technological capability of the applicant to restore prime farmlands. The plan shall include:

(1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored and replaced;

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with Paragraph (g) [now Subsection G of 19.8.36.36 NMAC] of this section;

(3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first 12 months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(6) Available agricultural school studies, company data or other scientific data for comparable areas that demonstrate that the applicant using his proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

F. Consultation with secretary of agriculture and issuance of permit.

(1) The regulatory authority may grant a permit which shall incorporate the plan submitted under Paragraph (e) [now Subsection E of 19.8.36.36 NMAC] of this section, if it finds in writing that the applicant:

(a) has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as non-mined prime farmland in the surrounding area under equivalent levels of management; and

(b) Will achieve compliance with the standards of Paragraph (g) [now Subsection G of 19.8.36.36 NMAC] of this Section.

(2) Before any permit is issued for areas that include prime farmlands, the regulatory authority shall consult with the secretary of agriculture. The secretary of agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The secretary of agriculture has assigned his responsibilities under this paragraph to the administrator of the U.S. soil conservation service and the U.S. soil conservation service will carry out the consultation and review through their state conservationist, located in each state.

G. Special requirements. For all prime farmlands to be mined and reclaimed the applicant shall meet the following special requirements:

(1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air and water pollution, the regulatory authority shall specify methods of treatment to control erosion of exposed overburden. The permittee shall:

(a) Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

(b) Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productivity capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

(c) Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the

reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(2) If stockpiling of soil horizons is allowed by the regulatory authority in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than 30 days must meet the requirements of Section 715.16(c).

(3) Scarify the final graded land before the soil horizons are replaced.

(4) Replace the material from the B horizon or other suitable material specified in Paragraph (g)(1)(ii) or (g)(1)(iii) [now Subparagraphs b or c of Paragraph 1 of Subsection G of 19.8.36.36 NMAC] of this Section in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(5) Replace the A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface soil layer to the thickness of the original soil as determined in Paragraph (g)(1)(i) [now Subparagraphs a of Paragraph 1 of Subsection G of 19.8.36.36 NMAC] of this Section in a manner that:

(a) Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper 20 inches of the reconstructed soil profile; and

(b) Protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

[Recompiled 6/4/02]

19.8.36.37 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS: GENERAL OBLIGATIONS (717.11):

A. Compliance. All underground coal mining and associated reclamation operations conducted on lands where any element of the operations is regulated by a state shall comply with the initial performance standards of this Part.

(1) For the purposes of this Part, underground coal mining and associated reclamation operations mean a combination of surface operations and underground operations. Surface operations include construction, use, and reclamation of new and

existing access and haul roads, aboveground repair areas, storage areas, processing areas, shipping areas and areas upon which are sited support facilities including hoist and ventilating ducts, and on which material incident to underground mining operations are placed. Underground operations include underground construction, operation, and reclamation of shafts, adits, underground support facilities, underground mining, hauling, storage and blasting.

(2) For the purpose of this Part the term permittee means the person permitted to conduct underground mining operations by a state or if no permit is issued in the state, the person operating a mine.

(3) For the purpose of this Part, disturbed areas means surface work areas and lands affected by surface operations including, but not limited to, roads, mine entry excavations, above ground (surface) work areas, such as tipples, coal processing facilities and other operating facilities, waste work and spoil disposal areas, and mine waste impoundments or embankments. "Disturbed area" is synonymous with the word's "affected area" used in Sections 1 through 37 [now 19.8.36.8 NMAC through 19.8.36.43 NMAC].

(4) Where state environmental protection standards are adopted for a specific state because they are more stringent than the standards of this part, they will be published in Part 718 of this chapter.

B. Authorizations to operate. A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

[Recompiled 6/4/02]

19.8.36.38 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS: SIGNS AND MARKERS (717.12):

A. Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material and shall conform to local ordinances and codes. The signs and other markers shall be maintained during all operations to which they pertain.

B. Mine and permit identification signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public highways. Signs shall show the name, business address and telephone number of the permittee and identification numbers of current mining and reclamation permit. Such signs shall not be removed until after release of all bonds.

[Recompiled 6/4/02]

19.8.36.39 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS: BACKFILLING AND GRADING OF ROAD CUTS, MINE ENTRY AREA CUTS AND OTHER SURFACE WORK AREAS (717.14):

A. Upon completion of underground mining, surface work areas which are involved in excavation, disposal of materials or otherwise affected, shall be regraded to approximate original contour. The permittee shall transport, backfill and compact fill material to assure stability or to prevent leaching of toxic pollutants. Barren rock or similar materials excess to the mining operations and which are disposed on the land surface shall be subject to the provision of Section 717.15 of this Part. Roads and support facility areas existing prior to the effective date of this Part and used in support of underground mining operations which are subject to this Part shall be regraded to the extent deemed feasible by the regulatory authority based on the availability of backfill material and resulting stability of the affected lands after reclamation. As a minimum, the permittee shall be required to:

(1) Retain all earth, rock and other mineral nonwaste materials on the solid portion of existing or new benches, except that the regulatory authority may permit placement of such material at the site of the faceup as a means of disposing of excavated spoil when additional working space is needed to facilitate operations. Such placement of material shall be limited to minimize disturbance of land and to the hydrologic balance. Such fills shall be stabilized with vegetation and shall achieve a minimum static safety factor of 1.5. In no case shall the outslope exceed the angle of repose.

(2) Backfill and grade to the most moderate slope possible to eliminate any highwall along roads, mine entry faces or other areas. Slopes shall not exceed the angle of repose or such lesser slopes as required by the regulatory authority to maintain stability.

B. On approval by the regulatory authority and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed 20 feet unless specifically approved by the regulatory authority as necessary for stability erosion control or roads.

(2) The vertical distance between terraces shall be as specified by the regulatory authority to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely

resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on the terrace only when approved by the regulatory authority.

C. All surface operations on steep slopes of 20 degrees or more or on such lesser slopes as the regulatory authority define as a steep slope shall be conducted so as not to place any material on the downslope below road cuts, mine working or other benches, other than in conformance with Paragraph (a)(1) [now Paragraph 1 of Subsection A of 19.8.36.39 NMAC] of this Part.

D. Regrading or stabilizing rills and gullies. When rills or gullies deeper than 9 inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade or otherwise stabilize the rills and gullies and reseed or replant the areas according to Section 717.20. The regulatory authority shall specify that erosional features of lesser size be stabilized if they result in additional erosion and sedimentation.

E. Covering coal and acid-forming, toxic-forming, combustible and other waste materials; stabilizing backfilled materials; and using waste material for fill. Any acid-forming, toxic-forming, combustible materials, or any other waste materials as identified by the regulatory authority that are exposed, used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with Section 717.15 of this Part, be covered with a minimum of 4 feet of non-toxic and non-combustible material; or, if necessary, treated to neutralize toxicity, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the regulatory authority shall specify thicker amount of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of Section 717.17 of this Part.

F. Grading along the contour. All final grading, preparation of earth, rock and other nonwaste materials before replacement of topsoil, and placement of topsoil in accordance with Section 717.20 shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators, grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

[Recompiled 6/4/02]

19.8.36.40 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS: DISPOSAL OF EXCESS ROCK AND EARTH MATERIALS ON SURFACE AREAS (717.15):

Excess rock and earth materials produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be placed in surface disposal areas in accordance with requirements of Section 715.15. Where the volume of such material is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment the regulatory authority may modify the requirements of Section 715.15 in accordance with Section 717.14(a)(1).

[Recompiled 6/4/02]

19.8.36.41 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS: PROTECTION OF THE HYDROLOGIC SYSTEM (717.17):

The permittee shall plan and conduct underground coal mining and reclamation operations to minimize disturbance of the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining operations, both on and off site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized and applicable Federal and State statutes and regulations shall not be violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize underground coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities prior to discharge to surface waters. Practices to control and minimize pollution include, but are not limited to, diverting water from underground workings or preventing water contact with acid or toxic-forming materials, and minimizing water contact time with waste materials, maintaining mine barriers to enhance postmining inundation and sealing, establishing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, and lining drainage channels. If treatment is required to eliminate pollution of surface or ground waters, the permittee shall operate and maintain the necessary water treatment facilities as set forth in this section.⁴ (4The standards in Section 717.17(a) will be enjoined to the extent that they supersede, amend, repeal or modify the provisions of the Federal Water Pollution Control Act and its regulations.

A. Water quality standards and effluent limitations. All surface drainage from the disturbed areas, including disturbed areas that have been graded, seeded or planted and which remain subject to the requirements of this section, except for drainage from disturbed areas that have met the requirements of Section 717.20 shall be passed through a sedimentation pond or a series of sedimentation ponds prior to leaving the permit area. All waters which flow or are removed from underground operations or underground waters which are removed from other areas to facilitate mining and which discharge to surface waters must be passed through appropriate treatment facilities

prior to discharge where necessary to meet effluent limitations. For purposes of this section only, disturbed areas shall include areas of surface operations but shall not include those areas in which only diversion ditches, sedimentation ponds or roads are installed in accordance with this section and the upstream area is not otherwise disturbed by the permittee. Disturbed areas shall not include those surface areas overlying the underground working unless those areas are also disturbed by surface operations such as fill (disposal) areas, support facilities areas or other major activities which create a risk of pollution. The regulatory authority may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. Sedimentation ponds required by this paragraph shall be constructed in accordance with Paragraph (e) [now Subsection E of 19.8.36.41 NMAC] of this Section in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by underground operation and by surface operation and reclamation activities conducted thereon, must meet all applicable federal and state regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS IN MILLIGRAMS PER LITER

mg/l, Except For pH

		Average of daily values for
30		
Effluent characteristics discharge days ¹	Maximum Allowable ¹	consecutive
Iron, total _ _ _ _ _	7.0	3.5
Manganese, total _ _ _	4.0	2.0
Total suspended solids pH ²	70.0	35.0
Within the range 6.0 to 9.0 _ _ _ _ _		

¹ Based on representative sampling.

² Where the application of neutralization and sedimentation treatment technology results in inability to comply with the manganese limitations set forth, the regulatory authority may allow the pH level in the discharge to exceed to a small extent the upper limit of 9.0 in order that the manganese limitations will be achieved.

(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than the 10-year 24-hour frequency event will not be subject to the effluent limitations of paragraph (a) [Subsection A of 19.8.36.41 NMAC].

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state regulations or the limitations of Paragraph (a) [now Subsection A of 19.8.36.41 NMAC]. If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the regulatory authority shall be installed, operated and maintained. If the regulatory authority finds that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and the mine normally produces less than 500 tons of coal per day, the regulatory authority can approve the use of a manual system if the permittee agrees to ensure that consistent and timely treatment is carried out.

B. Surface water monitoring.

(1) The permittee shall submit for approval by the regulatory authority a surface water monitoring program which meets the following requirements:

(a) Provides adequate monitoring of all discharge from the disturbed area and from the underground operations.

(b) Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of flow, pH, total iron, total manganese and total suspended solids and as requested by the regulatory authority, any other parameter characteristic of the discharge.

(c) Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

(d) Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136.

(e) Provides regular reports of all measurements to the regulatory authority within 60 days of sample collection unless violations of permit conditions occur in which case the regulatory authority shall be notified immediately after receipt of analytical

results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with section 301 of the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. Section 1311), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the regulatory authority to satisfy the reporting requirements if the data meet the frequency and other requirements of this paragraph.

(2) Equipment, structures or other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained and operated and shall be removed when no longer required.

C. Diversion and conveyance of overland flow away from disturbed areas. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, as required or approved by the regulatory authority, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met for such diversions:

(1) Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one year recurrence interval, or a larger event as specified by the regulatory authority. The design criteria must assure adequate protection of the environment and public during the existence of the temporary diversion structure.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the regulatory authority and other appropriate state and federal agencies. To protect fills and property, to prevent water from contacting toxic-producing deposits, and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a 100-year recurrence interval or a larger event as specified by the regulatory authority. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and they are approved by the regulatory authority.

(3) Diversions shall be designed, constructed and maintained in a manner so as to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, vegetation and roughness structures and detention basins.

D. Stream channel diversions. In the event that the regulatory authority permits diversion of streams, the regulations of Section 715.17(d) shall apply.

E. Sediment control measures⁵. Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. ⁵The standards in Section 717.17(e) will be preliminarily enjoined.

(1) Sediment control measures include practices carried out within and adjacent to the disturbed area. The scale of downstream practices shall reflect the degree to which successful techniques are applied at the sources of the sediment. Sediment control measures consist of the utilization of proper mining, reclamation methods and sediment control practices (singly or in combination) including but not limited to:

(a) Disturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading and timely revegetation;

(b) Consistent with the requirements of Sections 715.14 and 715.15 of this chapter shaping the backfill material to promote a reduction of the rate and volume of runoff;

(c) Retention of sediment within the pit and disturbed area;

(d) Diversion of overland and channelized flow from undisturbed areas around or in protected crossings through the disturbed area;

(e) Utilization of straw dikes, riprap, check dams, mulches, vegetative sediment filters, dugout ponds and other measures that reduce overland flow velocity, reduce runoff volume or entrap sediment;

(f) Sedimentation ponds.

(2) Sedimentation ponds may be used individually or in series, should be located as near as possible to the disturbed area and where possible out of major stream courses, and shall (either individually or in a series) meet the following criteria:

(a) Sedimentation ponds must provide 24 hour theoretical detention time for the inflow or runoff entering the pond(s) from a 10 year, 24-hour precipitation event. Runoff diverted, in accordance with Paragraphs (c) and (d) [now Subsections C and D of 19.8.36.41 NMAC] of this Section, away from the disturbed drainage areas need not be considered in sedimentation pond design. In determining the runoff volume the characteristics of the mine site, reclamation procedures and on-site sediment control practices shall be considered.

(b) Upon approval of the regulatory authority theoretical detention time may be reduced to not less than 10 hours, as demonstrated by the permittee, equal to the improvement in sedimentation removal efficiency as a result of pond design including

but not limited to pond configuration, inflow outflow facilities and their relative location, baffles to decrease inflow velocity and short circuiting, a surface area sufficient to achieve the sediment trap efficiency necessary to meet effluent limitations (Sec. 715.17 (a)) and sediment control measures provided in Section 715.17(e)(1).

(c) The regulatory authority may approve a detention time less than the time required by Paragraph (e) (2) (i) or (ii) [now Subparagraphs an or b of Paragraph 2 of Subsection E of 19.8.36.41 NMAC] of this Section, when the permittee has demonstrated that the size distribution or the specific gravity of the suspended matter or the utilization of chemical treatment or flocculation are such that the effluent limitations can be met. The detention time shall be stipulated.

(3) An additional sediment storage volume must be provided equal to 0.2 acre-feet for each acre of disturbed area within the upstream drainage area. Upon approval of the regulatory authority, the sediment storage volume may be reduced in an amount as demonstrated by the permittee equal to the sediment removed by other appropriate sediment control measures such as those identified in Paragraph (e)(1) [now Paragraph 1 of Subsection E of 19.8.36.41 NMAC] of this Section, or by lesser sediment yields as evidenced by empirical data for runoff characteristics.

(4) Ponds may be of the permanent pool or self-dewatering type. Dewatering-type ponds shall use siphon or other dewatering methods approved by the regulatory authority to prevent discharges of pollutants within the design flow.

(5) Spillway systems shall be properly located to maximize the distances from the point of inflow into the pond to maximize detention times. Spillway systems shall be provided to safely discharge the peak runoff from a precipitation event with a 25-year recurrence interval, or larger event as specified by the regulatory authority.

(6) Sediment shall be removed from sedimentation ponds so as to assure maximum sediment removal efficiency and attainment and maintenance of effluent limitations. Sediment shall be disposed of in a manner that minimizes adverse effects on surface waters due to its chemical and physical characteristics, on infiltration, vegetation or surface or ground water quality.

(7) If a sedimentation pond includes an embankment that is more than 20 feet in height, as measured from the downstream toe of the embankment to the top of the embankment or has a storage volume of 20 acre-feet or more, the following additional requirements shall be met:

(a) An appropriate combination of principal and emergency spillways shall be provided to safely discharge the runoff resulting from a 100-year-6-hour precipitation event, or larger event as specified by the regulatory authority.

(b) Ponds shall be designed and constructed with an acceptable static safety factor of at least 1.5 for the normal pool level to ensure embankment slope stability.

(c) The minimum top width of the embankment shall not be less than the quotient of $H+35/5$ where H is the height of the embankment as measured from the downstream toe to the top of the embankment.

(d) Ponds shall have appropriate barriers to control seepage along conduits that extend through the embankment.

(8) All ponds shall be designed and inspected under the supervision of, and certified after construction by a professional engineer registered in the state of New Mexico.

(9) All ponds, including those not meeting the size or other criteria of Section 77.216(a) of this title, shall be examined for structural weakness, erosion and other hazardous conditions in accordance with the inspection requirements contained in Section 77.216-3 of this title.

(10) All ponds shall be removed and the land affected regraded and revegetated consistent with the requirements of Sections 717.14 and 717.20.

F. Discharge structures. Discharges from sedimentation ponds and diversion structures shall be controlled, where necessary, using energy dissipators, surge ponds and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

G. Acid and toxic materials. Drainage to ground and surface waters which emanates from acid-forming or toxic-forming mine waste materials and spoils placed on the land surface shall be avoided by:

(1) Identifying, burying and treating where necessary, spoil or other materials that, in the judgment of the regulatory authority, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed in accordance with the provision of Section 717.14(e);

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within 30 days if such materials are subject to wind and water erosion or within a lesser period designated by the regulatory authority. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to Sections 717.17(g)(4) and 717.18 shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than 90 days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with Section 717.14(e) of this Part;

(5) Casing, sealings or otherwise managing boreholes, shafts, wells and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters or significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water-bearing strata shall be plugged permanently in a manner approved by the regulatory authority, unless boreholes have been approved for use in monitoring.

H. Ground water systems.

(1) Underground operations shall be conducted to minimize adverse effects on ground water flow and quality, and to minimize off-site effects. The permittee will be responsible for performing monitoring according to Subparagraph (2) [now Paragraph 2 of Subsection H of 19.8.36.41 NMAC] of this paragraph to ensure operations conform to this requirement.

(2) Ground water levels subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the regulatory authority to determine the effects of underground coal mining operations on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells which can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The regulatory authority may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the regulatory authority, additional hydrologic tests, such as aquifer tests, must be undertaken by the permittee to demonstrate compliance with Subparagraph (1) [now Paragraph 1 of Subsection H of 19.8.36.41 NMAC] of this Paragraph.

I. Water rights and replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

J. Hydrologic impact of roads.

(1) General. Access and haul roads and associated bridges, culverts, ditches and road rights-of-way shall be constructed, maintained and reclaimed so as to the extent possible, using the best technology currently available, prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable state or federal law. All haul and access roads shall be removed and the land affected shall be regraded and revegetated consistent with the requirements of Sections 717.14 and 717.20, unless

retention of a road is approved and assured of necessary maintenance to adequately control erosion.

(2) Construction.

(a) All roads, insofar as possible, shall be located on ridges or on flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the regulatory authority as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossings shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this Paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with Paragraph (d) [now Subsection D of 19.8.36.41 NMAC] of this Section.

(b) In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the regulatory authority to be necessary to control erosion:

(i) The overall sustained grade shall not exceed 1v:10h (10 percent).

(ii) The maximum grade greater than 10 percent shall not exceed 1v:6.5h (15 percent) for more than 300 feet.

(iii) There shall not be more than 300 feet of grade exceeding 10 percent within each 1,000 feet.

(c) All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains and ditch relief drains. For access and haul roads that are to be maintained for more than 1 year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a 10-year, 24-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of Paragraph (a) [now Subsection A of 19.8.36.41 NMAC] of this Section shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this section unless otherwise specified by the regulatory authority.

(d) Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the

essential width necessary for road and associated ditch construction and to serve traffic roads.

(3) Maintenance.

(a) Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

(b) Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(4) Access roads constructed for and used only to provide infrequent service to surface facilities, such as ventilators or monitoring devices shall be exempt from the requirements of Subparagraph (2) [now Paragraph 2 of Subsection J of 19.8.36.41 NMAC] of this Paragraph provided adequate stabilization to control erosion is achieved through use of alternative measures.

K. Hydrologic impacts of other transport facilities. Railroad loops, spurs, conveyors or other transport facilities shall be constructed, maintained and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available and to control other diminution or degradation of water quality and quantity. In no event shall contributions be in excess of requirements set by applicable state or federal law. Discharge of waters into underground mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

[Recompiled 6/4/02]

**19.8.36.42 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS:
DAMS CONSTRUCTED OF WASTE MATERIAL (717.18):**

A. General. No waste material shall be used in existing or new dams without the approval of the regulatory authority. The permittee shall design, locate, construct, operate, maintain, modify and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials in accordance with the requirements of this Section.

B. Construction of dams.

(1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis to have no adverse effect on stability.

(2) Plans for dams subject to this Section, and also including those dams that do not meet the size or other criteria of Section 77.216(a) of this title, shall be approved by the regulatory authority before construction and shall contain the minimum plan

requirements established by the mining enforcement and safety administration pursuant to Section 77.216-2 of this title.

(3) Construction requirements are as follows:

(a) Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than 100-year frequency may be approved by the regulatory authority.

(b) The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least 3 feet to avoid overtopping by wind and wave action.

(c) Dams shall have minimum safety factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction	1.3
II	Partial pool with steady seep-age saturation	1.5
III	Steady seepage from spillway or decant crest	1.5
IV	Earthquake (cases II and III with seismic loading)	1.0

(d) The dam, foundation and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in Paragraph (b)(3)(ii) [now Subparagraph b of Paragraph 3 of Subsection B of 19.8.36.42 NMAC] of this Section and for all increments of construction.

(e) Seepage through the dam, foundation and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution or erosion of material by loss into cracks, joints and cavities. This may require the use of impervious blankets, pervious drainage zones or blankets, toe drains, relief wells or dental concreting of jointed rock surface in contact with embankment materials.

(f) Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

(g) Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of 90 percent of the volume of water stored during the design precipitation event within 10 days.

(h) During construction of dams subject to this Section, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction the structure shall be certified by a professional engineer registered in the State of New Mexico, experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

(i) A permanent identification marker, at least 6 feet high that shows the dam number assigned pursuant to Section 77.216-1 of this title and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within 30 days of certification of design pursuant to this Section.

(4) All dams, including those not meeting the size or other criteria of Section 77.216(a) of this title, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with mining enforcement and safety administration regulations pursuant to Section 77.216-3 of this title.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this section shall be recertified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual recertification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding

structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the regulatory authority before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated and stabilized before the release of bond unless the regulatory authority approves retention of such dams as being compatible with an approved postmining land use (Section 715.13).

[Recompiled 6/4/02]

19.8.36.43 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS: TOPSOIL HANDLING AND REVEGETATION (717.20):

A. Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations such as roads and areas upon which support facilities are to be sited. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the regulatory authority to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed and revegetated.

B. The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted for native species if approved by the regulatory authority. Introduced species shall meet applicable State and Federal seed or introduced species statutes, and may not include poisonous or potentially toxic species.

[Recompiled 6/4/02]

19.8.36.44 UNDERGROUND MINING GENERAL PERFORMANCE STANDARDS: COAL EXPLORATION:

Prior to conducting any exploration, any person must file with the Director notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration; and provisions for reclamation in accordance with the performance standards in Section 19 of the Surfacemining Act of all lands substantially disturbed in exploration, including excavation, roads, drill holes and the removal of the necessary facilities and equipment.

[Recompiled 6/4/02]

19.8.36.45 APPROVED:

D.E. Gray

Chairman

New Mexico Coal Surfacemining Commission

CHAPTER 9: [RESERVED]

CHAPTER 10: NON-COAL MINING

PART 1: GENERAL PROVISIONS

19.10.1.1 ISSUING AGENCY:

New Mexico Mining Commission.

[2-15-96; 19.10.1.1 NMAC - Rn, 19 NMAC 10.2.1.100, 05-15-2001]

19.10.1.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[2-15-96; 19.10.1.2 NMAC - Rn, 19 NMAC 10.2.1.101, 05-15-2001]

19.10.1.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[2-15-96; 19.10.1.3 NMAC - Rn, 19 NMAC 10.2.1.102, 05-15-2001]

19.10.1.4 DURATION:

Permanent.

[2-15-96; 19.10.1.4 NMAC - Rn, 19 NMAC 10.2.1.103, 05-15-2001]

19.10.1.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[2-15-96, 12-14-96; 19.10.1.5 NMAC - Rn, 19 NMAC 10.2.1.104, 05-15-2001]

19.10.1.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[2-15-96, 12-29-2000; 19.10.1.6 NMAC - Rn, 19 NMAC 10.2.1.105, 05-15-2001]

19.10.1.7 DEFINITIONS:

A. Definitions with letter "A."

(1) "Acid/Acid Drainage" means water that is discharged from an area affected by mineral exploration, mining or reclamation, with a pH of less than 5.5 and in which total acidity exceeds total alkalinity as defined by the latest edition of Standard Methods for the Examination of Water and Wastewater.

(2) "Act" means the New Mexico Mining Act, Sections 69-36-1 through 69-36-20, NMSA 1978.

(3) "Affected area" means the area outside of the permit area where the land surface, surface water, ground water or air resources are impacted by mining operations within the permit area.

(4) "As-built drawings" means engineering drawings signed and sealed by a professional engineer registered in New Mexico which portray facilities as constructed and which the engineer certifies that the facility meets the requirements of the relevant rule.

B. Definitions with the letter "B." **[RESERVED]**

C. Definitions with the letter "C."

(1) "Commission" means the Mining Commission established in the Act.

(2) "Contaminated" means the presence of substances at concentrations exceeding state or federal standards as a result of mining exploration or reclamation.

D. Definitions with the letter "D."

(1) "Director" means the Director of the Division or his designee.

(2) "Disturbed area" means an area where the earth's surface is disturbed as a result of mining or activities facilitating mining.

(3) "Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

(4) "Division" means the Mining and Minerals Division of the Energy, Minerals and Natural Resources Department.

E. Definitions with the letter "E."

(1) "Ephemeral stream" means a stream or reach of a stream that flows briefly only in direct response to precipitation or snowmelt in the immediate locality; its channel bed is always above the water table of the region adjoining the stream.

(2) "Existing mining operation" means an extraction operation that produced marketable minerals for a total of at least two years between January 1, 1970 and June 18, 1993.

(3) "Exploration" means the act of searching for or investigating a mineral deposit, including sinking shafts, tunneling, drilling core and bore holes, digging pits, making cuts and other works for the purpose of extracting samples prior to commencement of development or extraction operations and the building of roads, access ways and other facilities related to such work; however, activities that cause no, or very little, surface disturbance, such as airborne surveys and photographs, use of instruments or devices that are hand carried or otherwise transported over the surface to perform magnetic, radioactive or other tests and measurements, boundary or claim surveying, location work or other work that causes no greater disturbance than is caused by ordinary lawful use of the area by persons not engaged in exploration are excluded from the meaning of "exploration."

F. Definitions with the letter "F." [RESERVED]

G. Definitions with the letter "G."

(1) "Ground cover" means foliar or basal area cover of living plant material, rock or litter.

(2) "Ground water" means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

H. Definitions with the letter "H." [RESERVED]

I. Definitions with the letter "I."

(1) "Important habitat" means vegetation, water and physical resources that are utilized by sensitive wildlife species or are critical to the survival or productivity of important wildlife populations.

(2) "Important wildlife" means wildlife populations determined by the Department of Game and Fish as having high recreational, ecological or commercial values.

(3) "Impoundment" means a basin constructed for the retention of water or sediment, but does not include impoundments for process solutions or tailings.

(4) "Intermittent stream" means a stream or reach of a stream that flows only at certain times of the year, such as when it receives flow from springs, melting snow, or localized precipitation.

J. Definitions with the letter "J." [RESERVED]

K. Definitions with the letter "K." [RESERVED]

L. Definitions with the letter "L."

(1) "Life zone of the surrounding area" means the climate, elevation and topography of the undisturbed environment in the locality of lands disturbed by mining.

(2) "Location work" means the minimum amount of labor or improvements required to establish a federal mining claim.

M. Definitions with the letter "M."

(1) "Mineral" means a nonliving commodity that is extracted from the earth for use or conversion into a saleable or usable product, but does not include clays, adobe, flagstone, potash, sand, gravel, caliche, borrow dirt, quarry rock used as aggregate for construction, coal, surface water or subsurface water, geo-thermal resources, oil and natural gas together with other chemicals recovered with them, commodities, byproduct materials and wastes that are regulated by the Nuclear Regulatory Commission or waste regulated under Subtitle C of the federal Resource Conservation and Recovery Act.

(2) "Minimal impact mining operation" means a mining operation or an exploration operation determined by the Director, in consultation with other state agencies, likely to have minimal environmental impact if operated and reclaimed in accordance with the approved permit. In making this determination, the Director shall, except as set forth in Subsection M, Paragraph 2, Subparagraph j of 19.10.1.7 NMAC exclude from minimal impact status operations with any of the characteristics:

(a) Located in or expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, reservoirs or riparian areas, except those excluded by 19.10.3.300 NMAC;

(b) Located in designated critical habitat areas as determined in accordance with the federal Endangered Species Act of 1973 or in areas determined by the Department of Game and Fish likely to result in an adverse impact on an endangered species designated in accordance with the Wildlife Conservation Act, Sections 17-2-37 through 17-2-46 NMSA 1978 or by the State Forestry Division for the Endangered Plants Act, Section 75-6-1 NMSA 1978;

(c) Located in an area with cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties;

(d) Having or expected to have a direct impact on ground water that has a total dissolved solids concentration of less than 10,000 mg/l, except exploratory drilling intersecting ground water may be performed as a minimal impact operation;

(e) Expected to use or using cyanide, mercury amalgam, heap leaching or dump leaching in its operations;

(f) Located in a known cemetery or other burial ground;

(g) Located in an area designated as a Federal Wilderness Area, Wilderness Study Area, Area of Critical Environmental Concern, or an area within the National Wild and Scenic River System;

(h) Expected to result in point or non-point source surface or subsurface releases of acid or other toxic substances from the permit area; or

(i) Requiring a variance from any element of these regulations as part of the permit application.

(j) The Director may determine that an operation with any of the characteristics set forth in Subsection M, Paragraph 2, Subparagraphs a through d of 19.10.1.7 NMAC may qualify for minimal impact status, if the Director finds the operation is likely to have minimal environmental impact if operated and reclaimed in accordance with the approved permit. In making this determination, the Director shall:

(i) obtain written concurrence from the Secretary of the Environment Department for a waiver of characteristics in Subsection M, Paragraph 2, Subparagraphs a or d of 19.10.1.7 NMAC;

(ii) obtain written concurrence from the Director of the Department of Game and Fish for a waiver of any portion of characteristic in Subsection M, Paragraph

2, Subparagraph b of 19.10.1.7 NMAC that does not apply to the State Forestry Division; and

(iii) obtain written consultation from and cooperate with the Office of Cultural Affairs for a waiver of characteristics in Subsection M, Paragraph 2, Subparagraph c of 19.10.1.7 NMAC.

(k) In addition, where interrelated mining operations are located in close proximity to each other, the Director may determine to issue one permit for all the operations which may eliminate these operations from consideration as minimal impact operations. In determining whether or not the operations are interrelated, the Director shall look for common owners or operators, immediate family members as owners or operators, related corporations as owners or operators or other common, reliable indicators of interrelated operations.

(3) "Mining" means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. "Mining" does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal Nuclear Regulatory Commission.

N. Definitions with the letter "N." "New mining operation" means a mining operation that engages in a development or extraction operation after June 18, 1993 and that is not an existing mining operation.

O. Definitions with the letter "O." "Obtaining useful minerals" does not include the recovery of minerals from previously disposed or abandoned mining wastes when the Director determines the following:

(1) that those wastes are removed from a location that does not require a permit under the Act;

(2) the wastes are removed pursuant to a plan approved by appropriate Federal or State authorities for mitigating and controlling adverse environmental impacts from the wastes and from the removal activities; and

(3) the wastes are taken to a facility appropriately permitted for processing.

P. Definitions with the letter "P."

(1) "Perennial stream" means a stream or reach of a stream that flows continuously throughout the year in all years; its upper surface, generally, is lower than the water table of the region adjoining the stream.

(2) "Permit-by-rule" means an authorization to engage in mining activities without obtaining an individual permit under this Act provided that the conditions specified in Subsection B of 19.10.3.301 NMAC are met.

(3) "Permit area" means the geographical area defined in the permit for a new mining operation or for an existing mining operation on which mining operations are conducted or cause disturbance

(4) "Permittee" is the person or entity issued the permit by the Director, or required to have a permit under the Mining Act.

(5) "Post-mining land use" means a beneficial use or multiple uses which will be established on a permit area after completion of a mining project. The post-mining land use may involve active management of the land. The use shall be selected by the owner of the land and approved by the Director. The uses which may be approved as post-mining land uses may include agricultural, commercial or ecological uses that would ensure compliance with Federal, State or local laws, regulations and standards and which are feasible. Approved post-mining land use categories include, but are not limited to:

(a) cropland

(b) pasture land or land occasionally cut for hay

(c) grazing land

(d) forestry

(e) residential

(f) industrial/commercial

(g) recreation or tourism

(h) wildlife habitat

(i) developed water resources

(j) scientific or educational

(6) "Precipitation event" means an event with a specified frequency of return and specified period of duration as defined in "Precipitation-Frequency Atlas of the Western United States," vol. IV-New Mexico.

Q. Definitions with the letter "Q." "Quarry rock used as aggregate in construction" means rock extracted from a surface mine which is actually used in construction. Construction use includes building materials, landscaping, erosion control and stabilization and road maintenance activities.

R. Definitions with the letter "R."

(1) "Reclamation" means the employment during and after a mining operation of measures designed to mitigate the disturbance of affected areas and permit areas and to the extent practicable, provide for the stabilization of a permit area following closure that will minimize future impact to the environment from the mining operation and protect air and water resources.

(2) "Revision" means a modification to a permit that has a significant environmental impact and requires public notice and an opportunity for public hearing.

(3) "Riparian area" means a geographically delineated area with distinct resource values, that is characterized by plant species that depend on having roots in the water table or its capillary zone and that occurs within or adjacent to a perennial or intermittent stream, lake, pond, spring, or marsh bed maintained by natural water sources. For the purposes of 19.10 NMAC, "Riparian area" does not include areas in or adjacent to man-made bodies of water which neither were originally created in a natural watercourse nor resulted in an impoundment of a natural watercourse.

S. Definitions with the letter "S."

(1) "Safeguard" means to restrict, to the extent practicable, entrance or access by unauthorized persons to mine shafts, adits, pits, highwalls or other hazardous areas created by the operator or owner of a mining operation in order to reduce the possibility of accidents.

(2) "Self-sustaining ecosystem" means reclaimed land that is self-renewing without augmented seeding, amendments, or other assistance which is capable of supporting communities of living organisms and their environment. A self-sustaining ecosystem includes hydrologic and nutrient cycles functioning at levels of productivity sufficient to support biological diversity.

(3) "Sensitive wildlife species" means a species that has been identified by federal or state agencies pursuant to the Endangered Species Act of 1973 or the Wildlife Conservation Act, Sections 17-2-37 through 17-2-46 NMSA 1978, as requiring special protection to maintain its continued existence throughout all or a significant portion of its range.

(4) "Stabilize" means to control movement of soil or areas of disturbed earth by modifying the landform, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating or vegetation.

(5) "Standby status" means the permitted temporary cessation of a mining operation which is expected to resume.

T. Definitions with the letter "T."

(1) "Topdressing" means geological material and other amendments capable of supporting vegetation.

(2) "Topsoil" means the "A" soil horizon or other soil material capable of supporting vegetation.

U. Definitions with the letter "U." "Unit" means a component of a mining operation including but not limited to processing, leaching, excavation, storage, stockpile or waste units.

V. Definitions with the letter "V." [RESERVED]

W. Definitions with the letter "W."

(1) "Wetlands" means those areas which are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. For the purposes of 19.10 NMAC, "wetlands" does not include areas in or adjacent to man-made bodies of water which neither were originally created in a natural watercourse nor resulted in an impoundment of a natural watercourse.

(2) "Wildlife" means all wild birds, fish, mammals, mollusks, reptiles, amphibians and crustaceans.

X. Definitions with the letter "X." [RESERVED]

Y. Definitions with the letter "Y." [RESERVED]

Z. Definitions with the letter "Z." [RESERVED]

[7-12-94, 11-15-95, 2-15-96, 12-29-2000; 19.10.1.7 NMAC - Rn, 19 NMAC 10.2.1.107, 05-15-2001]

19.10.1.8-19.10.1.199 [RESERVED]:

[19.10.1.8 - 19.10.1.199 NMAC - N, 05-15-2001]

PART 2: FEES

19.10.2.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.2.1 NMAC - N, 05-15-2001]

19.10.2.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.2.2 NMAC - N, 05-15-2001]

19.10.2.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.2.3 NMAC - N, 05-15-2001]

19.10.2.4 DURATION:

Permanent.

[19.10.2.4 NMAC - N, 05-15-2001]

19.10.2.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.2.5 NMAC - N, 05-15-2001]

19.10.2.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.2.6 NMAC - N, 05-15-2001]

19.10.2.7 DEFINITIONS:

[RESERVED]

[19.10.2.7 NMAC - N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.2.8-19.10.2.200 [RESERVED]:

[19.10.2.8 - 19.10.2.200 NMAC - N, 05-15-2001]

19.10.2.201 APPLICATION FEES:

Applications filed with the director shall be accompanied by a fee determined under the following schedule:

A. The permit application fee for an existing mining operation shall be determined by adding:

- (1)** \$1,000.00 base fee;
- (2)** \$15.00 per acre for the first 50 acres of land expected to be disturbed over the life of the mine (design limits) for surface disturbance, plus \$5.00 per acre for all such land over 50 acres;
- (3)** a fee determined in accordance with 19.10.2.203 NMAC; and
- (4)** if a closeout plan is submitted with the initial application, an additional fee will be assessed in accordance with Subsection K of 19.10.2.201 NMAC.

B. The permit application fee for a new mining operation shall be determined by adding:

- (1)** \$5,000.00 base fee;
- (2)** \$200.00 per acre for the first 50 acres of land expected to be disturbed over the life of the mine (design limits) for surface disturbance, plus \$40.00 per acre for all such land over 50 acres;
- (3)** a fee determined in accordance with 19.10.2.203 NMAC; and
- (4)** in addition, any cost associated with the preparation of an environmental evaluation by a third party shall be paid for by the applicant.

C. The initial application fee for an existing minimal impact mining operation is \$250.00. If a closeout plan is submitted with the initial application, an additional fee of \$250.00 will be assessed.

D. The initial application fee for a new minimal impact mining operation is \$1,000.00.

E. The fee for an exploration permit is \$1,000.00.

F. The fee for a minimal impact exploration permit is \$500.00.

G. The fee for transferring a permit is \$250.00.

H. The fee is \$1,000.00 for a non-minimal impact operation permit modification which is not a revision.

I. The fee for a minimal impact operation modification is \$250.00.

J. The fee for each permit revision, excluding revisions for closeout plans, is \$5,000.00.

K. The fee for a permit revision for a closeout plan for an existing mining operation shall be determined by the following table. Acreage calculations must be based on total existing and proposed disturbance as described in the closeout plan.

(1)	> 0 to 10 acres	\$750
(2)	> 10 to 30 acres	\$1,500
(3)	> 30 to 100 acres	\$3,000
(4)	> 100 to 300 acres	\$4,500
(5)	> 300 to 3,000 acres	\$6,000
(6)	> 3,000 to 10,000 acres	\$7,500
(7)	> 10,000 acres	\$9,000

L. The fee for a permit modification for a closeout plan for a minimal impact existing mine is \$250.00.

M. The fee for each application for a variance is \$500.00.

N. The director may waive application fees for a variance, modification, revision, or transferring a permit that requires little or no cost for investigation and issuance.

O. The application fee to determine whether a mine or a portion of a mine qualifies for prior reclamation is \$250.00. The fee shall be paid at the time an inspection is requested.

[7-12-94, 11-15-95, 12-15-95, 2-15-96; 19.10.2.201 NMAC - Rn, 19 NMAC 10.2.2.201, 05-15-2001; A, 03-16-09]

19.10.2.202 ANNUAL FEES:

A. The annual fee for an existing mining operation shall be determined by adding:

- (1) \$800.00 base fee;
- (2) \$15.00 per acre for the first 50 acres of currently disturbed surface land plus \$3.00 per acre for all disturbed land over 50 acres;
- (3) a fee determined in accordance with 19.10.2.203 NMAC;
- (4) a surcharge of 75% shall be added to the total annual fees for mining operations that have 500 acres or more disturbed area in their permit as defined in Paragraph (2) of Subsection D of 19.10.1.7 NMAC; substantially reclaimed acreage as defined in Paragraph (1) of Subsection F of 19.10.2.202 NMAC will not be counted as disturbed acreage for purposes of this paragraph;
- (5) a surcharge of 50% shall be added to the total annual fees for existing mining operations that did not obtain an extension in accordance with Subsection D of 19.10.5.501 NMAC and have not obtained closeout plan approval; and
- (6) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before April 30th of each year until all Mining Act requirements are met.

B. The annual fee for the new mining operation shall be determined by adding:

- (1) \$1,000.00 base fee;
- (2) \$30.00 per acre for the first 50 acres of currently disturbed surface land plus \$10.00 per acre for all disturbed land over 50 acres;
- (3) a fee determined in accordance with 19.10.2.203 NMAC; and
- (4) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before April 30th of each subsequent year following initial submittal of a permit application.

C. The annual fee for a minimal impact existing mining operation shall be \$250.00. This fee shall be due on or before April 30th of each year following initial submittal of permit application.

D. The annual fee for a minimal impact new mining operation shall be \$250.00. This fee shall be due on or before April 30th of each year following initial submittal of permit application.

E. Formula for reducing fees for substantially reclaimed acreage.

(1) For the purposes of 19.10.2 NMAC, "substantially reclaimed" means financial assurance has been released pursuant to 19.10.12.1210 NMAC except the amount to establish revegetation pursuant to Subsection A of 19.10.12.1204 NMAC.

(2) For the purposes of 19.10.2 NMAC, the total annual pre-reclamation fee is the total annual fee calculated assuming no reclamation has taken place.

(3) Base fees, disturbance fees and facility fees calculated pursuant to Subsection A of 19.10.2.202 NMAC or Subsection B of 19.10.2.202 NMAC shall be reduced in proportion to the area substantially reclaimed as compared to the total pre-reclamation fee but shall not be reduced to less than 60 percent of the total annual pre-reclamation fee. Formula for fee calculation: Fee owed = pre-reclamation fee - (AR/AT) * (pre-reclamation fee), where AT = total acreage and AR = reclaimed acreage.

[7-12-94, 11-15-95, 2-15-96, 5-31-97, 6-30-99, 12-29-2000; 19.10.2.202 NMAC - Rn, 19 NMAC 10.2.2.202, 05-15-2001; A, 05-31-2001; A, 04-30-03; A, 12-30-05; A, 03-16-09; A, 2-15-12; 12-13-13]

19.10.2.203 ASSESSMENT OF FACILITY-RELATED FEES:

A. The following table is used to calculate the portion of the fee based on certain types of facilities. These tables reflect the complexity of an operation. A facility fee in each applicable category will be assessed based on total acreage for all facilities of that type.

B. This portion of permit application and annual fees for existing and new mining operations shall be the sum of the costs within each of the following categories of fees applicable to the operation: Application Fees. For existing and new mine initial application fees, when determining acreages of facilities in the following categories, the total acreage identified as current and future sites (design limits) of these facilities is counted. Annual Fees. For existing and new mine annual fees, when determining acreages of facilities in the following categories, cumulative acreage disturbed up to June 30 of the current fee year will be counted.

Facility

Fee

(1) Open Pit Mine

(a) > 0 to 4 acres	\$500
(b) > 4 to 10 acres	\$1,000
(c) > 10 to 50 acres	\$2,500
(d) > 50 to 100 acres	\$5,000
(e) > 100 acres	\$7,500

(2) Tailings

(a) > 0 to 4 acres	\$500
(b) > 4 to 10 acres	\$1,000
(c) > 10 to 50 acres	\$2,500
(d) > 50 to 100 acres	\$5,000
(e) > 100 acres	\$7,500

(3) Waste Dumps

(a) > 0 to 4 acres	\$500
(b) > 4 to 10 acres	\$1,000
(c) > 10 to 50 acres	\$2,500
(d) > 50 to 100 acres	\$5,000
(e) > 100 acres	\$7,500

(4) Plant Site

(a) > 0 to 4 acres	\$500
(b) > 4 to 10 acres	\$1,000
(c) > 10 to 50 acres	\$2,500
(d) > 50 to 100 acres	\$5,000

(e) > 100 acres	\$7,500
(5) Leach Piles	
(a) > 0 to 4 acres	\$500
(b) > 4 to 10 acres	\$1,000
(c) > 10 to 50 acres	\$2,500
(d) > 50 to 100 acres	\$5,000
(e) > 100 acres	\$7,500

[7-12-94, 11-15-95, 2-15-96; 19.10.2.203 NMAC - Rn, 19 NMAC 10.2.2.203, 05-15-2001]

19.10.2.204 PAYMENT:

A. Payments shall be in cash or check made payable to the Mining and Minerals Division and received by the Division on or prior to the date due. The Division shall deposit the payment with the state treasurer in the Mining Act Fund.

B. This fee schedule applies to all permit applications submitted after July 12, 1994. Permit fees submitted pursuant to Subsection A of 19.10.2.201 NMAC filed July 12, 1994 shall satisfy the requirement of Subsection A of 19.10.2.201 NMAC. Previously submitted fees exceeding those required under Subsection A of 19.10.2.201 NMAC shall be credited to annual fees for that operation.

[7-12-94, 12-15-95, 2-15-96; 19.10.2.204 NMAC - Rn, 19 NMAC 10.2.2.204, 05-15-2001]

19.10.2.205 LATE FEES:

A late fee shall be charged for fees that are paid after the due date of April 30th, each year. The late fee shall consist of (i) \$100 to cover administrative costs associated with the late payment and (ii) interest on the amount of the unpaid fees at an annual rate of fifteen percent (15%), compounded daily. The late fee will be applied to the mining act fund that is created by Section 69-36-19 of the New Mexico Mining Act.

[11-15-95, 12-15-95, 2-15-96, 5-31-97, 6-30-99; 19.10.2.205 NMAC - Rn, 19 NMAC 10.2.2.205, 05-15-2001; A, 12-28-01; A, 04-30-03; 19.10.2.205 NMAC - N, 2-15-12]

19.10.2.206 SURCHARGE FOR DEPARTMENT OF GAME AND FISH ACTIVITIES:

A. To compensate the department of game and fish for its costs required to implement its involvement in implementing the act, a percentage surcharge shall be added in the same percentage to each of the above application and annual fees. This surcharge shall be 4.5 percent of fees collected in FY 96 to be used in FY 97 and FY 98. This surcharge shall be 4.2 percent of fees collected in FY 98 and FY 99, to be used in FY 99 and FY 2000. This surcharge shall be 3.2 percent of fees collected in FY2000 to be used in FY 2001. No percentage surcharge shall be assessed in FY 2001 or FY 2002; instead, the balance of the surcharges assessed during FY 1996 through FY 2002 shall be used in FY 2002, FY 2003, FY 2004, FY 2005 and FY 2006.

B. Payment. On a quarterly basis, the director shall reimburse the department of game and fish, only from this surcharge, for its reasonably necessary costs incurred under the department's involvement with implementation of the act.

[19.10.2.206 NMAC - Rn, 19.10.2.205 NMAC, 2-15-12]

PART 3: MINIMAL IMPACT OPERATIONS

19.10.3.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.3.1 NMAC - N, 05-15-2001]

19.10.3.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.3.2 NMAC - N, 05-15-2001]

19.10.3.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.3.3 NMAC - N, 05-15-2001]

19.10.3.4 DURATION:

Permanent.

[19.10.3.4 NMAC - N, 05-15-2001]

19.10.3.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.3.5 NMAC - N, 05-15-2001]

19.10.3.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.3.6 NMAC - N, 05-15-2001]

19.10.3.7 DEFINITIONS:

[RESERVED]

[19.10.3.7 NMAC - N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.3.8-19.10.3.299 [RESERVED]:

[19.10.3.8 - 19.10.3.299 NMAC - N, 05-15-2001]

19.10.3.300 EXCLUSION:

Prospectors, gold panners and rock collectors causing no or very little surface disturbance with their activities are excluded from the requirements of the Act and 19.10 NMAC pursuant to the definition of "Exploration," in 19.10.1 NMAC. Excavation(s) by one operator totaling greater than 2 cubic yards per year or the use of mechanized mining equipment, including mechanized sluices or dredges, are not eligible for this exclusion.

[7-12-94, 2-15-96, 12-14-96; 19.10.3.300 NMAC - Rn, 19 NMAC 10.2.3.300, 05-15-2001]

19.10.3.301 GENERAL PERMITS:

A. Validity:

(1) Operators must have a valid permit prior to commencing operations.

(2) A general permit for operations not occurring in intermittent streams, perennial streams or other bodies of water is valid for a period of one year once the applicant has submitted a signed copy of the general permit application to the director.

(3) For general permit operations occurring in intermittent streams, perennial streams or other bodies of water, the permit is valid for a period of one year once the applicant submits a signed copy of the general permit to the director and the environment department sends the director a copy of a certification from the environment department stating that water quality standards are expected to be met if the operation is conducted as described.

(4) General permits must be submitted for renewal at least 10 days prior to expiration.

B. Mining operations not occurring in intermittent streams, perennial streams or other bodies of water may apply to the director for a general permit if they meet the following requirements:

(1) the operation does not have any of the disqualifying characteristics listed in Subsection M, Paragraph (2), Subparagraphs (a) through (i) of 19.10.1.7 NMAC;

(2) not excavate greater than 200 cubic yards per year, with no more than 25 cubic yards and no more than 2 acres of unreclaimed surface disturbance at any time with all new disturbances including roads included in these amounts; for the purposes of this paragraph "unreclaimed" means the failure to meet the commitments of Subsection D, Paragraph (2), Subparagraphs (b) through (d) of 19.10.3.301 NMAC; and

(3) not cause a discharge of process water or drilling mud.

C. Mining operations occurring in intermittent streams, perennial streams or other bodies of water may apply to the director for a general permit if they meet the following requirements:

(1) the operation does not have any of the disqualifying characteristics listed in Subsection M, Paragraph (2), Subparagraphs (b) through (i) of 19.10.1.7 NMAC;

(2) not excavate greater than 2 cubic yards per day and 100 cubic yards per year;

(3) maintain a distance of at least 50 yards from other mining operations;

(4) not excavate into stream banks; and

(5) not drill.

D. An application for a general permit shall be on the form approved by the director and will include the following:

- (1)** the name and address of the operator, and location of the operation;
- (2)** a commitment from the applicant to comply with the following requirements:
 - (a)** not to exceed the applicable characteristics of Subsection B of 19.10.3.301 NMAC or Subsection C of 19.10.3.301 NMAC;
 - (b)** regrade the disturbed area to blend into and compliment the drainage pattern of the surrounding terrain upon cessation of operations;
 - (c)** revegetate the disturbed area with a seed mix appropriate for the surrounding area upon cessation of operations;
 - (d)** minimize erosion and sedimentation by use of best management practices;
 - (e)** safeguard against hazards to the health and safety of humans and domestic animals;
 - (f)** agree that the operation is subject to the inspection, enforcement and penalty provisions of 19.10.11 NMAC;
 - (g)** provide information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" Subsection M, Paragraph (2) of 19.10.1.7 NMAC or achieve reclamation;
 - (h)** agree to complete the requirements of Subsection D, Paragraph 2, Subparagraphs b through e of 19.10.3.301 NMAC prior to expiration of the permit; and
 - (i)** comply with applicable state and federal requirements and standards; and
- (3)** a signed statement by the operator agreeing to allow the director to inspect the operation, and to follow the terms of the general permit.

E. Operations meeting the general permit provisions are not required to provide financial assurance. An application fee of \$50.00 is required. General permit inspections are at the discretion of the director.

F. Operations not excluded from the act or not eligible for a general permit must meet the requirements of the definition of "minimal impact mining operation" in 19.10.1.7 NMAC in addition to the specific requirements set forth below for each type of operation in order to be granted minimal impact status. If the operation does not meet

minimal impact status it must be permitted in accordance with 19.10.4 NMAC, 19.10.5 NMAC or 19.10.6 NMAC.

[7-12-94, 2-15-96, 12-14-96, 12-29-2000; 19.10.3.301 NMAC - Rn, 19 NMAC 10.2.3.301, 05-15-2001; A, 05-31-2001]

19.10.3.302 MINIMAL IMPACT EXPLORATION OPERATIONS:

A. A minimal impact exploration operation will not exceed 1000 cubic yards of excavation per permit. Disturbances for constructed roads, drill pads and mud pits shall be no more than 5 acres total and will not be counted in the excavated materials. The type of road construction, the number and type of drill pads, and other disturbances when considered with site specific conditions will be major factors in determining eligibility for minimal impact status which is in the discretion of the director.

B. Timing of applications and deadlines for approval for minimal impact exploration operations must be in accordance with 19.10.4.401 NMAC, except that a complete application for minimal impact exploration operations shall be submitted not less than 45 days prior to the anticipated date of commencement of operations.

C. An applicant for a minimal impact exploration operation permit shall submit six copies of a completed application on a form provided by the director. If the proposed operation is on federal land, information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.4.402 NMAC.

D. The application shall include the following information:

(1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;

(2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on the permit area; areas and types of proposed disturbances shall be indicated; the anticipated dimensions of each proposed disturbance shall also be provided;

(3) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(4) a general description of the minerals sought and the methods of exploration; any chemicals to be used on site must be identified;

(5) an estimate of depth to ground water and total dissolved solids concentration; and

(6) a general description of how the operation will be operated and reclaimed to meet the requirements of reclamation, as defined in 19.10.1.7 NMAC.

E. The application must be accompanied by the permit fee as required by 19.10.2 NMAC.

F. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

G. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.4.402 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection F of 19.10.4.402 NMAC which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making a determination of eligibility for minimal impact status.

H. The director shall determine if an operation is eligible for a minimal impact operation permit and may conduct a site visit in making this determination.

I. No permit for a minimal impact exploration operation will be issued until the director finds the following:

(1) the application is complete and demonstrates that the proposed operation and reclamation will meet the requirements of reclamation, as defined in 19.10.1.7 NMAC; reclamation of the disturbed area will be initiated as soon as possible, and will be completed within the permit term unless the disturbed area is included within a complete permit application for a new mining operation;

(2) the applicant has paid the permit fee determined by 19.10.2 NMAC;

(3) the applicant has signed a statement indicating he agrees to comply with the reclamation requirements of the permit, 19.10 NMAC, and the act and allows the director to enter the permit area, without delay, for the purpose of conducting inspections during exploration and reclamation;

(4) the applicant has certified he is not in violation of the New Mexico Mining Act or 19.10 NMAC; and

(5) the applicant has provided satisfactory financial assurance in an amount determined by the director; acceptable forms of financial assurance are limited to surety bonds, letters of credit or cash accounts described in 19.10.12.1208 NMAC.

J. The term of a permit for a minimal impact exploration operation is governed by Subsections A, C and D of 19.10.4.405 NMAC. Modifications to the permit are governed by 19.10.4.406 NMAC. A termination report pursuant to 19.10.4.407 NMAC is also required at the conclusion of an exploration operation not being renewed, unless the permittee has applied for a mining operation permit.

K. Reclamation of the disturbed area shall be initiated as soon as possible and completed in accordance with the schedule in the permit. Topsoil or topdressing material removal and stockpiling shall precede any excavation within the drill site area. All lands, including access roads or terrain damaged in gaining access to or clearing the site, or lands whose natural state has been substantially disturbed as a result of the exploration by drilling, shall be restored as nearly as possible to their original condition unless otherwise requested by the landowner and applicant and approved by the director. Where vegetation has been removed or destroyed within the permit area, vegetative cover shall be reestablished by seeding, planting, transplanting, or other adequate methods. All open mud pits shall be constructed in a manner to prevent wildlife entrapment, and shall be constructed to prevent any overflows. When drilling is completed, the mud pits shall be allowed to dry and then backfilled with native cover.

L. Each drill hole shall be plugged from total depth to within 2 feet of the original ground surface or the collar of the hole, whichever is lower, with a column of cement, high-density bentonite clay or other materials specified in the permit. If the approved plugging material is not cement, then the top ten feet of the column must be a cement plug. The hole shall be backfill with topdressing or topsoil from above the cement plug to the original ground surface. The hole shall be plugged as soon as practicable and satisfy the requirements of the state engineer and the New Mexico environment department for proper plugging of such holes. This plugging requirement may be waived if the state engineer issues a permit for a well for the exploration drill hole.

M. Financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of this section and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.3.302 NMAC - Rn, 19 NMAC 10.2.3.302, 05-15-2001; A, 04-30-09]

19.10.3.303 MINIMAL IMPACT EXISTING MINING OPERATIONS:

A. An existing mining operation that continues mining operations will not be considered a minimal impact existing mining operation if it exceeds 10 acres of disturbed land, or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations that: (1) are located outside Bernalillo, Dona Ana and Santa Fe counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Permanent roads and areas within the permit area that are reclaimed will not be counted as part of the acreage limitation for a minimal impact existing mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status. Notwithstanding the frequency for inspections of minimal impact mining operations specified in Paragraph (4) of Subsection A of 19.10.11.1101 NMAC, if a minimal impact operation permit is issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

B. A minimal impact existing mining operation that has discontinued or does not continue active mining operations may consist of unlimited acres of disturbed land; however, sites with the following characteristics will not be determined to be minimal impact operations:

(1) sites that exceed state or federal standards for soil or water contamination from mining activities that are subject to the act;

(2) sites likely to create acid mine drainage; or

(3) sites where the applicant proposes to seek a waiver from the usual reclamation requirements for a pit or waste unit.

C. Timing of applications and deadlines for approval for minimal impact existing mining operations must be in accordance with 19.10.5.501 NMAC or 19.10.5.511 NMAC.

D. An applicant for a minimal impact existing mining operation permit shall submit six copies of a completed application form provided by the director. If the proposed operation is on federal land, then information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information on the form provided by the director. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.5.502 NMAC. Any information that was submitted with the site assessment must be updated to reflect current conditions.

E. The application shall include the following information:

(1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;

(2) the location of the operation as shown on a topographic map which indicates the proposed permit area with the existing and proposed area of disturbance and gives the location of the following: the areas to be disturbed; perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on and within one-half mile of the permit area;

(3) a general description of the minerals sought, the methods of extraction, and any processing to be conducted on site; any chemicals to be used on site must be identified;

(4) an estimate of depth to ground water and total dissolved solids concentration;

(5) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(6) a closeout plan, whether submitted with the permit application or as a modification, shall include a general description of how the permit area will be reclaimed to a condition that allows for re-establishment of a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use; each closeout plan must be developed to meet the site-specific characteristics of the mining operations and the site; the closeout plan must specify incremental work to be done within specific time frames to accomplish the reclamation; and

(7) a list of other permits required for the operation, and the anticipated schedule for receipt of these; and

(8) information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" in Paragraph (2) of Subsection M of 19.10.1.7 NMAC or achieve reclamation.

F. The director shall determine the amount of financial assurance appropriate for each operation based on the cost of reclaiming the site by a third party. Operations less than 2 acres total disturbance are not required to provide financial assurance.

G. The application must be accompanied by the permit fee as required by 19.10.2 NMAC and a proposal for the required financial assurance.

H. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

I. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.5.502 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection E of 19.10.5.506 NMAC which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making his determination of eligibility for minimal impact status.

J. The director shall determine if an operation is eligible for a minimal impact operation permit. The director may conduct an evaluation or site visit which may include other agencies in making this determination for operations that do not exceed 10 acres of disturbance. In making this determination for operations with more than 10 acres of disturbance, the director shall conduct an on-site inspection which may include other agencies.

K. No permit for a minimal impact operation will be issued until the director finds the following:

(1) the application is complete and demonstrates the closeout plan will meet the performance and reclamation standards and requirements Paragraphs (5) and (6) of Subsection E of 19.10.3.303 NMAC or provides a schedule for submitting such a plan in the shortest time practicable;

(2) the applicant has paid the permit fee;

(3) the applicant has provided satisfactory financial assurance; and

(4) the applicant has signed a notarized statement that he agrees to comply with the requirements of the permit, 19.10 NMAC and the act and allows the director to enter the permit area for the purpose of conducting inspections.

(5) the secretary of environment has provided a written determination stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the closeout plan; this determination will address applicable standards for air, surface water and ground water protection enforced by the environment department or for which the environment department is otherwise responsible; the determination shall be made within the 20-day period provided in Subsection I of 19.10.3.303 NMAC, or the requirement is waived.

L. Modifications to a permit are allowed pursuant to 19.10.5.505 NMAC including modifications to incorporate a closeout plan. The term of a permit is governed by 19.10.5.504 NMAC. Annual reports are required for each permit pursuant to 19.10.5.510 NMAC.

[7-12-94, 2-15-96, 12-14-96; 19.10.3.303 NMAC - Rn, 19 NMAC 10.2.3.303, 05-15-01; A, 02-28-14; A, 05-31-16]

19.10.3.304 MINIMAL IMPACT NEW MINING OPERATIONS:

A. A minimal impact new mining operation will not exceed 10 acres of disturbed land, or 40 acres of disturbed land in the case of dolomite, garnet, humate, perlite and zeolite operations that: (1) are located outside Bernalillo, Dona Ana and Santa Fe counties; and (2) are committed to perform concurrent reclamation of disturbed areas to the extent practicable. Pre-existing roads and reclaimed acres within the permit area will not be counted as part of the acreage limitation for a minimal impact new mining operation. Reclaimed, for this purpose, means all financial assurance has been released, except the amount held to re-establish vegetation pursuant to Subsection A of 19.10.12.1204 NMAC. Construction of roads and access ways, the types of disturbances, and the applicant's previous history of compliance with the act and 19.10 NMAC will be major factors in the director's determination of minimal impact status. In determining whether a proposed operation with between 10 and 40 acres of disturbed land is eligible for a minimal impact new mining permit, the director shall conduct a site visit that may include other agencies in accordance with Subsection I of 19.10.3.304 NMAC. Notwithstanding the frequency for inspections of minimal impact mining operations specified in Paragraph (4) of Subsection A of 19.10.11.1101 NMAC, if a minimal impact operation permit is issued under this subsection for more than 10 acres of disturbance, the director shall conduct on-site inspections at least once per year during the term of the permit.

B. Timing of applications and deadline for approval for minimal impact new mining operations must be in accordance with 19.10.6.601 NMAC.

C. An applicant for a minimal impact new mining operation permit shall submit six copies of a completed application on a form to be provided by the director. If the proposed operation is on federal land, then the information submitted to the federal land management agency may be submitted with the application in lieu of providing duplicative information on the form provided by the director. Any confidential information shall be submitted separately in accordance with Subsection B of 19.10.6.602 NMAC.

D. The application shall include the following information:

(1) the name and address of the applicant, and if different, the name and address of the owner of the operation and the land; a statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation;

(2) the location of the proposed operation as shown on a topographic map which indicates the proposed permit area and gives the location of the following: the areas to be disturbed; perennial, intermittent and ephemeral streams; springs; wetlands, riparian areas, lakes and reservoirs; residences; existing and proposed roads; other access routes; support facilities; cemeteries; burial grounds; cultural resources listed on either the *national register of historic places* or the *state register of cultural properties*; pipelines; and oil, gas and water wells on and within 1/2 mile of the permit area;

(3) a listing of other environmental permits held by the applicant for other mining operations within the United States and any violations issued for non-compliance with those permits;

(4) a general description of the minerals sought, the methods of extraction, and any processing to be conducted on site; any chemicals to be used on site must be identified;

(5) an estimate of depth to ground water and total dissolved solids concentration;

(6) an explanation of why the proposed operation qualifies as a minimal impact operation in accordance with 19.10 NMAC;

(7) a general description of how the operation will meet the following performance standards:

(a) the mining and reclamation operation shall be designed and operated using the most appropriate technology and best management practices;

(b) the mining and reclamation operation shall assure protection of human health and safety, the environment, wildlife and domestic animals;

(c) measures will be taken to safeguard the public from unauthorized entry into shafts, adits and tunnels and to prevent falls from highwalls or pit edges; depending on site-specific characteristics, the following measures shall be required:

(i) closing shafts, adits or tunnels to prevent entry;

(ii) posting warning signs, and restricting access to hazardous areas;
and

(iii) posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies;

(d) the disturbed area shall not contribute suspended solids above background levels, or where applicable the water quality control commission's standards, to intermittent and perennial streams; and

(e) mining and reclamation operations shall be conducted to control erosion;

(8) a general description of how the operation will be operated and reclaimed to a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use;

(9) a list of other permits required for the operation, and the anticipated schedule for receipt of these; and

(10) information necessary to meet other requirements specified by the director which are necessary to meet the definition of "minimal impact mining operation" Paragraph (2) of Subsection M of 19.10.1.7 NMAC or achieve reclamation.

E. The director shall determine the amount of financial assurance appropriate for each operation based on the cost of reclaiming the site by a third party. Operations less than two acres total disturbance are not required to provide financial assurance.

F. The application must be accompanied by the permit fee as required by 19.10.2 NMAC and a proposal for the required financial assurance.

G. If the permit area includes state or federally-owned lands, no permit will be issued unless the appropriate land management agency has approved or acknowledged the proposed operation, if such approval or acknowledgement is required by the agency's rules.

H. The director shall, after determining that the application is complete, deliver copies of the application (except those parts of the application designated confidential under Subsection B of 19.10.6.602 NMAC provided, however, that the director shall include with the application a list of the parts withheld and will provide such parts on specific request) to the agencies listed in Subsection C of 19.10.6.605 which shall have 20 days in which to provide comments to the director. The director shall consider comments from these agencies in making his determination of eligibility for minimal impact status.

I. The director shall determine if an operation is eligible for a minimal impact operation permit. The director may conduct an evaluation or site visit which may include other agencies in making this determination for operations that do not exceed 10 acres of disturbance. In making this determination for operations with more than 10 acres of disturbance, the director shall conduct an on-site inspection which may include other agencies.

J. No permit for a minimal impact operation will be issued until the director finds the following:

(1) the application is complete and demonstrates the proposed operation will comply with the performance and reclamation standards and requirements of Paragraphs (6) through (8) of Subsection D of 19.10.3.304 NMAC;

(2) the applicant has paid the permit fee;

(3) the applicant has provided satisfactory financial assurance;

(4) the applicant, the operator or owner or any persons or entities directly controlled by the applicant, operator, owner or any persons or entities that directly control the applicant, operator or owner:

(a) are not currently in violation of the terms of another permit issued by the division or in violation of any substantial environmental law or substantive regulation at a mining operation in the United States, which violation is unabated and is not the subject of appeal, and have not forfeited or had forfeited financial assurance required for any mining, reclamation or exploration permit in the United States; for purposes of this subparagraph, a substantial environmental law or substantive regulation is one which is intended to protect natural resources from degradation and does not include violations of record-keeping or reporting requirements; if a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(b) have not demonstrated a pattern of willful violations of the act or other New Mexico environmental statutes; if a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(5) the applicant has signed a notarized statement that he agrees to comply with the requirements of the permit, 19.10 NMAC, and the act and allows the director to enter the permit area for the purpose of conducting inspections until release of the financial assurance;

(6) the secretary of environment has provided a written determination stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the closeout plan; this determination shall address applicable standards for air, surface water and ground water protection enforced by the environment department or for which the environment department is otherwise responsible; the determination shall be made within the 20-day period provided in Subsection H of 19.10.3.304 NMAC, or the requirement is waived.

K. The term of a permit is governed by 19.10.6.607 NMAC. Modifications to a permit are allowed pursuant to 19.10.6.608 NMAC. Annual reports are required for each permit pursuant to 19.10.6.610 NMAC.

[7-12-94, 2-15-96; 19.10.3.304 NMAC - Rn, 19 NMAC 10.2.3.304, 05-15-01; A, 02-28-14; A, 05-31-16]

PART 4: EXPLORATION

19.10.4.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.4.1 NMAC - N, 05-15-2001]

19.10.4.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.4.2 NMAC - N, 05-15-2001]

19.10.4.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.4.3 NMAC - N, 05-15-2001]

19.10.4.4 DURATION:

Permanent.

[19.10.4.4 NMAC - N, 05-15-2001]

19.10.4.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.4.5 NMAC - N, 05-15-2001]

19.10.4.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed

to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.4.6 NMAC - N, 05-15-2001]

19.10.4.7 DEFINITIONS:

[RESERVED]

[19.10.4.7 NMAC - N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.4.8-19.10.4.400 [RESERVED]:

[19.10.4.8 - 19.10.4.400 NMAC - N, 05-15-2001]

19.10.4.401 TIMING OF SUBMITTAL AND DEADLINE FOR OBTAINING APPROVAL:

A. After December 31, 1994, no person shall engage in exploration operations in New Mexico without first obtaining a permit to conduct exploration from the Director.

B. Any person conducting exploration and who intends to continue exploration after December 31, 1994, shall submit an application by September 1, 1994.

C. For exploration commencing after December 31, 1994, applications for exploration operations shall be submitted not less than 120 days prior to the anticipated date of commencement of operations.

D. Renewal applications shall be filed at least 30 days preceding expiration of the current permit.

E. Permits for exploration operations are not required for exploration operations conducted within a permit area of a new or existing mining operation.

[7-12-94, 2-15-96; 19.10.4.401 NMAC - Rn, 19 NMAC 10.2.4.401, 05-15-2001]

19.10.4.402 PERMIT APPLICATION REQUIREMENTS:

A. Six copies of an application for a permit shall be submitted to the Director. The Director may require additional copies for distribution by the Director to other governmental agencies.

B. All information submitted to the Director shall be made available for public inspection and copying at the Director's office, except as designated confidential.

Information in the application which the applicant desires to keep confidential shall be clearly indicated and submitted separately from the rest of the application.

(1) If the operator designates as confidential an exploration map, financial information, information concerning the grade or location of ore reserves or trade secret information, the Director shall maintain the information as confidential and not subject to public records or disclosure laws.

(2) If a request is made for public review of the information held confidential, the Director shall notify the operator and provide a reasonable opportunity for substantiation of the claim that public disclosure of the information could harm the competitive position of the operator. If the claim of confidentiality is not substantiated to the satisfaction of the Director, the information shall be released.

(3) When a request is made for public review of information designated as confidential, the Director shall attempt to notify the operator within 24 hours of the request, and shall provide written notification by certified mail.

C. Each application shall be signed by an applicant or authorized agent of the applicant for the operation with the following certification made: I certify that I have personally examined and am familiar with the information submitted herein, and based on my inquiry of those individuals responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. Further, the applicant certifies that he is not in violation of any other obligation under the New Mexico Mining Act or 19.10 NMAC adopted pursuant to that Act.

D. Each application for a permit shall include:

(1) The name of the applicant.

(2) A listing of all parties, including addresses and telephone numbers, which have an ownership or controlling interest in the proposed exploration operation or submittal of the applicant's most recent 10K form required by the United States Securities and Exchange Commission, and a listing of all mining operations within the United States owned, operated or directly controlled by the applicant, owner or operator and by persons or entities that directly control the applicant and the names and addresses of regulatory agencies with jurisdiction over the environmental aspects of those operations and that could provide a compliance history for those operations over the preceding ten years.

(3) Copies of documents upon which the applicant bases his right to enter the property to conduct the exploration and reclamation.

(4) A map(s) and list, including names and addresses, of all owners of surface and mineral estates within the proposed permit area, as shown by the most recent county assessor's property tax schedule.

(5) A map at a scale of at least 1 inch equals 2,000 feet (1:24,000) showing the areas of land to be disturbed by the proposed exploration and reclamation. The map shall specifically show the boundary of the proposed permit area, proposed and existing roads, previously disturbed areas, occupied dwellings, and pipelines; existing bodies of surface water, springs, wetlands, and riparian areas; topographic and drainage features; and oil, gas and water wells on the permit area. Areas and types of proposed disturbance shall be indicated. The anticipated depth of each proposed method of exploration shall also be provided.

(6) A description of the exploration methods to be used, the minerals sought and the proposed dates during which exploration will be conducted.

(7) An estimate of the total number of acres to be disturbed by the operations, including new road construction and reconstruction of existing roads. Estimates must include:

(a) the width and length of any new roads to be constructed including culvert locations and sizes;

(b) the approximate depth and diameter of all drill holes; and

(c) the general dimensions of all trenches, pits, shafts, cuts, or other types of disturbances.

(8) A list of chemicals contemplated for use by the exploration operation and a detailed plan for the containment, use, and disposal of such chemicals.

(9) An estimate of depth to ground water and total dissolved solids concentration.

(10) A reclamation plan which shall address:

(a) a general description of the vegetation of the area to be disturbed and, if applicable, a detailed description of species and methods to be used during revegetation;

(b) all applicable performance and reclamation standards and requirements in 19.10.4.403 NMAC; and

(c) an estimate of the proposed financial assurance required by 19.10.12 NMAC.

(11) The applicant shall designate an agent and provide the agent's street address for the service of notices and orders from the Director. This information shall be kept current during the term of the permit.

(12) A copy of the proposed form of notices required under 19.10.9 NMAC.

(13) The permit fees as determined pursuant to 19.10.2 NMAC.

(14) Any additional information necessary for evaluation of the permit application as required by the Director.

E. To avoid duplication and conflicting requirements, the applicant may include information from environmental permits relevant to the application. Permits issued by other governmental agencies shall be accepted by the Director to the extent such permits satisfy the requirements of the Act and 19.10 NMAC.

F. The Director shall, after determining the application is complete, deliver copies of the application or appropriate sections (except those parts of the application designated confidential under Subsection B of 19.10.4.402 NMAC, provided, however, that the Director shall include with the application a list of the parts withheld and will provide such parts at an agency's specific request) to the following agencies which shall have 60 days in which to provide comments to the Director: the Environment Department; the Department of Game and Fish; the State Forestry Division; the State Historic Preservation Office; the State Engineer; if the operation is on state or federal land, the appropriate state or federal land management agency; and any other agency the Director deems appropriate.

[7-12-94, 2-15-96; 19.10.4.402 NMAC - Rn, 19 NMAC 10.2.4.402, 05-15-2001]

19.10.4.403 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:

Operations shall be designed and conducted to mitigate disturbance caused by exploration operations and, to the extent practicable, provide for the stabilization of disturbed areas to minimize future impact to the environment and protect air and water resources following closure. The reclamation plan must be developed to address site-specific characteristics and the exploration and excavation work to be performed.

A. Reclamation of the disturbed area shall be initiated and completed within the permit term, unless the disturbed area is included within a complete permit application for a new mining operation. Drill holes shall be plugged in accordance with Subsections K and L of 19.10.3.302 NMAC.

B. Cemeteries and burial grounds and the disturbance of cultural resources listed on or eligible for the *national register of historic places* or the *state register of cultural properties* shall be avoided until clearance has been granted by the director after consultation with the state historic preservation officer.

C. Measures shall be taken to safeguard the public from unauthorized entry into hazardous areas if such hazards were created by the operator. Depending on site-specific characteristics, the following measures shall be required:

- (1) closing shafts, adits and tunnels to prevent entry;
- (2) posting warning signs in locations near hazardous areas;
- (3) restricting access to hazardous areas; or
- (4) other measures as needed to protect human safety.

D. Trash, other materials and structures incidental to exploration shall be removed and disposed of appropriately.

E. Exploration and reclamation operations shall be conducted to minimize erosion.

F. Disturbance to riparian areas and wetlands shall be minimized during exploration. Adverse effects on riparian areas and wetlands shall be mitigated during reclamation.

G. Measures shall be taken during exploration and reclamation to minimize adverse impacts on wildlife and important habitat. Impacts on important habitat shall be mitigated during reclamation.

H. If necessary for the re-establishment of vegetation, topsoil or topdressing shall be salvaged, stockpiled, and distributed.

I. Vegetation shall be re-established with appropriate species.

J. Road construction should be limited. Roads shall be located to minimize disturbance to land and wildlife and enhance stability. Roads shall be constructed and maintained to control erosion. Roads constructed in or across intermittent or perennial streams require site specific designs. Roads to remain permanent must be approved by the surface owner and must be stabilized to control erosion.

K. Excavations shall be backfilled and graded to approximate the original topography. Adits and shafts created by the operator shall be sealed. Drill holes not regulated by the state engineer office shall be plugged or filled to prevent subsidence and injury to the public and wildlife.

L. Blasting shall be conducted to prevent injury to persons or damage to property not owned by the operator. Fly rock shall be confined to the permit area. The director may require a detailed blasting plan, pre-blast surveys or specific blast design limits to control possible adverse effects to structures.

[7-12-94, 2-15-96; 19.10.4.403 NMAC - Rn, 19 NMAC 10.2.4.403, 05-15-2001; A, 04-30-09]

19.10.4.404 COMPLIANCE WITH OTHER APPLICABLE LAWS:

A. Enforcement of other state or federal laws, regulations or standards shall be conducted by the agency charged with that responsibility under the applicable state or federal law, regulation or standard.

B. Enforcement of non-point source surface releases of acids or other toxic substances shall be performed by the Environment Department.

C. During the term of a permit issued pursuant to 19.10 NMAC, the permittee must maintain environmental permits required for the permit area. Revocation or termination of such a permit or the forfeiture of financial assurance related to the permit area by another governmental agency is adequate grounds for the Director to issue a cessation order pursuant to 19.10.11 NMAC.

[7-12-94, 2-15-96; 19.10.4.404 NMAC - Rn, 19 NMAC 10.2.4.404, 05-15-2001]

19.10.4.405 TERMS, ISSUANCE AND RENEWAL:

A. Terms

(1) A permit to conduct exploration and reclamation operations shall be valid for a period of not more than one year from the date of issuance.

(2) The permittee shall maintain a permit until financial assurance is released under 19.10.12 NMAC.

(3) If the permit area contains property owned by the federal or state government, the expiration or termination of the government's authorization to conduct exploration operations on the property automatically suspends the permittee's authority to continue exploration operations on the property, although not necessarily reclamation operations, by the permit issued under 19.10 NMAC.

B. Issuance - The Director may issue a permit subject to conditions necessary to meet the requirements of the Act and 19.10 NMAC. No permit shall be issued until the Director finds that:

(1) The applicant has agreed, in writing, to conduct only those operations described in the permit, including any subsequently approved revision or modification.

(2) The applicant has agreed, in writing, to reclaim any areas disturbed by the exploration operations in accordance with the permit.

(3) The applicant has paid the permit fee required by 19.10.2 NMAC.

(4) The financial assurance required by 19.10.12 NMAC has been provided and approved.

(5) The applicant's failure to comply with the provisions of the Act, 19.10 NMAC or a permit issued under 19.10 NMAC has not resulted in the forfeiture of financial assurance.

(6) If the proposed exploration operation is on state or federal lands, the appropriate land management agency approves or acknowledges the proposed exploration if approval or acknowledgement by the land management agency is required under that agency's regulations.

(7) The public participation requirements of 19.10.9 NMAC have been met.

(8) The applicant is not in violation of the Act or 19.10 NMAC.

(9) The applicant has submitted a notarized statement signed by the applicant that he agrees to comply with the performance standards and reclamation requirements of the permit, 19.10 NMAC, and the Act and allows the Director to enter the permit area without delay for the purpose of conducting inspections during mining and reclamation.

C. Renewal

(1) An exploration permit may be renewed from year to year.

(2) Renewal applications shall be filed 30 days preceding the expiration of the current permit.

(3) Applications for renewal shall not be approved if the applicant has outstanding violations of the Act or 19.10 NMAC or otherwise fails to meet the requirements of 19.10 NMAC.

D. Applications for the transfer of an exploration permit shall comply with the requirements of 19.10.8 NMAC.

[7-12-94, 2-15-96; 19.10.4.405 NMAC - Rn, 19 NMAC 10.2.4.405, 05-15-2001]

19.10.4.406 PERMIT MODIFICATIONS AND REVISIONS:

A. A permit modification or revision shall be required for exploration in areas or for types of disturbances not identified in the approved exploration permit.

B. A permit modification or revision shall be required for any change in the approved reclamation plan.

C. Revisions are modifications that require public notice and an opportunity for public hearing pursuant to 19.10.9 NMAC. The Director shall review each request for a permit modification to determine whether it must be processed as a revision

(1) The Director shall consider the following factors and their level of impact to determine whether a permit modification would have a significant environmental impact:

(a) Whether the proposed change would authorize an expansion of disturbed area beyond that currently authorized by the permit that:

(i) Would be located in or is expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, reservoirs or riparian areas.

(ii) Is expected to have a direct impact on ground water that has a total dissolved solids concentration of less than 10,000 mg/l.

(iii) Is expected to result in point or non-point source surface or subsurface releases of acid or other toxic substances from the permit area.

(iv) Would be located in designated critical habitat areas as determined in accordance with the federal Endangered Species Act of 1973 or in areas determined by the Department of Game and Fish likely to result in an adverse impact on an endangered species designated in accordance with the Wildlife Conservation Act, Sections 17-2-37 through 17-2-46 NMSA 1978 or by the State Forestry Division for the Endangered Plants Act, Section 75-6-1 NMSA 1978.

(v) Would adversely impact cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties.

(vi) Would be located in a known cemetery or other burial ground.

(vii) Would be located in an area designated as a Federal Wilderness Area, Wilderness Study Area, Area of Critical Environmental Concern, or an area within the national Wild and Scenic River System.

(b) Whether the proposed change would result in a significant increase in the amount of financial assurance as determined by the Director; or

(c) Whether the proposed change would significantly depart from the nature or scale of the original exploration permit.

(2) An application for a permit modification or revision shall be accompanied by sufficient information for the Director to determine whether any of the factors listed in 19.10.4.406 NMAC are present.

(3) The Director shall consult with the Department of Environment, the Department of Game and Fish, State Forestry, applicable state or federal land management agency, or the State Historic Preservation if factors listed in this section are present relevant to the agency's area of expertise.

D. A permit modification or revision will not be granted unless the Director determines that the proposed modification or revision meets the requirements of 19.10.4 NMAC.

[7-12-94, 2-15-96, 12-29-2000; 19.10.4.406 NMAC - Rn, 19 NMAC 10.2.4.406, 05-15-2001]

19.10.4.407 TERMINATION REPORT:

At the conclusion of an exploration operation not to be renewed, the permittee shall submit to the director a termination report. The report shall:

A. certify that the exploration reclamation operations have been completed in accordance with the approved permit;

B. provide the total depth and diameter of each hole drilled, the date each hole was completed, depth of water bearing zones and a statement describing any flow to the surface;

C. identify on an approved map, the disturbed area including the number and the location of the disturbed acres, and the location, including identification number, of all drill holes and excavation sites; and

D. financial assurance may only be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of 19.10.4.403 NMAC and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.4.407 NMAC - Rn, 19 NMAC 10.2.4.407, 05-15-2001; A, 04-30-09]

PART 5: EXISTING MINING OPERATIONS

19.10.5.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.5.1 NMAC - N, 05-15-2001]

19.10.5.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.5.2 NMAC - N, 05-15-2001]

19.10.5.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.5.3 NMAC - N, 05-15-2001]

19.10.5.4 DURATION:

Permanent.

[19.10.5.4 NMAC - N, 05-15-2001]

19.10.5.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.5.5 NMAC - N, 05-15-2001]

19.10.5.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.5.6 NMAC - N, 05-15-2001]

19.10.5.7 DEFINITIONS:

[RESERVED]

[19.10.5.7 NMAC - N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.5.8-19.10.5.500 [RESERVED]:

[19.10.5.8 - 19.10.5.500 NMAC - N, 05-15-2001]

19.10.5.501 TIMING OF SUBMITTAL AND DEADLINE FOR OBTAINING APPROVAL:

A. An application for a permit for an existing mining operation shall be submitted by December 31, 1994.

B. The application shall include: a closeout plan; or a compliance schedule for completion of, within the shortest time practicable, a closeout plan, which shall be submitted no later than December 31, 1995, unless the applicant requests an extension and the Director grants approval for good cause shown.

C. Every existing mining operation must have a permit and closeout plan approved by the Director by December 31, 1997 unless the Director grants a non-renewable extension of time not to exceed two years for good cause shown. Notwithstanding the preceding sentence, prior to December 31, 1999 the Director may grant an additional extension of time pursuant to Subsection D of 19.10.5.501 NMAC.

D. At any time before September 22, 1999, an applicant may file a request for an additional non-renewable extension, which shall not extend beyond December 31, 2001. The application shall be filed in writing, with the Director. Upon receipt of the request, the Director shall provide a copy of the request to the department of environment which will have thirty days from receipt to provide comments. The Director shall approve the request for an extension if:

(1) The request is accompanied by a non-refundable application fee of \$5,000.00 payable pursuant to subsection A of 19.10.2.204 NMAC. The request will not be processed if the fee has not been paid.

(2) The request includes a detailed schedule of milestones and deliverables acceptable to the Director for obtaining closeout plan approval, which shall include:

(a) a schedule for carrying out supporting studies and submitting reports thereon;

(b) a description of steps to be taken for allowing public participation as provided in the Mining Act for Mining Act permits, closeout plans and revisions, taking into consideration public participation requirements under other authorities;

(c) a schedule for closeout plan approval for portions of the mining operation where approval is feasible prior to the final approval deadline, giving priority to completion of all studies and milestones necessary for prompt closeout plan approval for those portions of the mining operation;

(d) a schedule for submitting proposals for financial assurance for each portion of a mining operation having a separate closeout plan deadline, which allows sufficient time for review and comment prior to the final deadline, and which may include submission prior to the closeout plan being deemed approvable; and

(e) a final date by which the closeout plan must be approved and the financial assurance mechanism in place for each portion of a mining operation having a separate closeout plan deadline; this date should be as soon as feasible for each portion of a mining operation.

(3) It is not feasible for the applicant to obtain a closeout plan approval by December 31, 1999.

(4) Written concurrence is obtained by the Director from the secretary of environment for a request that will have an impact upon programs administered by the department of environment. MMD may consult with other state and federal agencies in determining the adequacy of the detailed schedule and request for extension.

(5) A public meeting to provide information to the public and to receive public comment on the request for extension has been held by the Director in the locality of the mining operation requesting an extension of time. At least 30 days prior to the meeting, the applicant shall make a copy of the request available for public inspection at a public repository in the county where the mining operation is located. The public meeting shall be held within 45 days of the applicant filing the request for an extension, and notice of the meeting shall be approved by the Director and given by the applicant at least 30 days prior to the meeting. The notice shall include the date, time and place of the meeting and the information identified in subsection A of 19.10.9.902 NMAC through subsection D of 19.10.9.902 NMAC, and shall meet requirements of subsection B of 19.10.9.903 NMAC through subsection H of 19.10.9.903 NMAC except that mailings may be sent by first class mail.

E. Any applicant who received an extension of time pursuant to Subsection D of 19.10.5.501 NMAC, and for which a public hearing on a closeout application has been requested but will not be held pursuant to subsection A of 19.10.9.904. NMAC prior to December 1, 2001 or for which a public hearing on a closeout application was not requested, must have the closeout plan approved by the Director by no later than October 1, 2002.

[7-12-94, 2-15-96, 9-15-99; 19.10.5.501 NMAC - Rn, 19 NMAC 10.2.5.501, 05-15-2001; A, 12-28-01]

19.10.5.502 PERMIT APPLICATION REQUIREMENTS:

A. A minimum of six copies of each application for a permit under this Part shall be submitted to the Director. The Director may require additional copies for distribution by

the Director to other governmental agencies with an interest in, or jurisdiction over, elements of the proposed operation.

B. All information submitted to the Director shall be made available for public inspection and copying at the Director's office, except as designated confidential. Information in the application which the applicant desires to keep confidential shall be clearly indicated and submitted separately from the rest of the application.

(1) If the operator designates as confidential an exploration map, financial information, information concerning the grade or location of ore reserves or trade secret information, the Director shall maintain the information as confidential and not subject to public records or disclosure laws.

(2) If a request is made for public review of the information held confidential, the Director shall notify the operator and provide a reasonable opportunity for substantiation of the claim that public disclosure of the information could harm the competitive position of the operator. If the claim is not substantiated to the satisfaction of the Director, the information shall be released.

(3) When a request is made for public review of information designated as confidential, the Director shall attempt to notify the operator within 24 hours of the request, and shall provide written notification by certified mail.

C. Each application shall be signed by an applicant or authorized agent of the applicant for the operation with the following certification made:

I certify that I have personally examined and am familiar with the information submitted herein, and based on my inquiry of those individuals responsible for obtaining the information, I believe the submitted information is true, accurate, and complete.

D. Each application under this Part shall be in a format acceptable to the Director and contain the following:

(1) The name of the applicant to whom the permit will be issued.

(2) A map(s) and list, including names and addresses, of all owners of surface and mineral estates within the proposed permit area, as shown by the most recent county assessor's property tax schedule.

(3) A statement of the basis on which the applicant has the right to enter the property to conduct the mining and reclamation. The applicant will allow the Director to examine, if necessary, the documents which establish such basis.

(4) The site assessment previously submitted pursuant to Section 69-36-5 of the Act shall be considered part of the application. If information in the site assessment requires updates to provide information necessary for evaluation of the permit or if the

site-specific conditions at the time of the assessment significantly deviate from conditions at the time of submittal of the permit application, such updated information or deviations must be described in the application.

(5) A map(s) showing all existing and proposed pits, shafts, adits, stockpiles, waste units, impoundments, leach piles, processing facilities, and support facilities such as office buildings. The map(s) shall identify the proposed permit area and design limits of each unit of the operation.

(6) A description of undisturbed vegetation including a comprehensive list of species and their relative abundance with regards to cover and production.

(7) Evidence that other applicable state and federal permits to be obtained either have been or will be issued before the activities subject to those permits begin.

(8) The applicant shall designate an agent and provide the agent's street address for the service of notices and orders in writing from the Director. This information shall be kept current if a permit is granted.

(9) A copy of the proposed form of notices required under 19.10.9 NMAC.

(10) A permit fee as determined pursuant to 19.10.2 NMAC

(11) Any additional information necessary for evaluation of the permit application as required by the Director.

E. To avoid duplication and conflicting requirements, the applicant may include information from environmental permits relevant to the application. Permits issued by other governmental agencies shall be accepted by the Director to the extent such permits satisfy the requirements of the Act and 19.10 NMAC.

F. Where physically separate but interrelated mining operations are located in close proximity to each other and are under the control of the same owner or operator, the applicant may request or the Director may determine to issue one permit for all of the operations and require only one permit application and closeout plan.

[7-12-94, 2-15-96; 19.10.5.502 NMAC - Rn, 19 NMAC 10.2.5.502, 05-15-2001; A, 05-31-2001]

19.10.5.503 PERMIT APPROVAL REQUIREMENTS:

A. Unless a proposed closeout plan is submitted with the permit application, the following procedure shall be followed. If a closeout plan is submitted with the permit application, the requirements of 19.10.5.506 NMAC shall also be met.

B. As soon as practicable after receipt of a permit application, the Director shall notify the applicant in writing whether the application is complete. If the application is not complete, the notice shall specify the items missing from the application.

C. The Director shall deliver copies of the complete application or appropriate sections (except those parts of the application designated confidential under Subsection B of 19.10.5.502, provided, however, that the Director shall include with the application a list of the parts withheld and will provide such parts at an agency's specific request) to the Environment Department, the Office of the State Engineer, Department of Game and Fish, the State Forestry Division, the State Historic Preservation Office, and the state or federal land management agency, if applicable, for their information.

D. Within 30 days of receipt of a notice from the Director that the application is complete, the applicant shall, in a form approved by the Director, give public notice of the application pursuant to 19.10.9 NMAC.

E. An application for a permit under 19.10.5 NMAC shall be approved or denied within six months after the application has been determined to be complete.

F. The Director shall approve the application and issue the permit if he finds that:

(1) The application contains all of the information required, including a closeout plan or a proposed compliance schedule for submittal of a closeout plan within the shortest time practicable.

(2) The applicant has provided written information stating the name and official business address of the applicant and its agent for service of process.

(3) The applicant has provided the required signature and certification on the application.

(4) A permit application fee as determined pursuant to 19.10.2 NMAC has been paid.

(5) The public participation requirements of 19.10.9 NMAC have been met.

(6) The applicant has submitted a notarized statement signed by the applicant that he agrees to comply with the performance standards and reclamation requirements of the permit, 19.10 NMAC, and the Act and allows the Director to enter the permit area without delay during mining and reclamation.

[7-12-94, 2-15-96; 19.10.5.503 NMAC - Rn, 19 NMAC 10.2.5.503, 05-15-2001]

19.10.5.504 PERMIT TERM:

A. The permittee shall maintain a permit until financial assurance is released under 19.10.12 NMAC.

B. A permit shall be reviewed by the Director and may be required to be modified or revised for any of the following:

(1) additional applicable requirements under the Act or 19.10 NMAC; or

(2) the Director determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit.

C. After this review, the Director shall notify the permittee of any required modifications or revisions of the permit necessary to ensure compliance with the Act and 19.10 NMAC. If an approvable application for the required modifications or revisions has not been made within 90 days of the date of initial notification, the Director may order cessation of the mining operations.

D. The Director shall periodically review the amount of financial assurance filed with the Director under 19.10.12 NMAC. The Director may require adjustments to the amount of financial assurance to reflect inflationary increases or increases in the anticipated costs of reclamation.

E. If the permit area contains property owned by the federal or state government, the expiration or termination of the government's authorization for the permittee to conduct mining operations on the property automatically suspends the permittee's authority to continue mining operations on the property, though not necessarily closeout plan operations, by the permit issued under 19.10 NMAC.

[7-12-94, 2-15-96; 19.10.5.504 NMAC - Rn, 19 NMAC 10.2.5.504, 05-15-2001]

19.10.5.505 PERMIT MODIFICATIONS AND REVISIONS:

A. A permit modification or revision will not be granted unless the Director determines that the proposed modification or revision meets the requirements of 19.10.5 NMAC.

B. Revisions are modifications that require public notice and an opportunity for public hearing pursuant to 19.10.9 NMAC. The Director shall review each request for a permit modification to determine whether it must be processed as a revision.

(1) The Director shall consider the following factors and their level of impact to determine whether a permit modification would have a significant environmental impact:

(a) Whether the proposed change would authorize an expansion of design limits beyond that currently authorized by the permit that:

(i) Would be located in or is expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, reservoirs or riparian areas.

(ii) Is expected to have a direct impact on ground water that has a total dissolved solids concentration of less than 10,000 mg/l.

(iii) Is expected to result in point or non-point source surface or subsurface releases of acid or other toxic substances from the permit area.

(iv) Would be located in designated critical habitat areas as determined in accordance with the federal Endangered Species Act of 1973 or in areas determined by the Department of Game and Fish likely to result in an adverse impact on an endangered species designated in accordance with the Wildlife Conservation Act, Sections 17-2-37 through 17-2-46 NMSA 1978 or by the State Forestry Division for the Endangered Plants Act, Section 75-6-1 NMSA 1978.

(v) Would adversely impact cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties.

(vi) Would be located in a known cemetery or other burial ground.

(vii) Would be located in an area designated as a Federal Wilderness Area, Wilderness Study Area, Area of Critical Environmental Concern, or an area within the national Wild and Scenic River System.

(b) Whether the proposed change would result in a significant increase in the amount of financial assurance as determined by the Director; or

(c) Whether the proposed change would significantly depart from the nature or scale of the permit.

(2) An application for a permit modification or revision shall be accompanied by sufficient information for the Director to determine whether any of the factors listed in 19.10.5.505 NMAC are present.

(3) The Director shall consult with the Department of Environment, the Department of Game and Fish, State Forestry, applicable state or federal land management agency, or the State Historic Preservation if factors listed in Subsection B of 19.10.5.505 NMAC are present relevant to the agency's area of expertise.

C. An application for a permit modification or revision shall be in a format acceptable to the Director. A permit modification or revision shall be required for any changes in the approved closeout plan.

D. A permit modification or revision for a mining operation is required for each new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area and not identified in the permit and for each expansion of such a unit identified in the permit that exceeds the design limits specified in the permit for such units. Modifications or revisions will be approved if the Director determines the unit will:

(1) incorporate the requirements of paragraphs 1, 2, 4, 5 and 6 of subsection H of Section 69-36-7 of the Act;

(2) be sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation consistent with the closeout plan; and

(3) meet all the requirements of 19.10.5 NMAC.

E. The following actions do not require permit modifications:

(1) the construction, relocation or modification of roads within the disturbed area that does not change the closeout plan;

(2) placement or movement of support buildings, equipment areas, maintenance shops, monitoring facilities, wells, power lines, power poles, substations, and communications facilities within the disturbed area that does not change the closeout plan;

(3) the movement of tanks, pipelines, utilities, and portable units; and

(4) changes to facilities subject to regulation under the Solid Waste Act.

[7-12-94, 2-15-96, 12-29-2000; 19.10.5.505 NMAC - Rn, 19 NMAC 10.2.5.505, 05-15-2001; A, 05-31-2001]

19.10.5.506 CLOSEOUT PLANS:

Six copies of an application for a permit revision shall be submitted, in a format acceptable to the Director, pursuant to Section 69-36-7G of the Act for the incorporation of an approved closeout plan or closeout plan for a portion of the mine if a closeout plan or closeout plan for a portion of the mine was not approved as part of the original permit application. If the original permit application includes a proposed closeout plan or closeout plan for a portion of the mine, the contents, review and approval of the closeout plan or closeout plan for a portion of the mine shall be in accordance with 19.10.5 NMAC.

A. A proposed closeout plan for all or a portion of the mine shall be based on site-specific characteristics and the anticipated life of the mining operation. Site-specific characteristics include, but are not limited to, disturbances from previous mining operations, past and current mining methods utilized, geology, hydrology and

climatology of the area. Information previously submitted to the Director in the site assessment or permit application may be referenced to support the proposed closeout plan, provided that, if the information in the site assessment significantly deviates from conditions at the time of submittal of the proposed closeout plan, deviations shall be described in the application.

B. A proposed closeout plan or a proposed closeout plan for a portion of the mine shall include a detailed description of how the permit area will be reclaimed to meet the requirements of Section 69-36-11B(3) of the Act and the performance and reclamation standards and requirements of 19.10.5 NMAC. The closeout plan shall also include the following:

(1) A description of the work proposed to be performed and a schedule, including anticipated starting and finishing dates, specifying the incremental work to be conducted and the period of time anticipated to be required for the various phases of the closeout.

(2) A list of all federal and state permits required for the closeout plan and evidence of when they were issued or a schedule by which these permits are anticipated to be received. To avoid duplication and conflicting requirements, the applicant may include information from environmental permits, or portions thereof, relevant to the application.

(3) A topographic map of the anticipated surface configuration of the permit area upon completion of the closeout plan. The map shall be at a scale approved by the Director to accurately represent the permit area.

(4) Additional information necessary for evaluation of the closeout plan as required by the Director.

C. Upon a showing that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound, the Director may waive the requirement to achieve a self-sustaining ecosystem or post-mining land use for an open pit or waste unit if measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure and will not pose a current or future hazard to public health or safety.

D. As soon as practicable after the receipt of the application, the Director shall notify the applicant in writing whether the application is complete. If the application is not complete, the notice shall specify the items missing from the application.

E. The Director shall, after determining that the application is complete, deliver copies of the application or appropriate sections (except those parts of the application designated confidential under Subsection B of 19.10.5.502 NMAC, provided, however, that the Director shall include with the application a list of the parts withheld and will

provide such parts at an agency's specific request) to the following agencies which shall have 60 days in which to provide comments to the Director: the Environment Department; the Department of Game and Fish; the State Forestry Division; the State Historic Preservation Office; the State Engineer; if the operation is on state or federal land, the appropriate state or federal land management agency; and any other agency the Director deems appropriate.

F. Within 30 days of receipt of a notice from the Director that the application is complete, the applicant shall, in a form approved by the Director, give public notice of the application pursuant to 19.10.9 NMAC.

G. After notifying the applicant that the application is complete, the Director shall conduct a technical review of the closeout plan to determine if it is approvable. If the Director determines that the closeout plan is not approvable, the Director shall notify the applicant in writing of this determination, specifically describing each deficiency. The Director shall, upon submittal of additional information or changes, notify the applicant whether the resubmitted application is approvable or it continues to be deficient.

H. As soon as practicable after receiving notice that the closeout plan is approvable, the applicant shall submit a proposal for financial assurance in accordance with 19.10.12 NMAC.

I. The Director may approve a closeout plan subject to conditions necessary to meet the requirements of the Act and 19.10 NMAC.

J. The Director shall approve an application to incorporate a closeout plan or closeout plan for a portion of the mine if:

(1) the closeout plan and permit application are complete and the public participation requirements of 19.10.9 NMAC have been met;

(2) the closeout plan permit fee has been paid and the financial assurance is adequate and has been provided;

(3) the applicant has demonstrated that the work to be done will reclaim disturbed areas within the permit area to a condition that allows for the re-establishment of a self-sustaining ecosystem on the permit area following closure, appropriate for the life zone of the surrounding areas unless conflicting with the approved post-mining land use; provided that for purposes of 19.10.5 NMAC, upon a showing that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound, the Director may waive the requirement to achieve a self-sustaining ecosystem or post-mining land use for an open pit or waste unit if measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure and will not pose a current or future hazard to public health or safety;

(4) the existing mining operation is on state or federal lands, the appropriate land management agency approves or acknowledges the proposed closeout plan if approval or acknowledgement by the land management agency is required under that agency's regulations;

(5) a written determination has been received from the Secretary of the Environment Department stating that the application has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality, and other environmental standards if carried out as described in the closeout plan. This determination shall address applicable standards for air, surface water and ground water protection enforced by the Environment Department or for which the Environment Department is otherwise responsible;

(6) the applicant has submitted a notarized statement signed by the applicant that he agrees to comply with the performance and reclamation standards and requirements of the permit, 19.10 NMAC and the Act and allows the Director to enter the permit area without delay for the purpose of conducting inspections during mining and reclamation.

[7-12-94, 2-15-96; 19.10.5.506 NMAC - Rn, 19 NMAC 10.2.5.506, 05-15-2001; A, 05-31-2001]

19.10.5.507 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:

A. The permit area will be reclaimed to a condition that allows for re-establishment of a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use. Each closeout plan must be developed to meet the site-specific characteristics of the mining operation and the site. The closeout plan must specify incremental work to be done within specific time frames to accomplish the reclamation.

B. Waiver for Pits and Waste Units An operator may apply for a waiver for open pits or waste units from the requirement of achieving a post-mining land use or self-sustaining ecosystem. The operator must show that achieving a post-mining land use or self-sustaining ecosystem is not technically or economically feasible or is environmentally unsound. The Director may grant the waiver for an open pit or waste unit if he finds:

(1) measures will be taken to ensure that the open pit or waste unit will meet all applicable federal and state laws, regulations and standards for air, surface water and ground water protection following closure; and

(2) the open pit or waste unit will not pose a current or future hazard to public health or safety.

[7-12-94, 2-15-96; 19.10.5.507 NMAC - Rn, 19 NMAC 10.2.5.507, 05-15-2001]

19.10.5.508 NEW UNITS:

New discrete processing, leaching, excavation, storage or stockpile units located within the permit area of an existing mining operation and not identified in the permit of an existing mining operation, and for each expansion of such a unit identified in the permit for an existing mining operation that exceeds the design limits specified in the permit must meet the reclamation standard set forth in Subsection A of 19.10.5.507 NMAC above and must also comply with the standards and requirements set forth below. Site-specific characteristics, including the existing mining operation, must be considered in applying the standards and requirements.

A. Most Appropriate Technology and Best Management Practices The mining operation and the reclamation plan shall be designed and operated using the most appropriate technology and the best management practices.

B. Assure Protection The mining operation and completed reclamation shall meet the following requirements established to assure protection of human health and safety, the environment, wildlife and domestic animals.

(1) Signs, Markers and Safeguarding Measures will be taken, to safeguard the public from unauthorized entry into shafts, adits, and tunnels and to prevent falls from highwalls or pit edges. Depending on site-specific characteristics, the following measures shall be required:

- (a)** closing shafts, adits or tunnels to prevent entry;
- (b)** posting warning signs in locations near hazardous areas;
- (c)** restricting access to hazardous areas;
- (d)** marking the permit area boundaries;
- (e)** posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies related to the mine; or
- (f)** other measures as needed to protect human safety.

(2) Wildlife Protection Measures shall be taken to minimize adverse impacts on wildlife and important habitat. Based on site-specific characteristics, the following measures will be required:

- (a)** restricting access of wildlife and domestic animals to toxic chemicals or otherwise harmful materials;

(b) minimizing harm to wildlife habitat during mining; and

(c) reclaiming areas of wildlife habitat if not in conflict with the approved post-mining land use.

(3) Cultural Resources Cultural resources listed on or eligible for listing on the National Register of Historic Places or the State Register of Cultural Properties, and any cemeteries or burial grounds shall be protected until clearance has been granted by the State Historic Preservation Office or other appropriate authority.

(4) Hydrologic Balance Operations shall be planned and conducted to minimize negative impact to the hydrologic balance in both the permit and potentially affected areas.

(a) Operations shall be designed so that non-point source surface releases of acid or other toxic substances shall be contained within the permit area, and that all other surface flows from the disturbed area are treated to meet all applicable state and federal regulations.

(b) The disturbed areas shall not contribute suspended solids above background levels, or where applicable the Water Quality Control Commission's standards, to intermittent and perennial streams.

(c) To provide data to determine background levels for surface water entering the permit area, appropriate monitoring shall be conducted on drainages leading into the permit area.

(d) All diversions of overland flow shall be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance and to assure the safety of the public.

(i) No diversion shall be located so as to increase the potential for landslides.

(ii) Unless site-specific characteristics require a different standard which is included in the approved permit, diversions which have watersheds larger than 10 acres shall be designed, constructed and maintained to safely pass the peak runoff from a 10-year, 24-hour precipitation event.

(iii) All diversion designs which have watersheds larger than 10 acres shall be certified by a professional engineer registered in New Mexico as having been designed in accordance with 19.10 NMAC. Diversion designs shall be kept on-site or otherwise be made available, upon request, to the Director for inspection.

(iv) When no longer needed, temporary diversions shall be removed and the disturbed area reclaimed.

(5) Stream Diversions When streams are to be diverted, the stream channel diversion shall be designed, constructed, and removed in accordance with the following:

(a) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, the combination of channel, bank and flood plain configurations shall be adequate to safely pass the peak run-off of a 10-year, 24-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions;

(b) The design and construction of all intermittent and perennial stream channel diversions shall be certified as meeting 19.10 NMAC by a professional engineer registered in New Mexico. As-built drawings shall be completed promptly after construction and be retained on site or otherwise made available upon request to the Director; and

(c) When no longer needed, temporary stream channel diversions shall be removed and the disturbed area reclaimed.

(6) Impoundments If impoundments are required they shall be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance and adjoining property and to assure the safety of the public.

(a) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, impoundments having earthen embankments but not subject to the jurisdiction of the Mine Safety and Health Administration or the State Engineer shall:

(i) have a minimum elevation at the top of the settled embankment of 1.0 foot above the water surface in the pond with the spillway flowing at the design depth;

(ii) have a top width of the embankment not less than 6 feet;

(iii) have combined upstream and downstream side slopes of the settled embankment not less than 5 horizontal : 1 vertical with neither slope steeper than 2 horizontal : 1 vertical. Slopes shall be vegetated or otherwise stabilized to control erosion;

(iv) have the embankment foundation cleared of all vegetative matter, all surfaces sloped to no steeper than 1 horizontal : 1 vertical and the entire foundation area scarified;

(v) have fill material free of vegetative matter and frozen soil;

(vi) have spillways provided to safely discharge the peak runoff of a 25-year, 24-hour precipitation event, or an event with a 90-percent chance of not being exceeded for the design life of the structure;

(vii) have other site-specific design criteria for embankments as long as they result in a minimum static safety factor of 1.3 with water impounded to the design level;

(viii) be designed and certified by a professional engineer registered in New Mexico as having been designed and constructed in accordance with 19.10 NMAC. As-built drawings shall be completed promptly after construction and be retained on site or otherwise made available upon request to the Director; and

(viii) if necessary for sediment control, be in place before any other disturbance is made to the watershed for the impoundment.

(b) When no longer required, impoundments shall be graded to achieve positive drainage unless:

(i) the surface estate owner has requested in writing that they be retained;

(ii) they are consistent with the approved reclamation plan; and

(iii) they are appropriate for the post-mining land use or the self-sustaining ecosystem.

(7) Minimization of Mass Movement All man-made piles such as waste dumps, topsoil stockpiles and ore piles shall be constructed and maintained to minimize mass movement.

(8) Riparian and Wetland Areas Disturbance to riparian and wetland areas shall be minimized during mining. Adverse effects to riparian and wetland areas shall be mitigated during reclamation unless the mitigation conflicts with the approved post-mining land use.

(9) Roads Roads shall be constructed and maintained to control erosion.

(a) Drainage control structures shall be used as necessary to control runoff and to minimize erosion, sedimentation and flooding. Drainage facilities shall be installed as road construction progresses and shall be capable of safely passing a 10-year, 24 hour precipitation event unless site-specific characteristics indicate a different standard is appropriate and is included in the approved permit. Culverts and drainage pipes shall be constructed and maintained to avoid plugging, collapsing, or erosion.

(b) Roads to be constructed in or across intermittent or perennial streams require site-specific designs to be submitted with the permit application.

(c) Roads to be made permanent must be approved by the surface owner and be consistent with the approved post-mining land use.

(10) Subsidence Control Underground and in situ solution mining activities shall be planned and conducted, to the extent technologically and economically feasible, to prevent subsidence which may cause material damage to structures or property not owned by the operator.

(a) Underground and in situ solution mining activities near any aquifer that serves as a significant source of water supply to a public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata.

(b) Underground and in situ solution mining activities conducted beneath or adjacent to any perennial stream must be performed in a manner so that subsidence is not likely to cause material damage to streams, water bodies and associated structures.

(11) Explosives Blasting shall be conducted to prevent injury to persons or damage to property not owned by the operator. Fly rock shall be confined to the permit area. The Director may require a detailed blasting plan, pre-blast surveys or specify blast design limits to control possible adverse effects to structures.

C. Site Stabilization and Surface Configuration The permit area shall be stabilized, to the extent practicable, to minimize future impact to the environment and protect air and water resources. The final surface configuration of the disturbed area shall be suitable for achieving a self-sustaining ecosystem or approved post-mining land use.

(1) Final slopes and drainage configurations must be compatible with a self-sustaining ecosystem or approved post-mining land use.

(2) All reconstructed slopes, embankments and roads shall be designed, constructed and maintained to minimize mass movement.

(3) Measures must be taken to reduce, to the extent practicable, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded.

(4) Nonpoint source surface releases for acid or other toxic substances shall be contained within the permit area.

D. Erosion Control Reclamation of disturbed lands must result in a condition that controls erosion. Revegetated lands must not contribute suspended solids above

background levels to intermittent and perennial streams. Acceptable practices to control erosion include but are not limited to the following:

- (1) stabilizing disturbed areas through land shaping, berming, or grading to final contour;
- (2) minimizing reconstructed slope lengths and gradients;
- (3) diverting runoff;
- (4) establishing vegetation;
- (5) regulating channel velocity of water;
- (6) lining drainage channels with rock, vegetation or other geotechnical materials; and
- (7) mulching.

E. Revegetation To obtain the release of financial assurance revegetated lands must meet the following standards:

(1) Revegetation success for a self-sustaining ecosystem shall be determined through comparison of ground cover, productivity and diversity and shall be made on the basis of the following approved reference areas; through the use of technical guidance procedures published by the U. S. Department of Agriculture; other reasonably attainable standards approved by the Director; or a combination. Data collection shall be performed using the same methods and techniques on reference areas and reclaimed areas.

(a) foliar or basal cover and productivity of living perennial plants of the revegetated area shall be established equal to 90 percent of the reference area or equal to the approved revegetation standard to within a 90-percent statistical confidence;

(b) diversity of plant life forms (woody plants, grasses, forbs) shall consider what is reasonable based on the physical environment of the reclaimed area; and

(c) woody plant species shall be established to the approved density with an 80 percent statistical confidence.

(2) For areas for which the approved post-mining land use is for wildlife habitat or forest land, success of vegetation shall be determined on the basis of tree or shrub stocking (density) and ground cover.

(a) The ground cover of living perennial plants shall be equal to 90 percent of the native ground cover of the reference area or the approved standard to within a 90 percent statistical confidence and shall be adequate to control erosion.

(b) Tree stocking for forest land shall have stocking rates of plant species equal to 90 percent of the approved reference area or other approved standard with an 80 percent statistical confidence and shall be adequate to control erosion.

(c) If wildlife habitat is to be the post-mining land use, the operator shall select and use plant species on reclaimed areas based on the following criteria:

(i) their proven nutritional value for fish and wildlife;

(ii) their uses as cover and security for wildlife;

(iii) their ability to support and enhance fish and wildlife habitat; and

(iv) distribute plant life forms to maximize benefits of edge effect, cover and other benefits for fish and wildlife.

(3) Revegetation for other post-mining land shall be consistent with the approved post-mining land use. Site-specific standards may include standards for foliar or basal cover, production and diversity and will be included in the approved permit.

[7-12-94, 2-15-96; 19.10.5.508 NMAC - Rn, 19 NMAC 10.2.5.507.C, 05-15-2001]

19.10.5.509 COMPLIANCE WITH OTHER APPLICABLE LAWS:

A. Enforcement of other state or federal laws, regulation or standards shall be conducted by the agency charged with that responsibility under the applicable state or federal law, regulation or standard.

B. Enforcement of non-point source surface releases of acids or other toxic substances shall be performed by the Environment Department.

C. During the term of a permit issued pursuant to 19.10 NMAC, the permittee must maintain environmental permits required for the permit area. Revocation or termination of such a permit or the forfeiture of financial assurance related to the permit area by another governmental agency is adequate grounds for the Director to issue a cessation order pursuant to 19.10.11 NMAC.

[7-12-94, 2-15-96; 19.10.5.509 NMAC - Rn, 19 NMAC 10.2.5.508, 05-15-2001]

19.10.5.510 ANNUAL REPORT:

The permittee shall, on or before April 30 of each year after a permit has been issued, submit on a form provided by the Director a report for the preceding calendar year. The report must:

- A.** provide the status of the operation;
- B.** provide production figures for the operation;
- C.** identify, on a separate map(s), the location of the disturbed areas and if reclaimed, the year in which the work was done;
- D.** indicate the number of disturbed acres, number of acres reclaimed during the reporting year and the number of acres which have not yet been reclaimed;
- E.** indicate the current market value of any collateral posted as financial assurance in accordance with 19.10.12 NMAC; and
- F.** indicate compliance status for all existing state and federal environmental permits held by the permittee for this operation.

[7-12-94, 2-15-96; 19.10.5.510 NMAC - Rn, 19 NMAC 10.2.5.509, 05-15-2001]

19.10.5.511 PRIOR RECLAMATION:

A. The owner or operator of an existing mining operation who has completed some or all reclamation measures prior to July 12, 1994 may apply for an inspection of the reclaimed areas prior to August 31, 1994. This application shall be deemed to satisfy the deadline for a permit application for the areas covered as provided in Subsection A of 19.10.5.501 NMAC.

B. The Director shall release the owner or operator from further requirements of the Act and 19.10 NMAC if, after an inspection of the reclaimed areas, he determines that the reclamation measures satisfy the requirements of the Act and the substantive requirements for reclamation pursuant to 19.10 NMAC. The Director shall make the determination as soon as practicable, but not later than September 30, 1995. If the Director determines the reclamation measures do not satisfy the requirements of the Act and the substantive requirements for reclamation pursuant to 19.10 NMAC then, unless previously submitted, a permit application and closeout plan shall be submitted within 6 months after the owner or operator receives notice of the determination.

[7-12-94, 2-15-96; 19.10.5.511 NMAC - Rn, 19 NMAC 10.2.5.510, 05-15-2001]

PART 6: NEW MINING OPERATIONS

19.10.6.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.6.1 NMAC – N, 05-15-2001]

19.10.6.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.6.2 NMAC – N, 05-15-2001]

19.10.6.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.6.3 NMAC - N, 05-15-2001]

19.10.6.4 DURATION:

Permanent.

[19.10.6.4 NMAC - N, 05-15-2001]

19.10.6.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.6.5 NMAC – N, 05-15-2001]

19.10.6.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.6.6 NMAC - N, 05-15-2001]

19.10.6.7 DEFINITIONS:

[RESERVED]

[19.10.6.7 NMAC - N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.6.8-19.10.6.600 [RESERVED]:

[19.10.6.8 - 19.10.6.600 NMAC - N, 05-15-2001]

19.10.6.601 TIMING OF SUBMITTAL AND DEADLINES FOR OBTAINING APPROVAL:

A. Applications for permits for new mining operations operating pursuant to Section 69-36-5 of the Act shall be received by the Director by December 31, 1995. The Director may grant a six-month extension if the applicant has requested such and has shown good cause for the extension. Every new mining operation operating pursuant to Section 69-36-5 of the Act must have a permit approved by the Director by December 31, 1997.

B. Except as provided in Subsection A of 19.10.6.601 NMAC, after June 18, 1993, no person shall conduct a new mining operation without a permit issued by the Director.

C. Renewal applications shall be filed 120 days preceding expiration of the current permit.

[7-12-94, 2-15-96; 19.10.6.601 NMAC – Rn, 19 NMAC 10.2.6.601, 05-15-2001]

19.10.6.602 PERMIT APPLICATION REQUIREMENTS:

A. A minimum of six copies of applications for permits under this Part shall be submitted to the Director. The Director may require additional copies for distribution by the Director to other governmental agencies with an interest in, or jurisdiction over, elements of the proposed operation.

B. All information submitted to the Director shall be made available for public inspection and copying at the Director's office except as designated confidential. Information in the application which the applicant desires to keep confidential shall be clearly indicated and submitted separately from the rest of the application.

(1) If the operator designates as confidential an exploration map, financial information, information concerning the grade or location of ore reserves or trade secret information, the Director shall maintain the information as confidential and not subject to public records or disclosure laws.

(2) If a request is made for public review of the information held confidential, the Director shall notify the operator and provide a reasonable opportunity for substantiation of the claim that public disclosure of the information could harm the competitive position of the operator. If the claim is not substantiated to the satisfaction of the Director, the information shall be released.

(3) When a request is made for public review of information designated as confidential, the Director shall attempt to notify the operator within 24 hours of the request, and shall provide written notification by certified mail.

C. Each application shall be signed by the applicant or authorized agent of the applicant for the operation with the following certification made: I certify that I have personally examined and am familiar with the information submitted herein, and based on my inquiry of those individuals responsible for obtaining the information, I believe the submitted information is true, accurate, and complete.

D. Each application under this Part shall be in a format acceptable to the Director and shall contain the following:

(1) The name of the applicant to whom the permit may be issued.

(2) A map of the proposed permit area and a map and list, including names and addresses, of all known owners of surface and mineral estates within the proposed permit area as shown by the most recent county assessor's property tax schedule.

(3) Documents evidencing the applicant's right to enter the proposed permit area and conduct mining and reclamation.

(4) A listing of all parties, including addresses and telephone numbers, that have an ownership and controlling interests in the operation. Alternatively, the applicant may submit the applicant's most recent 10K form required by the United States Securities and Exchange Commission.

(5) A statement of all mining operations within the United States owned, operated or directly controlled by the applicant, owner or operator and by persons or entities that directly control the applicant and the names and addresses of regulatory agencies with jurisdiction over the environmental aspects of those operations and that could provide a compliance history for those operations over the preceding 10 years.

(6) The applicant shall designate an agent and provide the agent's street address for the service of notices and orders from the Director. This information shall be kept current if a permit is granted.

(7) To avoid duplication and conflicting requirements, the applicant may include information from environmental permit relevant to the application. Permits

issued by other governmental agencies shall be accepted by the Director to the extent such permits satisfy the requirements of the Act and 19.10 NMAC.

(8) A copy of the proposed form of notices required under 19.10.9 NMAC.

(9) The permit fee as determined pursuant to 19.10.2 NMAC.

(10) Where physically separate but interrelated mining operations are located in close proximity to each other and are under the control of the same owner or operator, the applicant may request or the Director may determine to issue one permit for all of the operations and require only one permit application.

(11) A listing of all federal and state permits required for the operation.

(12) Sampling and Analysis Plan

(a) The applicant shall submit a proposed sampling and analysis plan (SAP) to the Director for review prior to baseline data collection. Six copies should be submitted to facilitate the review. The proposed SAP should contain, at a minimum, the following information for each relevant resource:

- (i)** sampling objectives;
- (ii)** a list of data to be collected;
- (iii)** methods of collection;
- (iv)** parameters to be analyzed for;
- (v)** maps stating proposed sampling locations;
- (vi)** sampling frequency;
- (vii)** laboratory and field quality assurance plans; and
- (viii)** a brief discussion supporting the proposals.

(b) The Director shall distribute the proposed SAP to the Environment Department, Department of Game and Fish, and other agencies as determined by the Director. The agencies will have 30 days from receipt of the proposed SAP to submit written comments to the Director. Any written comments received within 30 days shall be provided to the applicant. The Director shall also provide written comments and recommendations to the applicant on the adequacy of the SAP.

(c) The applicant may request a conference with the Director to discuss the SAP.

(13) Baseline Data The level of detail required for environmental baseline information may vary depending on the location, size, scope and type of mining operation and site-specific characteristics. Baseline data shall describe the environment of the proposed permit area and, to the extent practicable, the affected area. Data gathered or available to the applicant for other purposes, such as a site assessment previously submitted, may be used in part to meet the requirements of this Part. Baseline data shall be collected over a period of at least 12 months for evaluation of water quality and quantity, wildlife and wildlife habitat and vegetation. The Director may require studies of longer duration than 12 months to address unique, site-specific factors. Baseline data shall include, as applicable:

(a) A description of the climatological factors representative of the permit area including precipitation, prevailing winds and temperature.

(b) Topographic maps clearly showing: the boundaries of the permit area, and the location of all buildings within 1/2 mile of the permit area; the kinds of information set forth on U.S.G.S. topographic maps; and all man-made features within the permit area existing on the date of application. The map shall be at a scale of 1 inch equals 2000 feet (1:24,000) or a scale approved by the Director to accurately represent the permit and potentially affected area.

(c) A map which delineates existing vegetation types and a description, including cover, density, and productivity of the plant communities within the proposed permit area. The description of the vegetation types and plant communities may be based upon data from adjacent areas if vegetation within the permit area has been adversely impacted by previous mining operations or other disturbances. Included in this description shall be the results of an inventory conducted for any sensitive, threatened or endangered plant species within the permit area.

(d) Wildlife information shall be developed for the permit area and, to the extent practicable, the affected area. Where species may be impacted beyond these areas, the information shall include, to the extent practicable, the area of potential impact. Wildlife information shall include the following:

(i) a map showing habitat types. The applicant is encouraged to contact the Director for recommendations on the preferred habitat classification system. Special or unique wildlife habitat features (e.g., cliffs, talus slopes, ponds, springs, known nests, etc.) within the area of potential impact by the mining operation, shall also be mapped.

(ii) a list of species potentially occurring on the permit or affected area and any additional species potentially impacted by the mining operations. This list must also indicate legal status of each species and which species were confirmed present during baseline studies.

(iii) data gathered shall include: presence/absence, distribution by season and habitat type, and relative abundance. Key habitat areas shall be identified such as calving/fawning, nesting, foraging, wintering areas, etc. The quality and quantity of the data must be suitable for measuring the success of reclamation and the impacts of the mining operation. Survey methods must be suitable for each species.

(iv) information collected pursuant to this Part shall be summarized in a report which includes a discussion of the faunal characteristics of the habitats in the permit and affected area. The report shall discuss the anticipated direct, indirect, short- and long-term impacts associated with the proposed operation.

(e) If revegetation is part of the reclamation plan, a description of the thickness and nature of the topsoil, if any, over the proposed permit area. A soil survey and soil analyses conducted in accordance with standard methods acceptable to the Director may be required to show variations in topsoil depth and suitability. Where the applicant proposes to use something other than topsoil, the application shall provide the results of analyses as necessary to determine the suitability of the proposed materials for use as a topdressing.

(f) A description of the ore body in the proposed permit area, including geologic plans and cross-sections depicting the nature and depth of overburden, mineralized zone or ore body, aquifers and springs. A description of the potential for geochemical alteration of overburden, ore body and other materials present within the permit area. Detailed analyses may be required if the substrata is suspected to contain substances that are likely to create acid drainage or might degrade surface water or ground water or hinder reclamation.

(g) Surface water and ground water information shall include the following:

(i) a map indicating the location of surface waters and the location and size of watersheds in and adjacent to the proposed permit area. The map shall depict all watercourses, lakes, reservoirs, springs, and riparian and wetland areas. Streams shall be classified as ephemeral, intermittent or perennial. The map shall identify all watercourses, lakes, springs, and riparian and wetland areas into which surface or pit drainage will be discharged or may possibly be expected to reach;

(ii) a description of surface drainage systems sufficient to identify the seasonal variations in surface water quantity and quality within the proposed permit and affected areas to the extent possible;

(iii) lithology and thickness of each geologic unit below the site indicating which units are water bearing, cross sections and potentiometric maps indicating the location of wells and the ground water flow direction in the vicinity of the site, and references or sources for this information;

(iv) a description of the aquifer characteristics including total dissolved solids concentration, maximum and minimum depths to ground water, direction of flow and gradients, transmissivity and storativity, and a general description of ground water quality, and references or sources for this information; and

(v) a determination of the probable hydrologic consequences of the operation and reclamation, on both the permit and affected areas, with respect to the hydrologic regime, quantity and quality of surface and ground water systems that may be affected by the proposed operations, including the dissolved and suspended solids under seasonal flow conditions.

(h) A description and delineation on topographic maps of any prior mining operations which may have affected the permit area including, if known, the type of mining and processing method and a list of any processing chemicals or reagents used.

(i) A list and accompanying map indicating all sites on or eligible for listing on either the National Register of Historic Places and/or the State Register of Cultural Properties and known cemeteries and human burials within the proposed permit area. Included with this list and map shall be a description of the effects the proposed mining operations may have on these sites and any proposed mitigation measures.

(j) A description of the present and historic land use of the permit area, the general patterns of land use in the surrounding areas, and a narrative of land capability and productivity based upon U.S. Soil Conservation Service land use capability classes or a similar classification.

(14) The Director may contract with and the applicant shall pay for qualified experts for the following:

(a) Review and comment to the Director on the adequacy of baseline data prior to submission of the permit application.

(b) Recommend to the Director additional baseline data that may be necessary in the review of the proposed mining activity.

(c) Recommend to the Director methodology guidelines for the collection of baseline data;

(d) Review and comment on the permit application;

(e) Prepare an environmental evaluation, analysis and assessment of the permit application which complies with Subsection D of 19.10.6.605 NMAC.

(15) A detailed description of the proposed mining operation and reclamation plan, including:

(a) A description of the type and method of mining and the engineering techniques proposed, and how the operation will meet the performance and reclamation standards and requirements of this Part.

(b) A map or maps at a scale approved by the Director and an approximate schedule or timetable indicating the mining operations including number of acres of land to be disturbed. A permittee will be required to follow the sequence described in the schedule or timetable, unless modified or revised. A permittee will not be required to meet specific dates for initiation or completion of mining according to the schedule or timetable.

(c) Maps and plans indicating the location, size and capacities for the mine facilities including:

- (i)** leach pads, heaps, ore dumps and stockpiles;
- (ii)** impoundments;
- (iii)** ponds;
- (iv)** diversions;
- (v)** disposal systems;
- (vi)** pits;
- (vii)** tailings disposal facilities;
- (viii)** mills;
- (ix)** water treatment facilities;
- (x)** storage areas for equipment, vehicles, chemicals and solutions;
- (xi)** topsoil and topdressing stockpiles;
- (xii)** waste rock dumps; and
- (xiii)** other facilities or structures.

(d) A contingency plan to mitigate impacts to wildlife when there has been an emergency or accidental discharge of toxic substances that may impact wildlife.

(e) A description of measures which will be undertaken to reduce sedimentation from the permit area and a plan for the monitoring of non-point source sediment pollution from the disturbed area.

(f) If a post-mining land use is proposed, a detailed description of how the disturbed area will be reclaimed to achieve that use and written approval of the surface owner for the proposed use.

(g) A description of the proposed reclamation plan, including, a detailed description of how the disturbed area will be reclaimed to meet the requirements of Section 69-36-7(H)4 and the performance and reclamation standards and requirements of this Part.

(h) A map or maps at a scale approved by the Director and an approximate schedule indicating the reclamation activities to take place on disturbed areas of the mine site including the number of acres to be reclaimed. A permittee will be required to follow the sequence described unless modified or revised.

(i) A topographic map of the anticipated surface configuration of the permit area upon the completion of reclamation operations. The map shall be at contour intervals and scale approved by the Director.

(j) A description of the potential for the generation of acid or other toxic drainage from overburden and waste materials following reclamation and a design that incorporates measures to reduce, to the extent practicable, the formation of acid or other toxic drainage that may otherwise occur following reclamation to prevent releases that cause federal or state standards to be exceeded.

(k) A detailed description of how all waste, waste management units, pits, heaps, pads and any other storage piles will be designed, sited and constructed in a manner that facilitates, to the maximum extent practicable, contemporaneous reclamation and are consistent with the approved reclamation plan.

(16) Additional information necessary for evaluation of the application as required by the Director. [7-12-94, 2-15-96; 19.10.6.602 NMAC – Rn, 19 NMAC 10.2.6.602, 05-15-2001; A, 05-31-2001]

19.10.6.603 PERFORMANCE AND RECLAMATION STANDARDS AND REQUIREMENTS:

The permit area will be reclaimed to achieve a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use. Each reclamation plan must be developed to meet the site-specific characteristics of the mining operation and the site.

A. Most Appropriate Technology and Best Management Practices The mining operation and the reclamation plan shall be designed and operated using the most appropriate technology and the best management practices.

B. Contemporaneous Reclamation Contemporaneous reclamation is required to the maximum extent practicable and in a manner that is consistent with the approved reclamation plan.

C. Assure Protection The mining operation and completed reclamation shall meet the following requirements established to assure protection of human health and safety, the environment, wildlife and domestic animals.

(1) Signs, Markers and Safeguarding Measures will be taken to safeguard the public from unauthorized entry into shafts, adits, and tunnels and to prevent falls from highwalls or pit edges. Depending on site-specific characteristics, the following measures shall be required:

- (a)** closing shafts, adits or tunnels to prevent entry;
- (b)** posting warning signs in locations near hazardous areas;
- (c)** restricting access to hazardous areas;
- (d)** marking the permit area boundaries;
- (e)** posting a sign at the main entrances giving a telephone number of a person to call in the event of emergencies related to the mine; or
- (f)** other measures as needed to protect human safety.

(2) Wildlife Protection Measures shall be taken to minimize adverse impacts on wildlife and important habitat. Based on site-specific characteristics, the following measures will be required:

- (a)** restricting access of wildlife and domestic animals to toxic chemicals or otherwise harmful materials;
- (b)** minimizing harm to wildlife habitat during mining; and
- (c)** reclaiming areas of wildlife habitat if not in conflict with the approved post-mining land use.

(3) Cultural Resources Cultural resources listed on or eligible for listing on the National Register of Historic Places or the State Register of Cultural Properties, and any cemeteries or burial grounds shall be protected until clearance has been granted by the State Historic Preservation Office or other appropriate authority.

(4) Hydrologic Balance Operations shall be planned and conducted to minimize change to the hydrologic balance in both the permit and potentially affected areas. If not in conflict with the approved post-mining land use, reclamation shall result

in a hydrologic balance similar to pre-mining conditions unless non-mining impacts have substantially changed the hydrologic balance.

(a) Operations shall be designed so that non-point source surface releases of acid or other toxic substances shall be contained within the permit area, and that all other surface flows from the disturbed area are treated to meet all applicable state and federal regulations.

(b) The disturbed areas shall not contribute suspended solids above background levels, or where applicable the Water Quality Control Commission's standards, to intermittent and perennial streams.

(c) To provide data to determine background levels for surface water entering the permit area, appropriate monitoring shall be conducted on drainages leading into the permit area.

(d) All diversions of overland flow shall be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance and to assure the safety of the public.

(i) No diversion shall be located so as to increase the potential for landslides.

(ii) Unless site-specific characteristics require a different standard which is included in the approved permit, diversions which have watersheds larger than 10 acres shall be designed, constructed and maintained to safely pass the peak runoff from a 10-year, 24-hour precipitation event.

(iii) All diversion designs which have watersheds larger than 10 acres shall be certified by a professional engineer registered in New Mexico as having been designed in accordance with 19.10 NMAC. Diversion designs shall be kept on-site or otherwise be made available, upon request, to the Director for inspection.

(iv) When no longer needed, temporary diversions shall be removed and the disturbed area reclaimed.

(5) Stream Diversions When streams are to be diverted, the stream channel diversion shall be designed, constructed, and removed in accordance with the following:

(a) unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, the combination of channel, bank and flood plain configurations shall be adequate to safely pass the peak run-off of a 10-year, 24-hour precipitation event for temporary diversions, a 100-year, 24-hour precipitation event for permanent diversions;

(b) the design and construction of all intermittent and perennial stream channel diversions shall be certified as meeting 19.10 NMAC by a professional engineer registered in New Mexico. As-built drawings shall be completed promptly after construction and be retained on site or otherwise made available upon request to the Director; and

(c) when no longer needed, temporary stream channel diversions shall be removed and the disturbed area reclaimed.

(6) Impoundments If impoundments are required they shall be designed, constructed and maintained to minimize adverse impacts to the hydrologic balance and adjoining property and to assure the safety of the public.

(a) Unless site-specific characteristics require different measures to meet the performance standard and are included in the approved permit, impoundments having earthen embankments but not subject to the jurisdiction of the Mine Safety and Health Administration or the State Engineer shall:

(i) have a minimum elevation at the top of the settled embankment of 1.0 foot above the water surface in the pond with the spillway flowing at the design depth;

(ii) have a top width of the embankment not less than 6 feet;

(iii) have combined upstream and downstream side slopes of the settled embankment not less than 5 horizontal : 1 vertical with neither slope steeper than 2 horizontal : 1 vertical. Slopes shall be vegetated or otherwise stabilized to control erosion;

(iv) have the embankment foundation cleared of all vegetative matter, all surfaces sloped to no steeper than 1 horizontal : 1 vertical and the entire foundation area scarified;

(v) have fill material free of vegetative matter and frozen soil;

(vi) have spillways provided to safely discharge the peak runoff of a 25-year, 24-hour precipitation event, or an event with a 90-percent chance of not being exceeded for the design life of the structure; or

(vii) have other site-specific design criteria for embankments as long as they result in a minimum static safety factor of 1.3 with water impounded to the design level;

(viii) be designed and certified by a professional engineer registered in New Mexico as having been designed and constructed in accordance with 19.10

NMAC. As-built drawings shall be completed promptly after construction and be retained on site or otherwise made available upon request to the Director; and

(ix) if necessary for sediment control be, in place before any other disturbance to the watershed for the impoundment.

(b) When no longer required, impoundments shall be graded to achieve positive drainage unless:

(i) the surface estate owner has requested in writing that they be retained;

(ii) they are consistent with the approved reclamation plan; and

(iii) they are appropriate for the post-mining land use or the self-sustaining ecosystem.

(7) **Minimization of Mass Movement** All man-made piles such as waste dumps, topsoil stockpiles and ore piles shall be constructed and maintained to minimize mass movement.

(8) **Riparian and Wetland Areas** Disturbance to riparian and wetland areas shall be minimized during mining. Adverse effects to riparian and wetland areas shall be mitigated during reclamation unless the mitigation conflicts with the approved post-mining land use.

(9) **Roads** Roads shall be constructed and maintained to control erosion.

(a) Drainage control structures shall be used as necessary to control runoff and to minimize erosion, sedimentation and flooding. Drainage facilities shall be installed as road construction progresses and shall be capable of safely passing a 10-year, 24 hour precipitation event unless site-specific characteristics indicate a different standard is appropriate and is included in the approved permit. Culverts and drainage pipes shall be constructed and maintained to avoid plugging, collapsing, or erosion.

(b) Roads to be constructed in or across intermittent or perennial streams require site-specific designs to be submitted with the permit application.

(c) Roads to be made permanent must be approved by the surface owner and be consistent with the approved post-mining land use.

(10) **Subsidence Control** Underground and in situ solution mining activities shall be planned and conducted, to the extent technologically and economically feasible, to prevent subsidence which may cause material damage to structures or property not owned by the operator.

(a) Underground and in situ solution mining activities near any aquifer that serves as a significant source of water supply to a public water system shall be conducted so as to avoid disruption of the aquifer and consequent exchange of ground water between the aquifer and other strata.

(b) Underground and in situ solution mining activities conducted beneath or adjacent to any perennial stream must be performed in a manner so that subsidence is not likely to cause material damage to streams, water bodies and associated structures.

(11) Explosives Blasting shall be conducted to prevent injury to persons or damage to property not owned by the operator. Fly rock shall be confined to the permit area. The Director may require a detailed blasting plan, pre-blast surveys or specify blast design limits to control possible adverse effects to structures.

D. Site Stabilization & Configuration The permit area shall be stabilized, to the extent practicable, to minimize future impact to the environment and protect air and water resources. The final surface configuration of the disturbed area shall be suitable for achieving a self-sustaining ecosystem or approved post-mining land use.

(1) Final slopes and drainage configurations must be compatible with a self-sustaining ecosystem or approved post-mining land use.

(2) Backfilling or partial backfilling shall be required only when necessary to achieve reclamation objectives that cannot be accomplished through other mitigation measures.

(3) All reconstructed slopes, embankments and roads shall be designed, constructed and maintained to minimize mass movement.

(4) Measures must be taken to reduce, to the extent practicable, the formation of acid and other toxic drainage that may otherwise occur following closure to prevent releases that cause federal or state standards to be exceeded.

(5) Nonpoint source surface releases for acid or other toxic substances shall be contained within the permit area.

E. Topsoil Where sufficient topsoil is present, the operator shall take measures to preserve it from erosion or contamination and assure that it is in a usable condition for sustaining vegetation when needed. The following requirements shall be met unless site-specific characteristics mandate different requirements and those requirements are included in the approved permit.

(1) Topsoil and topdressing shall be sampled and analyzed for vegetation establishment suitability:

(a) sample spacing and interval shall be based on site-specific materials; and

(b) suitability will be identified by analysis based on site-specific materials.

(2) If revegetation is a component of the reclamation plan and if sufficient topsoil is present in the disturbed or borrow areas, it shall be collected and preserved to the extent practicable. Sufficient topsoil means that it is of sufficient quality to conform to the definition of topsoil. Any necessary topdressing may be obtained from areas to be disturbed or borrow areas and shall be salvaged separately from other materials as needed to ensure its availability for distribution when needed for reclamation.

(3) Where direct distribution of topsoil or topdressing is not possible, it shall be stockpiled separately and in a manner to prevent loss of the resource.

(4) Topsoil and topdressing shall be distributed in a manner to establish and maintain vegetation, consistent with the approved permit.

(5) After distribution, topsoiled and topdressed areas shall be stabilized to protect loss of the resource.

(6) Where topsoil has been stockpiled for more than one year, the permittee may be required to conduct analyses to determine if amendments are necessary.

F. Erosion Control Reclamation of disturbed lands must result in a condition that controls erosion. Revegetated lands must not contribute suspended solids above background levels, or where applicable the Water Quality Control Commission's standards, to streamflow of intermittent and perennial streams. Acceptable practices to control erosion include but are not limited to the following:

(1) stabilizing disturbed areas through land shaping, berming, or grading to final contour;

(2) minimizing reconstructed slope lengths and gradients;

(3) diverting runoff;

(4) establishing vegetation;

(5) regulating channel velocity of water;

(6) lining drainage channels with rock, vegetation or other geotechnical materials; and

(7) mulching.

G. Revegetation To obtain the release of financial assurance revegetated lands must meet the following standards:

(1) Revegetation success for a self-sustaining ecosystem shall be determined through comparison of ground cover, productivity and diversity and shall be made on the basis of the following approved reference areas; through the use of technical guidance procedures published by the U. S. Department of Agriculture; other reasonably attainable standards approved by the Director; or a combination. Data collection shall be performed using the same methods and techniques on reference areas and reclaimed areas.

(a) foliage or basal cover and productivity of living perennial plants of the revegetated area shall be established equal to 90 percent of the reference area or equal to the approved revegetation standard to within a 90-percent statistical confidence;

(b) diversity of plant life forms (woody plants, grasses, forbs) shall consider what is reasonable based on the physical environment of the reclaimed area; and

(c) woody plant species shall be established to the approved density with an 80 percent statistical confidence.

(2) For areas for which the approved post-mining land use is for wildlife habitat or forest land, success of vegetation shall be determined on the basis of tree or shrub stocking (density) and ground cover.

(a) The ground cover of living perennial plants shall be equal to 90 percent of the native ground cover of the reference area or the approved standard to within a 90 percent statistical confidence and shall be adequate to control erosion.

(b) Tree stocking for forest land shall have stocking rates of plant species equal to 90 percent of the approved reference area or other approved standard with an 80 percent statistical confidence and shall be adequate to control erosion.

(c) If wildlife habitat is to be the post-mining land use, the operator shall select and use plant species on reclaimed areas based on the following criteria:

(i) their proven nutritional value for fish and wildlife;

(ii) their uses as cover and security for wildlife;

(iii) their ability to support and enhance fish and wildlife habitat; and

(iv) distribute plant life forms to maximize benefits of edge effect, cover and other benefits for fish and wildlife.

(3) Revegetation for other post-mining land shall be consistent with the approved post-mining land use. Site-specific standards may include standards for foliar or basal cover, production and diversity and will be included in the approved permit.

H. The operation will be designed to meet without perpetual care all applicable environmental requirements of the Act, 19.10 NMAC and other laws following closure.

[7-12-94, 2-15-96; 19.10.6.603 NMAC – Rn, 19 NMAC 10.2.6.603, 05-15-2001]

19.10.6.604 COMPLIANCE WITH OTHER APPLICABLE LAWS:

A. Enforcement of other state or federal laws, regulations or standards shall be conducted by the agency charged with the responsibility under the applicable state or federal law, regulation or standard.

B. Enforcement of non-point source surface releases of acids or other toxic substances shall be performed by the Environment Department.

C. During the term of a permit issued pursuant to 19.10 NMAC, the permittee must maintain environmental permits required for the permit area. Revocation or termination of such a permit or the forfeiture of financial assurance related to the permit area by another governmental agency is adequate grounds for the Director to issue a cessation order pursuant to 19.10.11 NMAC.

[7-12-94, 2-15-96; 19.10.6.604 NMAC – Rn, 19 NMAC 10.2.6.604, 05-15-2001]

19.10.6.605 PERMIT APPROVAL REQUIREMENTS:

A. As soon as practicable after receipt of a permit application, the Director shall notify the applicant in writing whether the application is complete. If the application is not complete, the notice shall specify the items missing from the application.

B. Within 30 days of receipt of a notice from the Director that the application is complete, the applicant shall, in the form approved by the Director, give public notice of the application pursuant to 19.10.9 NMAC.

C. The Director shall deliver copies of the complete application or appropriate sections (except those parts of the application designated confidential under Subsection B of 19.10.6.602 NMAC, provided, however, that the Director shall include with the application a list of the parts withheld and will provide such parts at an agency's specific request) to the following agencies which shall have 60 days in which to provide comments to the Director: the Environment Department; the Department of Game and Fish; the State Forestry Division; the State Historic Preservation Office; and the State Engineer; if the operation is on state or federal land, the appropriate state or federal land management agency; and any other agency the director deems appropriate.

D. The Director shall prepare a draft environmental evaluation which shall include an analyses of the reasonably foreseeable impacts of proposed activities on the pre-mining and post-mining environment and the local community, including other past, present and reasonably foreseeable future actions, regardless of the agency or persons

that undertake the other action or whether the actions are on private, state or federal land. The Director may contract with, and the applicant should pay for, a third party to prepare the analysis and assessment.

E. The Director shall, within 30 days after completion of the technical review of the application and the draft environmental evaluation, notify the applicant in writing whether the application is approvable, or, if not approvable, shall specify in detail what additional submittal or changes are required. The Director shall, upon submittal of additional information or changes, notify the applicant whether the resubmitted application is approvable or if the additional submittal or changes are not sufficient.

F. After receipt of written notice from the Director that the application is approvable, the applicant shall submit a proposal for financial assurance as determined under 19.10.12 NMAC.

[7-12-94, 2-15-96; 19.10.6.605 NMAC – Rn, 19 NMAC 10.2.6.605, 05-15-2001]

19.10.6.606 PERMIT APPROVAL OR DENIAL:

A. The Director may issue a permit subject to conditions necessary to meet the requirements of the Act and 19.10 NMAC.

B. No permit shall be issued until the Director finds, in writing, that:

(1) The permit area will achieve a self-sustaining ecosystem appropriate for the life zone of the surrounding areas following closure unless conflicting with the approved post-mining land use.

(2) The applicant has provided evidence that all other applicable state and federal permits required to be obtained by the new mining operation either have been or will be issued before the activities subject to those permits begin.

(3) The Secretary of the Environment Department has provided a written determination stating that the permit applicant has demonstrated that the activities to be permitted or authorized will be expected to achieve compliance with all applicable air, water quality and other environmental standards if carried out as described in the permit application. This determination shall address applicable standards for air, surface water and ground water protection enforced by the Environment Department, or for which the Environment Department is otherwise responsible.

(4) The permit application is complete.

(5) The permit application fee, and any fees for the environmental evaluation, have been paid and the financial assurance is adequate and has been provided.

(6) Reclamation in accordance with the proposed reclamation plan is economically and technically feasible.

(7) The mining or reclamation operation is designed to meet, without perpetual care, all applicable environmental requirements following closure.

(8) The applicant, the operator or owner or any persons or entities directly controlled by the applicant, operator, owner or any persons or entities that directly control the applicant, operator or owner:

(a) Are not currently in violation of the terms of another permit issued by the Division or in violation of any substantial environmental law or substantive environmental regulation at a mining operation in the United States, which violation is unabated and is not the subject of appeal, and have not forfeited or had forfeited financial assurance required for any mining, reclamation or exploration permit in the United States. For purposes of this Section, a substantial environmental law or substantive environmental regulation is one which is intended to protect natural resources from degradation and does not include violations of recordkeeping or reporting requirements. If a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose; and

(b) Have not demonstrated a pattern of willful violations of the Act or other New Mexico environmental statutes. If a violation occurred prior to the initiation of a legal relationship between the permit applicant and the violator, it shall not be considered for this purpose.

(9) An environmental evaluation has been prepared which meets the requirements of Section 69-36-9 of the Act.

(10) If the proposed mining operation is on state or federal lands, the appropriate land management agency approves the proposed mining operation if approval by the land management agency is required under that agency's regulations.

(11) The public participation requirements of 19.10.9 NMAC have been met.

(12) The applicant has submitted a notarized statement that he agrees to comply with the performance and reclamation standards and requirements of the permit, the Act, and 19.10 NMAC and allows the Director to enter the permit area without delay until release of the financial assurance.

[7-12-94, 2-15-96; 19.10.6.606 NMAC – Rn, 19 NMAC 10.2.6.606, 05-15-2001]

19.10.6.607 PERMIT TERM:

A. The permittee shall maintain a permit until financial assurance is released under 19.10.12 NMAC.

B. The term of a permit shall not exceed 20 years. The term of renewals of a permit shall not exceed 10 years.

C. For any permits issued for more than five years, the Director shall review these permits at least every five years to determine compliance with the Act and 19.10 NMAC and to determine if the conditions are accurately reflected in the approved permit.

(1) In determining the frequency of review, the Director shall consider, among other factors:

(a) the current level of activity at the operation;

(b) the compliance history of the operation;

(c) complaints received about the operation;

(d) the effect amendments to the Act and 19.10 NMAC may have on the operation; and

(e) the status of other environmental permits and compliance thereunder.

(2) After this review, the Director shall notify the permittee of any required modifications or revisions of the permit necessary to ensure compliance with the Act and 19.10 NMAC.

(3) If an approvable application for the required modification or revision has not been made within 90 days of the date of initial notification, the Director may order the cessation of the mining operation.

D. A permit shall be reviewed and may be required to be modified or revised for any of the following:

(1) additional applicable requirements under the Act or 19.10 NMAC; or

(2) the Director determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit.

E. The Director shall periodically review the amount of financial assurance filed with the Director under 19.10.12 NMAC. The Director may require adjustments to the amount of financial assurance to reflect inflationary increases or increases in the anticipated costs of reclamation.

F. If the permit area contains property owned by the federal or state government, the expiration or termination of the government's authorization for the permittee to conduct mining operations on the property automatically suspends the permittee's authority to continue mining operations on the property, although not necessarily reclamation operations, by the permit issued under 19.10 NMAC.

[7-12-94, 2-15-96; 19.10.6.607 NMAC – Rn, 19 NMAC 10.2.6.607, 05-15-2001]

19.10.6.608 PERMIT MODIFICATIONS OR REVISION:

A. A permit modification or revision for a mining operation is required for each new discrete processing, leaching, excavation, storage or stockpile unit located within the permit area and not identified in the permit and for each expansion of such a unit identified in the permit that exceeds the design limits specified in the permit.

B. A permit modification or revision shall be required for any change in the approved reclamation plan.

C. An application for a permit modification or revision shall be in a format acceptable to the Director. A permit modification or revision will not be granted unless the Director determines that the proposed modification or revision meets the requirements of 19.10.6 NMAC.

D. Revisions are modifications that require public notice and an opportunity for public hearing pursuant to 19.10.9 NMAC. The Director shall review each request for a permit modification to determine whether it must be processed as a revision.

(1) The Director shall consider the following factors and their level of impact to determine whether a permit modification would have a significant environmental impact:

(a) Whether the proposed change would authorize an expansion of design limits beyond that currently authorized by the permit that:

(i) Would be located in or is expected to have a direct surface impact on wetlands, springs, perennial or intermittent streams, lakes, rivers, reservoirs or riparian areas.

(ii) Is expected to have a direct impact on ground water that has a total dissolved solids concentration of less than 10,000 mg/l.

(iii) Is expected to result in point or non-point source surface or subsurface releases of acid or other toxic substances from the permit area.

(iv) Would be located in designated critical habitat areas as determined in accordance with the federal Endangered Species Act of 1973 or in areas determined by the Department of Game and Fish likely to result in an adverse impact on an

endangered species designated in accordance with the Wildlife Conservation Act, Sections 17-2-37 through 17-2-46 NMSA 1978 or by the State Forestry Division for the Endangered Plants Act, Section 75-6-1 NMSA 1978.

(v) Would adversely impact cultural resources listed on either the National Register of Historic Places or the State Register of Cultural Properties.

(vi) Would be located in a known cemetery or other burial ground.

(vii) Would be located in an area designated as a Federal Wilderness Area, Wilderness Study Area, Area of Critical Environmental Concern, or an area within the national Wild and Scenic River System.

(b) Whether the proposed change would result in a significant increase in the amount of financial assurance as determined by the Director; or

(c) Whether the proposed change would significantly depart from the nature or scale of the permit.

(2) An application for a permit modification or revision shall be accompanied by sufficient information for the Director to determine whether any of the factors listed in 19.10.6.608 NMAC are present.

(3) The Director shall consult with the Department of Environment, the Department of Game and Fish, State Forestry, applicable state or federal land management agency, or the State Historic Preservation if factors listed in Subsection D of 19.10.6.608 NMAC are present relevant to the agency's area of expertise.

E. The following actions do not require permit modifications:

(1) the construction, relocation or modification of roads within the disturbed area that does not change the reclamation plan;

(2) placement or movement of support buildings, equipment areas, maintenance shops, monitoring facilities, wells, power lines, power poles, substations, and communications facilities within the disturbed area that does not change the reclamation plan;

(3) the movement of tanks, pipelines, utilities, and portable units; and

(4) changes to facilities subject to regulation under the Solid Waste Act.

[7-12-94, 2-15-96, 12-29-2000; 19.10.6.608 NMAC – Rn, 19 NMAC 10.2.6.608, 05-15-2001; A, 05-31-2001]

19.10.6.609 PRIOR RECLAMATION:

A. The owner or operator of a new mining operation who has completed some or all reclamation measures prior to the effective date of 19.10 NMAC may apply for an inspection of the reclaimed areas prior to August 31, 1994.

B. The Director shall release the owner or operator from further requirements of the Act and 19.10 NMAC if, after an inspection of the reclaimed areas, he determines that the reclamation measures satisfy the requirements of the Act and 19.10 NMAC. The Director shall make the determination as soon as practicable, but not later than September 30, 1995.

[7-12-94, 2-15-96; 19.10.6.609 NMAC – Rn, 19 NMAC 10.2.6.609, 05-15-2001]

19.10.6.610 ANNUAL REPORT:

Every permittee, including those holding minimal impact mining permits, shall, on or before April 30 of each year after a permit has been issued, submit, on a form provided by the Director, a report for the preceding calendar year. The report must:

A. provide the status of the operation;

B. provide production figures for the operation;

C. identify, on a separate map, the location of the disturbed areas and if reclaimed, the year in which the work was done;

D. identify the number of acres disturbed, the number of acres reclaimed during the reporting year and the number of acres which have not yet been reclaimed;

E. indicate the current market value of any collateral posted as financial assurance in accordance with Part 19.10.12 NMAC; and

F. indicate the compliance status for all existing state and federal environmental permits held by permittee for this operation.

[7-12-94, 2-15-96; 19.10.6.610 NMAC – Rn, 19 NMAC 10.2.6.610, 05-15-2001]

PART 7: STANDBY

19.10.7.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.7.1 NMAC - N, 05-15-2001]

19.10.7.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.7.2 NMAC - N, 05-15-2001]

19.10.7.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.7.3 NMAC - N, 05-15-2001]

19.10.7.4 DURATION:

Permanent.

[19.10.7.4 NMAC - N, 05-15-2001]

19.10.7.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.7.5 NMAC - N, 05-15-2001]

19.10.7.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.7.6 NMAC - N, 05-15-2001]

19.10.7.7 DEFINITIONS:

[RESERVED]

[19.10.7.7 NMAC - N, 05-15-2001]

[Definitions for this Part can be found in 19.10.1.7 NMAC.]

19.10.7.8-19.10.7.700 [RESERVED]:

[19.10.7.8 - 19.10.7.700 NMAC - N, 05-15-2001]

19.10.7.701 STANDBY STATUS:

A. If, due to a temporary cessation of mining operations exceeding 180 days, a permittee desires to suspend reclamation pursuant to a permit for an existing or new mining operation, the permittee shall submit an application for a permit revision for standby status pursuant to this Part and 19.10.5.505 NMAC or 19.10.6.608 NMAC.

B. An application for a permit revision for standby status shall indicate the portions of the permit to be revised, the proposed changes, and for each unit subject to the proposed revision, shall, at a minimum, provide the following:

- (1)** identify the projected term of standby status;
- (2)** describe the measures to be taken to reduce, to the extent practicable, the formation of acid and other toxic drainage and to prevent releases that cause federal or state environmental standards to be exceeded;
- (3)** describe how applicable federal and state environmental standards and regulations will be met during the duration of standby status and provide to the Director a written determination from the Secretary of the Environment Department stating that the permittee has demonstrated that the operation will be expected to achieve compliance with all applicable air, water quality and other environmental standards of the Environment Department during standby status if carried out as described;
- (4)** describe how waste and storage units, leach piles, impoundments and pits will be stabilized during the duration of standby status;
- (5)** describe how the applicable requirements of the Act and 19.10 NMAC will be met during the term of the standby status for the operations proposed for standby status; and
- (6)** provide an analysis of the anticipated future economic viability of the units proposed for standby status.

C. An application for a permit revision for standby status must contain a copy of the notices required pursuant to 19.10.9 NMAC and the permit revision fee pursuant to 19.10.2 NMAC.

D. The Director may require additional information to ensure that an operation in standby status minimizes adverse impacts to the environment and complies with applicable regulations.

E. The Director shall provide notice of receipt of the application for standby status to the Environment Department, the Office of the State Engineer, the Department of Game and Fish, the State Historic Preservation Division, the Forestry Division, other agencies he deems appropriate, and, if the operation is on state or federal land, to the appropriate state or federal land management agency.

F. An application for a permit revision for standby status will be approved if the permittee has paid the permit revision fee pursuant to 19.10.2 NMAC, and the Director finds:

(1) that the permittee agrees to take measures to reduce, to the extent practicable, the formation of acid and other toxic drainage and to prevent releases that cause federal or state environmental standards to be exceeded;

(2) that the permittee agrees to meet applicable federal and state environmental standards and regulations during the period of standby status, and the Secretary of the Environment Department has indicated environmental standards of that Department are expected to be met during the term of standby status.

(3) that the permittee agrees to stabilize waste and storage units, leach piles, impoundments and pits during the term of standby status;

(4) that the permittee agrees to comply with the applicable requirements of the Act, 19.10 NMAC and the permit during the term of standby status; and

(5) that the permittee has provided an analysis of the economic viability for each unit proposed for standby status.

G. Standby status will not be granted until the public participation requirements of 19.10.9 NMAC are met. Standby status will not be granted for an existing mining operation until a closeout plan has been approved and financial assurance provided, nor for a new mining operation until a permit has been issued and financial assurance provided.

H. Standby status will end upon revision or modification of the permit to return to operating status or expiration of the permit term or renewal period.

I. Standby status shall be granted for a maximum term of five years; the Director may renew the standby status for no more than three additional five-year terms.

J. Standby status will not be granted beyond the term of any mineral lease. Should the mineral lease terminate or the claims become invalid during the term of standby status, then standby status shall also end.

[7-12-94, 2-15-96; 19.10.7.701 NMAC - Rn, 19 NMAC 10.2.7.701, 05-15-2001]

PART 8: PERMIT TRANSFER

19.10.8.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.8.1 NMAC - N, 05-15-2001]

19.10.8.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.8.2 NMAC - N, 05-15-2001]

19.10.8.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.8.3 NMAC - N, 05-15-2001]

19.10.8.4 DURATION:

Permanent.

[19.10.8.4 NMAC - N, 05-15-2001]

19.10.8.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.8.5 NMAC - N, 05-15-2001]

19.10.8.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.8.6 NMAC - N, 05-15-2001]

19.10.8.7 DEFINITIONS:

[RESERVED]

[19.10.8.7 NMAC - N, 05-15-2001]

[Definitions for this Part can be found in 19.10.1.7 NMAC.]

19.10.8.8-19.10.8.800 [RESERVED]:

[19.10.8.8 - 19.10.8.800 NMAC - N, 05-15-2001]

19.10.8.801 GENERAL REQUIREMENTS:

No transfer of any permit issued pursuant to the Act shall be made without the prior written approval of the Director. The transferor will not be released from obligations under the permit until the transferee has assumed such obligations.

[7-12-94, 2-15-96; 19.10.8.801 NMAC – Rn, 19 NMAC 10.2.8.801, 05-15-2001]

19.10.8.802 TRANSFER OF PERMIT:

A. To obtain a permit transfer, an applicant, i.e., the person proposing to succeed by such transfer, shall prior to the date of such transfer:

(1) obtain financial assurance coverage as required by 19.10.12 NMAC for the permit area;

(2) provide proof to the Director that the transfer complies with the terms of the mineral lease, if any;

(3) apply to the Director for approval of such proposed transfer including the following:

(a) the name and address of the current permittee;

(b) the name and address of the applicant and the name and street address of the applicant's resident agent; and

(c) the information required by Section 69-36-7(I)(1)&(2) of the Act; and

(4) pay the permit transfer fee pursuant 19.10.2 NMAC.

B. Except for applications for permit transfer for minimal impact operations, the applicant shall advertise the filing of the application in a newspaper of general circulation in the county of the mining, exploration or reclamation operation, indicating the name and address of the applicant, the permittee, the permit number and particular geographic location of the permit area, and the Director's address to which written comments may be sent.

C. Any person whose interests are or may be adversely affected, may submit written comments on the application to the Director within 30 days of the public notice. Notice also shall be provided by the Director to the Environment Department, the Office of the State Engineer, the Department of Game and Fish, the Forestry Division, the State Historic Preservation Division, other agencies he deems appropriate, and, if the operation is on state or federal land, to the appropriate state or federal management agency.

D. The Director shall, upon the basis of the applicant's compliance with the requirements of Subsection A of 19.10.8.802 NMAC, grant written approval for the transfer of a permit, if the Director first finds, in writing, that:

(1) the applicant has, in accordance with Subsections A and B of 19.10.8.802 NMAC, submitted financial assurance as required by 19.10.12 NMAC;

(2) the applicant agrees to continue to conduct the operations involved in full compliance with the Act, 19.10 NMAC and the terms and conditions of the original permit, unless and until the applicant has obtained a new, revised or modified permit;

(3) for existing or new mining operations, the applicant would be eligible to receive a permit for new mines in accordance with Section 69-36-12(B)(5); for exploration operations the applicant would be eligible to receive a permit in accordance with Section 69-36-13(B) of the Act; and

(4) the applicant has paid the permit transfer fee.

E. The Director shall notify the current permittee, the applicant, and the owner of the mineral estate of his findings.

F. The applicant shall immediately provide notice to the Director of the consummation of the transfer of the permit. Upon the Director's written approval, the applicant becomes the permittee and may continue mining, exploration or reclamation operations according to the permit.

[7-12-94, 2-15-96; 19.10.8.802 NMAC – Rn, 19 NMAC 10.2.8.802, 05-15-2001]

PART 9: PUBLIC PARTICIPATION

19.10.9.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.9.1 NMAC - N, 05-15-2001]

19.10.9.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.9.2 NMAC - N, 05-15-2001]

19.10.9.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.9.3 NMAC - N, 05-15-2001]

19.10.9.4 DURATION:

Permanent.

[19.10.9.4 NMAC - N, 05-15-2001]

19.10.9.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.9.5 NMAC - N, 05-15-2001]

19.10.9.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.9.6 NMAC - N, 05-15-2001]

19.10.9.7 DEFINITIONS:

[RESERVED]

[19.10.9.7 NMAC - N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.9.8-19.10.9.900 [RESERVED]:

[19.10.9.8 - 19.10.9.900 NMAC - N, 05-15-2001]

19.10.9.901 APPLICABILITY:

A. No action on any of the following applications will be taken by the Director until the applicant has complied with the requirements of notice and opportunity for public hearing contained in this Part:

(1) application for the issuance, renewal or revision of a mining or exploration permit, except that minimal impact operations need not comply with public notice requirements contained in this Part;

(2) application for standby status; and

(3) application for a variance.

B. The Director may hold one hearing on more than one application by a permittee for the same mining operation.

C. Public notice and opportunity for a hearing for applications for the release of financial assurance and for any inspection prior to such release are provided for in 19.10.12 NMAC.

D. 19.10.9 NMAC does not apply to applications related to minimal impact operations.

[7-12-94, 2-15-96; 19.10.9.901 NMAC - Rn, 19 NMAC 10.2.9.901, 05-15-2001]

19.10.9.902 CONTENTS OF NOTICE:

The notice shall contain, at a minimum, the following information:

A. the name and address of the applicant;

B. a description of the location and boundaries of the proposed permit area;

C. the purpose of the application and a general description of the mining operation;

D. the Director's name and address to whom written comments may be submitted and where a copy of the application is available for public inspection; and

E. the procedure and deadline for requesting a hearing.

[7-12-94, 2-15-96; 19.10.9.902 NMAC - Rn, 19 NMAC 10.2.9.902, 05-15-2001]

19.10.9.903 PUBLICATION REQUIREMENTS:

The applicant shall provide the Director at the time of filing the application with the Director proof that notice of the application has been:

A. provided by certified mail to the owners of record, as shown by the most recent property tax schedule, of all properties within 1/2 mile of the property on which the mining, exploration or reclamation operation is located or is proposed to be located on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

B. provided by certified mail to all municipalities and counties and tribal organizations within a 10 mile radius of the property on which the mining, exploration or reclamation operation is or is proposed to be located on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

C. published once in a newspaper of general circulation in each county in which the property on which the mining, exploration or reclamation operation is or is proposed to be located; provided that this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice, and shall be printed in both English and Spanish;

D. posted in at least four publicly accessible and conspicuous places on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC, including the entrance to the new or existing mining operation or exploration operation if that entrance is publicly accessible and conspicuous;

E. mailed to the mineral lessor, if any, on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

F. mailed to all persons who have made a written request to the Director for notice of this application on or before the newspaper publication date required by Subsection C of 19.10.9.903 NMAC;

G. mailed by certified mail to all persons on a list maintained by the Director of individuals and organizations who have requested notice of applications under this Act; and

H. mailed to the Environment Department, the State Engineer, the Department of Game and Fish, the Forestry Division and the State Historic Preservation Division.

I. When the application is determined to be administratively complete by the Director, the applicant shall provide to the Director timely proof that notice of that determination has been provided by first class mail to everyone who has indicated to the applicant in writing that they desire information regarding the application and to a list maintained by the Director of individuals and organizations who have requested notice of applications under this Act.

[7-12-94, 2-15-96, 7-31-97; 19.10.9.903 NMAC - Rn, 19 NMAC 10.2.9.903, 05-15-2001]

19.10.9.904 OPPORTUNITY FOR PUBLIC HEARING:

A. Any interested person may request that the Director conduct a public hearing on the application. Such request must be made within 30 days of the date of the newspaper publication of the notice of application unless the Director determines a longer period in which to make the request is appropriate and such period is specified in the published notice. If a hearing is timely requested, the Director shall set a hearing unless the request is clearly frivolous. The Director may hold a public hearing absent any request.

B. The date, time and location of the public hearing shall be advertised by the Director in a newspaper of general circulation in the locality of the operation. The advertisement shall also identify the applicant, the operation, the purpose of the hearing, and how to contact the Division for additional information. All persons who have submitted written requests in advance to receive notices of hearing to the Director or who have provided comments on the application to the Director shall be mailed notice at least 30 days prior to the hearing.

C. The nearest community to the mining or exploration operation with adequate and accessible public facilities will be the site for any public hearing.

D. All interested persons may submit written comments regarding the application to the Director. Written comments must be received by the Director prior to the close of the hearing record following any public hearing that is held. If no public hearing is held, written comments will be considered only if they are received by the Director within 60 days after the newspaper publication of the notice of the application or within 60 days after the person filling the comment received notice of the application, whichever is later.

E. An additional opportunity for a public hearing may be provided if the applicant makes substantial changes in the proposed action, if there are significant new circumstances or information bearing on the proposed action or if the applicant proposes to substantially increase the scale or substantially change the nature of the proposed action and there is public interest and a request for a public hearing.

[7-12-94, 2-15-96, 7-31-97; 19.10.9.904 NMAC - Rn, 19 NMAC 10.2.9.904, 05-15-2001]

19.10.9.905 HEARING PROCEDURES:

A. The Director may act as the hearing officer or appoint a hearing officer to conduct the hearing. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in hearings including, but not limited to:

(1) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;

(2) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process; and

(3) preparing and filing a report of the hearing and if requested by the Director, making recommendations for action.

B. The rules of civil procedure and the rules of evidence do not apply to hearings under this Part.

C. Any interested person may testify at the hearing. A person who wants to present testimony should indicate this desire on the sign-in sheet before the hearing begins. Any person who testifies at the hearing is subject to cross-examination on the subject matter of his direct testimony. Any person attending the hearing is entitled to conduct such cross-examination as may be required for full disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

D. All testimony will be taken under oath or affirmation.

E. Any interested person may submit a written statement containing data, views or arguments to the hearing officer for inclusion in the record. The hearing officer may set a deadline for such submittal at the conclusion of the hearing.

F. Any person offering exhibits at the hearing shall mark the exhibits identifying the person offering it and the date of the hearing.

[7-12-94, 2-15-96; 19.10.9.905 NMAC - Rn, 19 NMAC 10.2.9.905, 05-15-2001]

19.10.9.906 HEARING RECORD:

A. The Division will make a verbatim record, by audio tape or stenography, of each public hearing.

B. Any person may obtain a copy of the verbatim record of the hearing. It shall be obtained directly from the court reporter, or if no reporter was employed, the Director will provide a copy of the audio tape. The person requesting the copy shall pay the court reporter or Director for the cost of the transcript or the audio tape copy, respectively.

C. The administrative record includes all documents related to the application and received by the Director prior to the beginning, during or after the conclusion of the hearing, including, but not limited to:

- (1) the application that is the subject of the hearing;
- (2) correspondence related to the application;
- (3) the notice of hearing;
- (4) affidavits of publication of the notice;
- (5) written statements submitted to the Director including post-hearing submissions, if allowed;
- (6) the verbatim record of the hearing;
- (7) the hearing officer's report, if any;
- (8) the Director's decision and the reasons therefor; and
- (9) any other material used by the Director in reaching the decision.

[7-12-94, 2-15-96; 19.10.9.906 NMAC - Rn, 19 NMAC 10.2.9.906, 05-15-2001]

19.10.9.907 COMMISSION REVIEW:

[RESERVED]

[7-12-94, 2-15-96; R 6-30-99; 19.10.9.907 NMAC - Rn, 19 NMAC 10.2.9.907, 05-15-2001]

[Material previously under this Section was repealed effective 6-30-99]

PART 10: VARIANCES

19.10.10.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.10.1 NMAC - N, 05-15-2001]

19.10.10.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.10.2 NMAC - N, 05-15-2001]

19.10.10.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.10.3 NMAC - N, 05-15-2001]

19.10.10.4 DURATION:

Permanent.

[19.10.10.4 NMAC - N, 05-15-2001]

19.10.10.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.10.5 NMAC - N, 05-15-2001]

19.10.10.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.10.6 NMAC - N, 05-15-2001]

19.10.10.7 DEFINITIONS:

[RESERVED]

[19.10.10.7 NMAC - N, 05-15-2001]

[Definitions for this Part can be found in 19.10.1.7 NMAC.]

19.10.10.8-19.10.10.1000 [RESERVED]:

[19.10.10.8 - 19.10.10.1000 NMAC - N, 05-15-2001]

19.10.10.1001 GENERAL:

An applicant or a permittee may apply to the Director for a variance from the provisions of 19.10 NMAC.

[7-12-94, 2-15-96; 19.10.10.1001 NMAC – Rn, 19 NMAC 10.2.10.1001, 05-15-2001]

19.10.10.1002 APPLICATION:

A. Each application for a variance must:

- (1) state the applicant's name and address;
- (2) state the date of the application;
- (3) identify the mining operation for which the variance is sought;
- (4) provide the location of the property on which the mining operation is located;
- (5) identify the section of 19.10 NMAC from which the variance is sought;
- (6) state in detail the extent to which the applicant wants to vary from 19.10 NMAC;
- (7) present sufficient evidence to prove that failure to grant a variance will impose an undue economic burden on the applicant;
- (8) present sufficient evidence to prove that granting a variance will not result in a significant threat to human health, safety or the environment; and
- (9) include the fee for a variance application pursuant to 19.10.2 NMAC.

B. The Director may require the applicant to furnish additional information.

[7-12-94, 2-15-96; 19.10.10.1002 NMAC - Rn, 19 NMAC 10.2.10.1002, 05-15-2001]

19.10.10.1003 NOTICE REQUIREMENTS:

A. Applications for a variance are subject to the public notice and opportunity for public hearing requirements of 19.10.9 NMAC.

B. Notice also shall be provided by the Director to the Environment Department, the Office of the State Engineer, the Game and Fish Department, the State Historic Preservation Office, the Forestry Division, other agencies he deems appropriate, and, if the operation is on state or federal land, to the appropriate state or federal land management agency.

[7-12-94, 2-15-96; 19.10.10.1003 NMAC – Rn, 19 NMAC 10.2.10.1003, 05-15-2001]

19.10.10.1004 VARIANCE APPROVALS:

A. In granting the variance, the Director may impose conditions on the applicant to assure that the variance will not result in a significant threat to human health, safety or the environment.

B. An order of the Director granting a variance shall:

- (1)** state the applicant's name and address;
- (2)** state the date the order is made;
- (3)** identify the mining operation for which the variance is sought;
- (4)** state the address or location of the property upon which the mining operation is located;
- (5)** identify the section of 19.10 NMAC from which the variance is sought;
- (6)** find that the variance will not result in a significant threat to human health, safety or environment; and
- (7)** find that failure to grant the variance will impose an undue economic burden on the applicant.

[7-12-94, 2-15-96; 19.10.10.1004 NMAC – Rn, 19 NMAC 10.2.10.1004, 05-15-2001]

19.10.10.1005 LIMITATIONS:

The Director shall not grant a variance which results in a violation of any state or federal law or regulation.

[7-12-94, 2-15-96; 19.10.10.1005 NMAC – Rn, 19 NMAC 10.2.10.1005, 05-15-2001]

PART 11: INSPECTION, ENFORCEMENT AND PENALTIES

19.10.11.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.11.1 NMAC – N, 05-15-2001]

19.10.11.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.11.2 NMAC – N, 05-15-2001]

19.10.11.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.11.3 NMAC – N, 05-15-2001]

19.10.11.4 DURATION:

Permanent.

[19.10.11.4 NMAC – N, 05-15-2001]

19.10.11.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.11.5 NMAC – N, 05-15-2001]

19.10.11.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.11.6 NMAC – N, 05-15-2001]

19.10.11.7 DEFINITIONS:

[RESERVED]

[19.10.11.7 NMAC – N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.11.8-19.10.11.1100 [RESERVED]:

[19.10.11.8 - 19.10.11.1100 NMAC – N, 05-15-2001]

19.10.11.1101 INSPECTIONS:

A. The Director shall conduct on-site inspections on an irregular basis according to the following schedule:

- (1)** at least two per year at each active existing and new mining operation;
- (2)** at least one per year at each inactive existing and new mining operation;
- (3)** at least one per year following completion of all significant reclamation activities, but prior to release of financial assurance; and
- (4)** at least one within the initial permit year and subsequently as determined by the Director for each minimal impact mining operation and for each exploration operation.

B. When the Director determines that a mining operation is conducting significant reclamation, the inspection must be on an irregular basis averaging not less than one inspection per month.

C. Inspections shall occur without prior notice to the permittee or its agents or employees except for necessary on-site meetings with such persons.

D. To avoid duplication and assist in coordination with other state and federal agencies, the Director is authorized to allow other state and federal regulatory agencies to conduct the required inspections or for the Division to conduct inspections for other agencies if the Division has entered into a joint powers agreement with the agencies. The joint powers agreement shall provide that the enforcement action for violations noted during such inspection shall be conducted by the agency charged with the responsibility under the applicable state or federal law.

E. The Director or his authorized representative, without advance notice, shall:

(1) have the right of entry to, upon or through any mineral exploration, mining operation, or reclamation operation at any time to determine if the permittee is in compliance with the permit requirements and conditions; and

(2) at reasonable times, and without delay, have access to and copies of any records associated with permitting and compliance required by the Act, 19.10 NMAC, or the permit.

[7-12-94, 2-15-96, 7-31-97; 19.10.11.1101 NMAC – Rn, 19 NMAC 10.2.11.1101, 05-15-2001]

19.10.11.1102 ENFORCEMENT:

A. Cessation Orders

(1) When the Director determines that a condition, practice or violation exists at any operation that violates the Act, 19.10 NMAC, a permit, or order and which condition, practice or violation also creates an imminent danger to the health or safety of the public or will cause significant imminent environmental harm, the Director shall immediately order a cessation of the operation or the portion of that operation relevant to the condition, practice or violation. Factors to be considered by the Director in determining significant imminent environmental harm include but are not limited to:

(a) whether there is a violation of Mining Act requirements that creates a reasonable probability of serious or widespread adverse environmental impact; or

(b) whether mining activities threaten important habitat, important wildlife, or domestic animals.

(2) When the Director determines that mining is conducted in violation of the Act, 19.10 NMAC, or a permit because the mining is conducted either (a) without a permit, (b) outside of a permit area, or (c) on previously undisturbed land within a permit area but where mining is not authorized by the permit, the Director may issue a cessation order with respect to activities in the area where the unauthorized mining occurs.

(3) The permittee shall advise the Director when the condition practice or violation has been abated. Within 10 days of receiving such information the Director shall determine if the condition practice or violation has been abated.

(4) The cessation order shall remain in effect until the Director determines that the condition practice or violation has been abated or until modified, vacated or terminated by the Director or the Commission.

B. Notices of Violation

(1) When the Director determines that an owner or operator is in violation of a requirement of the Act, 19.10 NMAC, a permit, or order but such condition or practice does not create an imminent danger to the health or safety of the public or will not cause significant imminent environmental harm, the Director shall issue a notice of violation, ordering abatement and fixing a reasonable time, not to exceed 60 days unless extended for good cause shown, for the abatement of the condition or practice. Such an order may be appealed to the Commission pursuant to Section 69-36-15 of the Act.

(2) If, upon expiration of the period of time fixed for abatement, the Director finds that the condition or practice has not been abated, the Director shall order a cessation of operations or a portion thereof. The permittee shall advise the Director when the condition or practice has been abated. Within 10 days of receiving such information the Director shall determine if the condition or practice has been abated. The cessation order shall remain in effect until the Director determines that the condition or practice has been abated.

C. Order to Show Cause When the Director determines that a pattern of violations of the Act, 19.10 NMAC, or the permit exists or has existed, and if the Director also finds that such violations are caused by the unwarranted failure of the permittee to comply with the Act, 19.10 NMAC, or the permit or that such violations are willfully caused by the permittee, the Director shall issue an order to the permittee to show cause as to why the permit should not be suspended or revoked. The order shall be in writing, signed by the Director and shall set forth: the nature of the violations, including a citation to the Act, 19.10 NMAC, or the permit allegedly violated; and set a hearing before the Director on these issues. Following the hearing, the Director may dismiss the action or issue a final order suspending or revoking the permit. Such an order may be appealed to the Commission pursuant to Section 69-36-15 of the Act.

D. Effective Date of Orders, Conferences, and Appeals

(1) Unless otherwise stated in the order, each order issued pursuant to this section shall be effective upon service pursuant to Subsection B of 19.10.11.1104 NMAC.

(2) A permittee who is served with a notice of violation or a cessation order may request a conference pursuant to 19.10.11.1111 NMAC. A request for conference shall not operate as a stay. A request for a conference may include a request for the director to extend the time for abatement or cessation of operations, subject to the Director's approval, pending completion of the conference.

(3) A permittee who is served with a notice of violation or a cessation order may file a petition for review with the Commission pursuant to NMSA 1978, Section 69-36-15 and 19.10.14 NMAC without first requesting a conference pursuant to 19.10.11.1111 NMAC.

[7-12-94, 2-15-96, 12-29-2000; 19.10.11.1102 NMAC – Rn, 19 NMAC 10.2.11.1102, 05-15-2001]

19.10.11.1103 PERMIT SUSPENSION OR REVOCATION:

For purposes of determining the propriety of an order to show cause why a permit should not be suspended or revoked, the following definitions shall apply:

A. Willful violation means an act or omission which violates the Act, 19.10 NMAC, the permit or an order committed by a person who intends the act or omission which occurs.

B. Unwarranted failure to comply means the failure of the permittee to prevent the occurrence of any violation of the Act, 19.10 NMAC, the permit or an order because of indifference, lack of diligence, lack of reasonable care or the failure to abate any violation of the Act, 19.10 NMAC, the permit or an order because of indifference, lack of diligence or lack of reasonable care. Violations by any person conducting mining, exploration or reclamation operations on behalf of the permittee shall be attributed to the permittee.

C. The Director may determine that a pattern of violations exists or has existed, based upon:

(1) the number and seriousness of violations cited on more than one occasion of the same or related requirements of the Act, 19.10 NMAC, the permit or an order;

(2) the number and seriousness of violations cited on more than one occasion of different requirements of the Act, 19.10 NMAC, the permit or an order; and

(3) the extent to which the violations are isolated departures from lawful conduct.

[7-12-94, 2-15-96; 19.10.11.1103 NMAC – Rn, 19 NMAC 10.2.11.1103, 05-15-2001]

19.10.11.1104 SERVICE:

A. A notice of violation shall be in writing, signed by the Director and shall set forth:

(1) the nature of the violation, including a citation to the requirement allegedly violated;

(2) time for abatement;

(3) description of the portion of the operation to which the notice applies; and

(4) a notice of the opportunity to submit information in response and to request a conference under 19.10.11.1110 NMAC and 19.10.11.1111 NMAC.

B. A notice of violation, cessation order, order to show cause or final order suspending or revoking a permit shall be served promptly after issuance as follows:

(1) By tendering a copy at the operation to the designated agent or to the individual who, based upon reasonable inquiry by the Director, appears to be in charge of the operation referred to in the notice or order. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be a supervisory employee or agent of the permittee to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative, service may be made by sending a copy of the notice or order by certified mail, return receipt requested, or by hand to the permittee to whom it is issued or to his designated agent. Service shall be complete upon tender of the notice or order to the mail and shall not be deemed incomplete because the permittee refuses to accept the certified mail.

C. The Director shall cause copies of notices and orders to be furnished to the owner of the permit area, a corporate officer of the permittee or the financial assurance company when so requested in writing.

[7-12-94, 2-15-96; 19.10.11.1104 NMAC – Rn, 19 NMAC 10.2.11.1104, 05-15-2001]

19.10.11.1105 PENALTY ASSESSMENT:

A. The Director shall review each notice of violation and cessation order in accordance with the assessment procedures described in this Part to determine whether a civil penalty will be assessed, the amount of the penalty and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

B. The Director may assess a penalty for each violation. In determining whether to assess a penalty, the Director shall consider the factors listed in this Part.

C. The Director shall assess a penalty for each cessation order.

[7-12-94, 2-15-96; 19.10.11.1105 NMAC – Rn, 19 NMAC 10.2.11.1105, 05-15-2001]

19.10.11.1106 POINT SYSTEM FOR PENALTIES:

A. History of previous violations The Director shall assign up to 25 points based on the history of previous violations. One point shall be assigned for each past violation. Five points shall be assigned for each violation contained in a cessation order. The

history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular mining, exploration or reclamation operation activity. Points shall be assigned as follows:

(1) a violation shall not be counted if the violation is the subject of pending administrative or judicial review, or if the time to request such review or to appeal any administrative or judicial decision has not expired. Thereafter, it shall be counted for only 12 months following the date of final disposition of the violation;

(2) no violation for which the notice or order has been vacated shall be counted; and

(3) a violation not resulting in a civil penalty assessment shall not receive more than 50% of the points that would have been assigned if the violation had resulted in an assessment.

B. Seriousness The Director shall assign up to 25 points based on the seriousness of the violation, as follows:

(1) Foreseeability of occurrence. The Director shall assign up to 10 points based on the foreseeability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Foreseeability of Occurrence	
Points	
(a) Not foreseeable	0
(b) Unlikely	1-5
(c) Likely	6-9
(d) Almost certain	10

(2) Extent of potential or actual damage. The Director shall assign up to 15 points, based on the extent of the potential or actual damage in terms of area and impact on the public or environment, as follows:

(a) If the damage or impact which the violated Section is to prevent remains within the permit area, the Director shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(b) If the damage or impact which the violated Section is to prevent extends outside the permit area, the Director shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(3) Alternative. In the case of a violation of an administrative requirement such as a requirement to keep records or submit reports, the Director shall, in lieu of subparagraphs a. and b. above, assign up to 10 points for seriousness.

C. Negligence

(1) The Director shall assign up to 25 points based on the degree of fault of the permittee in causing or failing to correct the condition or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(a) violation which occurs through no negligence shall be assigned no penalty points for negligence;

(b) violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence; or

(c) violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(2) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(a) No negligence means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(b) Negligence means the failure of a permittee to prevent the occurrence of any violation because of indifference, lack of diligence or lack of reasonable care, or the failure to abate any violation because of indifference, lack of diligence or lack of reasonable care.

(c) A greater degree of fault than negligence means reckless, willful, or intentional conduct.

(3) In calculating points to be assigned for negligence, the acts of all persons working on the permit area shall be attributed to the permittee.

D. Good faith in attempting to achieve compliance

(1) The Director may reduce points based on the degree of good faith of the permittee in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Points	Degree of Good Faith
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(a) Rapid compliance	-1 to -15
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(b) Use of additional equipment or labor	-1 to -25
(c) Normal compliance	0

(total not to exceed -25)

(2) The following definitions shall apply for Paragraph 1 of Subsection D of 19.10.11.1106 NMAC:

(a) Rapid compliance means that the permittee took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(b) Use of additional equipment or labor means rapid compliance and the employment of equipment and/or labor in amounts and at a cost greater than would normally be employed.

(c) Normal compliance means the permittee abated the violation within the time given for abatement.

[7-12-94, 2-15-96; 19.10.11.1106 NMAC – Rn, 19 NMAC 10.2.11.1106, 05-15-2001]

19.10.11.1107 DETERMINATION OF AMOUNT OF PENALTY:

The Director shall determine the dollar amount of any civil penalty by using the following schedule: [19.10.11.pdf – Table]

Points	Dollars	Points	Dollars
1	25	36	3200
2	25	37	3400
3	25	38	3600
4	25	39	3800
5	25	40	4000
6	25	41	4200
7	25	42	4400
8	25	43	4600
9	25	44	4800
10	25	45	5000
11	100	46	5200
12	100	47	5400
13	100	48	5600
14	100	49	5800
15	100	50	6000
16	500	51	6200
17	500	52	6400
18	500	53	6600

19	500	54	6800
20	500	55	7000
21	1000	56	7200
22	1000	57	7400
23	1000	58	7600
24	1000	59	7800
25	1500	60	8000
26	1500	61	8200
27	1500	62	8400
28	1500	63	8600
29	1500	64	8800
30	1500	65	9000
31	2200	66	9200
32	2400	67	9400
33	2600	68	9600
34	2800	69	9800
35	3000	70 and above	10000

[7-12-94, 2-15-96; 19.10.11.1107 NMAC – Rn, 19 NMAC 10.2.11.1107, 05-15-2001]

19.10.11.1108 ASSESSMENT OF SEPARATE PENALTY FOR EACH DAY:

A. The Director may assess a separate penalty for each day from the date of the violation to the date of abatement of the violation. In determining whether to make such an assessment, the Director shall consider the factors listed in 19.10.11.1106 NMAC and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points, the Director shall assess a penalty for a minimum of two separate days.

B. Any penalty assessed shall not exceed \$10,000 per day of noncompliance for each violation.

[7-12-94, 2-15-96; 19.10.11.1108 NMAC – Rn, 19 NMAC 10.2.11.1108, 05-15-2001]

19.10.11.1109 WAIVER OF USE OF FORMULA TO DETERMINE PENALTY:

A. The Director may waive the use of the formula contained in this Part to set the penalty, if he determines that, taking into account factors present in the particular case, the penalty is unjustified. However, the Director shall not waive the use of the formula or reduce the proposed penalty simply because reduction in the proposed penalty would provide more resources to abate violations of the Act, 19.10 NMAC, the permit or an order. In no event shall the Director assess or accept a penalty of less than the economic benefit realized as a result of a failure to comply. The basis of every waiver shall be fully explained and documented in the records of the case.

B. If the Director waives the use of the formula, the criteria set forth in Section 69-36-17 of the Act shall be used to determine the appropriate penalty. When the Director elects to waive the use of the formula, a written explanation of the basis for the assessment made shall be provided to the permittee.

[7-12-94, 2-15-96; 19.10.11.1109 NMAC – Rn, 19 NMAC 10.2.11.1109, 05-15-2001]

19.10.11.1110 PROCEDURE FOR PENALTY ASSESSMENT:

A. The permittee may submit written and oral information about the alleged violation to the Director and to the inspector who issued the notice of violation or cessation order. The Director shall consider any information so submitted in determining the facts surrounding the alleged violation and the amount of the penalty.

B. The Director shall serve a copy of the proposed penalty assessment and of the worksheet showing the computation of the proposed penalty on the permittee, in the manner prescribed in Subsection B of 19.10.11.1104 NMAC. The Director shall serve the proposed penalty assessment no later than 30 days after the date set for abatement of the violation or issuance of the cessation order. Failure by the Director to serve the proposed penalty within 30 days shall not be grounds for dismissal of all or part of such violation or penalty unless the permittee:

(1) proves actual prejudice as a result of the delay; and

(2) makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative and judicial review.

[7-12-94, 2-15-96, 12-29-2000; 19.10.11.1110 NMAC – Rn, 19 NMAC 10.2.11.1110, 05-15-2001]

19.10.11.1111 PROCEDURE FOR CONFERENCE:

A. A permittee who receives a notice of violation or a cessation order pursuant to 19.10.11.1102 NMAC or a proposed penalty assessment may request a conference for a review of the Director's action by submitting a written request to the Director within 15 days from the date of service. The Director shall arrange for a conference if a timely request for a conference is made. The Director, in his sole discretion, may arrange for a conference if a late request for a conference is made.

(1) If the permittee requests a conference, the Director may assign a conference officer to hold the conference. This person shall not be the inspector signing the notice or order. The conference shall be informal in nature and not be governed by the rules of evidence for adjudicatory hearings. The conference shall be held within 30 days from the date of issuance of the notice of violation, cessation order, or proposed penalty assessment unless the Director grants an extension for good cause shown.

(2) The conference officer shall consider all relevant information. The conference officer shall make his recommendation to the Director to affirm, modify or vacate the notice of violation or cessation order or affirm, decrease or vacate the proposed penalty, if any.

B. The Director, within 30 days after the conference, shall serve the permittee with his order regarding the violation and penalty. When a conference is held, the period for filing a petition for review of the director's action pursuant to Section 69-36-15 NMSA 1978 shall run from the date of service of the director's order pursuant to this subsection.

C. When the permittee notifies the Director that the violation has been abated, the permittee may request a reduction of points under Subsection D of 19.10.11.1106 NMAC. The Director may reduce any penalty by awarding points for good faith compliance.

D. All penalties must be paid within 30 days after the penalty assessment, or any Director's order issued following a conference held pursuant to 19.10.11.1111 NMAC.

[7-12-94, 2-15-96, 12-29-2000; 19.10.11.1111 NMAC – Rn, 19 NMAC 10.2.11.1111, 05-15-2001]

19.10.11.1112 APPEAL OF ORDER:

[RESERVED]

[7-12-94, 2-15-96, R 6-30-99; 19.10.11.1112 NMAC – Rn, 19 NMAC 10.2.11.1112, 05-15-2001]

[Material previously under this Section was repealed effective 6-30-99]

PART 12: FINANCIAL ASSURANCE REQUIREMENTS

19.10.12.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.12.1 NMAC - N, 05-15-2001]

19.10.12.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.12.2 NMAC - N, 05-15-2001]

19.10.12.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.12.3 NMAC - N, 05-15-2001]

19.10.12.4 DURATION:

Permanent.

[19.10.12.4 NMAC - N, 05-15-2001]

19.10.12.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of the Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.12.5 NMAC - N, 05-15-2001]

19.10.12.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.12.6 NMAC - N, 05-15-2001]

19.10.12.7 DEFINITIONS:

[RESERVED]

[19.10.12.7 NMAC - N, 05-15-2001]

[Definitions for this part can be found in 19.10.1.7 NMAC.]

19.10.12.8-19.10.12.1200 [RESERVED]:

[19.10.12.8 - 19.10.12.1200 NMAC - N, 05-15-2001]

19.10.12.1201 REQUIREMENT TO FILE FINANCIAL ASSURANCE:

A. Except for existing mining operations without new units, the applicant for a permit shall provide a financial assurance proposal to the director following the director's determination that the permit application is approvable, but prior to the permit issuance. An applicant's financial assurance proposal shall be based upon estimates for a third-party contractor to complete reclamation work. The permit shall not be issued until receipt of the approved financial assurance by the director.

B. The permittee of an existing mining operation shall provide a financial assurance proposal in an amount adequate to complete the proposed closeout plan as soon as practicable after the permittee receives notice from the director that the closeout plan is approvable. The permittee shall provide the approved financial assurance prior to the director's approval of the closeout plan.

C. Financial assurance shall be payable to the state of New Mexico and conditioned upon the performance of all the requirements of the act, 19.10 NMAC, the permit, and the reclamation plan or closeout plan.

D. Financial assurance proposals submitted by applicants or permittees may be required to be reviewed by a third party contractor as ordered by the director. All costs for such review shall be paid by the applicant or permittee.

[7-12-94, 2-15-96; 19.10.12.1201 NMAC - Rn, 19 NMAC 10.2.12.1201, 05-15-2001; A, 10-15-03; A, 04-30-09]

19.10.12.1202 AREA TO BE COVERED BY FINANCIAL ASSURANCE:

A. The permittee or applicant shall file, with the approval of the director, financial assurance under one of the following schemes to cover the reclamation or closeout plan costs as determined in accordance with 19.10.12.1205 NMAC:

(1) financial assurance for the approved reclamation plan or closeout plan for the entire permit area; or

(2) financial assurance may be provided and approved to guarantee specific increments of reclamation within the permit area provided the sum of incremental financial assurance equals or exceeds the total amount required under 19.10.12.1205 NMAC and 19.10.12.1206 NMAC. The area to be reclaimed and the amount of financial assurance required for each increment shall be specified in detail, and the permittee shall comply with the following:

(a) An incremental financial assurance schedule and the financial assurance required for full reclamation of the first increment in the schedule shall be provided.

(b) Before mining, exploration or reclamation operations on succeeding increments are initiated and conducted within the permit area, the permittee shall file

with the director additional financial assurance to cover such increments in accordance with 19.10.12 NMAC.

(c) The permittee or applicant shall identify the initial and successive areas or increments on a map submitted with the permit application and shall specify the financial assurance amount to be provided for each area or increment.

(d) Identified increments shall be of sufficient size and configuration to provide for efficient reclamation operations should reclamation by the director become necessary pursuant to 19.10.12.1211 NMAC.

B. A permittee or applicant shall not disturb any area prior to acceptance by the director of the required financial assurance.

[7-12-94, 2-15-96; 19.10.12.1202 NMAC - Rn, 19 NMAC 10.2.12.1202, 05-15-2001]

19.10.12.1203 FORM OF FINANCIAL ASSURANCE:

A. The director may accept the following forms of financial assurance:

- (1) cash;
- (2) trusts;
- (3) surety bonds;
- (4) letters of credit;
- (5) collateral bonds;
- (6) third party guarantees;
- (7) insurance; or
- (8) a combination of any of the above.

B. The director shall not accept any type or variety of self-guarantee or self-insurance for the required financial assurance.

[7-12-94, 2-15-96; 19.10.12.1203 NMAC - Rn, 19 NMAC 10.2.12.1203, 05-15-2001; A, 10-15-03]

19.10.12.1204 PERIOD OF LIABILITY:

A. The permittee shall maintain the financial assurance in effect, except as reduced pursuant to 19.10.12 NMAC, until such time as the director releases the financial

assurance pursuant to 19.10.12.1210 NMAC. For areas to be revegetated, the director shall retain the amount of financial assurance necessary for a third party to re-establish vegetation for a period of 12 years after the last year of augmented seeding, fertilizing, or irrigation, unless a post-mining land use is approved by the director that does not require revegetation. Interseeding to establish diversity shall not be considered augmented seeding. Interseeding may not be performed within the last three years of the liability period.

B. For new mining operations only, no part of the financial assurance necessary for a third party to re-establish vegetation shall be released so long as the lands to which the release would be applicable are contributing suspended solids above background levels to streamflow of intermittent or perennial streams.

C. Isolated and clearly defined portions of the disturbed area not qualifying for financial assurance release may be separated from the original area and assured separately with the approval of the director. Access to the separated areas for remedial work may be included in the area under extended liability if deemed necessary by the director.

D. For exploration permits, financial assurance may be released after the permittee has submitted a termination report that meets the requirements of 19.10.4.407 NMAC and the director has determined, after inspection, that the reclamation requirements of 19.10.3 NMAC and 19.10.4 NMAC, as applicable, and the permit have been satisfied.

[7-12-94, 2-15-96; 19.10.12.1204 NMAC - Rn, 19 NMAC 10.2.12.1204, 05-15-2001; A, 04-30-09]

19.10.12.1205 DETERMINATION OF FINANCIAL ASSURANCE AMOUNT:

A. The amount of the financial assurance shall be determined by the director and take into account, but not be limited to, the estimated cost submitted by the permittee or the applicant. This estimated cost should include at a minimum the following costs: contract administration; mobilization; demobilization; engineering redesign; profit and overhead; procurement costs; reclamation or closeout plan management; and contingencies. Credit for salvage value of building materials or abandoned equipment and supplies shall not be allowed. Equipment normally available to a third party contractor should be used in determining the estimated cost;

(1) reflect the probable difficulty of reclamation or closure, giving consideration to such factors as topography, geology, hydrology, revegetation potential and approved post-mining land use;

(2) depend on the requirements of the approved permit;

(3) not duplicate any federal or state financial requirements for the same area so long as those entities' financial assurance requirements are at least as stringent as this part; and

(4) not be less comprehensive than the federal requirements, if any.

B. The amount of the financial assurance shall be sufficient to assure the completion of the reclamation plan or closeout plan if the work has to be performed by the state of New Mexico or a contractor with the state in the event of forfeiture.

C. The director may accept a net present value calculation for the amount of financial assurance required pursuant to Subsections A and B of 19.10.12.1205 NMAC, if the scheduled completion date for the reclamation or closeout plan exceeds five years following closure, not including the 12 year period described in Subsection A of 19.10.12.1204 NMAC for re-establishing vegetation, and if the financial assurance will be provided in the form of cash or other allowable form of financial assurance to be converted into cash upon forfeiture. The director shall require an appropriate adjustment be made to the net present value calculation to exclude anticipated delays for converting financial assurance into cash.

(1) The net present value calculation shall be based upon projected inflation rates and projected rates of return over the term of the reclamation plan and shall be based upon publicly available indices and data. The director shall determine whether a proposed net present value calculation is acceptable and complies with the requirements of Subsection B of 19.10.12.1205 NMAC. The director shall issue guidance on acceptable methods for calculating net present value within one year from the effective date of this rule.

(2) The director shall review any approved net present value calculation as needed, but at least once every five years, to take into consideration additional information regarding rates of return and inflation rates.

D. The amount of financial assurance for a minimal impact existing and new mining operations shall be as provided for in Subsection F of 19.10.3.303 NMAC and Subsection E of 19.10.3.304 NMAC, respectively.

[7-12-94, 2-15-96; 19.10.12.1205 NMAC - Rn, 19 NMAC 10.2.12.1205, 05-15-2001; A, 10-15-03; A, 12-30-03]

19.10.12.1206 ADJUSTMENT OF AMOUNT:

A. The amount of the financial assurance required and the terms of its acceptance shall be adjusted by the director from time-to-time as the area requiring financial assurance is increased or decreased or when the future reclamation or closeout costs change. The director may specify periodic times or set a schedule for re-evaluating and adjusting the financial assurance amount.

B. The director shall:

- (1)** notify the permittee, the surety, any person with a property interest in collateral who has requested notification under Subsection C, Paragraph 4 of 19.10.12.1208 NMAC and any person who has requested notification of actions concerning the mining operation, of any proposed adjustment to the financial assurance amount; and
- (2)** provide the permittee an opportunity for an informal conference on the adjustment.

C. Permittee may request reduction of the amount of the financial assurance upon submission of evidence to the director demonstrating that the permittee's methods of operation or other circumstances reduce the estimated cost for the state of New Mexico or its contractor to reclaim or complete the closeout plan for the area. Adjustments which involve undisturbed land or revision of the cost estimate for reclamation or closeout plan completion are not considered financial assurance release subject to procedures of 19.10.12.1210 NMAC.

D. In the event that the approved permit is revised or modified, the director shall review the financial assurance for adequacy, and if necessary, shall require adjustment of the financial assurance to conform to the permit as revised or modified.

[7-12-94, 2-15-96; 19.10.12.1206 NMAC - Rn, 19 NMAC 10.2.12.1206, 05-15-2001; A, 12-30-03]

19.10.12.1207 GENERAL TERMS AND CONDITIONS OF FINANCIAL ASSURANCE:

A. The financial assurance shall be in an amount determined by the director as provided in 19.10.12.1205 NMAC.

B. The financial assurance shall be payable to the state of New Mexico.

C. The financial assurance shall be conditioned upon performance of all the requirements of the act, 19.10 NMAC, and the approved permit, including completion of the reclamation or closeout plan.

D. The duration of the financial assurance shall be for the time period provided in 19.10.12.1204 NMAC.

E. Failure of Financial Providers

(1) The financial assurance shall provide a mechanism for a bank or surety company or guarantor to give prompt notice to the director by certified mail and the permittee of any administrative or judicial action filed or initiated alleging the insolvency

or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company or guarantor by reason of bankruptcy, insolvency, suspension or revocation of charter or license or for any other reason, the permittee shall be deemed to be without financial assurance coverage and shall promptly notify the director in writing. Upon notification, the director shall specify to the permittee in writing a reasonable period, not to exceed 90 days, to replace the financial assurance coverage. If adequate financial assurance is not provided by the end of the period allowed, the permittee shall cease mining and shall immediately begin to conduct reclamation or closeout measures in accordance with the reclamation or closeout plan. The director may, for good cause shown, grant up to two 30-day extensions. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided.

[7-12-94, 2-15-96; 19.10.12.1207 NMAC - Rn, 19 NMAC 10.2.12.1207, 05-15-2001]

19.10.12.1208 FINANCIAL ASSURANCE MECHANISMS:

A. Surety Bonds.

(1) A surety bond shall be executed by the applicant or the permittee and a corporate surety licensed to do business in the state of New Mexico.

(2) Surety bonds shall be noncancellable during their terms, except that surety bond coverage for lands not disturbed may be cancelled with the prior written consent of the director. The director shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be cancelled on an undisturbed area.

(3) Surety bond terms shall be established for a minimum of five years. One hundred and twenty (120) days prior to the expiration of the term, the operator must provide the director with evidence that the current surety bond will be continued, another surety company is to provide a financial assurance, or another form of financial assurance will replace the surety bond. Upon receiving notification, the director shall respond to the permittee within 30 days, in writing, indicating whether or not the proposed form and amount of financial assurance will be acceptable. If adequate financial assurance is not provided 30 days prior to the expiration of the term of the original surety bond, the permittee shall cease operations and shall forfeit the existing surety bond. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided. If an acceptable financial assurance is provided within a time frame specified by the director, not to exceed 180 days, the forfeited funds, less any costs associated with the forfeiture, will be refunded to the surety company. If adequate financial assurance is not provided within the specified time frame, the director will authorize reclamation of the mining operation using the forfeited funds.

B. Letters of Credit.

(1) The letter of credit must be issued by a bank organized or authorized to do business in the United States. The director may require an independent rating of the proposed bank and the cost of any such rating shall be paid by the applicant or permittee.

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous financial assurance coverage shall be forfeited and shall be collected by the state of New Mexico if not replaced by other suitable financial assurance or letter of credit at least 30 days before its expiration date.

(3) Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided. If an acceptable financial assurance is provided within a time frame specified by the director, not to exceed 180 days, the payment amount, less any costs associated with the demand for payment, will be refunded to the bank. If financial assurance is not provided within the specified time frame, the director will authorize reclamation of the mining operation using the payment from the letter of credit.

(4) The letter of credit shall be payable to the state of New Mexico upon demand, in part or in full, upon receipt from the director of a notice of forfeiture issued in accordance with 19.10.12.1211 NMAC.

C. Collateral Bonds.

(1) Valuation of Collateral.

(a) If the nature of the collateral proposed to be given as security for financial assurance is subject to fluctuations in value over time, the director shall require that such collateral have a fair market value at the time of permit approval in excess of the financial assurance amount by a reasonable margin. The amount of such margin shall reflect changes in value anticipated over a period of five years, including depreciation, appreciation, marketability and market fluctuation. In any event, the director shall require a margin for legal fees and costs of disposition of the collateral in the event of forfeiture.

(b) The annual report filed by the permittee must indicate the current market value of any collateral accepted by the director pursuant to this part.

(c) The financial assurance value of collateral may be evaluated at any time, but it shall be evaluated as part of permit renewal and, as necessary, its amount increased or decreased. In no case shall the value attributed to the collateral exceed its market value.

(2) Collateral bonds, except for cash accounts and real property, shall be subject to the following conditions:

(a) the director must have custody of collateral deposited by the applicant or permittee until authorized for release or replacement as provided in this part;

(b) the director shall value collateral at its current market value, not at face value;

(c) the director shall not accept as collateral shares of stock issued by the following: applicant or permittee; an entity that owns or controls the applicant or permittee; or an entity owned or controlled by the applicant or permittee;

(d) the director shall require that certificates of deposit be made payable to or assigned to the state of New Mexico, both in writing and upon the records of the bank issuing the certificates; if assigned, the director shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates prior to the director's acceptance;

(e) the director shall not accept an individual certificate of deposit in an amount in excess of one hundred thousand dollars (\$100,000) or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation.

(3) Real property provided as a collateral bond shall meet the following conditions:

(a) the real property must be located in the state of New Mexico. The real property cannot be within the permit or affected area of a mining operation;

(b) the permittee shall grant the state of New Mexico a first mortgage, first deed of trust, or perfected first-lien security interest in real property with a right to sell in accordance with state law or otherwise dispose of the property in the event of forfeiture under 19.10.12.1211 NMAC;

(c) for the director to evaluate the adequacy of the real property, the permittee must submit the following information for the real property, unless the director, for good cause, waives any of the requirements:

(i) a description of the property, which shall include a site improvement survey plat to verify legal descriptions of the property and to identify the existence of recorded easements;

(ii) the fair market value as determined by a current appraisal conducted by an independent qualified appraiser, previously approved by the director;

(iii) proof of ownership and title to the real property;

(iv) a current title binder which provides evidence of clear title containing no exceptions, or containing only exceptions acceptable to the director; and

(v) phase I environmental assessment.

(d) in the event the permittee pledges water rights, the permittee shall provide such additional information as may be required by the director to meet any additional conditions prescribed by him for accepting water rights as collateral.

(4) Persons with an interest in collateral provided as financial assurance who desire notification of actions affecting the collateral shall request the notification in writing to the director at the time collateral is offered.

D. Cash accounts shall be subject to the following conditions.

(1) The director may authorize the applicant or permittee to meet its financial assurance obligations through the establishment of a cash account in one or more federally-insured or equivalently protected accounts made payable upon demand to, or deposited directly with, the state of New Mexico.

(2) Any interest paid on a cash account must be retained in the account and applied to the account unless the director has approved the payment of interest to the permittee.

(3) Certificates of deposit may be substituted for a cash account with the approval of the director.

(4) The director shall not accept an individual cash account in an amount in excess of one hundred thousand dollars (\$100,000) or the maximum insurable amount as determined by the federal deposit insurance corporation or the federal savings and loan insurance corporation, unless the cash account has been deposited with the state of New Mexico.

E. Trusts shall be subject to the following conditions.

(1) The director may approve the use of a trust to hold and manage funds for the purpose of implementing reclamation as prescribed in the closeout plan. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency and which has been approved by the director. The director must be notified of any change of trustee and any successor trustees must be approved by the director.

(2) The trust fund is also subject to the following conditions:

(a) the initial payment into the trust must be made by the date established by the director;

(b) the trust shall be funded in accordance with the terms of the permit;

(c) investments of the trust shall be reviewed and approved by the director and may include fixed income investments such as U.S. treasury obligations, state issued securities, time deposits and other investments of similar risk as approved by the director;

(d) income accrued on trust funds shall be retained in the trust, except as otherwise agreed by the director under the terms of an agreement governing the trust;

(e) the trustee may be compensated under terms defined by the director, upon approval of the director;

(f) the trust may be terminated by the permittee only if the permittee substitutes, with the approval of the director, alternate financial assurance as specified in this section or the permittee has completed reclamation in accordance with Subsection E of 19.10.12.1210 NMAC;

(g) a copy of the trust agreement, as well as quarterly and annual reports of the trustee on the trust fund balance shall be provided to the director upon request;

(h) any disbursement of funds from the trust shall be approved by the director in writing.

F. Insurance.

(1) The insurer must be authorized to transact the business of insurance in the state of New Mexico and a licensed carrier or a registered carrier of surplus lines of insurance or reinsurance and authorized to transact business of insurance in the state of New Mexico, and have an AM BEST rating of not less than A- or the equivalent rating of other recognized rating companies.

(2) The insurance policy shall be issued for the amount equal to the closeout plan cost estimate as approved by the director or for a lesser amount if used in conjunction with other forms of financial assurance and approved by the director.

(3) The insurance policy shall guarantee that funds will be available for reclamation in accordance with the closeout plan and that the insurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon direction of the director. Actual payments by the insurer will not change the face amount, although the insurer's future liability may be reduced by the amount of the payments, during the policy period.

(4) The permittee must maintain the policy in full force and effect until the director approves termination or replacement of insurance with another form of financial assurance acceptable to the director.

G. Third party guarantee.

(1) A third party guarantee is a written agreement from a guarantor, which provides that if the permittee fails to complete the performance requirements of the permit, including closure and reclamation, the guarantor shall do so or, upon forfeiture in accordance with 19.10.12.1211 NMAC, shall fund such account(s) as the director may instruct in the full amount of that portion of the financial assurance covered by the third party guarantee.

(a) A third party guarantee may not exceed seventy-five percent of the total amount of the financial assurance for a permit established pursuant to 19.10.1205 NMAC. Any permittee with a third party guarantee in place at the effective date of this subparagraph shall meet the limitation within one year after the effective date of this subparagraph.

(b) A third party guarantee may not include any type of self-guarantee or self-insurance. The director may investigate to determine whether a sham relationship exists between the guarantor and the permittee. The director may reject a third party guarantee as a form of self-guarantee if the director concludes that substantial evidence supports a finding that either the guarantor or the permittee exercises dominion and control over the other so pervasive as to render the one a mere instrumentality of the other.

(2) The permittee or applicant shall submit financial information as requested by the director unless doing so would place guarantor in violation of an applicable legal requirement.

(3) The third party guarantee shall be signed by an authorized representative, and legal counsel of the guarantor shall certify that the guarantor can legally engage in the guarantee and shall certify the amounts and names of beneficiaries of all other guarantees for which the guarantor is obligated.

(4) If the guarantor is a corporation, the authorization documentation will include a board of directors' resolution or shareholder's vote or similar verification and proof that the corporation can validly execute a guarantee under the laws of the state or country of its incorporation, and its bylaws and articles of incorporation.

(5) If the guarantor is a partnership, joint venture, syndicate, or other business entity, each party or an authorized representative for the party with the beneficial interest, direct or indirect, shall sign the agreement.

(6) The guarantor's financial statements shall be audited by an independent certified public accountant and the accountant's certification provided to the director. All costs and fees for such audit and certification shall be paid by the applicant or permittee. If the accountant gives an adverse opinion of the financial statements, the guarantor cannot qualify for the third party guarantee. The permittee shall also pay for any evaluation and analysis by an independent reviewer selected by the director to evaluate and analyze for the director any information regarding the guarantor provided to the director or requested by the director to evaluate the guarantor's financial ability to provide a guarantee.

(7) The guarantor as well as its successors and assignees agree to remain bound jointly and severally liable for all litigation costs incurred in any successful effort to enforce the third party guarantee against the guarantor.

(8) The guarantor must demonstrate financial soundness by meeting either alternative I or alternative II soundness tests.

(a) Alternative I financial soundness test:

(i) guarantor has a tangible net worth of at least ten million dollars (\$10,000,000);

(ii) guarantor's tangible net worth and working capital are each equal to or greater than six times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated;

(iii) guarantor's assets located in the United States amount to at least ninety percent of its total assets or its total assets in the United States are at least six times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated; and

(iv) guarantor meets at least two of the following three financial ratios: the ratio of total liabilities to net worth is less than 2:1; the ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities is greater than 0.1:1; the ratio of current assets to current liabilities is greater than 1.5:1.

(b) Alternative II financial soundness test:

(i) guarantor's most recently issued senior credit obligation are rated "BBB" or higher by standard and poor's corporation, or "Baa" or higher by moody's investors service, inc.;

(ii) the guarantor has a tangible net worth of at least ten million dollars (\$10,000,000) and is greater than six times the sum of the proposed financial assurance

and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated; and

(iii) guarantor's assets located in the United States amount to at least ninety percent of its total assets or its total assets in the United States are at least six times the sum of the proposed financial assurance and all other guarantees for environmental permits issued in the U.S. for which the guarantor is obligated.

(9) The director may require monitoring of the guarantor's financial condition by a contractor with the state during the time that a third party guarantee is used for financial assurance. The costs of such monitoring shall be paid by the permittee. The frequency of such monitoring shall be determined by the director.

(10) At any time that the guarantor's financial condition is such that the guarantor no longer qualifies pursuant to this part, the permittee shall be deemed without financial assurance coverage. The director shall specify to the permittee in writing a reasonable period, not to exceed 90 days, to replace the financial assurance coverage. If adequate financial assurance is not provided by the end of the period allowed, the permittee shall cease mining and shall immediately begin to conduct reclamation or closeout measures in accordance with the reclamation or closeout plan. The director may, for good cause shown, grant up to two 30-day extensions. Mining operations shall not resume until the director has determined that an acceptable replacement financial assurance has been provided.

[7-12-94, 2-15-96, 12-14-96, 6-30-98, 12-29-2000; 19.10.12.1208 NMAC - Rn, 19 NMAC 10.2.12.1208, 05-15-2001; A, 10-15-03; A, 12-30-03]

19.10.12.1209 REPLACEMENT OF FINANCIAL ASSURANCE:

A. The director may allow a permittee to replace existing financial assurance with other approved financial assurance mechanisms that provide equivalent coverage.

B. The director shall not release existing financial assurance until the permittee has submitted, and the director has approved, acceptable replacement financial assurance. Replacement of financial assurance pursuant to 19.10.12.1209 NMAC shall not constitute a release of the financial assurance under 19.10.12.1210 NMAC.

[7-12-94, 2-15-96; 19.10.12.1209 NMAC - Rn, 19 NMAC 10.2.12.1209, 05-15-2001]

19.10.12.1210 RELEASE OF FINANCIAL ASSURANCE:

A. Release Application.

(1) The permittee may file an application with the director for the release of all or part of the financial assurance. The permittee may file multiple release applications per year for each permit.

(2) The application shall describe the reclamation or closeout measures completed and shall contain an estimate of the cost of reclamation that has not been completed.

(3) At the time the release application is filed with the director, the permittee shall submit proof that the notice of application has been provided in accordance with 19.10.9.902 NMAC and 19.10.9.903 NMAC. The notice shall be considered part of any release application and shall contain: the permittee's name; permit number and approval date; notification of the precise location of the real property affected; the number of acres; the type and amount of the financial assurance filed and the portion sought to be released; the type and appropriate dates of reclamation or closeout plan performed; a description of the results achieved as they relate to the permittee's approved reclamation or closeout plan; and the name and address of the director, to whom written comments, objections, or requests for public hearings on the specific financial assurance release may be submitted pursuant to Subsection C of 19.10.12.1210 NMAC.

(4) The director shall promptly provide notice of receipt of the application for release of all or part of the financial assurance to the environment department, the office of the state engineer, the department of game and fish, the forestry division, the state historic preservation division, other agencies he deems appropriate, and if the operation is on state or federal land, to the appropriate state or federal land management agency.

B. Inspection by director. Upon receipt of the complete financial assurance release application, the director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation or closeout measures completed. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation. The surface owner or lessor of the real property, other state and federal agencies as listed in Subsection A, Paragraph 4 of 19.10.12.1210 NMAC above, and any other persons who have requested advance notice of the inspection shall be given notice of such inspection and may be present at the release inspection as may any other interested members of the public. The director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the financial assurance release, for the purpose of gathering information relevant to the proceeding.

C. Public Hearing.

(1) Within 30 days from the date of the inspection, a person with an interest that is or will be adversely affected by the proposed financial assurance release may file written objections to the proposed release with the director. If written objections are filed and a hearing is requested, the director shall inform all persons who have requested notice of hearings and persons who have filed written objections in regard to the application of the time and place of the hearing at least 30 days in advance of the public hearing. The hearing shall be held in the locality of the permit area proposed for release.

(2) The date, time and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality of the permit area once a week for two consecutive weeks. All persons who have submitted a written request in advance to the director to receive notices of hearings shall be provided notice at least 30 days prior to the hearing. The hearing procedures of 19.10.9.905 NMAC shall be followed.

D. Within 45 days from the inspection, if no public hearing is held pursuant to Subsection C of 19.10.12.1210 NMAC, or, within 45 days after a public hearing has been held pursuant to Subsection C of 19.10.12.1210 NMAC, the director shall notify in writing the permittee, the surety or other persons with an interest in the collateral who have requested notification under 19.10.12.1208 NMAC and the persons who either filed objections in writing or participants in the hearing proceedings who supplied their addresses to the director, if any, of the decision whether to release all or part of the financial assurance.

E. The director may release all or part of the financial assurance for the entire permit area or incremental area if the director is satisfied that the reclamation or closeout plan or a phase of the reclamation or closeout plan covered by the financial assurance, or portion thereof, has been accomplished in accordance with the act, 19.10 NMAC, and the permit.

F. If the director denies the release application or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Subsection C, Paragraph 4 of 19.10.12.1208 NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release.

G. The director may approve an application for release of financial assurance for a minimal impact operation without public notice or hearing.

[7-12-94, 2-15-96; 19.10.12.1210 NMAC - Rn, 19 NMAC 10.2.12.1210, 05-15-2001; A, 12-30-03; A, 07-15-15]

19.10.12.1211 FORFEITURE OF FINANCIAL ASSURANCE:

A. If a permittee refuses or is unable to conduct or complete the reclamation or closeout plan, if the terms of the permit are not met, or if the permittee defaults on the conditions under which the financial assurance was accepted, the director shall take the following action to forfeit all or part of the financial assurance for the permit area or an increment of the permit area:

(1) Send written notification by certified mail, return receipt requested, to the permittee and the surety, if any, informing them of the determination to forfeit all or part of the financial assurance, including the reasons for the forfeiture and the amount to be

forfeited. The amount shall be based on the estimated total cost of achieving reclamation or closeout.

(2) Advise the permittee and surety, if applicable, of the conditions under which forfeiture may be avoided. Such conditions may include, but are not limited to:

(a) An agreement by the permittee or another party to perform reclamation or closeout operations in accordance with the conditions of the permit, the reclamation or closeout plan, the act and 19.10 NMAC and a demonstration that such a party has the ability to satisfy the conditions; or

(b) The director may allow a surety to complete the reclamation or closeout plan, or the portion of the reclamation or closeout plan applicable to the financial assurance phase or increment, if the surety can demonstrate an ability to complete the reclamation or closeout plan in accordance with the approved reclamation or closeout plan. Except where the director approves partial release authorized under 19.10.12.1210 NMAC, no surety liability shall be released until successful completion of all reclamation or closeout under the terms of the permit, including applicable liability periods of 19.10.12.1204 NMAC.

B. In the event forfeiture of the financial assurance is required by this part, the director shall:

(1) proceed to collect the forfeited amount as provided by applicable laws if actions to avoid forfeiture have not been taken; and

(2) use funds collected from the forfeiture to complete the reclamation or closeout, or portion thereof, on the disturbed area or increment to which financial assurance coverage applies.

C. Upon default of the conditions under which the financial assurance was accepted, the director may cause the forfeiture of any and all financial assurance to complete reclamation or closeout for which the financial assurance was provided. Unless specifically limited, as provided in 19.10.12.1202 NMAC, financial assurance liability shall extend to the entire disturbed area under conditions of forfeiture.

D. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation or closeout, the permittee shall be liable for remaining costs. The director may complete, or authorize completion of, reclamation or closeout of the area in accordance with the permit terms and may recover from the permittee all reasonably incurred costs of reclamation or closeout and forfeiture in excess of the amount forfeited.

E. In the event the amount of financial assurance forfeited was more than the amount necessary to complete reclamation or closeout and all costs of forfeiture, the

excess funds shall be returned by the director to the party from whom they were collected.

[7-12-94, 2-15-96; 19.10.12.1211 NMAC - Rn, 19 NMAC 10.2.12.1211, 05-15-2001]

PART 13: PROCESS OF REVIEW OF MINING AND RECLAMATION PRACTICES

19.10.13.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.13.1 NMAC - N, 05-15-2001]

19.10.13.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.13.2 NMAC - N, 05-15-2001]

19.10.13.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.13.3 NMAC - N, 05-15-2001]

19.10.13.4 DURATION:

Permanent.

[19.10.13.4 NMAC - N, 05-15-2001]

19.10.13.5 EFFECTIVE DATE:

February 15, 1996, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-13 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-13 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-13.

[19.10.13.5 NMAC - N, 05-15-2001]

19.10.13.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.13.6 NMAC - N, 05-15-2001]

19.10.13.7 DEFINITIONS:

[RESERVED]

[19.10.13.7 NMAC - N, 05-15-2001]

[Definitions for this Part can be found in 19.10.1.7 NMAC.]

19.10.13.8-19.10.13.1300 [RESERVED]:

[19.10.13.8 - 19.10.13.1300 NMAC - N, 05-15-2001]

19.10.13.1301 ANNUAL REPORT:

The Division shall prepare a report of mining and reclamation practices in New Mexico to be presented to the Commission annually at a public meeting with opportunity for public comment. [7-12-94, 2-15-96; 19.10.13.1301 NMAC – Rn, 19 NMAC 10.2.13.1301, 05-15-2001]

19.10.13.1302 CONTENTS:

The report shall contain:

A. a general description of mining operations and reclamation practices in the state including production figures for the state;

B. proposed amendments to 19.10 NMAC, if any, to provide for the protection of the environment and to consider the economic effects of 19.10 NMAC; and

C. any other information the Director considers necessary to be presented to the Commission pertinent to 19.10 NMAC or the Act.

[7-12-94, 2-15-96; 19.10.13.1302 NMAC – Rn, 19 NMAC 10.2.13.1302, 05-15-2001]

19 10.13.1303 COORDINATION AMONG AGENCIES:

A. Avoidance of duplicative and conflicting requirements will be accomplished through coordinated procedures that address the following:

(1) Avoid imposing requirements which are duplicative of or which conflict with any other applicable state or federal law, regulation or standard.

(2) Enforcement of other statutes or regulations to be conducted by the agency charged with that responsibility under the applicable state or federal statute or regulation.

(3) Information provided to other agencies may be provided to the Director to partially or completely meet these requirements.

(4) Financial assurance required under the Act shall not duplicate nor be less comprehensive than federal or state financial requirements.

(5) Maintain a location or locations for maps and other information to assist in the determination of whether lands are not subject to minimal impact exploration and mining.

(6) Coordination of inspections with other regulatory agencies.

B. Coordination of Review: The Director shall, as appropriate, consult with the staff of other federal and state agencies responsible for the review of mining operations for compliance with other applicable laws and the issuance of permits for the mining operations, for the purpose of avoiding duplication and conflicting requirements of the Act and 19.10 NMAC.

[[7-12-94, 2-15-96; 19.10.13.1303 NMAC – Rn, 19 NMAC 10.2.13.1303, 05-15-2001]

PART 14: MINING COMMISSION ADJUDICATORY REVIEW

19.10.14.1 ISSUING AGENCY:

New Mexico Mining Commission.

[19.10.14.1 NMAC – N, 05-15-2001]

19.10.14.2 SCOPE:

All persons subject to the New Mexico Mining Act NMSA 1978, Section 69-36-1 et. seq.

[19.10.14.2 NMAC – N, 05-15-2001]

19.10.14.3 STATUTORY AUTHORITY:

NMSA 1978, Section 69-36-1 et. seq.

[19.10.14.3 NMAC – N, 05-15-2001]

19.10.14.4 DURATION:

Permanent.

[19.10.14.4 NMAC – N, 05-15-2001]

19.10.14.5 EFFECTIVE DATE:

June 30, 1999, unless a later date is cited at the end of a section.

A. All references to the Mining Act Parts 1-14 in any other rule shall be understood as a reference to 19.10 NMAC.

B. The amendment and replacement of The Mining Act Parts 1-14 shall not affect any administrative or judicial enforcement action pending on the effective date of this amendment nor the validity of any permit issued pursuant to the Mining Act Parts 1-14.

[19.10.14.5 NMAC – N, 05-15-2001]

19.10.14.6 OBJECTIVE:

The objective of Parts 1-14 of 19.10 NMAC is to establish regulations to implement the New Mexico Mining Act as directed in NMSA 69-36-7A. These regulations are designed to ensure proper reclamation through permitting for operations subject to the Mining Act, in accordance with provisions and standards outlined in the Mining Act.

[19.10.14.6 NMAC – N, 05-15-2001]

19.10.14.7 DEFINITIONS FOR 19.10.14 NMAC:

A. "Applicant" means the person whose application for a permit or variance or revision to a permit is the subject of the permitting action to which a petition applies.

B. "Date of notice" means the date on which the Director initiates service of the notice of a decision by mail or other means. For example, the date of notice of final permitting decisions authorizing new activities shall be the date on which the Director mails notice to participants in the permitting proceeding and others who requested notice.

C. "Document" means, except as used in 19.10.14.1423 NMAC, any motion, response, memorandum, decision, order, comment, other pleading or evidence filed in a proceeding under 19.10.14 NMAC.

D. "Final action" means a written order issued by the Commission that contains findings of fact and the final decision of the Commission.

E. "Hearing Clerk" means the person designated to maintain the official record of the proceeding.

F. "Hearing Officer" means the person designated under 19.10.14 NMAC or appointed by the Commission to conduct a proceeding under 19.10.14 NMAC.

G. "Interested participant" means any person, other than a party, who files a statement of intent to present evidence pursuant to Subsection D of 19.10.14.1434 NMAC.

H. "New activities" means a new mining operation, a new unit of an existing mining operation or a unit expansion that exceeds the design limits specified in a permit for an existing mining operation.

I. "Party" means, the Petitioner, the Applicant, if different from the Petitioner, the Division, or any person who has been permitted to intervene in the particular hearing pursuant to Section 19.10.14.1424 NMAC.

J. "Petition" means a petition for review of an order, penalty assessment or issuance or denial of a permit by the Director pursuant to NMSA 1978, Section 69-36-15 (1993).

K. "Petitioner" means any person who files a timely petition.

L. "Record" depending on the context, means all documents filed by or with the Hearing Clerk during a proceeding before the Commission and includes: the audio or stenographic recording of the hearing and all exhibits admitted into evidence at the hearing, or otherwise made a part of the record by the Commission; and the minutes, or an appropriate extract of minutes, of any Commission meeting where the Commission deliberated or acted on any procedural or substantive issue in the proceeding or the Hearing Record for decisions by the Director as described in 19.10.9.906 NMAC.

[6-30-99; 19.10.14.7 NMAC – Rn, 19 NMAC 10.2.14.1404, 05-15-2001]

[Additional Definitions for this Part can be found in 19.10.1.7 NMAC.]

19.10.14.8-19.10.14.1400 [RESERVED]:

[19.10.14.8 - 19.10.14.1400 NMAC – N, 05-15-2001]

19.10.14.1401 APPLICABILITY OF RULES OF CIVIL PROCEDURE:

In the absence of a specific provision in this Part or the Act governing an action, the Commission may look to the New Mexico Rules of Civil Procedure, Rules 1-001 to 1-102, NMRA 1998, and the New Mexico Rules of Evidence, Rules 11-101 to 11-1102, NMRA 1998, for guidance.

[6-30-99; 19.10.14.1401 NMAC – Rn, 19 NMAC 10.2.14.1401, 05-15-2001]

19.10.14.1402 SEVERABILITY:

If any portion or application of 19.10.14 NMAC is held invalid, the remainder of this Part, or its application to other persons or situations, shall not be affected.

[6-30-99; 19.10.14.1402 NMAC – Rn, 19 NMAC 10.2.14.1402, 05-15-2001]

19.10.14.1403 SAVINGS CLAUSE:

This Part does not apply to petitions before the Commission filed prior to the effective date of this Part, except as agreed to by the parties to such proceedings.

[6-30-99; 19.10.14.1403 NMAC – Rn, 19 NMAC 10.2.14.1403, 05-15-2001]

19.10.14.1404 [RESERVED]

19.10.14.1405 EFFECTIVE DATES:

A. Except as otherwise provided in the Director's decision or in these rules, the effective date of a Director's decision shall be the date of notice.

B. The effective date of final permitting decisions authorizing new activities shall be no sooner than the sixteenth day after the date of notice, but the Director may, in the decision itself, provide for an effective date up to 30 days after the date of notice upon finding good cause.

C. Upon finding good cause, the Director may, in any other decision, provide for a delayed effective date up to 90 days after the date of notice.

[6-30-99; 19.10.14.1405 NMAC – Rn, 19 NMAC 10.2.14.1405, 05-15-2001]

19.10.14.1406 REQUESTS FOR STAY OF NEW ACTIVITIES:

A. A person who is or may be adversely affected by a decision authorizing new activities may file with the Commission a request to stay the new activities no later than 15 days after the date of notice.

B. Upon the timely filing of a request to stay new activities, the effective date of the Director's decision shall be delayed until the Commission concludes an expedited hearing as provided in Subsection G of 19.10.14.1406 NMAC.

C. A request to stay new activities shall include, at a minimum:

(1) a petition initiating an appeal to the Commission, which petition may include a waiver of the hearing deadlines applicable to hearings on the merits, and;

(2) a statement of the basis for the request and showings to be made at the expedited hearing, including:

(a) the irreparable harm to the person requesting the stay if the stay is not granted,

(b) the likelihood that the person requesting the stay will prevail in the appeal on the merits,

(c) the lack of substantial harm to others if the stay is granted, and

(d) the lack of harm to the public interest if the stay is granted.

D. The person requesting the stay shall, at the time of filing, serve the request on all other parties. The other parties may file responses to the request at least 2 working days prior to the expedited hearing, and may separately respond to the petition as otherwise provided.

E. The petition, which must be filed as part of a request to stay new activities, need not include the detailed statement of objections required in Subsection B of 19.10.14.1417 NMAC; provided, however, the petitioner must supplement the petition to meet all requirements for a petition by no later than 60 days after notice of the decision being appealed. A waiver of the hearing deadlines in a petition under this section shall have the limited effect of tolling the deadlines for the hearing on the merits until the date on which petitioner supplements the petition.

F. A person filing a request to stay new activities need not provide financial assurance for the period of any resulting stay ordered by the Commission.

G. The hearing clerk shall distribute copies of any timely request to stay new activities to the Commissioners and schedule an expedited hearing no sooner than 16 days and no later than 30 days after notice of the decision. Only parties (including but not limited to all who filed a timely request for stay) shall be entitled to participate in the Commission's expedited hearing.

(1) The expedited hearing shall be completed and a decision rendered by the Commission no later than 30 days after notice of the decision, and the expedited hearing may be held on short notice.

(2) The Commission chairperson or another Commissioner designated by the chair shall conduct an orderly hearing, not to exceed 5 hours in length, and shall allow each party the opportunity to present evidence on the request(s).

(3) The Commission shall grant or deny the request at the conclusion of the expedited hearing. The Commission may grant a request to stay new activities only if it finds that:

- (a)** the request was timely and complete when filed,
- (b)** the person requesting the stay is or may be adversely affected by the Director's decision,
- (c)** irreparable harm to the person requesting the stay will result if the stay is not granted,
- (d)** there is a likelihood that the person requesting the stay will prevail on the merits in the appeal,
- (e)** no substantial harm will result to other interested persons if the stay is granted, and
- (f)** no harm will ensue to the public interest if the stay is granted.

H. If the Commission fails to decide a request to stay new activities within 30 days of the Director's notice of decision, the request(s) shall be deemed denied.

I. If the Commission denies a request to stay new activities, the effective date of the Director's decision shall be the date of such denial, and no further request to stay the same decision will be considered by the Commission. No person may appeal the denial of a request to stay new activities until after the Commission's final action in the appeal on the merits.

J. If the Commission grants a request to stay new activities, the effective date of the Director's decision shall be the date of the Commission's final action in the appeal on the merits.

[6-30-99; 19.10.14.1406 NMAC – Rn, 19 NMAC 10.2.14.1406, 05-15-2001]

19.10.14.1407 OTHER REQUESTS FOR STAY:

A. Any request for stay other than requests to stay new activities shall be filed with the Commission at or after the time of filing a petition. The request for stay must be served on all other parties and must meet the requirements of Subsection C, Paragraph 2 of 19.10.14.1406 NMAC.

B. Any other party shall have 10 days after service to file a response. The party filing the request for stay may submit a reply to any response within 5 days of service of the response.

C. The Commission may grant a request to stay under this Section only if, after a hearing, it makes the findings required under Subsection G, Paragraph 3 of 19.10.14.1406 NMAC.

D. Any party opposing a request for stay under this Section may request that financial assurance be provided if the stay is granted. If a stay is granted, the Commission shall determine whether the financial assurance is to be provided and set the other terms for it, including the form and amount of the financial assurance and the conditions for forfeiture or release of the financial assurance. In the event the appeal is ultimately denied by the Commission, the Commission's final action shall include a determination of what portion of any financial assurance that was provided shall be paid over to the party who requested that financial assurance be provided, and shall state what portion, if any, is to be released back to the provider of the financial assurance.

[6-30-99; 19.10.14.1407 NMAC – Rn, 19 NMAC 10.2.14.1407, 05-15-2001]

19.10.14.1408 POWERS AND DUTIES OF THE COMMISSION:

The Commission shall exercise all powers and duties as prescribed under the Act, the Regulations and this Part and not otherwise delegated to the Hearing Officer or the Hearing Clerk.

A. The Commission may issue procedural orders that either impose additional procedural duties or simplify the procedures provided in this Part. The Commission shall not eliminate any procedural requirements of the Act or regulations.

B. The Commission may appoint one or more of its members as Hearing Officers to perform the functions described in 19.10.14.1407 NMAC. From the date a petition is received by the Commission, the chairperson of the Commission shall serve as Hearing Officer until the Commission appoints another hearing officer.

C. No Commissioner with any financial interest affected or potentially affected by the outcome of an adjudicatory proceeding may serve as a Hearing Officer in that proceeding or otherwise participate in the proceeding.

D. The evidentiary hearings conducted under this Part shall take place at meetings of the Commission, unless the Commission specifically delegates, for good cause, the taking of evidence by the Hearing Officer.

E. The Commission may adopt, modify or set aside the Director's actions and can remand the matter to the Director for further action.

[6-30-99; 19.10.14.1408 NMAC – Rn, 19 NMAC 10.2.14.1408, 05-15-2001]

19.10.14.1409 POWERS AND DUTIES OF THE HEARING OFFICER:

The Hearing Officer shall exercise all powers and duties prescribed or delegated by the Commission under the Act or this Part, including, but not limited to:

- A.** Preside over the hearings under this Part;
- B.** Rule on motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders;
- C.** Issue subpoenas, as authorized by the Act, for the attendance and testimony of witnesses and the production of documentary evidence;
- D.** Administer oaths and affirmations, examine witnesses, and admit or exclude evidence;
- E.** Require parties to attend conferences for the settlement or simplification of issues or proceedings;
- F.** Enter pre-hearing orders related to scheduling and other procedural issues; and
- G.** Impose sanctions, subject to review by the Commission, on parties who cause undue delay and fail to cooperate in the proceeding.

[6-30-99; 19.10.14.1409 NMAC – Rn, 19 NMAC 10.2.14.1409, 05-15-2001]

19.10.14.1410 COMPUTATION AND EXTENSION OF TIME:

A. In computing any period of time prescribed or allowed by this Part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended until the end of the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, 3 days is added to the prescribed period. The three-day extension does not apply to any deadline under the Act or in Sections 19.10.14.1405 NMAC, 19.10.14.1406 NMAC or 19.10.14.1407 NMAC.

B. The Commission or Hearing Officer may grant an extension of time for the filing of any document or the hearing upon consent of all the parties or upon timely motion of a party to the proceeding, if good cause is shown, and no prejudice will result to other parties.

[6-30-99; 19.10.14.1410 NMAC – Rn, 19 NMAC 10.2.14.1410, 05-15-2001]

19.10.14.1411 DISCUSSION OF ISSUES WITH COMMISSION:

At no time after the filing of a petition and before the conclusion of a proceeding shall any party, interested participant or their representatives discuss the issues involved in the proceeding with any Commissioner when all other parties to the proceeding are not present. This prohibition does not preclude any constituent agency Commissioner from conferring with agency employees who are not, and have not been, involved in the matter before the Commission.

[6-30-99; 19.10.14.1411 NMAC – Rn, 19 NMAC 10.2.14.1411, 05-15-2001]

19.10.14.1412 FILING, SERVICE, AND FORM OF DOCUMENTS:

A. The originals of all documents served in the proceeding shall be filed with the Hearing Clerk designated by the Director. Filing is complete when received by the Hearing Clerk or some other Division employee in his place. Filing may be completed between 8 a.m. and 5 p.m. on state work days. Additionally, a party filing a document must provide 12 copies of the document at the time of filing to the Hearing Clerk to distribute to the Commission and its counsel.

B. A party filing documents shall serve copies of the documents upon all other parties. A certificate of service, as shown in Attachment A, shall accompany each filed document.

C. All documents may be served by hand-delivery, facsimile transmission or first class mail. If facsimile transmission is used, the sending party must telephone and confirm receipt in order to complete service. If the parties agree, then service by electronic mail may also be used. Service by mail is not allowed within 10 days of the hearing.

D. All documents, except exhibits, shall be prepared on 8 1/2 x11-inch white paper, and where appropriate, the first page of every document shall contain the heading and caption illustrated in Attachment A.

E. The Hearing Clerk shall provide a docket number for the proceeding and maintain a file of documents submitted in the proceeding and a listing identifying those documents and their date of submittal.

[6-30-99; 19.10.14.1412 NMAC – Rn, 19 NMAC 10.2.14.1412, 05-15-2001]

19.10.14.1413 FILING AND SERVICE OF DOCUMENTS ISSUED BY COMMISSION OR HEARING OFFICER:

All documents issued by the Commission or Hearing Officer shall be filed with the Hearing Clerk. The Hearing Clerk shall promptly serve copies of the documents upon all parties.

[6-30-99; 19.10.14.1413 NMAC – Rn, 19 NMAC 10.2.14.1413, 05-15-2001]

19.10.14.1414 EXAMINATION OF DOCUMENTS FILED:

Any person may, during normal business hours, inspect and copy any document filed in any proceeding, except confidential documents. Such documents shall be made available by the Hearing Clerk. The person seeking copies of any documents shall pay the cost of copying the documents.

[6-30-99; 19.10.14.1414 NMAC – Rn, 19 NMAC 10.2.14.1414, 05-15-2001]

19.10.14.1415-19.10.14.1416 [RESERVED]

[6-30-99; 19.10.14.1415-19.10.14.1416 NMAC -- Rn, 19 NMAC 10.2.14.1415-1416, 05-15-2001]

19.10.14.1417 FILING OF PETITION:

The proceeding shall be started by the filing of a petition with the Commission within 60 days from the date of notice of the Director's action. The Petitioner shall file the original and 12 copies of the Petition with the Hearing Clerk and serve a copy on the Division and the applicant if the applicant is not the Petitioner. The Hearing Clerk shall promptly serve copies of the petition to the Commission. The Petition shall:

- A.** Identify the Petitioner, and state how the Petitioner is or may be adversely affected by the Director's action;
- B.** Identify the Director's action which is the subject of the appeal, specify the portions of the Director's action to which Petitioner objects and specifically state the objections. The Commission will consider only the objections included in the Petition;
- C.** Have attached a copy of the Director's action;
- D.** Be served on the Applicant on the date of filing if the Applicant is not the Petitioner.

[6-30-99; 19.10.14.1417 NMAC – Rn, 19 NMAC 10.2.14.1417, 05-15-2001]

19.10.14.1418 RESPONSES TO THE PETITION:

- A.** The Division shall file a response to the Petition responding to each of the objections in the Petition no later than 20 days after the petition is filed.
- B.** The Division shall deliver to the Hearing Clerk a list of all persons who have expressed in writing an interest in the subject of the Petition by requesting a public hearing, submitting written comments regarding the application to the Director, or by presenting testimony at any hearing conducted by the Division prior to the Director's action.

C. When the Petitioner is not the same person as the Applicant, then the Applicant may also file a response clearly and directly responding to each of the objections in the Petition within 30 days after the Petition is filed.

[6-30-99; 19.10.14.1418 NMAC – Rn, 19 NMAC 10.2.14.1418, 05-15-2001]

19.10.14.1419 NOTICE OF HEARING OFFICER ASSIGNMENT:

If a Hearing Officer other than the Commission chairperson is assigned, the Hearing Clerk shall notify the parties of the name and address of the Hearing Officer. The Hearing Clerk shall also, at that time, forward to the Hearing Officer copies of all documents filed to date. Any party may request a pre-hearing conference with the Hearing Officer to address scheduling, motions and other pre-hearing matters.

[6-30-99; 19.10.14.1419 NMAC – Rn, 19 NMAC 10.2.14.1419, 05-15-2001]

19.10.14.1420 SCHEDULING THE HEARING:

A. The Commission or Hearing Officer shall schedule the hearing to begin no earlier than 30 days and no later than 60 days after the date the Petition was filed, unless the parties waive the deadline in writing. The notice of waiver must be filed before the 60-day deadline.

B. The Hearing Clerk shall, upon direction from the Commission or Hearing Officer, but no later than 20 days prior to the hearing date, issue and serve upon the parties a Notice of Hearing with proof of service, setting forth the date, time, and location of the hearing, a brief description of the petition and information regarding participation in the hearing. This information shall include references to the procedures to intervene pursuant to 19.10.14.1424 NMAC, to present evidence as an interested participant by filing and mailing to the parties a statement of intent pursuant to Subsection D of 19.10.14.1434 NMAC, and to participate as a general public participant pursuant to 19.10.14.1434 NMAC.

C. The Hearing Clerk shall mail a copy of the Notice of Hearing to each person identified in Subsection B of 19.10.14.1418 NMAC at least 30 days prior to the hearing and shall include information regarding participation by the general public.

D. The Hearing Clerk shall send copies of the Notice of Hearing, with requests for publication, to at least one newspaper of general circulation in the state; and at least one additional newspaper published or distributed at least weekly in the county where the mining or exploration operation is located to be published at least 25 days prior to the hearing.

E. The Hearing Clerk shall file in the record a copy of the Notice of Hearing and any affidavits of publication attached.

F. A request for postponement of a hearing shall be granted if all parties agree or if good cause is shown.

G. Unless otherwise ordered or allowed by the Commission or Hearing Officer, the hearing shall be in Santa Fe.

[6-30-99; 19.10.14.1420 NMAC – Rn, 19 NMAC 10.2.14.1420, 05-15-2001]

19.10.14.1421 MOTIONS:

A. Any application or request by a party to the Commission for an order shall be made by motion in writing except those made orally during a hearing. The party making the motion shall specify the reasons for the motion and state the relief sought. Motions may be accompanied by an affidavit(s), certificate(s), or other evidence relied upon.

B. Motions should be filed within 30 days of when the Petition was filed.

C. Any party upon whom a motion is served shall have 10 days after service of the motion to file a response. A party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

D. The party making the motion may, but is not required to, submit a reply to any response within 5 days after service of the response.

E. Motions shall be decided by the Hearing Officer without a hearing unless otherwise ordered by the Hearing Officer or upon written request of any party. The Hearing Officer shall refer any motion that would resolve the matter, and may refer any other motion, to the Commission for a decision. The Hearing Officer may make a recommendation to the Commission on dispositive motions. The Commission may reconsider a motion decided by the Hearing Officer if the reconsideration will not delay the proceeding. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received after the ruling but prior to the expiration of the time for response shall be treated as a request for reconsideration of the ruling.

F. Motions seeking an extension of time may be filed at any time before the deadline for which the extension is sought.

[6-30-99; 19.10.14.1421 NMAC – Rn, 19 NMAC 10.2.14.1421, 05-15-2001]

19.10.14.1422 DISCOVERY:

A. At least 15 days prior to the hearing, the Petitioner shall file and serve on the Division and any other party the following information:

- (1)** The name of each witness to be called at the hearing;

(2) An estimate of the length of the direct testimony of each witness;

(3) A summary or outline of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the basis for those opinions; and

(4) A list of exhibits, if any, to be offered into evidence at the hearing and copies of any such exhibits that are not in the administrative record.

B. At least 7 days prior to the hearing, the Division and any other party, other than an intervenor, shall file and serve on the Petitioner the information listed in Subsection A of 19.10.14.1422 NMAC.

C. If a request for discovery is made, the Rules of Civil Procedure for the District Courts, Rule 1-001 to 1-102, NMRA 1998, shall govern, except the Hearing Officer shall resolve any disputes and may shorten deadlines.

[6-30-99; 19.10.14.1422 NMAC – Rn, 19 NMAC 10.2.14.1422, 05-15-2001]

19.10.14.1423 SUBPOENAS:

The Hearing Officer may issue subpoenas to compel attendance of witnesses and for the production of documents relevant to the Petition.

A. The Hearing Clerk shall, upon request by any party and without the necessity for notice to other parties, forward the proposed subpoena to the Hearing Officer for issuance. The subpoena may be issued with the name and address of the witness blank, to be completed by the requesting party.

B. A subpoena must be served on the person to whom it is directed at least 7 days before the date set for the hearing.

C. Any person to whom the subpoena is directed may file a motion to modify the subpoena or quash the subpoena (declare it void) within 5 days after service of the subpoena. Unless the motion is granted in advance, the person to whom the subpoena is directed is expected to be in attendance at the hearing.

[6-30-99; 19.10.14.1423 NMAC – Rn, 19 NMAC 10.2.14.1423, 05-15-2001]

19.10.14.1424 INTERVENTION:

A. Any person may intervene as a matter of right or by permission of the Commission pursuant to the criteria set forth in Rule 1-024, NMRA 1998. Any agency represented on the Mining Commission pursuant to NMSA 1978, Section 69-36-6(A) (1993) shall be permitted to intervene as a matter of right by following the procedures set forth in this Section.

B. A person seeking to intervene must file and serve upon each party a motion to intervene at least 10 days before the hearing. The motion shall include the following information:

- (1)** The name of the person seeking to intervene;
- (2)** A pleading setting forth the objections to or support for the Director's action which is the subject of the appeal and for which intervention is sought;
- (3)** Unless the person is an agency that may intervene as a matter of right, an explanation of why intervention should be allowed based upon the criteria set forth in Rule 1-024, NMRA 1998;
- (4)** The name of each witness to be called at the hearing;
- (5)** An estimate of the length of the direct testimony of each witness;
- (6)** A summary or outline of the anticipated direct testimony of each witness and, if the testimony includes expert opinions, a list of documents or other information that provides the basis for those opinions; and
- (7)** A list of exhibits, if any, to be offered into evidence at the hearing.

C. Any party shall have 5 days after service of a motion to intervene to file a response.

D. The motion shall be decided pursuant to Paragraph F of 19.10.14.1421 NMAC.

[6-30-99; 19.10.14.1424 NMAC – Rn, 19 NMAC 10.2.14.1424, 05-15-2001]

19.10.14.1425-19.10.14.1428 [RESERVED]

[6-30-99; 19.10.14.1425-19.10.14.1428 NMAC -- Rn, 19 NMAC 10.2.14.1425-1428, 05-15-2001]

19.10.14.1429 CONDUCT OF HEARING:

A. In most circumstances, the hearing will be conducted in front of the Commission, with the Hearing Officer presiding. For good cause, the Commission may delegate the authority to take evidence to the Hearing Officer.

B. The Hearing Officer shall conduct the hearing to provide a reasonable opportunity for the parties and interested participants to present evidence without making the hearing unreasonably long or repetitious.

C. Members of organizations that are parties or interested participants will appear and participate only through counsel or authorized representatives.

[6-30-99; 19.10.14.1429 NMAC – Rn, 19 NMAC 10.2.14.1429, 05-15-2001]

19.10.14.1430 ORDER OF TESTIMONY:

The Hearing Officer may allow brief opening and closing statements. The Petitioner has the first opportunity to present evidence or argument to support its position. Other parties and interested participants supporting the Petition will then proceed. Following the presentation of evidence in support of the Petition, any party or interested participant opposed to the relief sought in the Petition may produce evidence or argument to support its position. The Hearing Officer may change the order of testimony as needed to accommodate parties, interested participants, witnesses, the public or for other good cause.

[6-30-99; 19.10.14.1430 NMAC – Rn, 19 NMAC 10.2.14.1430, 05-15-2001]

19.10.14.1431 PREPONDERANCE OF EVIDENCE:

Each matter of controversy raised by the Petition shall be determined by the Commission upon a preponderance of the evidence.

[6-30-99; 19.10.14.1431 NMAC – Rn, 19 NMAC 10.2.14.1431, 05-15-2001]

19.10.14.1432 EVIDENCE:

A. The Hearing Officer shall admit any relevant evidence, unless it is immaterial, repetitious, or otherwise unreliable. Evidence relating to settlement is not admissible.

B. All or portions of the administrative record before the Director shall be admitted into evidence at the request of any party or interested participant or at the Commission's request. The party or interested participant who requested the administrative record to be admitted into evidence shall pay for the cost of copies if the Commission requests such copies. Copies may be made by any party or interested participant so long as the copies match the documents in the record.

C. Witnesses shall be examined orally, under oath or affirmation. The Commission, Hearing Officer, parties and interested participants shall have the right to cross-examine a witness. The Hearing Officer will limit cross-examination that he determines to be unduly repetitious, harassment or beyond the scope of the witness' direct testimony.

D. All exhibits offered in evidence shall be marked with a designation identifying the party or interested participant offering the exhibit, and numbered in the sequence in which offered.

E. The Hearing Officer may take official notice of any matter that may be judicially noticed in New Mexico courts.

F. The Commission strongly urges the parties to enter into stipulations of fact to expedite the hearing process. Any stipulation of facts must be filed with the Commission at least 10 business days before the hearing.

[6-30-99; 19.10.14.1432 NMAC – Rn, 19 NMAC 10.2.14.1432, 05-15-2001]

19.10.14.1433 OBJECTIONS:

A. Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing at the time the issue arises. The party raising the objection must supply a short statement of the reasons for the objection. The ruling by the Hearing Officer on any objection and the reasons given for it shall be part of the record.

B. Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proven. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

[6-30-99; 19.10.14.1433 NMAC – Rn, 19 NMAC 10.2.14.1433, 05-15-2001]

19.10.14.1434 PARTICIPATION BY THE GENERAL PUBLIC:

A. Any member of the general public may present comments in support of or in opposition to a petition at the hearing. Such comments may be given orally or in a signed written statement with 12 copies. Such comments will be included in the record but will not be admitted as evidence. The Commission may consider the comments with respect to the weight of the evidence presented by the parties or interested participants or with respect to interpretation of law or matters of public policy within the Commission's jurisdiction and discretion.

B. If written submittals are allowed following the hearing, then any member of the general public may offer additional comments during the time allowed for such submittals, which shall be considered in the same manner as provided in Subsection A of 19.10.14.1434 NMAC. Comments received after the deadline will not be included in the record.

C. Members of the general public cannot file motions, need not be served with motions or pleadings filed by the parties, and cannot conduct cross-examination of witnesses.

D. Any person who wishes to present evidence at the hearing as an interested participant shall, not later than 10 days prior to the hearing, file a statement of intent to present evidence and send a copy of the statement by first class mail to each party at the address of record with the Hearing Clerk. The Hearing Clerk shall provide any interested person with the names and mailing addresses of the parties upon request. The statement of intent shall include:

- (1) the name of the person filing the statement;
 - (2) an indication of whether the person supports or opposes the Petition at issue;
 - (3) the name of each witness to be called at the hearing;
 - (4) an estimate of the length of the direct testimony of each witness;
 - (5) a summary or outline of the anticipated direct testimony of each witness;
- and
- (6) a list of exhibits, if any, to be offered into evidence at the hearing.

E. Upon the request of any party, the interested participant shall, prior to the hearing, provide a list of documents or other information that provides the basis for the testimony described in the statement of intent to present evidence as an interested participant pursuant to Subsection D of 19.10.14.1434 NMAC. Discovery from an interested participant shall be as provided in NMSA 1978, Section 69-36-15(F)(1993).

F. A person who has submitted a statement of intent to present evidence as an interested participant pursuant to Subsection D of 19.10.14.1434 NMAC may testify, offer witnesses to testify, or request the admission of exhibits as evidence at the hearing as disclosed in the statement of intent to present evidence, and may participate as otherwise provided in this Part.

G. An interested participant may not expand the issues at the hearing beyond the issues contained in the pleadings filed by the parties, may not file motions, and is bound by any stipulations filed by the parties. The parties are not required to serve motions or pleadings on interested participants.

[6-30-99; 19.10.14.1434 NMAC – Rn, 19 NMAC 10.2.14.1434, 05-15-2001]

19.10.14.1435-19.10.14.1438 [RESERVED]

[6-30-99; 19.10.14.1435-19.10.14.1438 NMAC -- Rn, 19 NMAC 10.2.14.1435-1438, 05-15-2001]

19.10.14.1439 RECORDING OF THE HEARING:

A. Unless otherwise ordered by the Commission, the Hearing Clerk shall make an audio recording of the hearing. Any person, other than the Commission, desiring a copy of the audio recording must order a copy from the Hearing Clerk and pay for the copying.

B. No later than 5 days prior to the hearing date, a party may request that the hearing be stenographically recorded at the cost of the party. The request shall be in writing, filed with the Hearing Clerk, and shall certify that the party hired a court reporter and that the court reporter will deliver 13 copies of the hearing transcript to the Commission and copies to the parties, if the Commission requests such copies.

[6-30-99; 19.10.14.1439 NMAC – Rn, 19 NMAC 10.2.14.1439, 05-15-2001]

19.10.14.1440 ATTENDANCE BY TELEPHONE:

Commission members may attend a meeting to take any action except on evidentiary matters by telephone if the following requirements are met:

A. The Hearing Clerk is able to arrange for a conference telephone or other similar communications equipment at the location of the meeting;

B. It is difficult or impossible for the Commissioner to attend the meeting in person;

C. Each Commissioner participating by telephone can be identified when speaking;

D. All participants are able to hear each other at the same time;

E. Members of the public attending the meeting are able to hear any Commissioner who speaks during the open portion of a meeting; and

F. Any documents to be considered in the meeting have been provided in advance to Commissioners attending by telephone.

[6-30-99; 19.10.14.1440 NMAC – Rn, 19 NMAC 10.2.14.1440, 05-15-2001]

19.10.14.1441 FINAL ORDER BY COMMISSION:

A. Following the hearing, the Commission may allow a period for written submittals from the parties and interested participants and comments from the general public. These submittals shall not contain evidence not presented previously. The Commission may ask for proposed findings of fact and conclusions of law from any or all parties and may ask for objections to proposed findings of fact and conclusions of law.

B. If the hearing was not held as part of a Commission meeting, then a recommendation based on the record shall be made by the Hearing Officer and presented to the Commission within 30 days of the hearing or the last day for written

submittals and comments. The recommendation will include findings of fact, conclusions regarding all material issues of law and reasons therefor, and a proposed final order. The recommendation shall be sent by the Hearing Clerk to all parties and the Commission. The Commission may allow written comments or oral argument regarding the recommendation.

C. The Commission shall reach a decision at the conclusion of the hearing or at a meeting within 30 days after the final deadline for written submittals by the parties or the Hearing Officer. After the Commission reaches an oral decision, the Commission or Commission counsel shall prepare a final written order. Unless otherwise ordered, the Commission shall approve the written order at a meeting within 30 days after the oral decision. Commission members may attend the meeting by telephone provided the requirements of 19.10.14.1440 NMAC are met. The written order shall include a decision granting or denying relief and the factual and legal basis for the decision, and may include a dissenting opinion.

D. The Hearing Clerk shall file the final order in the official public records of the Commission and within one day send copies of the final order to each party, interested participant and to all other persons who have made written requests for notification of the action taken.

[6-30-99; 19.10.14.1441 NMAC – Rn, 19 NMAC 10.2.14.1441, 05-15-2001]

19.10.14.1442 PENALTY:

For reviews of penalty assessments, the Commission may change the amount and nature of the civil penalty, if any, and shall set forth the reasons for the change. The Petitioner shall pay the full amount of the civil penalty, if any, assessed in the final order within 60 days after receipt of the final order, unless otherwise ordered by the Commission. Payment shall be made by forwarding to the Hearing Clerk a cashier's check or certified check in the amount of the penalty assessed, payable to the fund specified in the Act.

[6-30-99; 19.10.14.1442 NMAC – Rn, 19 NMAC 10.2.14.1442, 05-15-2001]

19.10.14.1443 NO AUTOMATIC STAY DURING JUDICIAL REVIEW:

The filing of an appeal does not stay any action or payment of penalty required by the final order. The Commission may enter a stay if it is requested by motion prior to any appeal to district court.

[6-30-99; 19.10.14.1443 NMAC – Rn, 19 NMAC 10.2.14.1443, 05-15-2001]

19.10.14.1444 PREPARATION OF THE RECORD:

The preparation of the record for an appeal or for any other reason shall be the responsibility of the Hearing Clerk. The Appellant shall make satisfactory arrangements for payment for the copies of the record with the Hearing Clerk, including the costs of transcribing the audio recording of the hearing if such transcription is necessary or desired.

[6-30-99; 19.10.14.1444 NMAC – Rn, 19 NMAC 10.2.14.1444, 05-15-2001]

19.10.14.1445-19.10.14.1446 [RESERVED]:

[6-30-99; 19.10.14.1445-19.10.14.1446 NMAC -- Rn, 19 NMAC 10.2.14.1445-1446, 05-15-2001]

19.10.14.1447 SETTLEMENT:

The Commission encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and Regulations. The Commission may approve a settlement agreement signed by all parties. If the Commission disapproves the settlement agreement, the matter shall proceed as if there had been no settlement agreement.

[6-30-99; 19.10.14.1447 NMAC – Rn, 19 NMAC 10.2.14.1447, 05-15-2001]

19.10.14.1448 WITHDRAWAL:

A Petitioner may withdraw a petition at any time prior to a decision by the Commission by filing a Notice of Withdrawal with the Commission and serving the Notice on all other parties and upon such withdrawal, the permitting action becomes final.

[6-30-99; 19.10.14.1448 NMAC – Rn, 19 NMAC 10.2.14.1448, 05-15-2001]

19.10.14.1449 CERTIFICATE OF SERVICE:

ATTACHMENT A

[Preferred Format]

NEW MEXICO MINING COMMISSION

IN THE MATTER OF THE PETITION FOR

REVIEW OF THE DIRECTOR'S ACTION

DATED [] No.

PERMIT NO. _____

[NAME OF PETITIONER],

Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing [name of document] was [hand-delivered] [faxed] [mailed first class] to the following counsel of record on this ____ day of _____, 19__ and hand-delivered to the Clerk of the New Mexico Mining Commission.

[6-30-99; 19.10.14.1449 NMAC – Rn, 19 NMAC 10.2.14.1449, 05-15-2001]

PART 15: MINING COMMISSION RULEMAKING

19.10.15.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Mining and Minerals Division, and Mining Commission.

[19.10.15.1 NMAC - N, 3/27/2018]

19.10.15.2 SCOPE:

19.10.15 NMAC applies to persons or entities engaged in rulemaking proceedings before the commission.

[19.10.15.2 NMAC - N, 3/27/2018]

19.10.15.3 STATUTORY AUTHORITY:

19.10.15 NMAC is adopted pursuant to the New Mexico Mining Act, Sections 69-36-1 to 69-36-20 NMSA 1978 (1993, as amended), and the State Rules Act, Section 14-4-5.8 NMSA 1978 (2017).

[19.10.15.3 NMAC - N, 3/27/2018]

19.10.15.4 DURATION:

Permanent.

[19.10.15.4 NMAC - N, 3/27/2018]

19.10.15.5 EFFECTIVE DATE:

March 27, 2018, unless a later date is cited at the end of a section.

[19.10.15.5 NMAC - N, 3/27/2018]

19.10.15.6 OBJECTIVE:

The objectives of 19.10.15 NMAC are:

- A.** to establish procedures used in rulemaking proceedings before the commission;
- B.** to encourage the participation in the hearings the commission conducts for the promulgation of rules;
- C.** to make possible the effective presentation of the evidence and points of view of parties and members of the public; and
- D.** to assure that rulemaking hearings are conducted in a fair and equitable manner.

[19.10.15.6 NMAC - N, 3/27/2018]

19.10.15.7 DEFINITIONS:

See Section 69-36-3 NMSA 1978 and 19.10.1.7 NMAC for definitions. See also Section 14-4-2 NMSA 1978 (2017) for the definitions of "proceeding", "proposed rule" and "rule".

[19.10.15.7 NMAC - N, 3/27/2018]

19.10.15.8 LIBERAL CONSTRUCTION:

19.10.15 NMAC shall be liberally construed to carry out its purpose.

[19.10.15.8 NMAC - N, 3/27/2018]

19.10.15.9 SEVERABILITY:

If any portion or application of 19.10.15 NMAC is held invalid, the remainder, or its application to other persons or situations, shall not be affected.

[19.10.15.9 NMAC - N, 3/27/2018]

19.10.15.10 POWERS AND DUTIES OF COMMISSION AND HEARING OFFICER:

A. Commission. The commission shall exercise all powers and duties prescribed under 19.10.15 NMAC and not otherwise delegated to the hearing officer or the commission administrator.

B. Hearing officer. The commission shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under

19.10.15 NMAC. The hearing officer may be an appointed member of the commission. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings 19.10.15 NMAC governs, including, but not limited to:

- (1) conducting hearings under 19.10.15 NMAC;
- (2) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
- (3) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (4) if requested by the commission, preparing and filing a report of the hearing, with recommendations for commission action;
- (5) requesting parties to file original documents with the commission administrator; and
- (6) requesting a party to submit a proposed statement of reason in support of the commission's decision.

[19.10.15.10 NMAC - N, 3/27/2018]

19.10.15.11 GENERAL PROVISIONS - COMPUTATION OF TIME:

A. Computation of time. In computing any time prescribed or allowed by these rules, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him or her, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

B. Extension of time. The commission or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[19.10.15.11 NMAC - N, 3/27/2018]

19.10.15.12 GENERAL PROVISIONS - RECUSAL:

No commission member shall participate in an action for which he or she would be disqualified under Section 69-36-6 NMSA 1978 of the Mining Act, the Governmental Conduct Act, or any other applicable law.

[19.10.15.12 NMAC - N, 3/27/2018]

19.10.15.13 GENERAL PROVISIONS - EX PARTE DISCUSSIONS:

At no time after the initiation and before the conclusion of a proceeding under 19.10.15 NMAC, shall the division, or any other party, interested participant or their representatives discuss ex parte the merits of the proceeding with any commission member or the hearing officer.

[19.10.15.13 NMAC - N, 3/27/2018]

19.10.15.14 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:

A. The filing of any document that 19.10.15 NMAC requires shall be accomplished by delivering the document to the commission administrator and the commission legal counsel.

B. Any person filing any document shall:

(1) provide the commission administrator with nine original hard copies of the document and one identical bookmarked PDF file via email or personal delivery on CD or jump drive;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

(3) any document filed pursuant to 19.10.15 NMAC shall be filed with the commission administrator at least 20 days before any meeting at which the commission will consider the document. If the document is a motion seeking an order from the hearing officer in a rulemaking hearing, the motion must also be served at the same time with the hearing officer and the commission's legal counsel.

C. Whenever 19.10.15 NMAC requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to 19.10.15 NMAC service shall also be made upon the commission's legal counsel. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. Service by facsimile

or electronic transmission is accomplished when the transmission of the document is completed and acknowledged by designated recipient.

[19.10.15.14 NMAC - N, 3/27/2018]

19.10.15.15 EXAMINATION OF DOCUMENTS FILED:

A. Examination allowed. Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the commission. Such documents shall be made available on the division's website.

B. Cost of duplication. The person seeking copies of documents shall bear the cost of duplicating documents.

[19.10.15.15 NMAC - N, 3/27/2018]

19.10.15.16 PREHEARING PROCEDURES - PETITION FOR RULE CHANGE:

A. Any person, may file a petition with the commission to adopt, amend or repeal any rule within the commission's jurisdiction.

B. The petition shall be in writing and shall include a statement of the reasons for the rule change. The petition shall cite the relevant statutes that authorize the commission to adopt the proposed rules and shall estimate the time that will be needed to conduct the rules hearing, if possible. A copy of the entire rule, including the proposed rule change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the commission in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit his or her petition in the form 19.10.15 NMAC requires.

C. The commission shall determine at a public meeting within 60 days of submission of a petition for rule change whether to hold a hearing on the petition. Any person may respond to the petition for rule change either in writing prior to the public meeting or in person at the public meeting. If the commission determines not to hold a hearing, the commission's determination shall be subject to review as contemplated by Section 69-36-16 NMSA 1978.

D. If the commission determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by 19.10.15 NMAC, as may be necessary and appropriate to fully inform the commission of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-

hearing conferences, filing direct written testimony prior to the hearing or limiting testimony or cross-examination.

[19.10.15.16 NMAC - N, 3/27/2018]

19.10.15.17 RULEMAKING NOTICE:

A. The commission shall distribute a notice of proposed rulemaking at least 60 days before the hearing on the rule change by:

- (1) posting the notice on the division website;
- (2) posting the notice on the sunshine portal;
- (3) making the notice available in the division's district offices, if any;
- (4) sending the notice by mail or electronic mail to persons who have made a written request to the commission for advance notice of hearings and who have provided a mail or an electronic mail address to the commission;
- (5) providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and
- (6) publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.

B. Content. The notice shall include:

- (1) a summary of the full text of the proposed rule;
- (2) a short explanation of the purpose of the proposed rule;
- (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
- (4) information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;
- (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (6) information on where and when a rulemaking hearing will be held and how a person may participate in the hearing; and

(7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

[19.10.15.17 NMAC - N, 3/27/2018]

19.10.15.18 ENTRY OF APPEARANCE:

Any person who is or may be affected by the proposed rule change may file an entry of appearance as a party. The entry of appearance shall be filed no later than 10 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources. The filing of a petition or a notice of intent to present technical testimony shall serve as an entry of appearance.

[19.10.15.18 NMAC - N, 3/27/2018]

19.10.15.19 MOTIONS:

A. General. Any person who has filed an entry of appearance may file a motion. All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 19.10.15.14 NMAC.

B. Unopposed motions. An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions. Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions. Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to granting the motion.

E. Reply to response. The moving party may, but is not required to, submit a reply to any response within 10 days after the response is served.

F. Decision. The hearing officer shall decide all motions without a hearing, unless otherwise ordered by the hearing officer sua sponte or upon any party's written request. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the commission for a decision. A procedural motion

may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the commission administrator.

[19.10.15.19 NMAC - N, 3/27/2018]

19.10.15.20 TECHNICAL TESTIMONY:

A. Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 10 working days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present and state each witness's qualifications, including a description of their educational and work background, and the anticipated duration of each witness's testimony;
- (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
- (4) summarize or include a copy of the direct testimony of each technical witness in narrative form;
- (5) include the text of any recommended modifications to the proposed rule change; and
- (6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

B. The hearing officer may enforce 19.10.15.20 NMAC's provisions through such action as the hearing officer deems appropriate, including exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that parties submit written rebuttal testimony prior to hearing.

[19.10.15.20 NMAC - N, 3/27/2018]

19.10.15.21 PARTICIPATION BY PUBLIC:

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

B. A member of the public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment may be submitted electronically, mailed or delivered to the commission administrator.

[19.10.15.21 NMAC - N, 3/27/2018]

19.10.15.22 PARTICIPATION BY CONFERENCE TELEPHONE OR SIMILAR DEVICE:

A. A commission member may participate in a meeting or hearing of the commission by means of a conference telephone or other similar communications equipment, when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the commission who speaks at the meeting or hearing. A commission member's participation by such means shall constitute presence in person at the meeting or hearing. A commission member who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rulemaking hearing so as to permit the commission administrator to arrange for adequate telephone hookup.

B. A witness may participate in a rulemaking hearing of the commission by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer in advance of the rulemaking hearing. No witness may participate in a rulemaking hearing by telephone conference unless he or she makes a request sufficiently in advance of the rulemaking hearing to permit the commission administrator to arrange for an adequate telephone or electronic hookup. Each witness participating remotely must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

[19.10.15.22 NMAC - N, 3/27/2018]

19.10.15.23 HEARING PROCEDURES - CONDUCT OF HEARINGS:

A. The rules of civil procedure and the rules of evidence shall not apply.

B. The hearing officer shall conduct the hearing to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the hearing's nature and subject matter, and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present the proposed rule first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the public. Members of the public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 19.10.15.27 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

C. If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[19.10.15.23 NMAC - N, 3/27/2018]

19.10.15.24 TESTIMONY AND CROSS-EXAMINATION:

A. The hearing officer shall allow all interested persons a reasonable opportunity to submit arguments and to examine witnesses testifying at the hearing.

B. All testimony will be taken under oath or affirmation, which may be accomplished in mass or individually.

C. The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious. The hearing officer shall require all

oral testimony be limited to the position of the witness in favor of or against the proposed rule.

D. Any person who testifies at the hearing may be subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing may conduct such cross-examination if required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[19.10.15.24 NMAC - N, 3/27/2018]

19.10.15.25 EXHIBITS:

A. Any person offering an exhibit at hearing shall provide at least an original and 12 copies for the commission, and a sufficient number of copies for persons attending the hearing.

B. All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he or she shall identify each exhibit with an index tab or by other appropriate means.

C. Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[19.10.15.25 NMAC - N, 3/27/2018]

19.10.15.26 TRANSCRIPT OF PROCEEDINGS:

Unless specified by the commission or hearing officer, an audio recording and index shall be made of the hearing. If the hearing officer allows verbatim stenographic transcripts, the petitioner shall bear the cost of the original verbatim transcript of the proceeding and of providing a copy for each commission member and commission counsel.

[19.10.15.26 NMAC - N, 3/27/2018]

19.10.15.27 POST-HEARING SUBMISSIONS:

The hearing officer may allow the record to remain open for a reasonable time following the hearing's conclusion for written submission of additional evidence, comments and arguments and proposed statements of reasons. The hearing officer's determination shall be announced at the hearing's conclusion. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not

presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[19.10.15.27 NMAC - N, 3/27/2018]

19.10.15.28 HEARING OFFICER'S REPORT:

If the commission directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the commission, and shall be filed with the commission administrator within the time specified by the commission. The commission administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[19.10.15.28 NMAC - N, 3/27/2018]

19.10.15.29 DELIBERATION AND DECISION:

A. If a quorum of the commission attended at the hearing, and if the hearing notice indicated that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and decide on the proposed rule.

B. If the commission does not reach a decision at the hearing's conclusion, the commission administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each member that did not attend the hearing and, if necessary, to other members, commission counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

C. The commission shall reach its decision on the proposed rule within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

D. If the commission determines during its deliberations that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

E. The commission shall issue its decision on the proposed rule change in a suitable format, which shall include its reasons for the action taken.

F. The commission's written decision is the official version of the commission's action, and the reasons for that action. Other written or oral statements by commission members are not recognized as part of the commission's official decision or reasons.

G. The adoption of the commission's written decision shall constitute the adoption of the rule. Within 15 days after adoption of the written decision, the commission shall file the rule and the written decision in accordance with the State Rules Act.

[19.10.15.29 NMAC - N, 3/27/2018]

19.10.15.30 NOTICE OF COMMISSION ACTION:

The commission administrator shall provide notice of the commission's action in accordance with the State Rules Act.

[19.10.15.30 NMAC - N, 3/27/2018]

19.10.15.31 APPEALS AND STAYS - APPEAL OF RULES:

A. Appeal of any rule change by the commission shall be taken in accordance with governing law.

B. The appellant shall serve a copy of the notice of appeal on the commission and on each party.

C. The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the appellant's expense.

D. Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the rule change being appealed.

[19.10.15.31 NMAC - N, 3/27/2018]

CHAPTER 11: GEOTHERMAL RESOURCES DEVELOPMENT

PART 1: GENERAL PROVISIONS

19.11.1.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division.

[19.11.1.1 NMAC - N, 2/27/2018]

19.11.1.2 SCOPE:

All persons who engage in the exploration, development or production of a geothermal resource.

[19.11.1.2 NMAC - N, 2/27/2018]

19.11.1.3 STATUTORY AUTHORITY:

Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).

[19.11.1.3 NMAC - N, 2/27/2018]

19.11.1.4 DURATION:

Permanent.

[19.11.1.4 NMAC - N, 2/27/2018]

19.11.1.5 EFFECTIVE DATE:

February 27, 2018, except where a later date is cited at the end of a section.

[19.11.1.5 NMAC - N, 2/27/2018]

19.11.1.6 OBJECTIVE:

The objective of 19.11.1 NMAC is to set forth general provisions and definitions pertaining to the authority of the energy conservation and management division pursuant to the Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).

[19.11.1.6 NMAC - N, 2/27/2018]

19.11.1.7 DEFINITIONS:

These definitions apply to 19.11.1 through 19.11.4 NMAC. See Section 71-9-3 NMSA 1978 (2016) for the definitions of "**correlative rights**", "**division**", "**geothermal reservoir**", "**geothermal resources**" and "**person**".

A. Definitions beginning with the letter "A".

(1) "**Act**" means the Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).

(2) "**Affected person**" means a person having a property interest, water right or geothermal resource interest (correlative right) within the public notice area specified in Subsection B of 19.11.2.13 NMAC.

(3) **"Applicant"** means any person who applies with the division for a permit to construct, modify or operate a well or facility used for the exploration, development or production of geothermal resources.

(4) **"Annular space"** means the space between the walls of the well as drilled and the casing or between a permanent casing and the borehole.

(5) **"ASL"** means above sea level.

B. Definitions beginning with the letter "B".

(1) **"Blowout"** means an uncontrolled escape of liquids or gases, or both, from a geothermal well.

(2) **"Blowout prevention equipment"** means equipment that is designed to be attached to the casing in a geothermal well to prevent a blowout.

(3) **"BOPE"** means blowout prevention equipment.

C. Definitions beginning with the letter "C".

(1) **"Casing"** means the conduit required to prevent waste and contamination of the ground water, the geothermal resource or both, and to hold the formation open during the well's construction or use.

(2) **"Closed-loop system"** as used in 19.11.4 NMAC means a system that uses above ground tanks for the management of drilling fluids.

(3) **"Contaminant"** means any physical, chemical, biological or radiological substance or matter in water.

D. Definitions beginning with the letter "D".

(1) **"Department"** means the energy, minerals and natural resources department.

(2) **"Director"** means the director of the energy conservation and management division of the department.

(3) **"Drilling operations"** means the actual drilling, re-drilling, completion or recompletion of a well for exploration, observation, production or injection including the running and cementing of casing, the performance of such operations as logging and perforating and the installation of pumps and well-head equipment.

E. Definitions beginning with the letter "E".

(1) **"EPA"** means the United States environmental protection agency.

(2) **"Exploratory well"** means a well drilled for the discovery or evaluation of geothermal resources either in an identified geothermal reservoir or in unexplored areas.

F. Definitions beginning with the letter "F". "Fresh water" means the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the water body will not adversely affect hydrologically connected ground water), the surface waters of streams regardless of the water quality within a given reach and ground water that has an existing concentration of 10,000 mg/l or less.

G. Definitions beginning with the letter "G". "GRCA" means the Geothermal Resources Conservation Act, Section 71-5-1 et seq. NMSA 1978.

H. Definitions beginning with the letter "H". [RESERVED]

I. Definitions beginning with the letter "I". "Injection well" means any well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool or other source, or to provide new material to serve as a material medium therein, or for reinjecting any material medium (including fluids) or the residue thereof, or any by-product of geothermal resource exploration or development into the earth.

J. Definitions beginning with the letter "J". [RESERVED]

K. Definitions beginning with the letter "K". [RESERVED]

L. Definitions beginning with the letter "L". "LLDPE" means linear low-density polyethylene.

M. Definitions beginning with the letter "M".

(1) **"Material medium"** means any substance including, but not limited to, naturally heated fluids, brines, associated gases and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas or other hydrocarbon substances.

(2) **"Mg/l"** means milligrams per liter.

(3) **"Mg/kg"** means milligrams per kilogram.

(4) **"MIT"** means mechanical integrity test.

(5) "Monitoring well" means, for purposes of 19.11.4 NMAC, any well used to observe the level of the water and its temperature, pressure and chemistry in a shallow protected water aquifer above or near a potential geothermal resource.

N. Definitions beginning with the letter "N". "Notice" means, for purposes of 19.11.4 NMAC, a written statement to the division that the permittee intends to do work.

O. Definitions beginning with the letter "O". "Observation well" means any well used to observe the level of the water and its temperature, pressure and chemistry in an area of potential geothermal resource. This includes a thermal gradient well.

P. Definitions beginning with the letter "P".

(1) "Permittee" means the person issued a permit by the director, or a person required to have a permit pursuant to 19.11.2 NMAC including a person who is required to have a permit but has not applied for or obtained a permit. The permittee shall be the owner of the geothermal lease or geothermal interest and any well(s) or facility located upon the geothermal lease or interest or the operator of the geothermal facility if it is someone other than the owner of the geothermal lease or interest.

(2) "Pit" means a drilling, workover or blow-down pit, which is constructed with the intent that the pit will hold liquids and mineral solids. Pits may be used for one or more wells and must be located at one of the associated permitted well drilling locations or surface facilities. Any containment structure such as a pond or other impoundment that holds only fresh water that has not been treated for drilling, workover or blow-down purposes is not a pit.

(3) "Production well" means a well which is used to transmit fluids derived from a geothermal resource to the surface where the fluids are available for industrial, commercial or domestic purposes.

Q. Definitions beginning with the letter "Q". [RESERVED]

R. Definitions beginning with the letter "R". "Responsible official" means a corporate officer (president, secretary, treasurer or vice president), general partner or proprietor or public principal executive officer or elected official who is authorized to execute documents on behalf of the corporation, entity or office.

S. Definitions beginning with the letter "S".

(1) "Sump" means a subgrade impermeable vessel that is partially buried in the ground, is in contact with the ground surface or is a collection device incorporated within a secondary containment system, which remains predominantly empty, serves as a drain or receptacle for de minimis releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or geothermal wastes. Buckets, pails, drip pans or similar vessels that are not in contact with the ground surface are not sumps.

(2) **"Suspension of operations"** means the cessation of drilling, re-drilling or alteration of casing before the well is officially abandoned or completed.

T. Definitions beginning with the letter "T". "TDS" means total dissolved solids.

U. Definitions beginning with the letter "U".

(1) **"UIC"** means Underground Injection Control.

(2) **"UTM"** means Universal Transverse Mercator.

V. Definitions beginning with the letter "V". [RESERVED]

W. Definitions beginning with the letter "W".

(1) **"Waste"** means any physical waste including, but not limited to:

(a) underground waste resulting from inefficient, excessive or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir or other source; or the locating, spacing, constructing, equipping, operating or producing of any well in a manner that results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area; or

(b) the inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water that exceeds what is reasonably necessary in the efficient development or production of a well.

(2) **"Well"** means, (a) a bored, drilled or driven shaft; (b) a dug hole whose depth is greater than the largest surface dimension; (c) an improved sinkhole; or (d) a subsurface fluid distribution system.

[19.11.1.7 NMAC - N, 2/27/2018]

19.11.1.8 CONFIDENTIAL INFORMATION PROTECTION:

A. Applicants or permittees who submit information to the division may claim such information as confidential. Applicants or permittees must assert any claim of confidentiality at the time of submittal.

B. To claim confidentiality of information in a submittal, the applicant or permittee must clearly mark each page in the document on which the applicant or permittee claims there is confidential information, and submit to the division a written description of the basis for the claim of confidentiality and why the information meets the

requirements for a claim of confidentiality at the time it submits the document to the division. The division shall review the claim of confidentiality based on the written submittal and determine whether the information may be maintained as confidential pursuant to the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978 (1993, as amended). The division shall determine whether the information may be maintained as confidential prior to reviewing an application or request for approval. If the division determines that information in a submittal is confidential, the division may require submission of redacted copies of the submittal for the public record.

C. If no claim of confidentiality is made at the time of submission, any such claims are deemed waived and the division may make the information available to the public without further notice.

D. The division will deny claims of confidentiality for the name and address of any applicant or permittee or any information that deals with the existence, absence or level of contaminants in drinking water or the document is otherwise publicly available.

E. Information the division determines is confidential may be disclosed to officers, employees or authorized representatives of the division, or may be used in any proceedings conducted pursuant to the Act when such information is essential to such proceeding. The division may close that part of a proceeding where confidential information covered by Section 71-2-8 NMSA 1978 is discussed by the division.

[19.11.1.8 NMAC - N, 2/27/2018]

19.11.1.9 OTHER REQUIREMENTS:

A permittee shall allow any division employee upon notice and presentation of proper credentials to:

- A.** enter the property where wells are located or the facility at reasonable times;
- B.** inspect and copy records required by an abatement plan;
- C.** inspect any treatment works, monitoring and analytical equipment;
- D.** sample any wastes, ground water, surface water, stream sediment, plants, animals or vadose-zone material including vadose-zone vapor, geothermal resources or material medium;
- E.** use monitoring systems and wells under the permittee's control to collect samples of any media listed in Subsection D of 19.11.1.9 NMAC; and
- F.** gain access to off-site property the permittee does not own or control, but is accessible to the permittee through a third-party access agreement, provided the agreement allows it.

[19.11.1.9 NMAC - N, 2/27/2018]

19.11.1.10 TRANSITIONAL PROVISIONS:

Pursuant to the Act, Section 71-9-11 NMSA 1978, all permits, orders and determinations issued pursuant to the Geothermal Resources Conservation Act shall be administered by the division and shall remain in effect as provided in 19.11.1.10 NMAC.

A. The permittee under any permit, order or determination issued pursuant to the GRCA which authorizes the drilling and operation of a geothermal well may apply at any time, pursuant to the Act and 19.11.1 through 19.11.4 NMAC, for the issuance of a geothermal well permit covering such well or the inclusion of the geothermal well in a geothermal facility permit. Upon issuance of the permit or inclusion of the well in the geothermal facility permit, the permit, order or determination issued pursuant to the GRCA shall expire.

B. A permittee under a permit, order or determination issued pursuant to the GRCA may seek a minor permit modification, as defined in 19.11.2.10 NMAC, and shall follow the procedures in 19.11.2 NMAC. Any modification other than a minor permit modification shall be considered an application for a new geothermal well permit pursuant to Subsection A of 19.11.1.10 NMAC. Any hearings initiated concerning a permit, order or determination issued pursuant to the GRCA shall be conducted in accordance with 19.11.3 NMAC.

C. All permits, orders or determinations issued pursuant to the GRCA shall expire five years from the effective date of 19.11.1 through 19.11.4 NMAC unless there is a pending application submitted pursuant to Subsection A of 19.11.1.10 NMAC.

[19.11.1.10 NMAC - N, 2/27/2018]

PART 2: PERMITS

19.11.2.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division.

[19.11.2.1 NMAC - N, 2/27/2018]

19.11.2.2 SCOPE:

All persons who engage in the exploration, development or production of a geothermal resource.

[19.11.2.2 NMAC - N, 2/27/2018]

19.11.2.3 STATUTORY AUTHORITY:

Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).

[19.11.2.3 NMAC - N, 2/27/2018]

19.11.2.4 DURATION:

Permanent.

[19.11.2.4 NMAC - N, 2/27/2018]

19.11.2.5 EFFECTIVE DATE:

February 27, 2018, except where a later date is cited at the end of a section.

[19.11.2.5 NMAC - N, 2/27/2018]

19.11.2.6 OBJECTIVE:

The objective of 19.11.2 NMAC is to require persons to obtain a permit prior to commencing exploration, development and production of geothermal resources and to establish procedures for application for and approval or denial of permits.

[19.11.2.6 NMAC - N, 2/27/2018]

19.11.2.7 DEFINITIONS:

[RESERVED]

[See 19.11.1.7 NMAC for definitions.]

[19.11.2.7 NMAC – N, 2/27/2018]

19.11.2.8 INFORMATION TO STATE ENGINEER:

A. The division shall notify the office of state engineer when it receives an application for a geothermal well permit or geothermal facility permit.

B. When the applicant proposes to reinject all ground water as soon as practicable into the same ground water source from which it was diverted, resulting in no new depletion to the source, the division shall also provide the state engineer all information available to the division regarding the proposed diversion and reinjection and shall request the opinion of the state engineer as to whether existing ground water rights sharing the same ground water source may be impaired.

C. If the state engineer determines that the information provided is sufficient to render an opinion and it is the opinion of the state engineer that any existing ground water rights may be impaired, the division, upon receipt of the opinion of the state engineer, shall notify the applicant or permittee who shall submit to the division by the date specified in the notification a plan of replacement for any existing ground water rights that are likely to be impaired.

[19.11.2.8 NMAC - N, 2/27/2018]

19.11.2.9 PERMIT REQUIRED:

Except as provided in 19.11.1.10 NMAC, no person shall explore, develop or produce a geothermal resource including drilling or operating an injection well except pursuant to and in accordance with the terms and conditions of a permit issued by the division under the Act. The applicant for a permit or permit modification, renewal or transfer shall be the person who has the right to produce the geothermal resource either through ownership, lease, permit or other right. The permittee is responsible for the actions of its officers, employees, consultants, contractors and subcontractors as they relate to the exploration, development or production of the geothermal resource. Any person who is involved in the exploration, development or production of a geothermal resource shall comply with the Act, 19.11.1 through 19.11.4 NMAC and the permit.

[19.11.2.9 NMAC - N, 2/27/2018]

19.11.2.10 APPLICATION TO DRILL, MODIFY OR OPERATE WELLS OR FACILITIES IN A GEOTHERMAL RESOURCE:

A. Application for a permit to drill an exploratory well or to drill or operate a production or observation well. Any person who proposes to drill or operate an exploratory, production or observation well shall first apply for a permit by filing a written application with the division. The applicant shall submit two paper copies and one electronic copy of the application. The applicant shall submit the information listed below in the application:

(1) name and contact information of the owner or operator of the well and the drilling contractor and whether the owner or operator is a corporation, partnership, single proprietorship, association or other business entity and the names of the applicant's officers and directors;

(2) name and contact information of the applicant's registered agent;

(3) location of the proposed or existing well (UTM coordinates or latitude-longitude) and a map showing location and distances to property lines;

(4) estimated or actual (if existing) top of well-elevation;

- (5) name and contact information of the surface land owner;
- (6) signature of a responsible official or designated agent of the applicant;
- (7) name and contact information of the geothermal resource owner and documentation such as deeds, leases, permits or other documentation showing applicant has the authority or right to produce the geothermal resource;
- (8) for production wells, actual (when available) or estimated data regarding the physical characteristics of the geothermal resource including volume, temperature, permeability, thermal capacity and water quality of both the geothermal resource waters and any fresh water resources in the proposed drilling area;
- (9) whether the applicant proposes to reinject all ground water as soon as practicable into the same ground water source from which it was diverted, resulting in no new depletion to the source and information regarding the proposed diversion and reinjection;
- (10) a map and accompanying list showing the names, addresses and locations of adjacent landowners within one-half mile of the proposed geothermal well or facility; the location of water wells within one mile of the proposed geothermal well or facility; the names, addresses and locations of any geothermal resource owners or lessees currently owning or leasing a geothermal resource within five miles of the proposed geothermal well or facility; and the names, addresses and locations of any local, state, federal or tribal government property within five miles of the proposed geothermal well or facility;
- (11) a statement of the purpose and estimated or actual (if existing) depth of the well;
- (12) for production wells, the proposed production rate of geothermal resource waters;
- (13) a description of the geothermal well construction, BOPE and the drilling rig;
- (14) a description of the logging, coring and testing program;
- (15) plans for providing financial assurance prior to permit issuance pursuant to 19.11.2.18 NMAC;
- (16) pit information pursuant to 19.11.4.17 NMAC;
- (17) methods for disposal of geothermal resources, residue of geothermal resources or nondomestic waste from the exploration, development or production of geothermal resources pursuant to 19.11.4.20 NMAC;

(18) a geothermal well plugging and abandonment plan, including a responsible third-party contractor's cost estimate, sufficient to plug and abandon the wells in a manner that will protect life, health, property, natural resources, the environment and the public welfare, and comply with the requirements contained in 19.11.4.16 NMAC;

(19) a statement of whether the applicant or any subsidiary, affiliate or person controlled by or under common control with the applicant

(a) has had a federal or state UIC or geothermal drilling or operating permit suspended or revoked in the five years preceding the date of the application's submission; or

(b) has forfeited a performance bond or similar security deposited in lieu of bond; and

(c) a brief explanation of the facts involved if any such suspension, revocation or forfeiture referred to in Subparagraphs (a) and (b) of Paragraph (19) of Subsection A of 19.11.2.10 NMAC has occurred, including:

(i) the permit's identification number and issuance date, and the date and amount of bond or similar security involved;

(ii) identification of the authority that suspended or revoked the permit or forfeited the bond or similar security and the stated reasons for the action;

(iii) the status of the permit, bond or other security involved;

(iv) the date, location and type of any administrative or judicial proceedings initiated concerning the suspension, revocation or forfeiture; and

(v) the proceeding's status; and

(20) a listing of all violation notices the applicant has received relating to any UIC or geothermal drilling or operation during the three-year period before the application date; for each violation notice reported include the following information as applicable:

(a) any identifying number for the operation including the federal or state permit number, the violation notice's issuance date, the name of the person or entity to whom the violation notice was issued and the name of the issuing regulatory authority, department or agency;

(b) a brief description of the violation alleged in the notice;

(c) the date, location and type of any administrative or judicial proceedings initiated concerning the violation, including proceedings initiated by any person or entity to obtain administrative or judicial review of the violation;

(d) the status of the proceedings and of the violation notice; and

(e) the actions, if any, taken by any person identified in Paragraph (20) of Subsection A of 19.11.2.10 NMAC to abate the violation.

B. Application for permit to drill or operate an injection well. Any person who proposes to drill or operate an injection well shall first apply for a permit by filing a written application with the division. The applicant shall submit two paper copies and one electronic copy of the application. The items listed below along with the items listed in Subsection A of 19.11.2.10 NMAC are required:

(1) a description of the well construction, or proposed well construction, and the proposed method for testing the well before the well is used for injection;

(2) the estimated maximum injection pressure, mass flowrate and temperature;

(3) an analysis of the proposed injection fluid; and

(4) a description of the proposed pipelines, metering equipment and safety devices that will be used to prevent accidental pollution.

C. Application for a geothermal facility with multiple geothermal wells. Any person who proposes to drill or operate multiple geothermal wells and operate a geothermal facility on an applicant's geothermal lease shall apply for a multi-well geothermal facility permit. The applicant shall submit two paper copies and one electronic copy of the application. The items listed below along with the items listed in Subsections A and B of 19.11.2.10 NMAC are required:

(1) a description of surface equipment and site plan, with proposed topography, of the power generating facility and associated well field with proposed and existing wells identified; and

(2) a facility closure plan, including a responsible third-party contractor's cost estimate, sufficient to close the facility in a manner that will protect life, health, property, natural resources, the environment and the public welfare, and comply with the closure requirements contained in 19.11.4 NMAC.

D. Application to modify or renew a permit. Any permittee who proposes to modify an individual geothermal well permit or a geothermal facility permit or renew an existing permit (individual or facility) shall first apply for a permit modification or permit renewal by filing a written application with the division. The permittee shall file an

application to renew a permit one year prior to the expiration date of the current permit. All applications to modify or renew a permit shall follow the applicable requirements listed in Subsections A, B or C of 19.11.2.10 NMAC unless the modification is a minor permit modification or is approved under the permittee's notification requirements and requests for approval to division conditions listed in 19.11.4.9 NMAC. A minor permit modification includes:

- (1) change in owner of the geothermal lease or geothermal interest;
- (2) change in well name;
- (3) change in previously proposed location of a well that is within the approved area of a geothermal well or facility permit;
- (4) change in status of an injection well to another type of well;
- (5) changing the construction of an injection well, including placing a plug in the hole or well and recovering or altering the casing;
- (6) adding wells to a geothermal facility permit that have been approved previously per Subsections A or B of 19.11.2.10 NMAC;
- (7) creation of a geothermal facility permit that includes only wells and equipment permitted previously under 19.11.2 NMAC;
- (8) permitting of equipment that has been permitted or approved prior to the promulgation of 19.11.2 NMAC; the permittee may, upon promulgation of 19.11.2 NMAC, apply to permit all currently operating and previously approved geothermal wells and facilities under 19.11.1 through 19.11.4 NMAC pursuant to the minor permit modification procedures in Subsection E of 19.11.2.10 NMAC; and
- (9) for an injection well permit or for that portion of a geothermal facility permit that pertains to injection wells, a modification listed under 40 CFR 144.41.

E. Notification of application for minor permit modification or activity taken pursuant to 19.11.4.9 NMAC. When requesting approval of a minor permit modification or prior to taking an action listed in Paragraph (3) of Subsection A or Paragraphs (3), (6), (8) or (10) of Subsection B of 19.11.4.9 NMAC, the permittee shall provide written notification to the adjacent surface owners within one-half mile, water rights owners with a well that is within one mile and any geothermal resource owners or lessees within five miles of the geothermal well or facility.

F. Application for a minor permit modification. Any permittee who proposes a minor permit modification shall submit a written request, to the division, that fully explains the proposed modification and all information required to implement the

requested change. The permittee may apply for approval of the activity listed in Paragraph (3) of Subsection D of 19.11.2.10 NMAC up to 30 days after the action.

G. Pre-application meeting. Any person who proposes to submit a permit application to the division may request a pre-application meeting with division staff.

H. Transfer of a permit.

(1) The permittee shall not transfer a permit without the division's prior written approval. If the transferee wants to change the conditions of the original permit, it shall apply for a new permit pursuant to 19.11.2.10 NMAC. Unless the division otherwise orders, public notice or hearing are not required for the division to approve a transfer request. If the division denies the transfer request, it shall notify the permittee and the proposed transferee of the denial by certified mail, return receipt requested and either the permittee or the proposed transferee may request a hearing within 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

(2) If the transferee will conduct operations in full compliance with the terms and conditions of the original permit, the transferee shall provide the division with the following information:

(a) name and contact information of the owner or operator of the well or facility and a statement as to whether the applicant is a corporation, partnership, single proprietorship, association or other business entity and the names of the transferee's officers and directors;

(b) name and contact information of the transferee's registered agent;

(c) the signature of a responsible official or designated agent of the transferee on the transfer request;

(d) proof that the transfer complies with the terms of any deed, lease or permit;

(e) a statement that the transferee will continue to conduct the operations involved in full compliance with the terms and conditions of the original permit, unless the transferee applies for a new permit; and

(f) plans for providing sufficient financial assurance to cover the original permit in its entirety from inception to completion of plugging and abandonment prior to the transfer.

(3) Nothing in 19.11.2 NMAC shall be construed to relieve any person of responsibility or liability for any act or omission that occurred while that person owned, controlled or was in possession of the well or facility.

[19.11.2.10 NMAC - N, 2/27/2018]

19.11.2.11 CHANGING, SUPPLEMENTING OR CORRECTING APPLICATIONS:

A. Prior to the division's final decision on an application, the applicant shall have a duty to promptly supplement and correct information submitted in the application. The duty to supplement shall include relevant information thereafter acquired or otherwise determined to be relevant.

B. The process provided in 19.11.2.10 NMAC is not intended to limit informal informational exchanges during the application review period or prior to submission of an application. The process also does not prohibit an applicant from withdrawing an application and submitting a new application.

[19.11.2.11 NMAC - N, 2/27/2018]

19.11.2.12 PERMIT DECISIONS AND APPEALS:

A. The division shall, in a timely manner after its receipt of an application for a permit, or modification or renewal of a permit, evaluate such application and determine whether it is acceptable for review. An application that is acceptable for review is one that includes the information 19.11.2.10 NMAC requires. If the division deems the application:

(1) acceptable for review, the division shall send a letter by e-mail and physical mail to the applicant notifying that applicant that the division will review the application;

(2) not acceptable for review, the division shall send a letter by e-mail and physical mail to the applicant stating what additional information or points of clarification are necessary to deem the application acceptable for review; upon receipt of the additional information or clarification, the division shall promptly review such information and determine whether the application is acceptable for review;

(3) acceptable for review but no permit is required, the division shall send a letter by e-mail and physical mail to the applicant informing the applicant of the determination.

B. Upon completion of the division's review of the application, the division shall either issue a draft permit or notice of intent to deny the application. A notice of intent to deny the application is a type of draft permit and follows the same procedure as a draft permit under 19.11.2 NMAC.

C. For draft permits for injection wells or facilities that include injection wells, the division shall prepare a fact sheet that includes a brief description of the type of facility or activity that is the subject of the draft permit; the type and quantity of wastes, fluids or

pollutants that are proposed to be or are being treated, stored, disposed of, injected, emitted or discharged; a brief summary of the basis for the draft permit conditions including references to the administrative records; reasons why any requested variances or alternatives to required standards do or do not appear justified; a description of the procedures for reaching a final decision on the draft permit including the beginning and ending dates of the comment period and the address where comments will be received, procedures for requesting a hearing and the nature of that hearing and any other procedures by which the public may participate in the final decisions; the name and telephone number of a person to contact for additional information; and justification for waiver of any application requirements.

D. If after the applicant provides public notice as required in 19.11.2.13 NMAC, no requests for hearing are filed with the division within the 30 day public notice period as provided by 19.11.3.8 NMAC, or any such requests for hearing are filed by persons the division determines are not affected persons and the division does not otherwise schedule a hearing pursuant to 19.11.3.8 NMAC, the division's draft permit shall become final and the division, after receipt of acceptable financial assurance submitted by the applicant pursuant to 19.11.2.18 NMAC, shall issue the permit.

E. The division shall grant the permit or deny the permit based on information contained in the division's administrative record. The administrative record shall consist of the application, any other evidence the applicant submitted, any technical evidence or substantive written comments any person other than the division submitted, any other evidence considered by the division, a statement of matters officially noticed and, if a hearing is held, the evidence submitted at the hearing. The applicant has the burden of demonstrating that a permit or permit modification should be approved. If the division issues a permit, it shall issue a response to comments. The response to comments shall specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change, and briefly describe and respond to all significant comments on the draft permit raised during the public comment period or during any hearing. The response to comments shall be available to the public.

F. A person subject to a final decision of the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[19.11.2.12 NMAC - N, 2/27/2018]

19.11.2.13 PUBLIC NOTICE FOR PERMIT ACTIONS INVOLVING A GEOTHERMAL WELL OR FACILITY:

Except for Paragraphs (1) and (2) of Subsection A of 19.11.2.13 NMAC, 19.11.2.13 NMAC does not apply to permit actions pursuant to Subsection E of 19.11.2.10 NMAC or other approvals pursuant to 19.11.4.9 NMAC.

A. The division shall:

(1) make available for public inspection a list of all pending applications for permits or permit modifications or renewals;

(2) make available for public inspection the permit application and the division's draft permit and supporting analysis documentation; this material shall be available at the division's office; except those portions of which may be determined as confidential in accordance with 19.11.1.8 NMAC or the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978 (1993, as amended);

(3) subsequent to the division's production of a draft permit and supporting documentation, publish a public notice, on the division's website, which shall include: the division's name and address; the applicant's name and address, the location and brief description of the well or facility, a scope of the proposed operation and the division's preliminary intent to issue the permit at the end of the public notice period barring any substantive comments or new information or a permit hearing; the public notice shall identify the location of the permit application and division's draft permit and supporting analysis documentation for public review and describe the manner in which comments or evidence may be submitted to the division, including that persons must provide written comments or evidence to the division before the end of the 30 day public notice period; and a statement of the procedures for requesting a hearing on the application pursuant to 19.11.3.8 NMAC;

(4) provide the public notice under Paragraph (3) of Subsection A of 19.11.2.13 NMAC by mail, which may include e-mail, to the applicant;

(5) deliver written notice by ordinary first class United States mail to federal and state agencies with jurisdiction over fish and wildlife resources and state and tribal historic preservation officers;

(6) deliver written notice by ordinary first class United States mail to the EPA and any agency which the division knows has issued or is required to issue a Resource Conservation and Recovery Act permit, an air quality permit, a national pollutant discharge elimination system permit, 404 permit or sludge management permit for the same facility or activity;

(7) deliver written notice by ordinary first class United States mail to any unit of local government having jurisdiction over the area where the well or facility is to be located and to any state agency have authority with respect to the construction or operation of the well or facility;

(8) deliver written notice by ordinary first class United States mail or e-mail to each person who has requested in writing to be notified of such permit applications, modifications or renewals;

(9) deliver written notice by ordinary first class United States mail or e-mail to persons on a mailing list developed by the division including those who request in

writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area and notifying the public of the opportunity to be put on the mailing list through periodic publications in the public press, etc.; and

(10) publishing notice in a newspaper of general circulation in the county where the geothermal well or facility is located or is proposed to be located or in a newspaper of general circulation in the state.

B. The applicant shall:

(1) upon receipt of the division's public notice, provide written notice, by certified mail, return receipt requested, of the division's public notice to the adjacent surface owners within one-half mile, water rights owners with a well that is within one mile and any geothermal resource owners or lessees within five miles of the geothermal well or facility;

(2) mail notice by ordinary first class United States mail or e-mail to all local, state, federal or tribal governmental agencies that own property within five miles of the geothermal well or facility; and

(3) provide the division with proof that the applicant has met the public notice requirements of Paragraphs (1) and (2) of Subsection B of 19.11.2.13 NMAC prior to the division scheduling a hearing, if any, pursuant to 19.11.3.8 NMAC or issuing the permit.

[19.11.2.13 NMAC - N, 2/27/2018]

19.11.2.14 BASIS FOR DENIAL OF PERMIT:

The division shall deny an application for a permit or permit modification or renewal if the construction or operation of the geothermal well or facility will not or does not comply with the Act or the rules promulgated pursuant to the Act.

[19.11.2.14 NMAC - N, 2/27/2018]

19.11.2.15 PERMIT CONDITIONS:

A. The contents of the application specifically identified by the division shall become terms and conditions of the permit or permit modification.

B. The division shall, as appropriate, specify conditions upon a permit, including:

(1) placement of geothermal wells in accordance with the location limitations in 19.11.4.8 NMAC;

(2) financial assurance requirements in accordance with 19.11.2.18 NMAC;

- (3) well-construction in accordance with 19.11.4.10 NMAC;
- (4) blowout prevention requirements in accordance with 19.11.4.11 NMAC;
- (5) operating limitations in accordance with 19.11.4.12 NMAC;
- (6) testing and monitoring requirements in accordance with 19.11.4.13 NMAC;
- (7) recordkeeping and reporting requirements in accordance with 19.11.4.14 NMAC;
- (8) surface facility requirements in accordance with 19.11.4.15 NMAC;
- (9) abandonment requirements in accordance with 19.11.4.16 NMAC;
- (10) pit design, construction and operating plan and closure remediation plan requirements in accordance with 19.11.4.17 NMAC;
- (11) disposal requirements in accordance with 19.11.4.20 NMAC; and
- (12) other operational requirements, including additional testing, monitoring, recordkeeping and reporting or construction requirements deemed necessary to protect life, health, correlative rights, property, natural resources, the environment or the public welfare.

C. Any term or condition imposed by the division on a permit or permit modification is enforceable to the same extent as a rule.

D. The permit term for all permits shall not exceed 10 years.

[19.11.2.15 NMAC - N, 2/27/2018]

19.11.2.16 PERMIT CANCELLATION, TERMINATION AND MODIFICATION:

A. The division shall automatically cancel any permit for any well that has been plugged and abandoned or any facility that has been closed in accordance with the requirements of 19.11.4 NMAC and the permit.

B. The division may terminate or modify a permit during its term, or deny a permit renewal application, by following the procedures in 19.11.2.12 NMAC, for the following causes:

- (1) the permittee's noncompliance with any condition of the permit or 19.11.4 NMAC;

(2) the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

(3) a determination that the permitted activity has a reasonable likelihood to endanger life, health, property, natural resources (including geothermal and fresh water resources), the environment or the public welfare and can only be regulated to acceptable levels by permit modification or termination;

(4) a determination that the permitted activity is not protective of correlative rights of other geothermal resource leaseholders or owners;

(5) a determination that hazardous waste as defined in 40 CFR 261.3 is being injected into an injection well either because the definition has been revised, or because a previous determination has been changed.

C. The division may modify a permit for the following causes:

(1) there are material and substantial alterations or additions to the permitted well, facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit;

(2) the director has received information that was not available at the time of permit issuance (other than revised regulations or rules, guidance or test methods) and would have justified the application of different permit conditions at the time of issuance, including, for geothermal facility permits, any information indicating that cumulative effects on the environment are unacceptable;

(3) the standards or regulations or rules on which the permit was based have been changed by promulgation of new or amended standards or regulations or rules or by judicial decision after the permit was issued;

(4) the director determines good cause exists for modification of a compliance schedule such as an act of God, strike, flood or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

D. Interested persons may request that a permit be modified or terminated. However, the director may only modify or terminate permits for the reasons specified in Subsection B of 19.11.2.16 NMAC. If the director decides the request is not justified, he or she shall send the requestor a brief written response giving a reason for the decision. Denials of requests for modification or termination are not subject to public notice, comment or hearings.

E. If the director decides to modify a permit, the director shall issue a draft permit and publish notice pursuant to 19.11.2.12 NMAC and 19.11.2.13 NMAC.

[19.11.2.16 NMAC - N, 2/27/2018]

19.11.2.17 CORRECTIVE ACTION:

A. Applicants for injection well permits or for geothermal facility permits that include injection wells shall identify the location of all known wells (applicant's wells or wells of other parties), within a two-mile radius of the injection well, that penetrates the injection zone. For wells that are improperly sealed, completed or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of fresh water ("corrective action"). Where the plan is adequate, the division shall incorporate it into the permit as a condition. Where the division's review of an application indicates that the applicant's plan is inadequate, the division shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit or deny the application. An applicant may request a hearing, pursuant to 19.11.3.8 NMAC, regarding the corrective action plan or the denial of the corrective action plan.

B. No permittee of a new injection well or for a geothermal facility permit that includes a new injection well may begin injection until the permittee has taken all required corrective action. Any permit issued for or that includes an existing injection well requiring corrective action shall include a compliance schedule requiring the permittee to complete any corrective action accepted or prescribed under Subsection A of 19.11.2.17 NMAC as soon as possible.

C. A permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from non-compliance with the permit.

[19.11.2.17 NMAC - N, 2/27/2018]

19.11.2.18 FINANCIAL ASSURANCE FOR GEOTHERMAL WELLS AND FACILITIES:

Upon notification by the division that it has approved a new geothermal well or facility permit, a geothermal well or facility permit modification or a geothermal well or facility renewal permit but prior to issuing the permit, an applicant shall submit acceptable financial assurance for the geothermal well or facility affected by the permit action.

A. The applicant shall submit acceptable financial assurance in the amount of the plugging and abandonment cost for each geothermal well being permitted or, if permitting a geothermal facility, the estimated closure cost of the entire facility, including the plugging and abandonment costs for all geothermal wells and pits. The geothermal well's estimated plugging and abandonment cost or the geothermal facility's estimated closure cost shall be the amount provided in the plugging and abandonment or closure plan the applicant submitted with its application unless the division determines that such estimate does not reflect a reasonable and probable well plugging and abandonment or facility closure cost, in which event, the division shall determine the estimated well

plugging and abandonment or facility closure cost and shall include such determination in its draft permit. If the applicant disagrees with the division's determination of estimated well plugging and abandonment or facility closure cost, the applicant may request a hearing as provided in 19.11.3.8 NMAC. If the applicant so requests, and no other person files a request for a hearing regarding the application, the hearing shall be limited to determination of well plugging and abandonment or facility estimated closure cost.

B. Terms of financial assurance. The financial assurance shall be on division-prescribed forms, payable to the state of New Mexico and conditioned upon the geothermal well's or facility's proper operation, and proper well plugging and abandonment or facility closure in compliance with state of New Mexico statutes, division rules and the geothermal well or facility permit terms. The permittee shall notify the division of a material change affecting the financial assurance within 30 days of discovery of such change.

C. Forfeiture of financial assurance. The division shall give the permittee and any surety 20 days' notice and an opportunity for a hearing prior to forfeiting financial assurance.

D. Forms of financial assurance. The division may accept the following forms of financial assurance.

(1) Surety bonds. A surety bond shall be executed by the applicant and by a corporate surety licensed to do business in the state, and shall be non-cancelable.

(2) Letters of credit. A letter of credit shall be issued by a bank organized or authorized to do commercial banking business in the United States, shall be irrevocable for a term of not less than 10 years and shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 90 days before its expiration date. The letter of credit shall be payable to the state of New Mexico in part or in full upon receipt from the director or the director's authorized representative of demand for payment accompanied by a notice of forfeiture.

(3) Cash accounts. An applicant may provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts in a financial institution, provided the operator and the financial institution shall execute as to each such account a collateral assignment of the account to the division, which shall provide that only the division may authorize withdrawals from the account. In the event of forfeiture pursuant to Subsection C of 19.11.2.18 NMAC, the division may, at any time and from time to time, direct payment of all or part of the balance of such account (excluding interest accrued on the account) to itself or its designee for the well's plugging and abandonment or facility's closure.

E. Replacement of financial assurance.

(1) The division may allow a permittee to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.

(2) The division shall not release existing financial assurance until the permittee has submitted, and the division has approved, an acceptable replacement.

[19.11.2.18 NMAC - N, 2/27/2018]

PART 3: HEARINGS

19.11.3.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division.

[19.11.3.1 NMAC - N, 2/27/2018]

19.11.3.2 SCOPE:

All persons who engage in the exploration, development or production of a geothermal resource.

[19.11.3.2 NMAC - N, 2/27/2018]

19.11.3.3 STATUTORY AUTHORITY:

Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).

[19.11.3.3 NMAC - N, 2/27/2018]

19.11.3.4 DURATION:

Permanent.

[19.11.3.4 NMAC - N, 2/27/2018]

19.11.3.5 EFFECTIVE DATE:

February 27, 2018, except where a later date is cited at the end of a section.

[19.11.3.5 NMAC - N, 2/27/2018]

19.11.3.6 OBJECTIVE:

The objective of 19.11.3 NMAC is to establish procedures for hearings before the energy conservation and management division pursuant to the Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).

[19.11.3.6 NMAC - N, 2/27/2018]

19.11.3.7 DEFINITIONS:

[RESERVED]

[See 19.11.1.7 NMAC for definitions.]

[19.11.3.7 NMAC – N, 2/27/2018]

19.11.3.8 PERMIT HEARING:

The applicant or permittee, affected persons or interested persons may file a request with the division for a permit hearing. The person requesting a permit hearing or an attorney representing that person shall sign the hearing request. The director shall generally grant a permit hearing if the applicant or an affected person requests a hearing. However, the director has discretion to deny a hearing request if the issues are not substantial or have previously been heard and decided before the Oil Conservation Division, the Oil Conservation Commission or the division and the parties to the hearing, other than the division, would be the same as the parties to the original hearing. If the applicant or an affected person does not request a hearing, the director may grant a hearing if there is significant public interest in the application; or if the director determines, in his or her discretion, that a hearing may clarify one or more substantial issues involved in the permit. Permit hearings shall be held in Santa Fe. The hearing request shall be submitted in writing to the division and be postmarked or e-mailed by the close of the public comment period in Paragraph (3) of Subsection A of 19.11.2.13 NMAC. The hearing request shall include:

- A.** the requestor's name;
- B.** the requestor's address, or the address of the requestor's attorney, including an e-mail address and phone number if available;
- C.** the division's action that is disputed or a copy of the public notice referencing the division's action;
- D.** the name or general description of the property interest that the division's action affects, if any;
- E.** briefly, the general nature of the dispute with the division's action or proposed action; and

F. any other matter division rules or a division order requires.

[19.11.3.8 NMAC - N, 2/27/2018]

19.11.3.9 PERMIT HEARING NOTICE:

A. The division shall publish notice of a permit hearing in the name of the "State of New Mexico", signed by the director stating:

- (1) the time and place for the hearing;
- (2) the hearing requestor's name and address, or address of the requestor's attorney, including an e-mail address, if available;
- (3) a case name and number;
- (4) brief description of the purpose of the hearing; and
- (5) a reasonable description of the subject matter of the hearing that alerts persons who may be affected if the division approves or enacts the proposed action.

B. The division shall publish notice of each hearing at least 30 days before the hearing by:

- (1) posting notice on the division's website;
- (2) delivering written notice to the hearing requestor, by certified mail, return receipt requested and the applicant or permittee if not the hearing requestor;
- (3) delivering written notice by ordinary first class United States mail to federal and state agencies with jurisdiction over fish and wildlife resources and state and tribal historic preservation officers;
- (4) delivering written notice by ordinary first class United States mail to the EPA and any other agency which the division knows has issued or is required to issue a Resource Conservation and Recovery Act permit, an air quality permit, a national pollutant discharge elimination system permit, 404 permit or sludge management permit for the same facility or activity;
- (5) delivering written notice by ordinary first class United States mail to any unit of local government having jurisdiction over the area where the well or facility is to be located and to any state agency having authority with respect to the construction or operation of the well or facility;

(6) delivering written notice by ordinary first class United States mail or e-mail to each person who has requested in writing to be notified of such hearings or of the hearing for a specific application;

(7) delivering written notice by ordinary first class United States mail or e-mail to persons on a mailing list developed by the division including those who request in writing to be on the list, soliciting persons for "area lists" from participants in past permit proceedings in that area and notifying the public of the opportunity to be put on the mailing list through periodic publications in the public press, etc.; and

(8) publishing notice in a newspaper of general circulation in the county where the well or facility is located or is proposed to be located or in a newspaper of general circulation in the state.

[19.11.3.9 NMAC - N, 2/27/2018]

19.11.3.10 PARTIES TO PERMIT HEARINGS:

The parties to a permit hearing shall include:

- A. the division;
- B. the applicant or permittee of the geothermal well or facility; and
- C. an affected person who has requested a hearing or to intervene in the hearing.

[19.11.3.10 NMAC - N, 2/27/2018]

19.11.3.11 CONDUCT OF HEARINGS:

A. Testimony. Hearings shall be conducted without rigid formality. The division shall take or have someone take a transcript or recording of the testimony and preserve it as part of the division's records. A person testifying shall do so under oath. The hearing examiner shall designate whether an interested person's unsworn comments and observations are relevant and, if relevant, include the comments and observations in the record.

B. Pre-filed testimony. The director or hearing examiner may order the parties to file prepared written testimony in advance of the hearing. The witness shall be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motion to strike the unless the witness' presence at hearing is waived upon notice to other parties and without their objection. The parties shall number pages of prepared written testimony, which shall contain line numbers on the left-hand side.

C. Appearances pro se or through attorney. Parties may appear and participate in hearings either pro se (on their own behalf) or through an attorney. Corporations, partnerships, governmental entities, political subdivisions, unincorporated associations and other collective entities may appear only through an attorney or duly authorized officer or member. Participation in hearings shall be limited to parties as defined in 19.11.3.10 NMAC, except that a representative of a federal, state or tribal governmental agency or political subdivision may make a statement on the agency's or political subdivision's behalf. The hearing examiner shall have the discretion to allow other persons at the hearing to make a relevant statement, but not to present evidence or cross examine witnesses. A person making a statement shall be subject to cross-examination by the parties or their attorneys.

D. Presentation of evidence. The hearing examiner shall afford full opportunity to the parties at a hearing to present evidence and to cross-examine witnesses. The rules of evidence applicable in a trial before a court without a jury shall not control, but hearing examiners may use such rules as guidance in conducting hearings. The hearing examiner may admit relevant evidence, unless it is immaterial, repetitious or otherwise unreliable. The hearing examiner may take administrative notice of the authenticity of documents copied from the division's files.

E. Parties introducing exhibits at hearings shall provide a complete set for the court reporter, if applicable, the hearing examiner and other parties.

[19.11.3.11 NMAC - N, 2/27/2018]

19.11.3.12 HEARING EXAMINER'S POWER AND AUTHORITY:

The hearing examiner to whom the director refers a matter shall have full authority to hold a hearing on the matter, subject only to such limitations as the director may order in a case. The hearing examiner shall have the power to perform all acts and take all measures necessary and proper for the hearing's efficient and orderly conduct, including administering oaths to witnesses, receiving testimony and exhibits offered in evidence and ruling upon such objections as may be interposed. The hearing examiner shall cause a complete record of the proceedings to be made and transcribed or recorded and shall certify the record of the proceedings to the director.

A. The hearing examiner may hold a pre-hearing conference prior to the hearing on the merits on cases pending before the division upon a party's request or upon the hearing examiner giving notice. The pre-hearing conference's purpose shall be to narrow issues, eliminate or resolve other preliminary matters and encourage settlement. The director or hearing examiner shall either provide or ensure that written or oral notice of a pre-hearing conference is given to the parties.

B. The director or hearing examiner may rule on motions that are necessary or appropriate for disposition prior to the hearing on the merits. Prior to ruling on a motion, the director or hearing examiner shall give written or oral notice to each party who has

filed an appearance in the case and who may have an interest in the motion's disposition (except a party who has indicated that it does not oppose the motion), and shall allow parties a reasonable opportunity to respond to the motion. The director or hearing examiner may conduct a hearing on the motion, following written or oral notice to the parties.

[19.11.3.12 NMAC - N, 2/27/2018]

19.11.3.13 REPORT AND RECOMMENDATIONS FROM HEARING EXAMINER:

Upon conclusion of a hearing, the hearing examiner shall promptly consider the proceedings in such hearing, and based upon the hearing's record prepare a written report with recommendations for the division's disposition of the matter or proceeding. The hearing examiner shall draft a proposed order and submit it to the director with the certified record of the hearing.

[19.11.3.13 NMAC - N, 2/27/2018]

19.11.3.14 DISPOSITION OF CASES HEARD BY A HEARING EXAMINER:

After receipt of the hearing examiner's report, the director shall enter the division's order, which the director may have modified from the hearing examiner's proposed order disposing of the matter.

[19.11.3.14 NMAC - N, 2/27/2018]

19.11.3.15 CIVIL PENALTIES AND HEARINGS:

A. If a person violates the provisions of the Act or the rules promulgated pursuant to the Act or an order or permit issued pursuant to the Act, the division may assess the person a civil penalty of \$2,500 for each violation. In the case of a continuing violation, each day of violation shall constitute a separate violation.

B. To begin an action for a civil penalty, the division will issue a notice of violation. The notice of violation shall:

- (1) identify the person against whom the order is sought;
- (2) identify the provision of the Act or the provision of the rule, permit or order issued pursuant to the Act allegedly violated;
- (3) provide a general description of the facts supporting the allegations;
- (4) state the sanction or sanctions sought; and
- (5) provide the date, time and place of the public hearing.

C. The division shall provide notice by posting notice on the division's website and by delivering the notice of violation to the person against whom the order is sought by certified mail, return receipt requested to the person's last known address, and delivering notice by first class United States mail or e-mail to each person who has requested in writing to be notified of such hearings, and publishing notice in a newspaper of general circulation in the county where the violation occurred or in a newspaper of general circulation in the state.

D. The parties to the public hearing shall include the division and the person against whom the order is sought.

E. In determining the amount of the civil penalty, the division shall consider the person's history of previous violations of the Act or the Geothermal Resources Act, Section 19-13-1 NMSA 1978 (1967, as amended) or the rules, permits or orders issued pursuant to those acts, the seriousness of the violation, any hazard to the health or safety of the public or the environment and the demonstrated good faith of the person.

F. The division may assess a civil penalty only after a public hearing is held or the person has entered an agreed compliance order that waives the person's opportunity for a public hearing.

G. A public hearing to assess a civil penalty shall be held pursuant to 19.11.3.11 through 19.11.3.14 NMAC.

H. The director may enter an agreed compliance order with the permittee against whom a civil penalty is sought to resolve alleged violations of any provision of the Act or any provision of any rule, permit or order issued pursuant to the Act. The director may enter an agreed compliance order prior to or after the filing of a notice of violation. An agreed compliance order shall have the same force and effect as an order issued after a public hearing.

I. After the public hearing is held, or the person has failed to participate in the public hearing, the division shall issue an order requiring that the person pay any civil penalty imposed.

J. If the person fails to pay the civil penalty as ordered by the division, the division may file a civil suit to collect the penalty in the district court of the county in which the defendant resides or in which any defendant resides if there is more than one defendant or in the district court of any county in which the violation occurred.

[19.11.3.15 NMAC - N, 2/27/2018]

PART 4: CONSTRUCTION AND OPERATION

19.11.4.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division.

[19.11.4.1 NMAC - N, 2/27/2018]

19.11.4.2 SCOPE:

All persons who engage in the exploration, development or production of a geothermal resource.

[19.11.4.2 NMAC - N, 2/27/2018]

19.11.4.3 STATUTORY AUTHORITY:

Geothermal Resources Development Act, Section 71-9-1 et seq. NMSA 1978 (2016).

[19.11.4.3 NMAC - N, 2/27/2018]

19.11.4.4 DURATION:

Permanent.

[19.11.4.4 NMAC - N, / /2018]

19.11.4.5 EFFECTIVE DATE:

February 27, 2018, except where a later date is cited at the end of a section.

[19.11.4.5 NMAC - N, 2/27/2018]

19.11.4.6 OBJECTIVE:

The objective of 19.11.4 NMAC is to establish rules to ensure the exploration, development and production of geothermal resources is conducted in a manner that safeguards life, health, property, natural resources, the environment and the public welfare, and to encourage maximum economic recovery.

[19.11.4.6 NMAC - N, 2/27/2018]

19.11.4.7 DEFINITIONS:

[RESERVED]

[See 19.11.1.7 NMAC for definitions.]

[19.11.4.7 NMAC – N, 2/27/2018]

19.11.4.8 GEOTHERMAL WELL LOCATION LIMITATIONS:

Any well drilled for the exploration, development or production of geothermal resources or as an injection well shall be located 100 feet or more from and within the outer boundary of the parcel of land on which the well is situated, or 100 feet or more from a public road, street or highway dedicated prior to the commencement of drilling. The division may modify or waive this requirement upon written request if the applicant can demonstrate that public safety is preserved and that the integrity of the geothermal source is not jeopardized.

[19.11.4.8 NMAC - N, 2/27/2018]

19.11.4.9 PERMITTEE'S NOTIFICATION REQUIREMENTS AND REQUESTS FOR APPROVAL TO DIVISION:

A permittee shall notify the division with:

A. a written notice of intent to engage in any one of the following activities:

(1) make a minor change in the operation of the well (minor changes include changing capillary tubing, pulling or replacing a pump or any other change the division considers a minor change);

(2) conduct a spinner, pressure or temperature survey test or another test that does not modify the well structure;

(3) conduct a flow test on a production well;

(4) perform routine maintenance on a well;

(5) removal of fluids from on-site pits or closed-loop systems per Paragraph (3) of Subsection D of 19.11.4.17 NMAC; or

(6) change in location of a well that is within the approved area of a geothermal well or facility permit (this will require the permittee to apply for a minor permit modification pursuant to Subparagraph F of 19.11.2.10 NMAC so that the permit will reflect the new location).

B. a written notice of intent and request for approval for any one of the following activities:

(1) activities not specifically approved or exempted under an existing permit;

(2) activities that do not require a permit application per 19.11.2.10 NMAC;

(3) tracer tests;

- (4) mechanical integrity tests;
- (5) increasing depth of a well;
- (6) conduct a flow test on an injection well;
- (7) entering or opening a plugged well;
- (8) shooting, acidizing or fracturing a well;
- (9) abandoning and plugging a well;
- (10) directional drilling (drilling in a direction not intended to be vertical);
- (11) changing the construction of a hole or well, except for injection wells, including placing a plug in the hole or well and recovering or altering the casing;
- (12) conducting a major workover or cleaning of a well; or
- (13) any other activity for which the division conducts a field inspection or evaluates information or documentation regarding the construction of a hole or well.

C. The director may determine, based on the notices submitted under Subsections A or B of 19.11.4.9 NMAC, that the permittee is required to apply for a permit modification in accordance with 19.11.2.10 NMAC.

[19.11.4.9 NMAC - N, 2/27/2018]

19.11.4.10 WELL CONSTRUCTION AND CASING REQUIREMENTS:

Permittees shall construct and case all geothermal wells in a manner to protect or minimize damage to life, health, property, ground water and surface waters, geothermal resources, other natural resources, the environment and the public welfare. No permittee shall construct, operate, maintain, convert, plug, abandon or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the contaminant may cause a violation of drinking water regulations or rules or may otherwise adversely affect the health of persons. The permittee has the burden of showing that it meets these requirements. The permittee shall attach the permanent well head completion equipment to the production casing or to the intermediate casing if production casing does not reach the surface. The permittee shall install an annular blowout preventer on wells when the division deems it necessary. All surface, intermediate and production casing strings reaching the surface shall provide adequate anchorage for BOPE, pressure control and protection for all natural resources. The casing design criteria listed below represent minimum requirements.

A. Conductor casing. The permittee shall install a minimum of 40 feet of conductor casing. The permittee shall cement the annular space solid to the surface. The permittee shall allow a 24-hour cure period for the grout prior to drilling out the shoe unless the permittee uses additives, approved by the division, to obtain early strength.

B. Surface casing. A surface casing shall provide for control of formation fluids, for protection of shallow usable ground water and for adequate anchorage for BOPE. The permittee shall cement all surface casing solid to the surface. The permittee shall allow a 24-hour cure period prior to drilling out the shoe of the surface casing unless the permittee uses additives, approved by the division, to obtain early strength. The permittee shall set sufficient casing to reach a depth below all known or reasonably estimated levels of fresh water and water of present or future value for domestic, commercial or agricultural use and to protect those aquifers and to prevent blowout or uncontrolled flows.

C. Intermediate casing. Intermediate casing is required for protection against unusual pressure zones, cave-ins, wash-outs, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. The permittee shall cement intermediate casing strings solid to the surface or to the top of the liner hanger whenever the permittee runs intermediate casing string as a liner. The permittee shall pressure test the liner lap, of any unslotted liner, prior to resumption of drilling.

D. Production casing. The permittee shall set production casing above or through the producing or injection zone and cement it above the injection zones. The permittee shall use sufficient cement to exclude overlying formation fluids from the geothermal zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain fresh ground water. The permittee shall either cement production casing solid to the surface or lap it into intermediate casing, if run. If the permittee laps production casing into an intermediate casing, the casing overlap shall be at least 100 feet, cemented solid and pressure tested to ensure its integrity.

E. All casing materials shall be suitable for the proposed operating design stresses and temperatures.

[19.11.4.10 NMAC - N, 2/27/2018]

19.11.4.11 BLOWOUT PREVENTION:

The permittee shall take all necessary precautions to always keep wells under operational control and mechanical integrity. The permittee shall install BOPE, capable of shutting in the well during any operation, on the surface casing and always maintained ready for use. If necessary, the permittee shall equip the BOPE to be remotely activated. The equipment shall be rated for operating at pressures and temperatures exceeding the maximum pressure and temperature anticipated for the well.

[19.11.4.11 NMAC - N, 2/27/2018]

19.11.4.12 OPERATING LIMITATIONS:

The division shall establish operating limitations, for all production or injection wells, deemed necessary to protect life, health, correlative rights, property, natural resources, the environment or the public welfare. The permittee shall operate all wells within the operating parameter limits established in the permit. The permittee shall not operate a new injection well before receiving authorization to inject from the division.

[19.11.4.12 NMAC - N, 2/27/2018]

19.11.4.13 TESTING AND MONITORING:

A. Well construction testing and monitoring.

(1) The permittee shall log all injection or production wells with an induction electrical log, or equivalent, or by gamma-neutron log after running casing. The permittee shall log the well from the bottom of the hole to the bottom of the production casing. This requirement may vary from area to area, depending upon the amount of pre-existing subsurface geological data available. If sufficient subsurface geologic data is available, the division may not require the permittee to log the well. However, the permittee shall obtain the division's written permission to omit this requirement prior to running surface casing.

(2) The permittee shall take cuttings a minimum of every 10 feet for all geothermal wells. The cuttings must be cleaned, dried, marked for location and depth and placed in appropriate containers and maintained with the well or facility records per Subsection A of 19.11.4.14 NMAC.

(3) The permittee shall regularly monitor the temperature of the return mud during the drilling of the surface casing hole, below the conductor casing. The permittee shall either install and maintain in working condition a continuous temperature monitoring device, or read the temperature manually. In either case, the permittee shall log the return mud temperature after each joint of pipe has been drilled down 30 feet.

(4) After installation and prior to drilling out the guide shoe from the production or injection casing, the permittee shall test the well casing and BOPE under pressure. The test pressure shall be 1.5 times the saturated steam pressure (psia) of water at the predicted bottom hole mud return temperature. An acceptable test shall maintain pressure in the well between the guide shoe and BOPE, with no more than a ten percent drop from the initial test pressure, for 30 minutes.

(5) Prior to operation of an injection well, the permittee shall test the well construction to demonstrate that the casing cement has acceptably bonded to the casing. The permittee shall conduct the cement bond log test by a method approved by

the division and submit the test results to the division for approval before placing the well into operation.

(6) Prior to operation, the permittee shall test all injection wells to demonstrate that the casing has complete integrity. The permittee shall conduct the MIT by a method approved by the division and submit the test results to the division for approval before placing the well into operation.

(7) For fresh water aquifers the division determines may be affected by the operation of an injection well, prior to operation, the permittee shall sample and analyze water quality from the fresh water aquifer through a monitoring or observation well, located down gradient (static water level of fresh water aquifer) and within 500 feet of each injection well. During sampling, the permittee shall also measure the static water level and water temperature. The division shall establish the scope of the water quality analysis based on the potential contaminants from the geothermal resource and geothermal ground operations.

B. Well operation testing and monitoring.

(1) To verify the integrity of the annular cement above the shoe of the casing of any injection well, the permittee shall make sufficient surveys within 30 days after the permittee begins injection into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, the permittee shall make surveys at least every five years or more often if necessary. If the permittee can substantiate by existing data that these tests are not necessary, then, after review of the data, the division may grant a waiver exempting the permittee from the tests.

(2) The permittee of a geothermal production well shall daily monitor the rate of flow of water or steam or both, and the surface pressure and temperature of the fluids from each production well.

(3) The permittee of an injection well shall daily monitor the rate of flow of injected geothermal fluid or wastewater, and the surface pressure and temperature of the fluids injected into each injection well.

(4) The permittee of a geothermal facility shall continuously monitor the rate of flow, pressure and temperature of geothermal resource water or steam or both at the inlet and outlet of the facility.

(5) Based on site conditions and the potential for geothermal resource intrusion into an underground source of usable water, the division may require the permittee to install one or more monitoring wells and to submit a water quality monitoring and analysis plan for division approval.

(6) The permittee shall perform all pit testing and monitoring in accordance with Subsection D of 19.11.4.17 NMAC.

[19.11.4.13 NMAC - N, 2/27/2018]

19.11.4.14 RECORDKEEPING AND REPORTING:

The permittee shall maintain all records, notifications and reports, according to the following timelines, at the well location, if the well is associated with an operating surface facility, or at the permittee's business office located within the state of New Mexico.

A. Recordkeeping of well-construction testing and monitoring. The permittee shall maintain records and reports associated with well-construction testing and monitoring in Subsection A of 19.11.4.13 NMAC, generated and collected during construction of all injection or production wells for the life of the well up to the time the well is plugged and abandoned.

B. Recordkeeping of well-operation testing and monitoring. The permittee shall maintain records and reports associated with well-operation testing and monitoring in Subsection B of 19.11.4.13 NMAC, generated and collected during operation of all injection or production wells for a period of five years from the date the record or report was created.

C. The permittee shall submit reports of well-construction testing and monitoring associated with Paragraphs (1) through (3) of Subsection A of 19.11.4.13 NMAC to the division no later than 60 days after completion of drilling activities. The permittee shall submit records of well-construction testing and monitoring associated with Paragraphs (4) through (5) of Subsection A of 19.11.4.13 NMAC to the division no later than 30 days prior to placing the well into operation. The responsible official shall sign reports.

D. The permittee shall submit reports of well-operation testing and monitoring associated with Paragraph (1) of Subsection B of 19.11.4.13 NMAC to the division no later than 60 days after injection is started. The permittee shall submit records of well-operation testing and monitoring associated with Paragraphs (2) through (5) of Subsection B of 19.11.4.13 NMAC to the division semi-annually in a format specified by permit. The responsible official shall sign reports.

E. The permittee shall perform all pit recordkeeping and reporting in accordance with Paragraphs (4) through (5) of Subsection D of 19.11.4.17 NMAC.

[19.11.4.14 NMAC - N, 2/27/2018]

19.11.4.15 GEOTHERMAL SURFACE FACILITIES:

A. General. The permittee shall maintain all well heads, separators, pumps, mufflers, manifolds, valves, pipelines and other equipment of geothermal resources in good condition to prevent loss of or damage to life, health, property, natural resources, the environment or the public welfare.

B. Corrosion. The permittee shall quarterly inspect all surface well-head equipment and pipelines and subgrade appurtenances and master valves for signs of corrosion to safeguard life, health, property, natural resources, the environment and the public welfare.

C. Tests. The division may require such tests or remedial work as in its judgment are necessary to prevent damage to life, health, property, natural resources, the environment and the public welfare and to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Such tests may include casing tests, cementing tests and equipment tests.

D. Reclamation. Where the permittee is not the surface owner, the permittee shall maintain a post-geothermal resource production land use plan that details how the surface area disturbed by the geothermal surface facilities will be reclaimed to achieve the proposed use and written approval of the surface owner for the proposed use.

[19.11.4.15 NMAC - N, 2/27/2018]

19.11.4.16 PLUGGING AND ABANDONMENT:

A. Prior to plugging and abandoning a geothermal well, the permittee shall file with the division an application for permission to abandon and plug a geothermal well. The application shall be accompanied by a detailed statement of the proposed activity. This condition applies only to wells that have not received plugging and abandoning approvals in a well or facility permit.

B. The following provisions apply to the abandonment of an exploration or observation well.

(1) If the well was drilled with air and no water was encountered, the permittee shall backfill the hole with cuttings and place a cement plug of 50 linear feet at the top of the well.

(2) If the well was drilled with mud or drilled with air and water was encountered, the permittee shall fill the bore with mud and place a cement plug 50 linear feet at the top of the well.

(3) The permittee shall restore the surface to near original condition including the restoration of native vegetation.

C. The following provisions apply to the abandonment of a geothermal production or injection well.

(1) Except for cement used for surface plugging, the permittee shall plug the well by pumping cement in the hole through the drill pipe or tubing. The cement shall consist of a mix that resists high temperatures.

(2) The permittee shall place cement plugs in the uncased portion of wells to protect all subsurface resources. These plugs shall extend a minimum of 100 lineal feet above the producing zones and 100 lineal feet below the producing zones or to the total depth drilled, whichever is less. The permittee shall place cement plugs to isolate formations and to protect the fluids in those formations from interzonal migration.

(3) Where there is an open hole, the permittee shall place a cement plug in the deepest casing string by:

(a) placing a cement plug across the guide shoe extending a minimum of 100 lineal feet above and below the guide shoe, or to the total depth drilled, whichever is less; or

(b) setting a cement retainer with effective control of back pressure approximately 100 lineal feet above the guide shoe, with at least 200 lineal feet of cement below, or to the total depth drilled, whichever is less, and 100 lineal feet of cement above the retainer.

(4) If there is a loss of drilling fluids into the formation or such a loss is anticipated or if the well has been drilled with air or another gaseous substance, a permanent bridge plug shall be set at the casing shoe and capped with a minimum of 200 lineal feet of cement.

(5) The permittee shall place a cement plug across perforations, extending 100 lineal feet below, or to the total depth drilled, whichever is less, and 100 lineal feet above the perforations. When the permittee uses a cement retainer to squeeze cement into or across the perforations, the permittee shall set the retainer a minimum of 100 lineal feet above the perforations. Where the casing contains perforations at or below debris or collapsed casing, which prevents cleaning, the permittee shall set a cement retainer at least 100 lineal feet above that point and squeeze cement in the interval below the retainer.

(6) The permittee shall obtain the division's approval before casing is cut and recovered. The permittee shall place a cement plug in such a manner as to isolate all uncased intervals and guide shoes that are not protected by an inner string of casing. The plug shall extend a minimum of 50 feet above and below any such interval or guide shoe.

(7) In the case of a well not constructed with cement in the annulus running the full length of each casing, the permittee shall plug all annular spaces extending to the surface with cement.

(8) The permittee shall cement the innermost string of casing that reaches ground level to a minimum depth of 50 feet below the top of the casing.

(9) The permittee shall verify the hardness and location of cement plugs placed across perforated intervals and at the top of uncased or open holes by setting down with tubing or drill pipe a minimum weight of 15,000 pounds on the plug or, if less than 15,000 pounds, the maximum weight of the available tubing or drill pipe string. If the permittee uses a cement retainer or bridge plug to set the bottom plug, a test is not required for that interval.

(10) The permittee shall fill any interval that is not filled with cement with good quality, heavy drilling fluids.

(11) All casing strings shall be cut off below ground level and capped by welding a steel plate on the casing stub. The steel plate shall include a corrosion resistant marking that identifies the well name or number. The permittee shall remove all structures and other facilities.

(12) The permittee shall restore the surface to near original condition including the restoration of native vegetation.

[19.11.4.16 NMAC - N, 2/27/2018]

19.11.4.17 PIT AND CLOSED LOOP DESIGN, CONSTRUCTION AND OPERATING PLAN AND CLOSURE-REMEDIAL PLAN REQUIREMENTS:

All geothermal resources permit applications shall include details regarding the design, construction and operation of a system designed to temporarily store and dispose of drilling wastes and other process fluids during periods of well or facility maintenance. The division will approve two methods, pit or closed-loop system, for the handling of drilling fluids or other process fluids released during well or facility maintenance activities. The plan for design and construction of a pit shall follow the applicable liner manufacturer's requirements. The operating details shall include operating and maintenance procedures, a closure plan and hydrogeologic data that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the division to evaluate compliance with acceptable siting criteria. In the absence of site-specific ground water data, the permittee may provide a reasonable determination of probable ground water depth using data generated by models, cathodic well lithology, published information or other tools as approved by the division.

A. Siting.

(1) A permittee may locate a pit containing fluids containing 10,000 mg/l or less of TDS and 1 mg/l or less of H₂S:

(a) where ground water is more than four feet below the bottom of the pit;

(b) 100 feet or more from any continuously flowing watercourse or any other significant watercourse;

(c) 100 feet or more from any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(d) 200 feet or more from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(e) 200 feet or more from a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes; or 200 feet or more from any other fresh water well or spring, in existence at the time of the initial application;

(f) outside incorporated municipal boundaries or outside a defined municipal fresh water wellfield covered under a municipal ordinance adopted pursuant to Section 3-27-3 NMSA 1978, as amended, unless the municipality specifically approves;

(g) 100 or more feet from a wetland;

(h) outside the area overlying a subsurface mine, unless the division grants a variance that approves the proposed location based upon the permittee's demonstration that the pit's construction and use will not compromise the subsurface integrity;

(i) outside an unstable area, unless the division grants a variance upon a demonstration that the permittee has incorporated engineering measures into the design to ensure that the pit's integrity is not compromised; and

(j) outside a 100-year floodplain unless the division grants a variance for temporary use.

(2) A permittee shall not locate a pit containing fluids containing more than 10,000 mg/l of TDS and more than one mg/l of H₂S:

(a) where ground water is less than 50 feet below the bottom of the pit;

(b) within 300 feet of any continuously flowing watercourse or any other significant watercourse;

(c) within 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(d) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(e) within:

(i) 500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes; or

(ii) 1,000 feet of any other fresh water well or spring, in existence at the time of the initial application;

(f) within incorporated municipal boundaries or within a defined municipal fresh water wellfield covered under a municipal ordinance adopted pursuant to Section 3-27-3 NMSA 1978, as amended, unless the municipality specifically approves;

(g) within 300 feet of a wetland;

(h) within the area overlying a subsurface mine, unless the division grants a variance that approves the proposed location based upon the permittee's demonstration that the pit's construction and use will not compromise the subsurface integrity;

(i) within an unstable area, unless the division grants a variance upon a demonstration that the permittee has incorporated engineering measures into the design to ensure that the pit's integrity is not compromised; or

(j) within a 100-year floodplain.

B. Design and construction. A permittee shall design and construct a pit or closed-loop system to contain liquids and solids; prevent contamination of fresh water; and protect life, health, property, natural resources, the environment and the public welfare.

(1) The pit or closed-loop system shall ensure the confinement of liquids to prevent releases.

(2) A pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The permittee shall construct a pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V).

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

(4) The permittee shall minimize liner seams and orient them up and down, not across, a slope. The permittee shall use factory welded seams where possible. Prior

to field seaming, the permittee shall overlap liners four to six inches. The permittee shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall field weld and test liner seams.

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

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

(7) The permittee shall anchor the edges of all liners in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep, unless anchoring to encountered bedrock provides equivalent anchoring.

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

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

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

(11) **Stockpiling of topsoil.** Prior to constructing a pit, the permittee shall strip and stockpile the topsoil for use as the final cover or fill at the time of closure.

(12) **Signs.** The permittee shall post an upright sign not less than 12 inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the pit. The permittee shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the permittee's name; the location of the site by quarter-quarter or unit letter, section, township and range; and emergency telephone numbers.

(13) A permittee who is using a closed-loop system with drying pads shall design and construct the drying pads to include the following:

(a) appropriate liners that prevent the contamination of fresh water and protect life, health, property, natural resources, the environment and the public welfare;

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

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

C. Fencing. The permittee shall fence or enclose a pit in a manner that deters unauthorized access and shall maintain the fences in good repair. Fences are not required if there is an adequate surrounding perimeter fence that prevents unauthorized access to the well site or facility, including the pit. During drilling or workover operations, the permittee is not required to fence the edge of the pit adjacent to the drilling or workover rig.

D. Operation. A permittee shall maintain and operate a pit or closed-loop system in accordance with the following requirements.

(1) The permittee shall operate and maintain a pit or closed-loop system, to contain liquids and solids and maintain the integrity of the liner, liner system or secondary containment system, prevent contamination of fresh water and protect life, health, property, natural resources, the environment and the public welfare.

(2) The permittee may only discharge fluids or mineral solids generated or used during the well drilling, completion or workover or facility maintenance operations process into a pit or closed-loop system. The permittee shall maintain a pit free of miscellaneous solid waste or debris.

(3) If the permittee elects to remove any stored fluids from a pit or a closed-loop system, the permittee shall dispose of the fluids pursuant to 19.11.4.20 NMAC.

(4) The permittee shall maintain at least two feet of freeboard in a pit. For temporary extenuating circumstances, a permittee may maintain a freeboard of less than two feet and shall maintain a log describing such circumstances and make the log available to the division upon request.

(5) The permittee shall inspect a pit or closed-loop system containing drilling fluids at least daily while the drilling or workover rig is on location. Thereafter, the permittee shall inspect the pit weekly so long as liquids remain in the pit. The permittee shall maintain a log of such inspections and make the log available for the division's review upon request.

(6) The permittee shall not discharge into or store any hazardous waste in a pit or drying pad associated with a closed-loop system.

(7) If a pit liner's integrity is compromised above the liquid's surface then the permittee shall repair the damage or initiate replacement of the liner within 48 hours of discovery.

(8) If a pit or closed loop system develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the permittee shall remove all liquid above the damage or leak within 48 hours of discovery, notify the division and repair the damage or replace the pit liner or closed loop hardware.

(9) The permittee shall inject or withdraw liquids from a pit through a header, diverter or other hardware that prevents damage to the liner by erosion, fluid jets or impact from installation and removal of hoses or pipes.

(10) The permittee shall operate and install a pit to prevent the collection of surface water run-on.

(11) The permittee shall install, or maintain on site, a water absorbent boom or other device to contain an unanticipated release.

E. Closure and remediation. A closure plan shall describe the proposed closure method and the proposed procedures and protocols to implement and complete the closure.

(1) The permittee shall not commence closure without first obtaining division approval of the closure plan submitted with the permit application.

(2) Prior to closure the permittee shall remove all free liquids reasonably achievable from the pit or drying pad and tank associated with a closed-loop system and dispose of such liquids at a division-approved facility.

(3) When closing a pit, the permittee shall stabilize or solidify the remaining pit contents to a capacity sufficient to support the final cover of the pit. When transferring the geothermal waste contents from a drying pad and tank associated with a closed-loop system into a pit, the permittee shall stabilize or solidify the geothermal waste contents to a capacity sufficient to support the final cover of the pit. The permittee shall not mix the contents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to contents. The geothermal waste mixture must pass the paint filter liquids test (EPA SW-846 Method 9095B or other test methods approved by the division).

(4) The permittee shall collect, at a minimum, a five-point composite of the contents of the pit to demonstrate that, after the geothermal waste is solidified or stabilized with soil or other non-geothermal waste material at a ratio of no more than 3:1 soil or other non-geothermal waste material to geothermal waste, the concentration of any contaminant in the stabilized geothermal waste is not higher than the parameters listed in Table 2 (19.11.4.19 NMAC).

(5) If, after appropriate stabilization, the concentrations of all contaminants in the contents from a pit are less than or equal to the parameters of listed in Table 2 (19.11.4.19 NMAC), the permittee may proceed with closure and remediation of the pit.

(6) If the concentration of any contaminant in the contents, after mixing with soil or non-geothermal waste material to a maximum ratio of 3:1, from a pit or drying pad associated with a closed-loop system is higher than constituent concentrations shown in Table 2 (19.11.4.19 NMAC), then the permittee shall close the pit or drying

pad by first removing all contents and, if applicable, synthetic liners and transferring those materials to a division-approved facility.

(7) Upon achieving all applicable geothermal waste stabilization in the pit or transfer of stabilized geothermal wastes to the pit, the permittee shall:

(a) fold the outer edges of the pit liner to overlap the geothermal waste material in the pit prior to installing the geomembrane cover;

(b) install a geomembrane cover over the geothermal waste material in the pit; the permittee shall install the geomembrane cover in a manner that prevents the collection of infiltration water in the pit and on the geomembrane cover after the soil cover is in place; the geomembrane cover shall consist of a 20-mil string reinforced LLDPE liner or equivalent cover that the division approves; the geomembrane cover shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions; cover compatibility shall comply with EPA SW-846 Method 9090A; and

(c) cover the pit with non-geothermal waste containing uncontaminated, earthen materials and construct a soil cover prescribed by the division.

(8) If the permittee has removed the geothermal wastes and the liner from a drying pad associated with a closed-loop system to a pit, the permittee shall test the soils beneath the drying pad as follows.

(a) At a minimum, the permittee shall take a five-point composite sample to include any obvious stained or wet soils, or other evidence of contamination under the liner and have that sample analyzed for the constituents listed in Table 1 (19.11.4.18 NMAC).

(b) If any contaminant concentration is higher than the parameters listed in Table 1 (19.11.4.18 NMAC) the division may require additional delineation upon review of the results and the permittee must receive division approval before proceeding with closure.

(c) If all contaminant concentrations are less than or equal to the parameters listed in Table 1 (19.11.4.18 NMAC), the permittee can proceed to backfill the pad or excavation with non-geothermal waste containing, uncontaminated, earthen material.

(9) A permittee shall notify the division at least 60 days prior to cessation of operations and provide a proposed schedule for closure. If there is no closure plan on file with the division applicable to the pit, the permittee shall provide a closure plan with this notice. Upon receipt of the notice and proposed schedule, the division shall review the current closure plan for adequacy and inspect the site. When onsite burial occurs on private land, the permittee shall file a deed notice identifying the exact location of the onsite burial with the county clerk in the county where the onsite burial occurs.

(10) Within 60 days of closure completion, the permittee shall submit a closure report that documents all closure activities including sampling results; other information the division requires and details on back-filling, capping and covering, where applicable. In the closure report, the permittee shall certify that all information in the report and attachments is correct and that the permittee has complied with all applicable closure requirements and conditions specified in the approved closure plan. If the permittee elects to conduct onsite burial in an onsite pit, the permittee shall also provide a plat of the pit location. The permittee shall place a steel marker at the center of an onsite burial. The steel marker shall be not less than four inches in diameter and shall be cemented in a three-foot deep hole at a minimum. The steel marker shall extend at least four feet above mean ground level and at least three feet below ground level. The permittee name, lease name, well number and location, including unit letter, section, township and range, and that the marker designates an onsite burial location shall be welded, stamped or otherwise permanently engraved into the metal of the steel marker. A person shall not build permanent structures over an onsite burial without the division's written approval. A person shall not remove an onsite burial marker without the division's written permission.

(11) A permittee shall close a drying pad associated with a closed-loop system or a pit within one year from the date that the permittee releases the drilling or workover rig. The permittee shall note the date of the drilling or workover rig's release, upon the well's or workover's completion. The division may grant an extension not to exceed one year.

(12) Reclamation of pit and drying pad locations.

(a) A permittee shall reclaim the pit or drying pad location and all areas associated with the closed-loop system or pit including associated access roads to a safe and stable condition that blends with the surrounding undisturbed area.

(b) The permittee may propose an alternative to the re-vegetation or re-contouring requirement if the permittee demonstrates to the division that the proposed alternative provides equal or better prevention of erosion and protection from contamination of fresh water, and protection of life, health, property, natural resources, the environment and the public welfare.

(c) The permittee shall compact, cover, pave or otherwise stabilize and maintain areas reasonably needed for production operations or for subsequent drilling operations in such a way as to minimize dust and erosion to the extent practicable.

(d) The soil cover for closures after site contouring, where the permittee has removed the drying pad contents and liner, and if necessary remediated the soil beneath the drying pad liner to chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0, shall consist of the background thickness of topsoil or one foot of suitable material, whichever is greater.

(e) The soil cover for burial in-place pits shall consist of a minimum of four feet of non-geothermal waste containing uncontaminated, earthen material with chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0. The soil cover shall include either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

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

(g) The permittee shall reclaim all areas disturbed by the closure of pits, except areas reasonably needed for production operations or for subsequent drilling operations, as early and as nearly as practicable to their original condition or their final land use and maintain them to control dust and minimize erosion to the extent practicable. The permittee shall replace top soils and subsoils to their original relative positions and contour them to achieve erosion control, long-term stability and preservation of surface water flow patterns. The permittee shall reseed disturbed area in the first favorable growing season following closure of a pit or drying pad associated with a closed-loop system. Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent of pre-disturbance levels and a total percent plant cover of at least seventy percent of pre-disturbance levels, excluding noxious weeds.

(h) The permittee shall notify the division when reclamation and re-vegetation are complete.

[19.11.4.17 NMAC - N, 2/27/2018]

19.11.4.18 TABLE 1 – CLOSURE CRITERIA FOR SOILS BENEATH DRYING PADS ASSOCIATED WITH CLOSED-LOOP SYSTEMS:

Depth below bottom of pit to ground water less than 10,000 mg/l TDS	Constituent	Method*	Limit**
≤50 feet	Chloride	EPA 300.0	600 mg/kg
51-100 feet	Chloride	EPA 300.0	10,000 mg/kg
>100 feet	Chloride	EPA 300.0	20,000 mg/kg

*Or other test methods approved by the division

**Numerical limits or natural background level, whichever is greater

[19.11.4.18 NMAC - N, 2/27/2018]

19.11.4.19 TABLE 2 – CLOSURE CRITERIA FOR GEOTHERMAL WASTE LEFT IN PLACE IN PITS:

Depth below bottom of pit to ground water less than 10,000 mg/l TDS	Constituent	Method*	Limit**
25-50 feet	Chloride	EPA 300.0	20,000 mg/kg
51-100 feet	Chloride	EPA 300.0	40,000 mg/kg
>100 feet	Chloride	EPA 300.0	80,000 mg/kg

*Or other test methods approved by the division

**Numerical limits or natural background level, whichever is greater

[19.11.4.19 NMAC - N, 2/27/2018]

19.11.4.20 DISPOSAL OF GEOTHERMAL RESOURCES, RESIDUE OF GEOTHERMAL RESOURCES OR NONDOMESTIC WASTE FROM THE EXPLORATION, DEVELOPMENT OR PRODUCTION OF GEOTHERMAL RESOURCES:

Persons disposing of geothermal resources, residue of geothermal resources or nondomestic waste from the exploration, development or production of geothermal resources shall do so in a manner that does not constitute a hazard to life, health, property, natural resources, the environment or the public welfare. The permittee shall dispose of geothermal resources, residue of geothermal resources or nondomestic waste from the exploration, development or production of geothermal resources as provided in 19.11.4.17 or 19.11.4.20 NMAC, or at a facility permitted to accept the products.

A. The permittee may discharge geothermal resources, residue of geothermal resources or nondomestic waste from the exploration, development or production of geothermal resources to an above ground surface impoundment that meets the requirements of Subsection B of 19.11.4.20 NMAC, provided the other requirements of 19.11.4 NMAC are met and the permittee submits, and the division approves, a discharge plan that conforms to the following requirements:

(1) the effluent shall not contain any detectable toxic pollutant as defined in 20.6.2 NMAC;

(2) the amount of effluent that enters the subsurface from a surface impoundment shall not exceed 0.5 acre-feet per acre per year, calculated as a monthly rolling 12-month total;

(3) the effluent is in conformance with the New Mexico Water Quality Standards in 20.6.2.3103 NMAC or the total weight of each water contaminant, that is not in conformance with the New Mexico Water Quality Standards in 20.6.2.3103 NMAC, that enters the subsurface from a surface impoundment shall not exceed 200 pounds per acre per year, calculated as a monthly rolling 12-month total;

(4) the discharge plan shall include adequate provisions for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined; and

(5) the discharge plan shall include a minimum annual reporting frequency of monitoring data to the division.

B. For discharges approved per Subsection A of 19.11.4.20 NMAC, the permittee shall construct and operate a surface impoundment in accordance with the following:

(1) the permittee shall design and construct a surface impoundment to prevent run-on of surface water and out flow of effluent; a berm, ditch, proper sloping or other diversion shall surround a surface impoundment to prevent run-on of surface water and out flow of effluent;

(2) the permittee shall site the surface impoundment according the requirements in Paragraph (1) of Subsection A of 19.11.4.17 NMAC;

(3) the permittee shall inject or withdraw liquids from a surface impoundment through a header, diverter or other hardware that prevents damage to the berm, ditch, sloping or other diversion system by erosion, fluid jets or impact from installation and removal of hoses or pipes; and

(4) the permittee shall maintain a surface impoundment to prevent the collection of surface water run-on and surface ground flow of effluent out from the surface impoundment.

[19.11.4.20 NMAC - N, 2/27/2018]

CHAPTER 12-13: [RESERVED]

CHAPTER 14: GEOTHERMAL POWER

PART 1: GENERAL PROVISIONS - DEFINITIONS

19.14.1.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.1.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.1.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.1.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.1.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.1.6 OBJECTIVE:

A. The following geothermal rules and regulations are of statewide application and have been adopted by the oil conservation division of the New Mexico energy and minerals department to conserve the natural geothermal resources of the state of New Mexico, to prevent waste, and to protect the correlative rights of all owners of geothermal resources. Special rules, regulations, and order may be adopted from time to time when required for a particular geothermal resources area, and shall prevail over the geothermal rules and regulations if in conflict therewith. However, when these geothermal rules and regulations do not conflict with special rules hereafter adopted, these geothermal rules and regulations will apply.

B. The Division may grant exceptions to these rules and regulations after notice and hearing, when the granting of such exceptions will not result in waste but will protect correlative rights or prevent waste.

[Rule G-1; Recompiled 12/31/01]

19.14.1.7 DEFINITIONS:

A. "Commission" shall mean the oil conservation commission.

B. "Condensate" shall mean the liquid recovered from the condensation of gases or steam produced from a geothermal reservoir.

C. "Correlative rights" shall mean the opportunity afforded, insofar as is practicable to do so, the owner of each property in a geothermal reservoir to produce his just and equitable share of the geothermal resources within such reservoir, being an amount, so far as can be practicably determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable geothermal resources under such property bears to the total recoverable geothermal resources in the reservoir, and for such purpose to use his just and equitable share of the natural heat or energy in the reservoir.

D. "Designated agent" shall mean that person designated by the owner or operator of any geothermal resources well to be his agent in all matters concerning the keeping of records within the state.

E. "Development well" shall mean a well drilled within the established limits of a designated geothermal field or within one mile thereof, for the commercial production of geothermal resources.

F. "Disposal well" shall mean a well drilled or converted for the purpose of disposing of fluids into a formation other than a geothermal reservoir.

G. "Division" shall mean the oil conservation division of the New Mexico energy and minerals department.

H. "Drilling operations" shall mean the actual drilling, redrilling, completion or recompletion of a well for geothermal production or injection, including the running and cementing of casing, the performance of such operations as logging and perforating, and the installation of wellhead equipment.

I. "Exploratory well" shall mean a well drilled for the discovery or evaluation of geothermal resources one mile or more beyond the established limits of a designated geothermal field.

J. "Geothermal section" shall mean that section of the oil conservation division charged with the authority and duty of regulating the drilling, development and production of geothermal resources, and with conserving and preventing waste of geothermal resources within this state pursuant to the provisions of the Geothermal Resources Conservation Act.

K. "Geothermal field" shall mean an area defined by the division which contains a well, or wells, capable of commercial geothermal production. "Geothermal field" includes "low-temperature thermal field."

L. "Geothermal gradient well" (see thermal gradient well)

M. "Geothermal observation well" shall mean any well which is to be utilized for the express purpose of evaluating or monitoring a geothermal reservoir by pressure observation or limited production.

N. "Geothermal reservoir" shall mean any common source of geothermal resources, whether the fluids produced from the reservoir are native to the reservoir, or flow into or are injected into said reservoir.

O. "Geothermal resources" shall mean the natural heat of the earth or the energy, in whatever form, below the surface of the earth present in, resulting from, created by, or which may be extracted from, this natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, but excluding oil, hydrocarbon gas and other hydrocarbon substances.

P. "Geothermal resources area" shall mean the same general surface area which is underlain, or appears to be underlain, by one or more formations containing geothermal resources.

Q. "Geothermal resources well" (see well)

R. "Geothermal waters" shall mean the water or brine produced from a geothermal reservoir.

S. "Injection" shall mean the placing of fluids in an underground stratum through a wellbore, whether by pressure at the surface or by gravity flow, and whether for disposal or other purpose.

T. "Injection well" shall mean a well drilled or converted for the purpose of injecting fluids into a geothermal reservoir.

U. "Log or well log" shall mean a systematic detailed and correct recorded description of the lithologic sequence encountered while drilling a geothermal well.

V. "Low-temperature thermal field" shall mean an area defined by the commission which contains a well, or wells, capable of production of low-temperature thermal waters.

W. "Low-temperature thermal water" shall mean naturally heated water the temperature of which is less than boiling at the altitude of occurrence, which has value by virtue of the heat contained therein and is found below the surface of the earth, or in warm springs on the surface.

X. "Low-temperature thermal well" shall mean a well drilled to produce low-temperature thermal water for the purpose of extracting heat for agricultural, commercial, industrial, municipal or domestic uses.

Y. "Multiple completion" shall mean the completion of a well in such a manner as to produce from more than one geothermal reservoir.

Z. "Operator" shall mean any person drilling, maintaining, operating, producing or in control of any well, and shall include "owner" when any well is operated or has been operated or is about to be operated by or under the direction of the owner.

AA. "Owner" shall mean the person who has the right to drill into and to produce from any geothermal resources area, and to appropriate the geothermal resources thereof for himself or for himself and another.

BB. "Person" shall mean any individual, firm, association or corporation or any other group or combination acting as a unit.

CC. "Potential" shall mean the properly determined ability of a well to produce geothermal resources under conditions prescribed by the division.

DD. "Temporary abandonment" shall mean a state or period of suspended operations during which essentially continuous drilling, production, injection, storage or work-over procedures have not taken place. Such period shall be 60 days for drilling wells and six months for all other classes of wells.

EE. "Thermal gradient well" shall mean a well drilled or used solely for temperature observation purposes, and which shall not be completed as a geothermal producing well or as an injection or disposal well.

FF. "Unorthodox well location" shall mean a location which does not conform to the well location requirements established by the geothermal rules and regulations of the division.

GG. "Waste" shall mean any physical waste including, but not limited to, underground waste resulting from the inefficient, excessive or improper use or dissipation of reservoir heat or energy or resulting from the location, spacing, drilling, equipping, operation or production of a geothermal resources well in such a manner as to reduce or tend to reduce the ultimate economic recovery of the geothermal resources within a reservoir and surface waste resulting from the inefficient production, gathering, transportation, storage or utilization of geothermal resources and the handling of geothermal resources in such a manner that causes or tends to cause the unnecessary or excessive loss or destruction of geothermal resources obtained or released from a geothermal reservoir.

HH. "Well" shall mean any exploratory well, development well, injection well, disposal well, thermal gradient well, geothermal observation well, or low-temperature thermal well, as defined herein.

[Rule G-01; Recompiled 12/31/01]

19.14.1.8 ENFORCEMENT OF LAWS, RULES, AND REGULATIONS DEALING WITH CONSERVATION OF GEOTHERMAL RESOURCES:

The division, its agents, representatives, and employees are charged with the duty and obligation of enforcing all statutes, rules and regulations of the state of New Mexico relating to the conservation of geothermal resources. However, it shall be the responsibility of all geothermal resource owners or operators to obtain information pertaining to the regulation of geothermal resources before operations have begun. Minor deviations from the requirements of these rules as to field practices may be permitted by the division or its duly authorized representatives where such can be safely done without waste and burdensome delay or expense to the operator avoided.

[Rule G-2; Recompiled 12/31/01]

19.14.1.9 WASTE PROHIBITED:

A. The production or handling of geothermal resources of any type or in any form, or the handling of products thereof, in such a manner or under such conditions or in such an amount as to constitute or result in waste is hereby prohibited.

B. All owners, operators, contractors, drillers, transporters, service companies, pipe pulling and salvage contractors and other persons shall at all times conduct their operations in the drilling, equipping, operating, producing, and plugging and abandoning of geothermal resource wells in a manner that will prevent waste of geothermal resources, and shall not wastefully utilize geothermal resources or allow leakage of such resources from a geothermal reservoir, or from wells, tanks, containers, or pipe, or other storage, conduit or operating equipment.

[Rule G-3; Recompiled 12/31/01]

19.14.1.10 PROTECTION OF LIFE, HEALTH AND THE ENVIRONMENT:

All geothermal operations, exploratory, drilling and producing, shall be conducted in a manner that will afford maximum reasonable protection to human life and health and to the environment.

[Rule G-4; Recompiled 12/31/01]

19.14.1.11 OTHER DEPARTMENTS AND AGENCIES:

Nothing in these rules shall be construed to supersede the authority which any state department or agency has with respect to the management, protection and utilization of the state lands and resources under its jurisdiction.

[Rule G-5; Recompiled 12/31/01]

19.14.1.12 UNITED STATES GOVERNMENT LEASES:

It is recognized by the division that all persons conducting geothermal operations on United States government land shall comply with the United States government regulations. Such persons shall also comply with all applicable state rules and regulations which are not in conflict therewith.

[Rule G-6; Recompiled 12/31/01]

19.14.1.13 UNITIZED AREAS:

After notice and hearing, the division may grant approval for the combining of two or more contiguous leases into a unitized area for purposes of exploration for and production of geothermal resources.

[Rule G-7; Recompiled 12/31/01]

19.14.1.14 CLASSIFYING AND DEFINING POOLS:

The division will determine whether a particular well or field is a high-temperature geothermal well or field or a low-temperature thermal well or field, as the case may be, and will, from time to time, classify and reclassify wells and name pools accordingly, and will determine the limits of any field so designated and from time to time redetermine such limits.

[Rule G-8; Recompiled 12/31/01]

19.14.1.15 FORMS UPON REQUEST:

Forms for written notices, requests and reports required by the division will be furnished upon request.

[Rule G-9; Recompiled 12/31/01]

19.14.1.16 AUTHORITY TO COOPERATE WITH OTHER AGENCIES:

The division may from time to time enter into arrangements with state and federal governmental agencies, industrial committees and other persons, with respect to special projects, services and studies relating to conservation of geothermal resources.

[Rule G-10; Recompiled 12/31/01]

19.14.1.17 DESIGNATION OF AGENT:

Any person who had drilled or is drilling or proposes to drill any geothermal well shall file a "designation of agent" (on a form approved by the division) with the division. The designated agent shall be a resident of this state and shall be the repository for all well records of wells drilled by the owner or operator for whom he is agent (Rule G-200 B) [now 19.14.51.9 NMAC]. All changes of address of the agent shall be immediately reported to the division in writing. Upon termination of any agent's authority, a new designation of agent shall be filed with the division within ten days.

[Rule G-100; Recompiled 12/31/01]

PART 2-19: [RESERVED]

PART 20: PLUGGING BOND

19.14.20.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.20.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.20.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.20.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.20.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.20.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.20.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.20.8 PLUGGING BOND:

A. Any person who has drilled or is drilling or proposes to drill any geothermal resources well shall post with the division, and obtain approval thereof, a bond, in a form approved by the division, conditioned to plug such well, if non-productive or when abandoned, in such a way as to confine all fluids in their native strata. Each such bond shall be executed by a responsible surety company authorized to transact business in the state of New Mexico and shall describe, or by subsequent rider describe, the name and exact location of the well, or wells, covered by the bond. Bonds may be either one-well bonds or multi-well bonds, in the amounts stated below in accordance with type of bond and depth of well(s):

(1) One-well bonds:

Projected depth of proposed well or

Actual depth of existing well	Amount of bond
Less than 500 feet deep ("shallow")	\$2,000
500 feet to 2,000 feet deep ("intermediate")	\$3,000
More than 2,000 feet deep ("deep")	\$5,000.

Revised plans for an actively drilling shallow or intermediate well being drilled under a one-well bond may be approved by the division for drilling as much as 15 percent deeper than the maximum depth on the well's bond, provided, however, any well drilled more than 15 percent deeper than the maximum allowed depth on the bond must be covered by a new bond in the amount prescribed for the deeper depth bracket, in which case the old bond will be released.

(2) Multi-well bonds:

Projected depth of proposed wells or

Actual depth of existing wells	Amount of bond
Less than 500 feet deep ("shallow")	\$10,000
500 feet to 2,000 feet deep ("intermediate")	\$10,000
More than 2,000 feet deep ("deep")	\$10,000

(a) Not more than ten shallow wells may be drilled under a \$10,000 multi-well bond. A \$2,000 one-well bond shall be posed for each additional shallow well drilled or an additional \$10,000 multi-well bond must be posted for each additional ten (or portion thereof) shallow wells drilled.

(b) Not more than six intermediate wells may be drilled under a \$10,000 multi-well bond. A \$3,000 one-well bond shall be posted for each additional intermediate well drilled or an additional \$10,000 multi-well bond must be posted for each additional six (or portion thereof) intermediate wells drilled.

(c) Not more than four deep wells may be drilled under a \$10,000 multi-well bond. A \$5,000 one-well bond shall be posted for each additional deep well drilled or an additional \$10,000 multi-well bond must be posted for each additional four (or portion thereof) deep wells drilled.

(d) The \$10,000 multi-well bond may be used to cover the drilling of a combination of wells, i.e., shallow and intermediate, shallow and deep, intermediate and deep, or shallow, intermediate and deep, provided however, that the \$10,000 capacity of the bond shall be charged in an amount equal to the one-well bond requirement for each such combination well according to its depth.

(e) Revised plans for an actively drilling shallow or intermediate well being drilled under a multi-well bond may be approved for drilling as much as 15 percent deeper than the well's maximum depth bracket without affecting the bond. Any well drilled more than 15 percent deeper than its depth bracket, however, shall be placed in the next deeper depth bracket, and the \$10,000 capacity of the multi-well bond charged accordingly. Additional bonding will be required in the event the capacity of the bond to cover the well in its new depth bracket is inadequate.

B. For the purposes of the division, the bond required is a plugging bond, not a drilling bond, and shall endure until the well has been plugged and abandoned, and such plugging and abandonment approved by the division. Transfer of the well or property does not release the bond. In case of transfer and the principal desires to be released from the bond, he shall proceed as follows:

(1) The principal on the bond shall notify the division in writing that the well, or wells, covered by the bond are being or have been transferred to a certain transferee. The notice shall name the wells and shall give their exact location.

(2) On the same instrument the transferee shall recite that he accepts such transfer and accepts the responsibility for such well, or wells, under his bond which shall be tendered therewith.

(3) When the division has approved the transfer, the transferor is immediately released of the plugging responsibility of the well, or wells, constitute all of the wells covered by the bond, such bond will be released by written notice from the division to the principal and to the surety company.

C. The division director is vested with power to act for the division in all matters relating to this rule.

[Recompiled 12/31/01]

PART 21: DRILLING PERMIT

19.14.21.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.21.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.21.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.21.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.21.5 EFFECTIVE DATE:

[November 15, 1983]

[Recompiled 12/31/01]

19.14.21.6 OBJECTIVE:

[RESERVED]

19.14.21.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.21.8 DRILLING PERMIT:

A. Prior to the commencement of operations, the owner or operator of any proposed well to be drilled for geothermal exploration, production, observation, or thermal gradient, or for injection or disposal purposes, shall file division form G-101, application for permit to drill, deepen or plug back-geothermal resources well, and obtain approval thereof from the division. form G-101 shall be accompanied by form G-102, geothermal resources well location and acreage dedication plat.

B. No permit shall be approved for the drilling of any well within the corporate limits of any city, town or village of this state unless notice of intention to drill such well has been given to the duly constituted governing body of such city, town or village or its duly authorized agent. Evidence of such notification shall accompany the application for a permit to drill (form G-101).

[Recompiled 12/31/01]

PART 22: SIGN ON WELLS

19.14.22.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.22.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.22.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.22.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.22.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.22.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.22.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.22.8 SIGN ON WELLS:

Each well, other than a thermal gradient well, shall be identified by a sign, posted on the drilling rig or not more than 20 feet from the well. Such sign shall be of durable construction and the lettering thereon kept in legible condition. Lettering shall be such that under normal conditions it shall be legible at a distance of 50 feet. Each sign shall show the name of the owner or operator of the well, the name of the lease, the number of the well, and the location of the well by quarter-quarter section, township and range. Each lease shall have a different and distinctive name, and the wells thereon shall be numbered in non-repetitive, logical sequence.

[Recompiled 12/31/01]

PART 23: WELL SPACING

19.14.23.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.23.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.23.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.23.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.23.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.23.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.23.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.23.8 CLASSIFICATION OF WELLS:

A. Any well, other than a thermal gradient well, a geothermal observation well or a low-temperature thermal well, which is drilled a distance of one mile or more outside the boundary of any defined geothermal field and a distance of one mile or more beyond

any well which is within one mile of such field, shall be classified as an exploratory well, and as such shall be spaced, drilled, operated and produced in accordance with these Geothermal Rules and Regulations.

B. Any well, other than a thermal gradient well, a geothermal observation well or a low-temperature thermal well, which is not an exploratory well as defined above shall be classified as a development well, unless such well is being drilled for injection or disposal purposes, in which case it will be appropriately classified.

C. Any well classified as a development well or injection or disposal well within a given geothermal field shall be drilled, operated and produced in accordance with these Geothermal Rules and Regulations unless special rules in conflict therewith have been promulgated for such field, said special rules then being applicable.

[Recompiled 12/31/01]

19.14.23.9 ACREAGE AND WELL LOCATION REQUIREMENTS:

A. Exploration wells. A well classified as an exploratory well shall be located on a designated drilling tract comprising at least 40 surface acres (being a quarter-quarter section of the U. S. public land surveys, or a projection thereof if on unsurveyed land) , and shall be located at least 330 feet from the outer boundary of the quarter-quarter section, at least 660 feet from the nearest such other well drilling to or capable of producing from or injection into the same formation to which it is projected, and at least 100 feet from any public road, street or highway dedicated prior to commencement of drilling.

B. Development wells. A well classified as a development well shall be located on a designated drilling tract comprising at least 10 surface acres (being a quarter-quarter-quarter section of the U.S. public land surveys or a projection thereof if on unsurveyed land), and shall be located at least 165 feet from the outer boundary of the quarter-quarter-quarter section, at least 330 feet from the nearest well drilling to or capable of production from or injection into the same geothermal reservoir to which it is projected, and at least 100 feet from any public road, street or highway dedicated prior to commencement of drilling.

C. Injection wells. Injection wells drilled for the purpose of injecting into a geothermal reservoir shall be located at least 330 feet from the outer boundary of the lease or drilling parcel and at least 100 feet from any public road, street or highway dedicated prior to commencement of drilling.

D. Disposal wells. There shall be no restriction as to the placement of geothermal disposal wells.

E. Thermal gradient wells and low-temperature thermal wells. There shall be no restriction as to the placement of thermal gradient wells or low-temperature thermal wells.

[Recompiled 12/31/01]

19.14.23.10 NON-STANDARD LOCATIONS:

A. The division director shall have the authority to grant an exception to the well location requirements of Rules B (1) , (2) , and (3) [now Subsections A, B and C of 19.14.23.9 NMAC] above without notice and hearing when such application is based upon topographical or geologic or engineering considerations.

B. Applications for such administrative approval shall be filed in duplicate and shall be accompanied by a plat showing the ownership of surrounding lands (within a 990-foot radius of the proposed location if application is for exception to Rule G-104 B (1) [now Subsection A of 19.14.23.9 NMAC] exploration wells; within a 495-foot radius of the proposed location if application is for exception to Rule G-104 B (2) [now Subsection B of 19.14.23.9 NMAC] development wells; within a 990-foot radius of the proposed location if application is for exception to Rule G-104 B (3) [now Subsection C of 19.14.23.9 NMAC] injection wells; and all drilling or completed wells thereon. If the proposed non-standard location is based upon topography, the plat shall also show the existent topographical conditions. If it is based upon geologic or engineering considerations, the application shall be accompanied by a geologic or engineering analysis, explaining the necessity for the non-standard location.

C. A copy of the application and accompanying plats and documents shall also be sent to the other owners, if any there be, within the above prescribed radii of the proposed non-standard location and the application shall state that such required copies have been so furnished. The division director may approve the non-standard location upon receipt of waivers from the above other owners or if no such other owner has entered an objection to the non-standard location within 20 days after receipt of the application by the division. If such objection is received, the matter will be set for hearing if the applicant so desires. If the director is not convinced of the necessity or desirability of such exception, he may require supplemental information to justify the exception, or set the matter for hearing if the applicant so desires.

[Recompiled 12/31/01]

19.14.23.11 OFFSETTING ACTION:

Whenever an exception to the well location requirements is granted, the division after hearing may take such action as may be necessary to offset any advantage the person securing the exception may gain over other owners within the same geothermal reservoir.

[Recompiled 12/31/01]

19.14.23.12 SPECIAL ACREAGE AND WELL LOCATION REQUIREMENTS:

In order to prevent waste and protect correlative rights, the division may, after notice and hearing, adopt different well location requirements and greater or lesser acreage dedication requirements than those contained in Rules G-104 B (1), (2), and (3) [now Subsections A, B and C of 19.14.23.9 NMAC] above for a particular geothermal reservoir and may adopt special well location and acreage dedication requirements for a particular low-temperature thermal field.

[Recompiled 12/31/01]

PART 24: ROTARY DRILLING AND CABLE TOOL DRILLING

19.14.24.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.24.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.24.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.24.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.24.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.24.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.24.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.24.8 ROTARY DRILLING AND CABLE TOOL DRILLING:

Rotary drilling equipment, adequately equipped to contain underground pressures and prevent or control blowouts, shall be used for the drilling of all geothermal resources wells except thermal gradient wells, low-temperature thermal wells and disposal wells, none of which will penetrate any high pressure zone or formation, in which case cable tools may be used.

[Recompiled 12/31/01]

PART 25: DRILLING MUD AND MUD PITS

19.14.25.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.25.2 SCOPE:

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19.14.25.3 STATUTORY AUTHORITY:

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19.14.25.4 DURATION:

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November 15, 1983.

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19.14.25.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.25.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.25.8 DRILLING MUD AND MUD PITS:

A. In order to assure an adequate supply of drilling fluid to confine all natural fluids to their respective native strata and to prevent blowouts, each operator shall, prior to commencing drilling operations, provide a pit of adequate size to hold such drilling fluid and to receive drill cuttings, and such pit shall be so constructed and maintained to prevent contaminants from overflowing on the surface of the ground and/or entering any water course.

B. The temperature of the return mud shall be monitored continuously during the drilling of the surface casing hole, and in the case of a thermal gradient well, shall be monitored to total depth. Either a continuous temperature recording device shall be installed and maintained in good working condition, or the temperature shall be measured manually and recorded at least one time each hour.

[Recompiled 12/31/01]

PART 26: SEALING OFF STRATA

19.14.26.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.26.3 STATUTORY AUTHORITY:

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19.14.26.4 DURATION:

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19.14.26.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.26.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.26.8 SEALING OFF STRATA:

A. During the drilling of any well, all fresh water strata and salt water strata overlying the geothermal resources strata shall be sealed or separated to prevent the migration of fluids from one stratum to the other.

B. All waters of present or probable future value for domestic, commercial, agricultural or stock purposes shall be confined to their respective strata and shall be adequately protected by methods approved by the division. Special precautions by methods satisfactory to the division shall be taken to guard against loss of artesian

water from the strata in which it occurs, and to prevent the contamination of such artesian water strata by any objectional geothermal fluids. Sealing off of strata, and migration prevention shall ordinarily be accomplished by cementing casing.

[Recompiled 12/31/01]

PART 27: CASING AND CEMENTING REQUIREMENTS

19.14.27.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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[RESERVED]

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19.14.27.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.27.8 CASING AND CEMENTING REQUIREMENTS:

A. All wells drilled for the production of geothermal resources, including low-temperature thermal wells, and all specialty wells, including injection and disposal wells, shall be cased and cemented in such manner as to protect surface waters, if any, useable ground waters, geothermal resources, and life, health and property. Thermal gradient wells shall be drilled, completed and plugged in such a manner as to protect surface waters, in any, and useable ground waters. The division may require casing and cementing as is deemed necessary for such wells.

B. All casing strings reaching the surface shall provide adequate anchorage for blowout prevention equipment, hole pressure control, and protection for all natural resources. Although specifications for casing programs shall be determined on a well-to-well basis, the following general casing requirements should be used as guidelines in submitting form G-101, application for permit to drill, deepen, or plug back-geothermal resources well.

(1) Conductor Pipe: A minimum of 90 feet and a maximum of 200 feet. In special cases the division may allow conductor pipe to be run and cemented at deeper depths. Annular space is to be cemented solid to the surface. An annular blowout-preventer or equivalent approved by the division shall be installed on conductor pipe on exploratory wells and on development wells when deemed necessary by the division. Note: For thermal gradient wells and low-temperature thermal wells the conductor pipe requirement may be reduced or waived by the division. The above conductor pipe requirements are not meant to be applicable to the single or double joint of large diameter pipe often run to keep mud out of the cellar.

(2) Surface Casing: Except in the case of thermal gradient wells and low-temperature thermal wells, the surface casing hole shall be logged with an electrical or radioactivity log, or equivalent, before running casing. Note: This requirement may vary from area to area, depending upon the amount of subsurface data available, and may be waived under certain conditions. Requests for exceptions to the logging requirement should be noted on form G-101 when applying for a drilling permit. Surface casing shall provide for control of formation fluids, for protection of useable ground water and for adequate anchorage for blowout-prevention equipment. All surface casing shall be, if possible, cemented solid to the surface.

(a) Length of Surface Casing:

(i) In areas where subsurface geological conditions are variable or unknown, surface casing in general shall be set at a depth equalling or exceeding 10

percent of the proposed total depth of the well. A minimum of 200 feet and a maximum of 1,500 feet of surface casing shall be set.

(ii) In areas of known high formation pressure, surface casing shall be set at a depth determined by the division after a careful study of geological conditions. The division will make such a determination within 30 days. Drilling shall not commence until such determination has been made.

(iii) Within the confines of designated geothermal fields, the depth at which surface casing shall be set shall be determined by the division on the basis of known field conditions. Requirements (a)(1) and (a)(2) [now (i) and (ii) of Subparagraph (a) and (b) of Paragraph (2) of Subsection B of 19.14.27.8 NMAC] above may be waived for low-temperature thermal wells.

(b) Cementing Point for Surface Casing:

(i) In areas where subsurface geological conditions are variable or unknown, surface casing shall be set in accordance with (a) (1) [now (i) Subparagraph (a) of Paragraph (2) of Subsection B of 19.14.27.8 NMAC] above and through a sufficient series of low permeability, competent lithologic units (such as claystone or siltstone) to ensure a solid anchor for blowout-prevention equipment and to protect useable ground water and surface water from contamination. A second string of surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units and either a rapidly increasing thermal gradient or rapidly increasing formation pressures are encountered.

(ii) In areas of known high formation pressure, surface casing shall be set in accordance with (a) (2) [now (ii) Subparagraph (a) of Paragraph (2) of Subsection B of 19.14.27.8 NMAC] above and through a sufficient series of low permeability, competent lithologic units (such as claystone, siltstone or basalt) to ensure a solid anchor for blowout-prevention equipment and to protect useable ground water and surface water from contamination. A second string of surface casing may be required, before drilling into the known high pressure zone is permitted, if the first string of surface casing has not been cemented through a sufficient series of low-permeability, competent lithologic units.

(iii) Within the confines of designated geothermal fields, cementing point shall be determined by the division on the basis of known field conditions. Requirements (b)(1) and (b)(2) [now (i) and (ii) of Subparagraph (b) of Paragraph (2) of Subsection B of 19.14.27.8 NMAC] above may be waived for low-temperature thermal wells.

(c) Return mud temperatures: Return mud temperatures shall be entered into the log book after each joint of pipe has been drilled down. See Rule G-106(b) [now Subsection B of 19.14.25.8 NMAC].

(d) Blowout-prevention equipment (BOPE): BOPE capable of shutting in the well during any operation shall be installed on the surface casing and maintained ready for use at all time (see Section H) [see compiler's note].

(3) Intermediate casing: Intermediate casing shall be required for protection against anomalous pressure zones, caveins, washouts, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings shall be, if possible, cemented solid to the surface. This requirement (to circulate cement) may be waived if the production casing will be cemented to the surface.

(4) Production casing: Production casing may be set above or through the producing or injection zone and cemented above the objective zones. Sufficient cement shall be used to exclude overlying formation fluids from the zone, to segregate zones and to prevent movement of fluids behind the casing into zones that contain useable ground water. Production casing shall either be cemented solid to the surface or lapped into intermediate casing, if run. If the production casing is lapped into an intermediate string, the casing overlap shall be at least 50 feet, the lap shall be cemented solid, and it shall be pressure tested to ensure its integrity. In order to reduce casing corrosion, production casing used to produce corrosive brine reservoirs shall be of the same nominal inside diameter from the shoe of the casing to the ground surface.

(5) Casing and Cement Tests: All casing strings shall be tested after cementing and before commencing any other operations on the well. Form G-103 shall be filed for each casing string reporting the grade and weight of pipe used. In the case of combination strings utilizing pipe of varied grades or weights, the footage of each grade and weight used shall be reported. The results of the casing test, including actual pressure held on the pipe and the pressure drop observed, shall also be reported on the form G-103. See Rule G-203C(2) [now Paragraph (2) of Subsection C of 19.14.54.8 NMAC].

(a) Casing strings in wells drilled with rotary tools shall be pressure-tested. Minimum casing test pressure shall be approximately one-third of the manufacturer's rated internal yield pressure except that the test pressure shall not be less than 600 pounds per square inch and need not be greater than 1,500 pounds per square inch. In cases where combination strings are involved, the above test pressures shall apply to the lowest pressure-rated casing used. Test pressures shall be applied for a period of 30 minutes. If a drop of more than ten percent of the test pressure should occur, the casing or cement job shall be considered defective and corrective measures shall be taken before commencing any further operations on the well.

(b) Casing strings in wells drilled with cable tools may be tested as outlined in Rule 5(a) [now Subparagraph (a) of Paragraph (5) of Subsection B of 19.14.27.8 NMAC] above, or by bailing the well dry, in which case the well must remain satisfactorily dry for a period of at least one hour before commencing any further operations on the well.

(6) Defective casing or cementing: If the cementing of any casing appears to be defective, or if the casing in any well appears to be defective or corroded or parted, or if there appears to be any underground leakage for whatever other reason, which may cause or permit underground waste, the operator shall proceed with diligence to use the appropriate method or methods to eliminate such hazard. If such hazard of waste cannot be eliminated, the well shall be plugged and abandoned in accordance with a division approved plugging program.

(7) Logging: All wells, except thermal gradient wells and low-temperature thermal wells, shall be logged with an electrical or radioactivity log, or equivalent, from total depth to the surface casing shoe. This requirement may be waived by the division depending upon geological or engineering conditions.

[Recompiled 12/31/01]

PART 28: DEVIATION TESTS AND DIRECTIONAL DRILLING

19.14.28.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.28.6 OBJECTIVE:

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[Recompiled 12/31/01]

19.14.28.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.28.8 DEVIATION TESTS AND DIRECTIONAL DRILLING:

A. Any well which is deepened or drilled with rotary tools shall be tested at reasonably frequent intervals to determine the deviation from the vertical. Such tests shall be made at least each 500 feet or at the first bit change succeeding 500 feet. A tabulation of all deviation tests, sworn to and notarized, shall be filed with form G-105, geothermal resources well log. When the deviation averages more than five degrees in any 500-foot interval, the division director may require that a directional survey be run to establish the location of the producing interval(s).

B. The division director, at the request of an offset operator, may require any operator to make a directional survey of any well. Said directional survey and all associated costs shall be at the expense of the requesting party and shall be secured in advance by a \$5,000.00 indemnity bond posted with and approved by the division. The requesting party may designate the well survey company, and said survey shall be witnessed by a representative of the division.

C. No well shall be intentionally deviated except toward the vertical without prior permission from the division. Permission to deviate a well other than toward the vertical shall be obtained on division form G-103 with copies of said form G-103 being furnished to all other operators owning leases offsetting the drilling tract, if any there be. Upon request of the division director any well which was intentionally deviated shall be directionally surveyed. The division may at its option witness such survey and the Santa Fe office shall be notified of the date and hour all directional surveys are to be conducted. All directional surveys run on any well which was intentionally deviated in any manner for any reason must be filed with the division upon completion of the well. Form G-104, certificate of compliance and authorization to produce geothermal resources, will not be approved until the operator has submitted an affidavit that all such directional surveys have been filed.

[Recompiled 12/31/01]

PART 29: SHOOTING AND CHEMICAL TREATMENT OF WELLS

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19.14.29.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.29.8 SHOOTING AND CHEMICAL TREATMENT OF WELLS:

If injury results to the producing formation, casing or casing seat from shooting or treating a well, the operator thereof shall proceed with diligence to use the appropriate method and means for rectifying such damage. If shooting or chemical treating results in irreparable injury to the well, the division may require the operator to properly plug and abandon the well.

[Recompiled 12/31/01]

PART 30: RIGHT OF ENTRY

19.14.30.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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[RESERVED]

[Recompiled 12/31/01]

19.14.30.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.30.8 RIGHT OF ENTRY:

The division or its duly authorized representatives shall have the right of entry onto any geothermal resources site for the purpose of inspecting wells and equipment and for the purpose of determining whether compliance with or violation of these rules is occurring.

[Recompiled 12/31/01]

PART 31: NOISE ABATEMENT

19.14.31.1 ISSUING AGENCY:

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19.14.31.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.31.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.31.8 NOISE ABATEMENT:

Adequate noise abatement equipment shall be installed and maintained in good condition to reduce noise to a level approved by the division or its representative on any drilling or producing geothermal resources well located within 1,500 feet of a habitation, school or church.

[Recompiled 12/31/01]

PART 32: SAFETY REGULATIONS

19.14.32.1 ISSUING AGENCY:

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19.14.32.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.32.8 SAFETY REGULATIONS:

The well site around any drilling or producing well shall be kept clear of any rubbish or debris or fuel which may constitute a fire hazard. In any area where there is any likelihood of encountering unexpected hydrocarbons, the drilling mud and cuttings shall be stored in a pit a safe distance from the drilling rig. All waste shall be burned or disposed of in such a manner as to avoid creating a fire hazard.

[Recompiled 12/31/01]

PART 33: WELL HEADS AND PRODUCTION EQUIPMENT

19.14.33.1 ISSUING AGENCY:

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[RESERVED]

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19.14.33.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.33.8 WELL HEADS AND PRODUCTION EQUIPMENT:

A. Well heads and all fittings appurtenant thereto shall be installed and maintained in good condition so that all necessary pressure tests may be readily made on flowing wells. The well head and related parts and fittings shall have a test pressure equivalent to at least 150 percent of the calculated or known pressure in the reservoir from which production is obtained or expected.

B. Valves shall be installed and maintained in good order to permit pressures to be obtained on the production casing and the annulus between the casing strings.

C. Flow lines shall be of adequate pressure rating and capacity and shall be sufficiently equipped with expansion bends to prevent leakage or rupture.

D. All separators, pumps, mufflers, manifolds, flowlines, and other equipment used for the production of geothermal resources shall be of adequate pressure rating and capacity and shall be maintained in good condition in order to prevent loss of or damage to human life and health or to property or natural resources.

[Recompiled 12/31/01]

PART 34: CORROSION

19.14.34.1 ISSUING AGENCY:

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[RESERVED]

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19.14.34.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.34.8 CORROSION:

All well head equipment, surface production equipment, flowlines and pipelines and subsurface casing and tubing shall be subject to periodic surveillance to prevent leakage or rupture and to safeguard human life and health and property and natural resources.

[Recompiled 12/31/01]

PART 35: DISPOSAL OF PRODUCED WATERS

19.14.35.1 ISSUING AGENCY:

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19.14.35.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.35.8 DISPOSAL OF PRODUCED WATERS:

The disposal of highly mineralized waters produced from geothermal resources wells shall be in such a manner as to not constitute a hazard to surface waters or underground supplies of useable water.

[Recompiled 12/31/01]

PART 36: NOTIFICATION OF FIRE, BREAKS, LEAKS, SPILLS AND BLOWOUTS

19.14.36.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.36.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.36.8 NOTIFICATION OF FIRE, BREAKS, LEAKS, SPILLS AND BLOWOUTS:

A. The division shall be notified of any fire, break, leak, spill or blowout occurring at any geothermal drilling, producing, transporting, treating, disposal or utilization facility in the state of New Mexico by the person operating or controlling such facility.

B. "Facility", for the purpose of this rule, shall include any geothermal drilling, producing, injection or disposal well; any pipeline through which geothermal resources or the waste products thereof are gathered or transported; any tank or other storage unit into which geothermal products, waters or wastes are produced, received or stored; any treating plant in which geothermal resources are treated or processed; any electrical generating plant in which geothermal resources are utilized; and any drilling pit, slush pit or storage pit or pond associated with geothermal drilling, producing, treating or utilization processes in which hydrocarbons or hydrocarbon waste or residue, salt water, strong caustics or acids, or other deleterious chemicals or harmful substances are present.

C. Notification to the division of such fire, break, leak, spill or blowout shall be in accordance with the provisions set forth below:

(1) Well Blowouts. Notification of well blowouts and/or fires shall be "immediate notification" described below.

(2) "Major" breaks, spills or leaks. Notification of breaks, spills, or leaks of wellheads, pipelines, or tanks, or drilling pits, slush pits or storage pits or ponds, the result of which 50 barrels or more of liquids containing hydrocarbons or hydrocarbon wastes, salt water, strong caustics or strong acids or other deleterious substances reach a water course or enter a stream or lake, or in which noxious gases escape or any quantity of fluids are lost which may with reasonable probability endanger human

health or result in substantial damage to property, shall be "immediate notification" described below.

(3) "Minor" breaks, spills or leaks. Notification of breaks, spills or leaks of wellheads, pipelines, or tanks, or drilling pits, slush pits or storage pits or ponds, the result of which 25 barrels or more but less than 50 barrels of liquids containing hydrocarbons or hydrocarbon wastes, salt water, strong caustics or strong acids or other deleterious substances are lost or in which noxious gases escape, but in which there is no danger of human health nor of substantial damage to property shall be "subsequent notice" described below.

(4) Fires. Notification of fires at geothermal installations in which there is reasonable probability of danger to human health or substantial damage to adjoining properties or substantial loss of geothermal resources shall be "immediate notice" described below. Notification of fires of lesser magnitude but of \$500.00 or more of property damage or \$500.00 or more geothermal resources loss shall be "subsequent notice" described below.

[Recompiled 12/31/01]

19.14.36.9 IMMEDIATE NOTIFICATION:

"Immediate Notification" shall be as soon as possible after discovery and shall be in person or by telephone to the Santa Fe office of the nearest district office of the division if the incident occurs during business hours. If the incident occurs after business hours, notification shall be in accordance with the latest division memorandum on the subject. A complete written report of the incident shall be submitted to the Santa Fe office of the division within ten days after discovery of the incident.

[Recompiled 12/31/01]

19.14.36.10 SUBSEQUENT NOTIFICATION:

"Subsequent notification" shall be a complete written report of the incident and shall be submitted to the Santa Fe office of the division within ten days after discovery of the incident.

[Recompiled 12/31/01]

19.14.36.11 CONTENT OF NOTIFICATION:

All reports of fires, breaks, spills, leaks or blowouts, whether verbal or written, shall identify the location of the incident by quarter-quarter, section, township and range, and by distance and direction from the nearest town or prominent landmark so that the exact site of the incident can be readily located on the ground. The report shall specify the nature and quantity of the loss and also the general condition prevailing in the area,

including precipitation, temperature and soil conditions. The report shall also detail the measures that have been taken and are being taken to remedy the situation reported.

[Recompiled 12/31/01]

19.14.36.12 WATERCOURSE:

For the purpose of this Rule, is defined as any lake-bed or gully, draw, streambed, wash, arroyo or natural or man-made channel through which water flows or has flowed.

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PART 37: MEASUREMENT OF PRODUCTION

19.14.37.1 ISSUING AGENCY:

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19.14.37.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.37.8 MEASUREMENT OF PRODUCTION:

All production from a completed geothermal resources well shall be accounted for by continuous metering or by other method approved by the division.

[Recompiled 12/31/01]

PART 38: UTILIZATION OF GEOTHERMAL RESOURCES

19.14.38.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.38.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.38.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.38.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.38.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.38.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.38.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.38.8 UTILIZATION OF GEOTHERMAL RESOURCES:

After the completion of a geothermal resources well, all production from said well shall be put to beneficial use. No production shall be permitted unless beneficial use is made thereof except for authorized periods of testing, in which case proper disposition of produced liquids shall be made.

[Recompiled 12/31/01]

PART 39-50: [RESERVED]

PART 51: GENERAL

19.14.51.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.51.2 SCOPE:

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19.14.51.3 STATUTORY AUTHORITY:

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19.14.51.4 DURATION:

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[Recompiled 12/31/01]

19.14.51.5 EFFECTIVE DATE:

November 15, 1983.

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19.14.51.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.51.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.51.8 BOOKS AND RECORDS:

All producers, transporters, purchasers or utilizers of geothermal resources within the state of New Mexico shall make and keep appropriate books and records for a period of not less than five years, covering their operations in this state, from which they may be able to substantiate the reports required by these rules.

[Recompiled 12/31/01]

19.14.51.9 WELL RECORDS:

The owner or operator of any geothermal resources well shall keep, or cause to be kept, a careful and accurate well log and history of the drilling of any such well, including the lithologic characteristics and depth of formations encountered, and the depths, pressures and temperatures of water-bearing and steam-bearing strata. These data, as well as such other tests, surveys and logs which may be taken on the well including the temperatures, chemical compositions and physical characteristics of fluids encountered in the well, deviation, directional and temperature surveys, logs, including electrical logs, physical logs and core logs, and tests, including potential tests, shall be placed in the custody of the designated agent (see Rule G-100) [now 19.14.12.17 NMAC] of the

owner or operator of the well and shall remain in such custody within the state of New Mexico until all required forms and attachments pertaining to the well have been filed with the division. These data shall be subject to inspection, during normal business hours, by the division or its representatives, and by the state engineer or his representatives.

[Recompiled 12/31/01]

19.14.51.10 WHERE TO FILE REPORTS:

All forms and reports required by these rules shall be filed with the New Mexico oil conservation division, geothermal section, Post Office Box 2088, Santa Fe, New Mexico 87501.

[Recompiled 12/31/01]

19.14.51.11 ADDITIONAL DATA:

These rules shall not be construed to limit or restrict the authority of the division to require the furnishing of such additional reports, data or other information relative to the production, transportation or utilization of geothermal resources in the state of New Mexico as may appear to be necessary or desirable, either generally or specifically, for the prevention of waste and the conservation of natural resources of the state of New Mexico.

[Recompiled 12/31/01]

PART 52: APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK-GEOTHERMAL RESOURCES

19.14.52.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.52.2 SCOPE:

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[Recompiled 12/31/01]

19.14.52.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.52.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.52.5 EFFECTIVE DATE:

[November 15, 1983]

[Recompiled 12/31/01]

19.14.52.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.52.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.52.8 APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK-GEOTHERMAL RESOURCES WELL (FORM G-101):

Before commencement of drilling or deepening operations of any geothermal resources well, or before plugging a well back to another zone, the operator of the well shall obtain a permit to do so. To obtain such a permit the operator shall submit to the division four copies of form G-101, application for permit to drill, deepen or plug back-geothermal resources well, completely filled in. If the operator has an approved bond in accordance with Rule G-101 [now 19.14.20 NMAC] and has filed satisfactory "designation of agent" (Rule G-100) [now 19.14.1.17 NMAC], and the proposed well meets the spacing and well location requirements (Rule G-104) [now 19.14.23 NMAC], one copy of the drilling permit will be returned to him on which will be noted the division's approval, with any modification deemed advisable. If the proposal cannot be approved for any reason, the forms G-101 will be returned with the cause for rejection stated thereon.

A. Each copy of form G-101 must be accompanied by one copy of form G-102, geothermal resources well location and acreage dedication plat. (See Rule G-202) [now 19.14.53 NMAC].

B. If the well is to be drilled on state land, five copies of forms G-101 and G-102 shall be submitted, the extra copy being for the state land office.

[Recompiled 12/31/01]

PART 53: GEOTHERMAL RESOURCES WELL LOCATION AND ACREAGE DEDICATION PLAT

19.14.53.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.53.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.53.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.53.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.53.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.53.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.53.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.53.8 GEOTHERMAL RESOURCES WELL LOCATION AND ACREAGE DEDICATION PLAT. (FORM G-102):

A. Form G-102 is a dual purpose form used to show the exact location of the well and the acreage dedicated thereto. The form is also used to show the ownership and status of each lease contained within the dedicated acreage. When there is more than one working interest or royalty owner on a given lease, designation of the majority owner et al. will be sufficient.

B. All information required on form G-102 shall be filled in and certified by the operator of the well except the well location on the plat. This is to be plotted from the outer boundaries of the section and certified by a registered professional engineer and/or land surveyor, registered in the state of New Mexico, or a surveyor approved by the Division. The surveyed location of thermal gradient wells is not required. Instead, an estimated location in a given quarter-quarter section will suffice.

C. Form G-102 shall be submitted in quadruplicate or quintuplicate as provided in Rule G-201 [now 19.14.52 NMAC].

D. Amended form G-102 (in quadruplicate or quintuplicate) shall be filed in the event there is a change in any of the information previously submitted. The well location need not be certified when filing amended form G-102.

[Recompiled 12/31/01]

PART 54: SUNDRY NOTICES AND REPORTS ON GEOTHERMAL RESOURCES WELL

19.14.54.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.54.2 SCOPE:

[RESERVED]

19.14.54.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.54.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.54.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.54.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.54.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.54.8 SUNDRY NOTICES AND REPORTS ON GEOTHERMAL RESOURCES WELL (FORM G-103):

Form G-103 is a dual purpose form to be filed with the Santa Fe office of the division to obtain approval prior to commencing certain operations and also to report various completed operations.

A. Form G-103 as a notice of intention: form G-103 shall be filed in duplicate by the operator and approval obtained from the division prior to:

(1) Effecting a change of plans from those previously approved on form G-101 or form G-103.

(2) Altering a drilling wells casing program or pulling casing or otherwise altering an existing well's casing installation.

(3) Temporarily abandoning a well. (See Rule G-303 B) [now 19.14.73.9 NMAC].

(4) Plugging and abandoning a well. (See Rules G-302 and G-303 A) [now 19.14.72 NMAC and 19.14.73.8 NMAC].

(5) Performing remedial work on a well which, when completed, will affect the original status of the well. (This shall include making new perforations in existing wells or squeezing old perforations in existing wells, but is not applicable to new wells in the process of being completed not to old wells being deepened or plugged back to another zone when such recompletion has been authorized by an approved form G-101, application for permit to drill, deepen, or plug back, nor to acidizing, fracturing or cleaning out previously completed wells.).

(6) In the case of well plugging operations, the notice of intention shall include a detailed statement of the proposed work, including plans for shooting and pulling casing, plans for mudding, including weight of mud, plans for cementing, including number of sacks of cement and depths of plugs and the time and date of the proposed plugging operations. (See Rules G-302 and G-303 A) [now 19.14.72 NMAC and 19.14.73.8 NMAC].

B. Form G-103 as a Subsequent Report. Form G-103 as a subsequent report of operations shall be filed in accordance with the section of this Rule applicable to the particular operation being reported. Form G-103 is to be used in reporting such completed operations as:

- (1) Commencement of drilling operations
- (2) Casing and cement test
- (3) Altering a well's casing installation
- (4) Temporary abandonment
- (5) Plugging and Abandonment
- (6) Plugging back or deepening
- (7) Remedial work
- (8) Change in ownership of a drilling well

(9) Such other operations which affect the original status of the well but which are not specifically covered herein.

C. Filing Form G-103 as a Subsequent Report. Information to be entered on form G-103, subsequent report, for a particular operation is as follows:

(1) Report of Commencement of Drilling Operations. Within ten days following the commencement of drilling operations, the operator of the well shall file a report thereof on form G-103 in duplicate. Such report shall indicate the hour and the date the well was spudded.

(2) Report of Results of Test of Casing and Cement Job; Report of Casing Alteration. A report of casing and cement test shall be filed by the operator of the well within ten days following the setting of each string of casing or liner. Said report shall be filed in duplicate on form G-103 and shall present a detailed description of the test method employed and the results obtained by such test, and any other pertinent information required by Rule G-108 B(5) [now Paragraph (5) of Subsection B of 19.14.27.8 NMAC]. The report shall also indicate the top of the cement and the means by which such top was determined. It shall also indicate any changes from the casing program previously authorized for the well.

(3) Report of Temporary Abandonment. A report of temporary abandonment of a well shall be filed by the operator of the well within ten days following completion of the work. The report shall be filed in duplicate and shall present a detailed account of the work done on the well, including location and type of plugs used, if any, type and status of surface and downhole equipment, and other pertinent information relative to the overall status of the well.

(4) Report on Plugging of Well.

(a) A report of plugging operations shall be filed by the operator of the well within 30 days following completion of plugging operations on any well. Said report shall be filed in triplicate on form G-103 and shall include the date the plugging operations were begun and the date the work was completed, a detailed account of the manner in which the work was performed including the depths and lengths of the various plugs set, the nature and quantities of materials employed in the plugging operations including the weight of the mud used, the size and depth of all casing left in the hole and any other pertinent information. (See Rules G-301 - G-303) [now 19.14.71 NMAC - 19.14.73 NMAC] regarding plugging operations.

(b) No plugging report will be approved by the division until all forms and reports on the well have been filed and the pits have been filled and the location levelled and cleared of junk. It shall be the responsibility of the operator to contact the Santa Fe office of the division when the location has been so restored in order to arrange for an inspection of the plugged well and the location by a division representative.

(5) Report of Remedial Work. A report of remedial work performed on a producing well or former producing well shall be filed by the operator of the well within 30 days following completion of such work. Said report shall be filed in duplicate on form G-103 and shall present a detailed account of the work done and the manner in which such work was performed; the daily production from the well both prior to and after the remedial operation; the size and depth of shots; the quantity of sand, acid, chemical or

other materials employed in the operation and any other pertinent information. Among the types of remedial work to be reported on form G-103 are the following:

- (a) Report on shooting, fluid fracturing or chemical treatment of a previously completed well
- (b) Report on squeeze job
- (c) Report on setting of liner or packer
- (d) Report of any other remedial operations which are not specifically covered herein
- (e) Report on deepening or plugging back

(6) Report of Change in Ownership of a Drilling Well. A report of change of ownership shall be filed by the new owner of any drilling well within ten days following actual transfer of ownership. Said report shall be filed in triplicate on form G-103 and shall include the name and address of both the new owner and the previous owner, the effective date of the change of ownership and any other pertinent information. No change in the ownership of a drilling well will be approved by the division unless the new owner has an approved bond in accordance with Rule G-101 [now 19.14.20 NMAC] and has filed satisfactory "Designation of Agent (Rule G-100) [now 19.14.1.17 NMAC]. The former owner of the well, to obtain release of his bond, shall follow the procedures set forth in Rule G-101(b) [now Subsection B of 19.14.20.8 NMAC]. (Form G-104 [now 19.14.23 NMAC] shall be used to report transfer of ownership of a completed well; see Rule G-204) [now 19.14.55 NMAC].

(7) Other Reports on Wells. Reports on any other operations which affect the original status of the well which are not specifically covered herein shall be submitted to the division on form G-103, in triplicate, by the operator of the well within ten days following the completion of such operation.

[Recompiled 12/31/01]

PART 55: CERTIFICATE OF COMPLIANCE AND AUTHORIZATION TO PRODUCE GEOTHERMAL RESOURCES

19.14.55.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.55.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.55.3 STATUTORY AUTHORITY:

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[Recompiled 12/31/01]

19.14.55.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.55.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.55.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.55.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

**19.14.55.8 CERTIFICATE OF COMPLIANCE AND AUTHORIZATION TO
PRODUCE GEOTHERMAL RESOURCES (FORM G-104):**

A. Prior to placing any geothermal resources well on production, injection or disposal, the owner or operator of said well shall file (in quintuplicate) with the division and receive approval thereof form G-104, certificate of compliance and authorization to produce geothermal resources, outlining thereon the information required and certifying that all division rules and regulations pertaining to the well have been complied with. Production of or injection into any well in violation of this rule shall result in the well being shut in by the division subject to the penalties provided by law for violation of the division's rules, orders and regulations. (In addition to form G-104 being approved, additional approval for injection or disposal must be obtained pursuant to Rules G-501-

G-505) [now 19.14.91 NMAC - 19.14.95 NMAC]. Form G-104 must be accompanied by three copies of form G-105, geothermal resources well log outlining the data required and with the attachments required by Rule G-205 A [now 19.14.56.8 NMAC], three copies of form G-106, geothermal resources well summary report (See Rule G-206) [now 19.14.57 NMAC] completely filled in and three copies of form G-107, geothermal resources well history (See Rule G-207) [now 19.14.58 NMAC] completely filled in.

B. Form G-104 shall also be filed in quintuplicate when there is a change in purchaser from a well or when there is a change of ownership of a producing well, injection well or disposal well. No change of ownership will be approved by the division unless the new owner has an approved bond in accordance with Rule G-101 [now 19.14.20 NMAC] and has filed satisfactory "Designation of Agent" (Rule G-100) [now 19.14.1.17 NMAC]. The former owner of the well, to obtain release of his bond, shall follow the procedures set forth in Rule G-101(b) [now Subsection B or 19.14.20.8 NMAC] (Form G-103 shall be used to report change of ownership of a drilling well; see Rule G-203 C(6).) [now Paragraph (6) of Subsection C of 19.14.54.8 NMAC].

C. After approval of form G-104, distribution of forms G-104, G-105, G-106 and G-107 shall be made by the division as follows:

- (1) one approved copy of form G-104 shall be returned to the operator;
- (2) one approved copy of form G-104 shall be forwarded to the purchaser from the well (except, of course, in the case of a disposal or injection well);
- (3) one approved copy of form G-104 and one copy of each of Forms G-105, G-106 and G-107 shall be forwarded to the New Mexico bureau of mines;
- (4) one approved copy of form G-104 and one copy each of forms G-105, G-106 and G-107 shall be forwarded to the United States geological survey; and
- (5) one approved copy of form G-104 and one copy each of form G-105, G-106 and G-107 shall be retained by the division.

[Recompiled 12/31/01]

PART 56: GEOTHERMAL RESOURCES WELL LOG

19.14.56.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.56.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.56.3 STATUTORY AUTHORITY:

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19.14.56.4 DURATION:

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November 15, 1983.

[Recompiled 12/31/01]

19.14.56.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.56.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.56.8 FOR PRODUCING, INJECTION, OR DISPOSAL WELLS:

Form G-105, geothermal resources well log, shall be filed in triplicate with the form G-104 when it is desired to put any geothermal resources well on production or injection or disposal. It shall be accompanied by copies of such logs, surveys, and tests which may have been conducted on the well, including electric logs, deviation and directional surveys, physical or chemical logs, water analyses, tests, including potential tests and temperature surveys. Failure to include these data and materials with the form G-105 will result in withholding approval of the form G-104, certificate of compliance and authorization to produce geothermal resources. Distribution of form G-105 for producing, injection or disposal wells shall be one copy to the New Mexico bureau of

mines, one copy to the United States geological survey, and one copy retained by the division.

[Recompiled 12/31/01]

19.14.56.9 FOR INACTIVE OR TEMPORARILY ABANDONED WELLS:

Form G-105, geothermal resources well log, with the attachments described in Rule G-205 A [now 19.14.56.8 NMAC], shall be filed in triplicate for every geothermal resources well, except thermal gradient wells, not on active producing or injection or disposal status within six months after cessation of active drilling operations on the well unless a permit for temporary abandonment shall have been approved for the well in accordance with Rule G-303 B [now 19.14.73.9 NMAC]. In no event, even in the case of prolonged temporary abandonment approved by the division, shall the filing of form G-105 with required attachments be delayed for more than five years after cessation of active drilling operations. Distribution of form G-105 for inactive or temporarily abandoned wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey, and one copy retained by the division.

[Recompiled 12/31/01]

19.14.56.10 FOR PLUGGED AND ABANDONED WELLS:

Form G-105, geothermal resources well log, together with all the attachments required by Rule G-205 A [now 19.14.56.8 NMAC] above, shall be filed in triplicate for all plugged and abandoned wells, except thermal gradient wells, within six months after abandonment. Distribution of form G-105 for abandoned wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey, and one copy retained by the division.

[Recompiled 12/31/01]

PART 57: GEOTHERMAL RESOURCES WELL SUMMARY REPORT

19.14.57.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.57.2 SCOPE:

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19.14.57.3 STATUTORY AUTHORITY:

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19.14.57.4 DURATION:

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November 15, 1983.

[Recompiled 12/31/01]

19.14.57.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.57.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.57.8 FOR PRODUCING, INJECTION, OR DISPOSAL WELLS:

Form G-106, geothermal resources well summary report, completely filled in, shall be filed in triplicate with the form G-104 when it is desired to put any geothermal resources well on production or injection or disposal. Failure to file a completed form G-106 will result in withholding approval of the form G-104, certificate of compliance and authorization to produce geothermal resources. Distribution of form G-106 for producing, injection, or disposal wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey and one copy retained by the division.

[Recompiled 12/31/01]

19.14.57.9 FOR INACTIVE OR TEMPORARILY ABANDONED WELLS:

Form G-106, geothermal resources well summary report, shall be filed in triplicate for every geothermal resources well, except thermal gradient wells, not on active producing or injection or disposal status within 90 days after cessation of active drilling operations. The owner or operator of the well shall state on the form the general results of the well's condition, i.e., whether the well is capable of production of geothermal resources and will be retained for such purpose, whether the well will be used for injection or disposal purposes, whether the well has been or will be plugged and abandoned or what other disposition of the well is to be made. A summary of the well's casing and cementing program shall be shown on the form, and in case the well is to be retained for production, injection or disposal purposes, the total mass flow in pounds per hour, flowing temperature in degrees fahrenheit, and flowing pressure in pounds per square inch gauge. Distribution of form G-106 for inactive or temporarily abandoned wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey and one copy retained by the division. If form G-106 is filed for an inactive or temporarily abandoned well, and the well later goes on active production or injection, refiling of form G-106 completely filled in accordance with Rule G-206-A [now 19.14.57.8 NMAC] above is required.

[Recompiled 12/31/01]

19.14.57.10 FOR PLUGGING AND ABANDONED WELLS:

Form G-106, geothermal resources well summary report, completely filled in, shall be filed in triplicate for plugged and abandoned wells, except thermal gradient wells, within six months after abandonment. Distribution of form G-106 for abandoned wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey, and one copy retained by the division.

[Recompiled 12/31/01]

PART 58: GEOTHERMAL RESOURCES WELL HISTORY

19.14.58.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.58.4 DURATION:

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19.14.58.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.58.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.58.8 FOR PRODUCING, INJECTION, OR DISPOSAL WELLS:

Form G-107, geothermal resources well history, is a chronological history of the entire operation of drilling and completing the well and shall be filed in triplicate with the form G-104 when it is desirable to put any geothermal resources well on production or injection or disposal. Failure to file a completed form G-107 will result in withholding approval of form G-104, certificate of compliance and authorization to produce geothermal resources. Distribution of form G-107 for producing, injection or disposal wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey and one copy retained by the division.

[Recompiled 12/31/01]

**19.14.58.9 FOR NON-PRODUCING OR TEMPORARILY ABANDONED WELLS
OTHER THAN THERMAL GRADIENT WELLS:**

Form G-107, geothermal resources well history, shall be filed in triplicate for every geothermal resources well not on active producing or injection or disposal status within

six months after cessation of active drilling operations on the well unless a permit for temporary abandonment shall have been approved for the well in accordance with Rule G-303 B [now 19.14.73.9 NMAC]. In no event, even in the case of prolonged temporary abandonment approved by the division, shall the filing of form G-107 be delayed for more than five years after cessation of active drilling operations. Distribution of form G-107 for inactive or temporarily abandoned wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey and one copy retained by the division.

[Recompiled 12/31/01]

19.14.58.10 FOR PLUGGED AND ABANDONED WELLS OTHER THAN THERMAL GRADIENT WELLS:

Form G-107, geothermal resources well history, shall be filed in triplicate for plugged and abandoned wells within six months after abandonment. Distribution of form G-107 for abandoned wells shall be one copy to the New Mexico bureau of mines, one copy to the United States geological survey and one copy retained by the division.

[Recompiled 12/31/01]

PART 59: MONTHLY GEOTHERMAL PRODUCTION REPORT

19.14.59.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.59.2 SCOPE:

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19.14.59.3 STATUTORY AUTHORITY:

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19.14.59.4 DURATION:

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19.14.59.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.59.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.59.8 MONTHLY GEOTHERMAL PRODUCTION REPORT (FORM G-108):

After placing any geothermal well on production, the owner or operator thereof shall file in duplicate a monthly production report, form G-108, which report shall be due in the Santa Fe office of the division by the 20th day of each month and shall show the production from each well and each lease during the preceding calendar month.

[Recompiled 12/31/01]

PART 60: MONTHLY GEOTHERMAL PURCHASER'S REPORT

19.14.60.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.60.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.60.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.60.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.60.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.60.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.60.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.60.8 MONTHLY GEOTHERMAL PURCHASER'S REPORT (FORM G-109):

The purchaser of production from any geothermal resource well shall file in duplicate a monthly purchaser's report, form G-109, which report shall be due in the Santa Fe office of the division by the 15th day of each month and shall show the purchases made from all leases and wells connected to the purchaser's facilities during the preceding calendar month.

[Recompiled 12/31/01]

**PART 61: MONTHLY GEOTHERMAL INJECTION REPORT MONTHLY
GEOTHERMAL INJECTION REPORT**

19.14.61.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.61.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.61.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.61.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.61.5 EFFECTIVE DATE:

November 15, 1983.

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19.14.61.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.61.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.61.8 MONTHLY GEOTHERMAL INJECTION REPORT (FORM G-110):

After placing any well on injection or disposal in a geothermal resources field or area, the owner or operator thereof shall file in duplicate a monthly injection report, form G-110, which report shall be due in the Santa Fe office of the division by the 20th day of each month and shall show the zone or formation into which injection is being made, the volume injected, the average temperature of the injected fluid and the average injection pressure at the wellhead.

[Recompiled 12/31/01]

PART 62: ANNUAL GEOTHERMAL TEMPERATURE AND PRESSURE TESTS

19.14.62.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.62.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.62.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.62.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.62.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.62.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.62.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

**19.14.62.8 ANNUAL GEOTHERMAL TEMPERATURE AND PRESSURE TESTS
(FORM G-111):**

Annual temperature and pressure tests shall be submitted by the owner or operator of each geothermal resource producing well in accordance with the annual testing schedule published by the division. Flowing temperatures and flowing pressure tests at the wellhead shall be recorded after at least 72 hours of continuous flow at normal producing rates. The well shall then be shut in for 24 hours and shut-in pressure at the wellhead recorded. Results of these tests shall be submitted in duplicate to the Santa Fe office of the division.

[Recompiled 12/31/01]

**PART 63: APPLICATION TO PLACE WELL ON INJECTION-
GEOTHERMAL RESOURCES**

19.14.63.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.63.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.63.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.63.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.63.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.63.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.63.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.63.8 APPLICATION TO PLACE WELL ON INJECTION-GEOTHERMAL RESOURCES AREA (FORM G-112):

Before placing any well on injection in a geothermal resources area, whether for charge, recharge or disposal purposes, authority to do so shall be obtained on form G-112 which shall be filed in accordance with Rule G-503 [now 19.14.93 NMAC].

[Recompiled 12/31/01]

PART 64-70: [RESERVED]

PART 71: GEOTHERMAL POWER LIABILITY

19.14.71.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.71.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.71.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.71.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.71.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.71.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.71.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.71.8 LIABILITY:

The owner of any geothermal resources well or any seismic, core or other hole drilled for geothermal purposes shall be responsible for the plugging thereof.

[Recompiled 12/31/01]

PART 72: GEOTHERMAL POWER NOTICE

19.14.72.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.72.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.72.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.72.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.72.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.72.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.72.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.72.8 NOTICE:

Prior to commencement of plugging operations, notice of intention to plug shall be filed with the division, and approval thereof obtained by the owner or operator of the well. This shall be accomplished by filing form G-103, sundry notices and reports on geothermal wells, which notice shall outline the casing and cementing program of the well, the casing which is to be pulled, the size of proposed cement plugs and their depth and such other information as may be pertinent. In the case of newly drilled wells which are to be plugged, verbal authority and instructions may be given by the division to plug the well provided written notice to plug shall be subsequently filed within 30 days and approval thereof obtained. Written approval or verbal approval of a plugging program shall be subsequently filed within 30 days and approval thereof obtained. Written approval or verbal approval of a plugging program shall be contingent upon evidence being furnished that the plugging program for the well is such as to prevent damage to any producing zone, migration of fluids from one zone to another, the waste or contamination of useable underground waters or other natural resources and the

leakage of any substance at the surface, all as substantiated by the filing of form G-105, geothermal resources well log, and form G-106, geothermal well summary report, with the request for approval of the plugging program. Filing of these forms may be delayed as provided in Rule G-205 C [now 19.14.56.10 NMAC] and Rule G-206 C [now 19.14.57.10 NMAC] if a division representative has had access to and has inspected the data and materials described in Rule G-200 B [now 19.14.51.9 NMAC]. Also see Rule G-203 A [now Subsection A of 19.14.54.8 NMAC], Rule G-203 c (4) [now Paragraph (4) of Subsection C of 19.14.54.8 NMAC] and Rule G-303 A [now of 19.14.73.8 NMAC].

[Recompiled 12/31/01]

PART 73: GEOTHERMAL POWER PLUGGING AND TEMPORARY ABANDONMENT

19.14.73.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.73.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.73.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.73.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.73.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.73.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.73.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.73.8 PLUGGING:

Before any well is abandoned, it shall be plugged in a manner that will permanently confine all fluids in the separate strata originally containing them. This operation shall be accomplished by the use of mud-laden fluid, cement and plugs, used singly or in combination, as may be approved by the division. In addition, an adequate cement plug at the surface shall be installed to permanently prevent intrusion of any substance into the well. The exact location of abandoned wells shall be shown by a steel marker at least four inches in diameter set in concrete and extending at least four feet above mean ground level. The name and number of the well and its location (quarter-quarter, section, township and range) shall be welded, stamped, or otherwise permanently engraved into the metal of the marker. seismic, core, thermal gradient or other wells less than 500 feet deep and low-temperature thermal wells less than 500 feet deep shall be plugged in accordance with the applicable provisions recited above but permanent markers shall not be required on such wells.

[Recompiled 12/31/01]

19.14.73.9 TEMPORARY ABANDONMENT:

No well shall be temporarily abandoned for a period in excess of six months unless a permit for such temporary abandonment has been approved by the division. Such permit shall be for a period not to exceed six months and shall be requested from the Santa Fe office of the division by filing form G-103 in duplicate. No such permit shall be approved unless evidence is furnished that the condition of the well is such as to prevent damage to any producing zone, migration of fluids from one zone to another, the waste or contamination of useable underground waters or other natural resources and the leakage of any substance at the surface, all as substantiated by the filing of form G-105, geothermal resources well log, and form G-106, geothermal resources well summary report, with the request for a temporary abandonment permit. Filing of these forms may be delayed as provided in Rule G-205 B [now 19.14.56.9 NMAC] and Rule G-206 B [now 19.14.57.9 NMAC] if a division representative has had access to and has inspected the data and materials described in Rule G-200 B [now 19.14.51.9 NMAC] .

Also see Rule G-203 A [now subsection A of 19.14.54.8 NMAC] and Rule G-203 C(3) [now Paragraph (3) of Subsection C of 19.14.54.8 NMAC].

A. The Santa Fe office of the division shall have authority to grant one extension to the permit for temporary abandonment. Such extension shall not exceed one year and shall be requested in the same manner as the original permit for temporary abandonment. No extension shall be approved unless good cause therefor is shown, and evidence is furnished that the continued condition of the well is as described above.

B. Upon expiration of the permit for temporary abandonment and any extension thereto, the well shall be put to beneficial use or shall be permanently plugged and abandoned, unless it can be shown to the division after notice and hearing that good cause exists why the well should not be plugged and abandoned, and a permit for further temporary abandonment should be issued. No such permit for further temporary abandonment shall be approved by the division unless a one-well plugging bond for the well, in an amount satisfactory to the division, but not to exceed \$10,000.00, is on file with the division to ensure future plugging of the well.

C. The requirements of the paragraph immediately above may be waived and additional extensions granted for thermal gradient wells and in those cases where it can be shown that a contract exists for the construction of electric power plants and such plants are being designated, on order, or under construction, where facilities are being designed or are under construction for direct use of geothermal energy, or in the case where a geothermal reservoir has been discovered and there is an ongoing exploration program of the reservoir to determine its commercial feasibility.

[Recompiled 12/31/01]

19.14.73.10 DRILLING WELLS:

When drilling operations on a well have been suspended for 60 days, the well shall be plugged and abandoned unless a permit for temporary abandonment has been obtained for the well in accordance with Section B [now 19.14.73.9 NMAC] above.

[Recompiled 12/31/01]

PART 74: GEOTHERMAL POWER, WELLS MAY BE USED FOR FRESH WATER

19.14.74.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.74.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.74.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.74.4 DURATION:

[RESERVED]

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19.14.74.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.74.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.74.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.74.8 WELLS TO BE USED FOR FRESH WATER:

When the well to be plugged may safely be used as a fresh water well and such utilization is desired by the land owner, the well need not be filled above a sealing plug set below the fresh water formation, provided that written agreement for such use by the owner of the well and by the land owner is filed with the division. Upon acceptance of the well by the land owner, the well's bond may be released.

[Recompiled 12/31/01]

PART 75-80: [RESERVED]

PART 81: GEOTHERMAL POWER, ILLEGAL SALE PROHIBITED

19.14.81.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.81.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.81.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.81.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.81.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.81.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.81.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.81.8 ILLEGAL SALE PROHIBITED:

The sale or purchase or acquisition or the transporting or utilization of geothermal resources produced in violation of the laws of this state, or of these rules, is prohibited.

[Recompiled 12/31/01]

PART 82: GEOTHERMAL POWER, RATABLE TAKE

19.14.82.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.82.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.82.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.82.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.82.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.82.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.82.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.82.8 RATABLE TAKE:

A. Any person now or hereafter engaged in purchasing geothermal resources from one or more producers within a single geothermal reservoir shall be a common purchaser within that geothermal reservoir, and shall purchase geothermal resources of like quality, quantity and pressure lawfully produced from that geothermal reservoir and tendered to such common purchaser at a reasonable point. Such purchase shall be made without reasonable discrimination in favor of one producer against another in the price paid, quantities taken, the bases of measurement or the facilities offered.

B. In the event such purchaser is also a producer, he is prohibited to the same extent from discriminating in favor of himself with respect to geothermal resource wells in which he has an interest, direct or indirect, as against other geothermal resource wells in the same geothermal reservoir.

C. For the purposes of this rule, reasonable differences in prices paid or facilities afforded, or both, shall not constitute unreasonable discrimination if such differences bear a fair relationship to difference in quality, quantity, or pressure of the geothermal resource available or to the relative lengths of time during which such geothermal resources will be available to the purchaser.

D. Any common purchaser taking geothermal resources produced from wells within a geothermal reservoir shall take ratably under such rules, regulations and orders, concerning quantity, as may be promulgated by the division after due notice and public hearing. The division, in promulgating such rules, regulations and orders may consider the quality and the quantity of the geothermal resources available, the pressure and temperature of the product at the point of delivery, acreage attributable to the well, market requirements and other pertinent factors.

E. Nothing in this Rule shall be construed or applied to require, directly or indirectly, any person to purchase geothermal resources of a quality or under a pressure or under any other condition by reason of which such geothermal resource cannot be economically and satisfactorily used by such purchaser by means of his geothermal utilization facilities then in service.

[Recompiled 12/31/01]

PART 83: REGULATION OF GEOTHERMAL RESOURCES PRODUCTION

19.14.83.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.83.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.83.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.83.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.83.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.83.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.83.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.83.8 REGULATION OF GEOTHERMAL RESOURCES PRODUCTION:

Upon determination by the division that geothermal resources production in the state of New Mexico, or in a particular geothermal resources area, is causing waste, the division

shall limit and allocate among the producing wells the total amount of geothermal resources which may be produced in the state, or in a particular geothermal area.

[Recompiled 12/31/01]

PART 84-90: [RESERVED]

PART 91: GEOTHERMAL INJECTION WELLS

19.14.91.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.91.2 SCOPE:

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19.14.91.3 STATUTORY AUTHORITY:

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[Recompiled 12/31/01]

19.14.91.4 DURATION:

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[Recompiled 12/31/01]

19.14.91.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.91.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.91.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.91.8 GEOTHERMAL INJECTION WELLS:

Geothermal injection wells are those wells used for the purpose of injecting fluids into a dry geothermal formation, or into a geothermal reservoir for the purpose of augmenting the natural supply of fluids in the reservoir, pressure maintenance of the reservoir, or such other purpose as authorized by the division. No well shall be utilized as a geothermal injection well until authority for such use has been obtained on an approved form G-112, application to place well on injection-geothermal resources area. Form G-112 shall be filed in accordance with Rule G-503 [now 19.14.93 NMAC] below.

[Recompiled 12/31/01]

PART 92: GEOTHERMAL DISPOSAL WELLS

19.14.92.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.92.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.92.3 STATUTORY AUTHORITY:

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[Recompiled 12/31/01]

19.14.92.4 DURATION:

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[Recompiled 12/31/01]

19.14.92.5 EFFECTIVE DATE:

November 15, 1983.

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19.14.92.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.92.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.92.8 GEOTHERMAL DISPOSAL WELLS:

Geothermal disposal wells are those wells used for the purpose of disposing of waters produced from a geothermal reservoir when disposal is into a zone or formation not classified as a geothermal reservoir. No well shall be utilized as a geothermal disposal well until authority for such use has been obtained on an approved form G-112, application to place well on injection-geothermal resources area. Form G-112 shall be filed in accordance with Rule G-503 [now 19.14.93 NMAC] below.

[Recompiled 12/31/01]

PART 93: GEOTHERMAL POWER, METHOD OF MAKING APPLICATION

19.14.93.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.93.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.93.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.93.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.93.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.93.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.93.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.93.8 METHOD OF MAKING APPLICATION:

A. Application for authority to inject fluids into a geothermal reservoir or to dispose of geothermal waters into a zone or formation not classified as a geothermal reservoir shall be made in duplicate on division form G-112, application to place well on injection-geothermal resources area, and shall be accompanied by one copy of each of the following:

(1) A plat showing the location of the proposed injection/disposal well and the location of all other wells within a radius of one mile from said well, and indicating the perforated or open-hole interval in each of said wells. The plat shall also indicate the ownership of all geothermal leases within said one-mile radius;

(2) The log of the proposed injection well, if available;

(3) A diagrammatic sketch of the proposed injection well showing casing strings, including diameters and setting depths, quantities used and tops of cement, perforated or open-hole interval, tubing strings, including diameters and setting depths, and the type and location of packers, if any.

B. Copies of the form G-112 (without the above attachments) shall be sent to all other geothermal lease owners, if any there be, within a one-half mile radius of the proposed injection/disposal well.

C. If no objection is received within 20 days from the date of receipt of the application, and the division director is satisfied that all of the above requirements have been complied with, that the proposal is in the interest of conservation and will prevent waste and protect correlative rights, and that the well is cased, cemented, and equipped in such a manner that there will be no danger to any natural resource, including geothermal resources, useable underground water supplies, and surface resources, form G-112 will be approved. In the event the form is not approved because of objection from an affected geothermal lease owner or for other reason, the application will be set for public hearing, if the applicant so requests.

D. The division director may dispense with the 20-day waiting period if waivers of objection are received from all geothermal lease owners within a one-half mile radius of the proposed injection/disposal well.

[Recompiled 12/31/01]

PART 94: GEOTHERMAL POWER, INJECTION REPORTS

19.14.94.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.94.2 SCOPE:

[RESERVED]

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19.14.94.3 STATUTORY AUTHORITY:

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[Recompiled 12/31/01]

19.14.94.4 DURATION:

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[Recompiled 12/31/01]

19.14.94.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.94.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.94.8 INJECTION REPORTS:

Monthly injection reports shall be filed for injection/disposal wells in accordance with Rule G-210 [now 19.14.61 NMAC] of these rules and regulations.

[Recompiled 12/31/01]

PART 95: GEOTHERMAL POWER, SURVEILLANCE

19.14.95.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

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19.14.95.2 SCOPE:

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19.14.95.3 STATUTORY AUTHORITY:

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19.14.95.4 DURATION:

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19.14.95.5 EFFECTIVE DATE:

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[Recompiled 12/31/01]

19.14.95.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.95.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.95.8 SURVEILLANCE:

A. Surveillance of waste water disposal or injection projects is necessary on a continuing basis in order to establish to the satisfaction of the division that all water is confined to the intended zone of injection.

B. When an operator proposes to drill an injection well, convert a producing or inactive well to an injection well or rework an injection well and return it to injection service, he shall be required to demonstrate to the division by means of such tests as the division may deem necessary the integrity of the well's casing.

C. To establish the integrity of the annular cement above the shoe of the casing, the operator shall make sufficient surveys, within 30 days after injection is started into a well, to demonstrate that all the injected fluid is confined to the intended zone of injection. Thereafter, such surveys shall be made at least every two years, or more often if ordered by the division. All such surveys may be witnessed by a representative of the division.

D. After the well has been placed on injection, a division representative shall visit the wellsite periodically. At these times, surface conditions shall be noted and if any unsatisfactory conditions exist, the operator shall be notified of needed remedial work. If this required work is not performed within 90 days, the approval issued by the division

may be rescinded. If it is determined that damage is occurring at a rapid rate, the division may order that the repair work be done immediately. Injection pressures shall be recorded by the division representative and compared with the pressure reported on the appropriate forms. Any discrepancies shall be rectified immediately by the operator. A graph of daily injection rates and pressures versus time shall be maintained by the operator. Reasons for anomalies shall be promptly ascertained. If these reasons are such that it appears damage is being done, approval by the division may be rescinded, and injection shall cease.

E. When an injection well has been left idle for six months, the operator shall be informed by letter that approval for use of the well for injection purposes has been rescinded, and that he should proceed in accordance with the provisions of Rule G-302 [now 19.14.72 NMAC] and Rule G-303 A [now 19.14.73.8 NMAC] or Rule G-303 B [now 19.14.73.9 NMAC]. In the event the operator intends to again use the well for injection purposes, he shall be required to demonstrate by means of surveys that the injected water will be confined to the intended zone of injection.

[Recompiled 12/31/01]

PART 96: GEOTHERMAL POWER, ABANDONMENT

19.14.96.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.96.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.96.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.96.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.96.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.96.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.96.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.96.8 ABANDONMENT:

Injection or disposal wells are required to be abandoned in the same manner as other wells. (See Sec. E, Abandonment, Temporary Abandonment, and Plugging of Wells).

[Recompiled 12/31/01]

PART 97-100: [RESERVED]

PART 101: GEOTHERMAL POWER, GENERAL

19.14.101.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.101.2 SCOPE:

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19.14.101.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.101.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.101.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.101.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.101.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.101.8 GENERAL:

A. In areas where high subsurface pressures are known to exist, or where there is a history of lost circulation and/or blowouts, or in areas where subsurface pressures are not known, all proper and usual precautions shall be taken for keeping the well under control, including the use of blowout preventers and high pressure fittings attached to properly cemented casing strings.

B. The division geothermal supervisor shall have the authority to waive the requirement for casing and/or blowout preventers for holes less than 500 feet deep.

[Recompiled 12/31/01]

**PART 102: GEOTHERMAL POWER, BLOWOUT PREVENTION
EQUIPMENT**

19.14.102.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.102.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.102.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.102.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.102.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.102.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.102.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.102.8 BLOWOUT PREVENTION EQUIPMENT (BOPE):

The following standards are not given as final blowout prevention equipment requirements for the drilling of any geothermal resources well but are given as guidelines for the preparation of a minimum blowout prevention program for certain categories of wells.

- A. Using Mud as the Drilling Fluid.

(1) API Class 2M-A or 2M-RR. For wells in geothermal resources areas known to contain geothermal fluids at a temperature greater than 212 degrees F. at depths less than 2,000 feet, and geothermal exploratory wells in areas where subsurface temperatures and pressures are unknown and the proposed depth of the well is less than 2,000 feet.

(a) An annular BOPE and a spool, fitted with a low-pressure safety pop-off and blow-down line, installed on the conductor pipe may be required for wells in the above categories to ensure against possible gas blowouts during the drilling of the surface casing hole.

(b) Annular BOPE or pipe-ram/blind-ram BOPE with minimum working-pressure ratings of 2,000 psi shall be installed on the surface casing so that the well can be shut in at any time.

(c) Hydraulic actuating system.

(d) Kelly cock.

(e) A fill-up line installed above the BOPE.

(f) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(g) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in such a manner so as to permit containment of produced fluids and to minimize any safety hazard to personnel.

(h) All lines and fittings shall be steel and have a minimum working-pressure rating of 1,000 psi.

(i) Return mud temperatures shall be entered into the log book after each joint of pipe is drilled down. See Rule G-106(b) [now Subsection B of 19.14.25.8 NMAC].

(2) API Class 2M-RSRA or Equivalent. For wells in geothermal resources areas known to contain geothermal fluids at temperatures greater than 212 degrees F. at depths more than 2,000 feet, and geothermal exploratory wells in areas where subsurface temperatures and pressures are unknown and the proposed depth of the well is more than 2,000 feet.

(a) An annular BOPE and a spool, fitted with a low-pressure safety pop-off and blow-down line, installed on the conductor pipe may be required to ensure against possible gas blowouts during the drilling of the surface casing hole.

(b) Annular BOPE and pipe-ram/blind-ram BOPE with a minimum working-pressure rating of 2,000 psi shall be installed so that the well can be shut in at any time. The double-ram preventer shall have a mechanical locking device.

(c) A hydraulic actuating system utilizing an accumulator of sufficient capacity and a high pressure auxiliary backup system. This total system shall be equipped with dual controls; one at the driller's station and one at least 50 feet away from the wellhead.

(d) Kelly cock and standpipe valve.

(e) A fill-up line installed above the BOPE.

(f) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(g) A blow-down line fitted with two valves installed below the BOPE. The blow-down line shall be directed in such a manner so as to permit containment of produced fluids and to minimize any safety hazard to personnel.

(h) All lines and fittings shall be steel and have a minimum working-pressure rating of at least that of the BOPE.

(i) Return mud temperatures shall be entered into the log book after each joint of pipe is drilled down. (See Rule G-106(b).) [now Subsection B of 19.14.25.8 NMAC].

B. Using Air as the Drilling Fluid. API Class 2M RSRdG (with Banjo Box). For wells in geothermal resources areas where it is known that dry steam exists at depth and/or formation pressures are known to be less than hydrostatic:

(1) A rotating head installed at the top of the BOPE stack.

(2) A pipe-ram/blind-ram BOPE, with a minimum working-pressure rating of 2,000 psi installed below the rotating head so that the well can be shut in at any time.

(3) A banjo box steam diversion unit installed below the double-ram BOPE fitted with an approved muffler in good working condition.

(4) A blind-ram BOPE, with a minimum working-pressure rating of 2,000 psi installed below the banjo box so that the well can be shut in while removing the rotating head during bit changes.

(5) A gate valve, with a suitable minimum working-pressure rating installed below the blind ram so that the well can be shut in after the well has been completed, prior to removal of the BOPE stack.

(6) All ram-type BOPE shall have a hydraulic actuating system utilizing an accumulator of sufficient capacity and a high-pressure backup system.

(7) Dual control stations for hydraulic backup system: one at the driller's station and the other at least 50 feet away from the wellhead.

(8) Float and standpipe valves.

(9) A kill line installed below the BOPE, leading directly to the mud pumps and fitted with a valve through which cement could be pumped if necessary.

(10) All lines and fittings must be steel and have a minimum working-pressure rating of 1,000 psi. Note: If any portion of a well is drilled using mud, Class 2M BOPE shall be installed on the surface casing so that the well can be shut-in at any time.

[Recompiled 12/31/01]

PART 103: GEOTHERMAL POWER, AREAS WITH HISTORY OF BLOWOUTS

19.14.103.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.103.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.103.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.103.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.103.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.103.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.103.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.103.8 AREAS WITH HISTORY OF BLOWOUTS:

Notwithstanding any of the provisions of Rule G-602 [now 19.14.102 NMAC], above, when drilling in any geothermal resources area which has a history of lost circulation and/or blowouts, the operator shall equip the well with adequate blowout prevention equipment to contain such pressures as may have previously been encountered in the other well(s).

[Recompiled 12/31/01]

PART 104: GEOTHERMAL POWER, TESTING OF BLOWOUT PREVENTION EQUIPMENT

19.14.104.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.104.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.104.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.104.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.104.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.104.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.104.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.104.8 TESTING OF BLOWOUT PREVENTION EQUIPMENT:

A. Upon installation, ram-type blowout preventers, bag-type blowout preventers, valves and manifolds shall be tested to a minimum of 750 psi pressure. Tests may be witnessed by a division representative on all wells prior to drilling out the shoe of the surface casing, and the division shall be notified of the date and hour any such test is to be conducted sufficiently in advance of the test to allow a division representative to travel to the well to witness the test.

B. Ram-type preventers shall be operated at least once each 24 hours and bag-type preventers closed on the drill pipe at least once each week, provided however, that an exception to this provision may be granted by the division's geothermal section to prevent undue wear and tear on the preventer rubbers when drilling drysteam wells.

[Recompiled 12/31/01]

PART 105-109: [RESERVED]

**PART 110: GEOTHERMAL POWER, NECESSITY FOR HEARING
[REPEALED]**

[This part was repealed on 2/27/2018]

PART 111: GEOTHERMAL POWER, EMERGENCY ORDERS [REPEALED]

[This part was repealed on 2/27/2018]

PART 112: GEOTHERMAL POWER, METHOD OF INITIATING A HEARING [REPEALED]

[This part was repealed on 2/27/2018]

PART 113: GEOTHERMAL POWER, METHOD OF GIVING LEGAL NOTICE FOR HEARING [REPEALED]

[This part was repealed on 2/27/2018]

PART 114: GEOTHERMAL POWER, CONTENTS OF NOTICE OF HEARING [REPEALED]

[This part was repealed on 2/27/2018]

PART 115: GEOTHERMAL POWER, PERSONAL SERVICE OF NOTICE [REPEALED]

[This part was repealed on 2/27/2018]

PART 116: GEOTHERMAL POWER, PREPARATION OF NOTICES [REPEALED]

[This part was repealed on 2/27/2018]

PART 117: GEOTHERMAL POWER, FILING PLEADINGS: COPY DELIVERED TO ADVERSE PARTY OR PARTIES [REPEALED]

[This part was repealed on 2/27/2018]

PART 118: GEOTHERMAL POWER, CONTINUANCE OF HEARING WITHOUT NEW SERVICE [REPEALED]

[This part was repealed on 2/27/2018]

PART 119: GEOTHERMAL POWER, CONDUCT OF HEARINGS [REPEALED]

[This part was repealed on 2/27/2018]

PART 120: GEOTHERMAL POWER, POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE [REPEALED]

[This part was repealed on 2/27/2018]

PART 121: GEOTHERMAL POWER, RULES OF EVIDENCE [REPEALED]

[This part was repealed on 2/27/2018]

PART 122: GEOTHERMAL POWER, EXAMINERS QUALIFICATIONS AND APPOINTMENT [REPEALED]

[This part was repealed on 2/27/2018]

PART 123: GEOTHERMAL POWER, REFERRAL OF CASES TO EXAMINERS [REPEALED]

[This part was repealed on 2/27/2018]

PART 124: GEOTHERMAL POWER, EXAMINER'S POWER AND AUTHORITY [REPEALED]

[This part was repealed on 2/27/2018]

PART 125: GEOTHERMAL POWER, HEARINGS MUST BE HELD BEFORE THE COMMISSION [REPEALED]

[This part was repealed on 2/27/2018]

PART 126: GEOTHERMAL POWER, EXAMINER'S MANNER OF CONDUCTING HEARINGS [REPEALED]

[This part was repealed on 2/27/2018]

PART 127: GEOTHERMAL POWER, REPORT AND RECOMMENDATIONS, EXAMINER'S HEARING [REPEALED]

[This part was repealed on 2/27/2018]

PART 128: GEOTHERMAL POWER, DISPOSITION OF CASES HEARD BY EXAMINERS [REPEALED]

[This part was repealed on 2/27/2018]

PART 129: GEOTHERMAL POWER, DE NOVO HEARING BEFORE COMMISSION [REPEALED]

[This part was repealed on 2/27/2018]

PART 130: GEOTHERMAL POWER, NOTICE OF COMMISSION AND DIVISION ORDERS [REPEALED]

[This part was repealed on 2/27/2018]

PART 131: GEOTHERMAL POWER, REHEARINGS [REPEALED]

[This part was repealed on 2/27/2018]

PART 132: GEOTHERMAL POWER, CHANGES IN FORMS AND REPORTS

19.14.132.1 ISSUING AGENCY:

Energy and Minerals Department, Oil Conservation Division, P.O. Box 2088, Santa Fe, New Mexico.

[Recompiled 12/31/01]

19.14.132.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.14.132.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 12/31/01]

19.14.132.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.14.132.5 EFFECTIVE DATE:

November 15, 1983.

[Recompiled 12/31/01]

19.14.132.6 OBJECTIVE:

[RESERVED]

[Recompiled 12/31/01]

19.14.132.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.14.132.8 CHANGES IN FORMS AND REPORTS:

Any change in the forms and reports or rules relating to such forms and reports shall be made only by order of the commission or division issued after due notice and hearing.

[Recompiled 12/31/01]

CHAPTER 15: OIL AND GAS

PART 1: GENERAL PROVISIONS AND DEFINITIONS [REPEALED]

[This part was repealed effective 12/1/2008 because of a restructuring effort involving many of the rules in Title 19, Chapter 15. Material previously found in this part is now available at 19.15.2 NMAC, General Provisions for Oil and Gas Operations.]

PART 2: GENERAL PROVISIONS FOR OIL AND GAS OPERATIONS

19.15.2.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.2.1 NMAC - Rp, 19.15.1.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.2 SCOPE:

19.15.2 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico and to 19.15.2 NMAC through 19.15.39 NMAC.

[19.15.2.2 NMAC - Rp, 19.15.1.2 NMAC, 12/1/2008]

19.15.2.3 STATUTORY AUTHORITY:

19.15.2 NMAC is adopted pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978, which grants the oil conservation division jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash because of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations.

[19.15.2.3 NMAC - Rp, 19.15.1.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.4 DURATION:

Permanent.

[19.15.2.4 NMAC - Rp, 19.15.1.4 NMAC, 12/1/2008]

19.15.2.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.2.5 NMAC - Rp, 19.15.1.5 NMAC, 12/1/2008]

19.15.2.6 OBJECTIVE:

To set forth general provisions and definitions pertaining to the authority of the oil conservation division and the oil conservation commission pursuant to the Oil and Gas Act, Sections 70-2-1 through 70-2-38 NMSA 1978.

[19.15.2.6 NMAC - Rp, 19.15.1.6 NMAC, 12/1/2008; A, 6/26/2018]

19.15.2.7 DEFINITIONS:

These definitions apply to 19.15.2 NMAC through 19.15.39 NMAC.

A. Definitions beginning with the letter "A".

- (1) "Abate"** means to investigate, contain, remove or mitigate water pollution.
- (2) "Abatement"** means the investigation, containment, removal or other mitigation of water pollution.
- (3) "Abatement plan"** means a description of operational, monitoring, contingency and closure requirements and conditions for water pollution's prevention, investigation and abatement.

(4) **"Act" or "Oil and Gas Act"** means Chapter 70, Article 2 NMSA 1978, as it may be modified or amended.

(5) **"Adjoining spacing units"** mean those existing or prospective spacing units in the same pool that are touching at a point or line on the subject spacing unit.

(6) **"Adjusted allowable"** means the allowable production a well or proration unit receives after all adjustments are made.

(7) **"AFE"** means authorization for expenditure.

(8) **"Affected persons"** means the following persons owning interests in a spacing unit or other identified tract:

(a) the operator, as shown in division records, of a well on the tract, or, if the tract is included in a division-approved or federal unit, the designated unit operator;

(b) in the absence of an operator, or with respect to an application wherein the operator of the spacing unit or identified tract is the applicant, each working interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant files the application;

(c) as to any tract or interest therein that is not subject to an existing oil and gas lease, each mineral interest owner whose interest is evidenced by a written conveyance document either of record or known to the applicant as of the date the applicant filed the application; and

(d) if the United States or state of New Mexico owns the mineral estate in the spacing unit or identified tract or any part thereof, the BLM or state land office, as applicable; or

(e) if the mineral estate in the spacing unit or identified tract or any part thereof is tribal land, the BLM, the United States department of the interior, bureau of Indian affairs, and the relevant tribe.

(9) **"Allocated pool"** means a pool in which the total oil or gas production is restricted and is allocated to various wells in the pool in accordance with proration schedules.

(10) **"Allowable production"** means that number of barrels of oil or cubic feet of gas the division authorizes to be produced from an allocated pool.

(11) **"APD"** means application for permit to drill.

(12) **"API"** means the American petroleum institute.

(13) **"Approved temporary abandonment"** means the status of a well that is inactive, has been approved in accordance with 19.15.25.13 NMAC and complies with 19.15.25.12 NMAC through 19.15.25.14 NMAC.

(14) **"Aquifer"** means a geological formation, group of formations or a part of a formation that can yield a significant amount of water to a well or spring.

(15) **"ASTM"** means ASTM International - an international standards developing organization that develops and publishes voluntary technical standards for a wide range of materials, products, systems and services.

B. Definitions beginning with the letter "B".

(1) **"Back allowable"** means the authorization for production of an underproduction resulting from pipeline proration.

(2) **"Background"** means, for purposes of ground water abatement plans only, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants occurring from a source other than the responsible person's facility. This definition does not prevent the director from requiring abatement of commingled plumes of pollution, does not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons and does not preclude the director from exercising enforcement authority under any applicable statute, rule or common law.

(3) **"Barrel"** means 42 United States gallons measured at 60 degrees fahrenheit and atmospheric pressure at the sea level.

(4) **"Barrel of oil"** means 42 United States gallons of oil, after deductions for the full amount of basic sediment, water and other impurities present, ascertained by centrifugal or other recognized and customary test.

(5) **"Below-grade tank"** means a vessel, excluding sumps and pressurized pipeline drip traps, where a portion of the tank's sidewalls is below the surrounding ground surface's elevation. Below-grade tank does not include an above ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

(6) **"Berm"** means an embankment or ridge constructed to prevent the movement of liquids, sludge, solids or other materials.

(7) **"Biopile"**, also known as biocell, bioheap, biomound or compost pile, means a pile of contaminated soils used to reduce concentrations of petroleum constituents in excavated soils through biodegradation. This technology involves heaping contaminated soils into piles or "cells" and stimulating aerobic microbial activity within the soils through the aeration or addition of minerals, nutrients and moisture.

(8) **"BLM"** means the United States department of the interior, bureau of land management.

(9) **"Bottom hole pressure"** means the gauge pressure in psi under conditions existing at or near the producing horizon.

(10) **"Bradenhead gas well"** means a well producing gas through wellhead connections from a gas reservoir that has been successfully cased off from an underlying oil or gas reservoir.

(11) **"BS&W"** means basic sediments and water.

(12) **"BTEX"** means benzene, toluene, ethylbenzene and xylene.

C. Definitions beginning with the letter "C".

(1) **"Carbon dioxide gas"** means noncombustible gas composed chiefly of carbon dioxide occurring naturally in underground rocks.

(2) **"Casinghead gas"** means a gas or vapor or both gas and vapor indigenous to and produced from a pool the division classifies as an oil pool. This also includes gas-cap gas produced from such an oil pool.

(3) **"Certified mail" or "certified mail, return receipt requested"** means United States Postal Service Certified Mail or equivalent service that provides tracking and signature receipt, including Federal Express, United Parcel Service, or similar courier services.

(4) **"Cm/sec"** means centimeters per second.

(5) **"CPD"** means central point delivery.

(6) **"Combination multiple completion"** means a multiple completion in which two or more common sources of supply are produced through a combination of two or more conventional diameter casing strings cemented in a common well bore, or a combination of small diameter and conventional diameter casing strings cemented in a common well bore, the conventional diameter strings of which might or might not be a conventional multiple completion.

(7) **"Commission"** means the oil conservation commission.

(8) **"Commission clerk"** means the division employee the director designates to provide staff support to the commission and accept filings in rulemaking or adjudicatory cases before the commission.

(9) **"Common purchaser for gas"** means a person now or hereafter engaged in purchasing from one or more producers gas produced from gas wells within each common source of supply from which it purchases.

(10) **"Common purchaser for oil"** means every person now engaged or hereafter engaging in the business of purchasing oil to be transported through pipelines.

(11) **"Common source of supply"**. See pool.

(12) **"Condensate"** means the liquid recovered at the surface that results from condensation due to reduced pressure or temperature of petroleum hydrocarbons existing in a gaseous phase in the reservoir.

(13) **"Contiguous"** means acreage joined by more than one common point, that is, the common boundary is at least one side of a governmental quarter-quarter section.

(14) **"Conventional completion"** means a well completion in which the production string of casing has an outside diameter exceeding 2.875 inches.

(15) **"Conventional multiple completion"** means a completion in which two or more common sources of supply are produced through one or more strings of tubing installed within a single casing string, with the production from each common source of supply completely segregated by means of packers.

(16) **"Correlative rights"** means the opportunity afforded, as far as it is practicable to do so, to the owner of each property in a pool to produce without waste the owner's just and equitable share of the oil or gas in the pool, being an amount, so far as can be practically determined, and so far as can be practicably obtained without waste, substantially in the proportion that the quantity of recoverable oil or gas under the property bears to the total recoverable oil or gas in the pool, and for the purpose to use the owner's just and equitable share of the reservoir energy.

(17) **"Cubic feet of gas or cubic foot of gas"** means that volume of gas contained in one cubic foot of space and computed at a base pressure of 10 ounces per square inch above the average barometric pressure of 14.4 psi (15.025 psi absolute), at a standard base temperature of 60 degrees fahrenheit.

D. Definitions beginning with the letter "D".

(1) **"Deep pool"** means a common source of supply that is situated 5000 feet or more below the surface.

(2) **"Depth bracket allowable"** means the basic oil allowable the division assigns a pool and based on its depth, unit size or special pool orders, which, when

multiplied by the market demand percentage factor in effect, determines the pool's top proration unit allowable.

(3) **"Director"** means the director of the New Mexico energy, minerals and natural resources department, oil conservation division.

(4) **"Division"** means the New Mexico energy, minerals and natural resources department, oil conservation division.

(5) **"Division clerk"** means the division employee the director designates to accept filings in adjudicatory cases before the division.

(6) **"Downstream facility"** means a facility associated with the transportation (including gathering) or processing of gas or oil (including a refinery, gas plant, compressor station or crude oil pump station); brine production; or the oil field service industry.

(7) **"DRO"** means diesel range organics.

E. Definitions beginning with the letter "E".

(1) **"EC"** means electrical conductivity.

(2) **"Enhanced oil recovery project"** means the use or the expanded use of a process for the displacement of oil from an oil well or division-designated pool other than a primary recovery process, including but not limited to the use of a pressure maintenance process; a water flooding process; an immiscible, miscible, chemical, thermal or biological process; or any other related process.

(3) **"EOR project"** means an enhanced oil recovery project.

(4) **"EPA"** means the United States environmental protection agency.

(5) **"Exempted aquifer"** means an aquifer that does not currently serve as a source of drinking water, and that cannot now and will not in the foreseeable future serve as a source of drinking water because:

(a) it is hydrocarbon producing;

(b) it is situated at a depth or location that makes the recovery of water for drinking water purposes economically or technologically impractical; or

(c) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption.

(6) **"Exempt waste"** means oil field waste exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(7) **"Existing spacing unit"** means a spacing unit containing a producing well.

F. Definitions beginning with the letter "F".

(1) **"Facility"** means a structure, installation, operation, storage tank, transmission line, access road, motor vehicle, rolling stock or activity of any kind, whether stationary or mobile.

(2) **"Field"** means the general area that at least one pool underlies or appears to underlie; and also includes the underground reservoir or reservoirs containing oil or gas. The words field and pool mean the same thing when only one underground reservoir is involved; however, field unlike pool may relate to two or more pools.

(3) **"Fresh water"** to be protected includes the water in lakes and playas (regardless of quality, unless the water exceeds 10,000 mg/l TDS and it can be shown that degradation of the particular water body will not adversely affect hydrologically connected fresh ground water), the surface waters of streams regardless of the water quality within a given reach, and underground waters containing 10,000 mg/l or less of TDS except for which, after notice and hearing, it is found there is no present or reasonably foreseeable beneficial use that contamination of such waters would impair.

G. Definitions beginning with the letter "G".

(1) **"Gas"**, also known as natural gas, means a combustible vapor composed chiefly of hydrocarbons occurring naturally in a pool the division has classified as a gas pool.

(2) **"Gas lift"** means a method of lifting liquid to the surface by injecting gas into a well from which oil production is obtained.

(3) **"Gas-oil ratio"** means the ratio of the casinghead gas produced in standard cubic feet to the number of barrels of oil concurrently produced during any stated period.

(4) **"Gas-oil ratio adjustment"** means the reduction in allowable of a high gas oil ratio unit to conform with the production permitted by the limiting gas-oil ratio for the particular pool during a particular proration period.

(5) **"Gas transportation facility"** means a pipeline in operation serving gas wells for the transportation of gas, or some other device or equipment in like operation

where the gas produced from gas wells connected with the pipeline or other device or equipment can be transported or used for consumption.

(6) **"Gas well"** means a well producing gas from a gas pool, or a well with a gas-oil ratio exceeding 100,000 cubic feet of gas per barrel of oil producing from an oil pool.

(7) **"Geomembrane"** means an impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(8) **"Geotextile"** means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(9) **"GRO"** means gasoline range organics.

(10) **"Ground water"** means interstitial water that occurs in saturated earth material and can enter a well in sufficient amounts to be used as a water supply.

(11) **"Ground water sensitive area"** means an area the division specifically designates after evaluation of technical evidence where ground water exists that would likely exceed WQCC standards if contaminants were introduced into the environment.

H. Definitions beginning with the letter "H".

(1) **"Hardship gas well"** means a gas well where underground waste occurs if the well is shut-in or curtailed below its minimum sustainable flow rate.

(2) **"Hazard to public health"** exists when water that is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of the use, one or more of the numerical standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher, or if a toxic pollutant as defined at Subsection WW of 20.6.2.7 NMAC affecting human health is present in the water. In determining whether a release would cause a hazard to public health to exist, the director investigates and considers the purification and dilution reasonably expected to occur from the time and place of release to the time and place of withdrawal for use as human drinking water.

(3) **"Hazardous waste"** means non-exempt waste that exceeds the minimum standards for waste hazardous by characteristics established in RCRA regulations, 40 CFR 261.21-261.24, or listed hazardous waste as defined in 40 CFR, part 261, subpart D, as amended.

(4) **"HDPE"** means high-density polyethylene.

(5) **"High gas-oil ratio proration unit"** means a unit with at least one producing oil well with a gas-oil ratio exceeding the limiting gas-oil ratio for the pool in which the unit is located.

(6) **"H₂S"** means hydrogen sulfide.

I. Definitions beginning with the letter "I".

(1) **"Illegal gas"** means gas produced from a gas well exceeding the division-determined allowable.

(2) **"Illegal oil"** means oil produced exceeding the allowable the division fixes.

(3) **"Illegal product"** means a product of illegal gas or illegal oil.

(4) **"Inactive well"** means a well that is not being used for beneficial purposes such as production, injection or monitoring and that is not being drilled, completed, repaired or worked over.

(5) **"Injection well"** means a well used for the injection of air, gas, water or other fluids into an underground stratum.

J. Definitions beginning with the letter "J". [RESERVED]

K. Definitions beginning with the letter "K". "Knowingly and willfully", for assessing civil penalties, means the voluntary or conscious performance of an act that is prohibited or the voluntary or conscious failure to perform an act or duty that is required. It does not include performances or failures to perform that are honest mistakes or merely inadvertent. It includes, but does not require, performances or failures to perform that result from a criminal or evil intent or from a specific intent to violate the law. The conduct's knowing and willful nature may be established by plain indifference to or reckless disregard of the requirements of statutes, rules, orders or permits. A consistent pattern or performance or failure to perform also may be sufficient to establish the conduct's knowing and willful nature, where such consistent pattern is neither the result of honest mistakes nor mere inadvertency. Conduct that is otherwise regarded as being knowing and willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

L. Definitions beginning with the letter "L".

(1) **"Limiting gas-oil ratio"** means the gas-oil ratio the division assigns to a particular oil pool to limit the volumes of casinghead gas that may be produced from the various oil producing units within that particular pool.

(2) **"Liner"** means a continuous, low-permeability layer constructed of natural or human-made materials that restricts the migration of liquid oil field wastes, gases or leachate.

(3) **"LLDPE"** means linear low-density polyethylene.

(4) **"Load oil"** means oil or liquid hydrocarbon that has been used in remedial operation in an oil or gas well.

(5) **"Log"** means a systematic detailed and correct record of formations encountered in drilling a well.

M. Definitions beginning with the letter "M".

(1) **"Marginal unit"** means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located.

(2) **"Market demand percentage factor"** means that percentage factor of one hundred percent or less as the division determines at an oil allowable hearing, which, when multiplied by the depth bracket allowable applicable to each pool, determines that pool's top proration unit allowable.

(3) **"MCF"** means 1000 cubic feet.

(4) **"MCFD"** means 1000 cubic feet per day.

(5) **"MCFGPD"** means 1000 cubic feet of gas per day.

(6) **"Measured depth"** means the total length of the well bore.

(7) **"Mg/l"** means milligrams per liter.

(8) **"Mg/kg"** means milligrams per kilogram.

(9) **"Mineral estate"** is the most complete ownership of oil and gas recognized in law and includes the mineral interests and the royalty interests.

(10) **"Mineral interest owner"** means a working interest owner, or an owner of a right to explore for and develop oil and gas that is not subject to an existing oil and gas lease.

(11) **"Minimum allowable"** means the minimum amount of production from an oil or gas well that may be advisable from time to time to the end that production will repay reasonable lifting cost and thus prevent premature abandonment and resulting waste.

(12) "Miscellaneous hydrocarbons" means tank bottoms occurring at pipeline stations; oil storage terminals or refineries; pipeline break oil; catchings collected in traps, drips or scrubbers by gasoline plant operators in the plants or in the gathering lines serving the plants; the catchings collected in private, community or commercial salt water disposal systems; or other liquid hydrocarbon that is not lease crude or condensate.

N. Definitions beginning with the letter "N".

(1) "Non-aqueous phase liquid" means an interstitial body of liquid oil, petroleum product, petrochemical or organic solvent, including an emulsion containing such material.

(2) "Non-exempt waste" means oil field waste not exempted from regulation as hazardous waste pursuant to Subtitle C of RCRA and applicable regulations.

(3) "Non-hazardous waste" means non-exempt oil field waste that is not hazardous waste.

(4) "Non-marginal unit" means a proration unit that can produce the top proration unit allowable for the pool in which it is located, and to which the division assigns a top proration unit allowable.

(5) "NORM" means the naturally occurring radioactive materials regulated by 20.3.14 NMAC.

O. Definitions beginning with the letter "O".

(1) "Official gas-oil ratio test" means the periodic gas-oil ratio test the operator performs pursuant to division order by the method and in the manner the division prescribes.

(2) "Oil" means petroleum hydrocarbon produced from a well in the liquid phase and that existed in a liquid phase in the reservoir. This definition includes crude oil or crude petroleum oil.

(3) "Oil field waste" means non-domestic waste resulting from the exploration, development, production or storage of oil or gas pursuant to Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 and the oil field service industry, the transportation of crude oil or natural gas, the treatment of natural gas or the refinement of crude oil pursuant to Paragraph (22) of Subsection B of Section 70-2-12 NMSA 1978, including waste generated from oil field remediation or abatement activity regardless of the date of release. Oil field waste does not include waste not generally associated with oil and gas industry operations such as tires, appliances or ordinary garbage or refuse unless generated at a division-regulated facility, and does not include sewage, regardless of the source.

(4) **"Oil well"** means a well capable of producing oil and that is not a gas well as defined in Paragraph (6) of Subsection G of 19.15.2.7 NMAC.

(5) **"Operator"** means a person who, duly authorized, manages a lease's development or a producing property's operation, or who manages a facility's operation.

(6) **"Overproduction"** means the amount of oil or gas produced during a proration period exceeding the amount authorized on the proration schedule.

(7) **"Owner"** means the person who has the right to drill into and to produce from a pool, and to appropriate the production either for the person or for the person and another.

P. Definitions beginning with the letter "P".

(1) **"Penalized unit"** means a proration unit to which, because of an excessive gas-oil ratio, the division assigns an allowable that is less than top proration unit allowable for the pool in which it is located and also less than the ability of the well or wells on the unit to produce.

(2) **"Person"** means an individual or entity including partnerships, corporations, associations, responsible business or association agents or officers, the state or a political subdivision of the state or an agency, department or instrumentality of the United States and of its officers, agents or employees.

(3) **"Pit"** means a surface or sub-surface impoundment, man-made or natural depression or diked area on the surface. Excluded from this definition are berms constructed around tanks or other facilities solely for safety, secondary containment and storm water or run-on control.

(4) **"Playa lake"** means a level or nearly level area that occupies the lowest part of a completely closed basin and that is covered with water at irregular intervals, forming a temporary lake.

(5) **"Pool"** means an underground reservoir containing a common accumulation of oil or gas. Each zone of a general structure, which zone is completely separated from other zones in the structure, is covered by the word pool as used in 19.15.2 NMAC through 19.15.39 NMAC. "Pool" is synonymous with "common source of supply" and with "common reservoir".

(6) **"Potential"** means a well's properly determined capacity to produce oil or gas under division-prescribed conditions.

(7) **"Ppm"** means parts per million by volume.

(8) **"PQL"** means practical quantitation limit.

(9) **"Pressure maintenance"** means the injection of gas or other fluid into a reservoir, either to maintain the reservoir's existing pressure or to retard the reservoir pressure's natural decline.

(10) **"Produced water"** means a fluid that is an incidental byproduct from drilling for or the production of oil and gas.

(11) **"Producer"** means the owner of a well or wells capable of producing oil or gas or both in paying quantities.

(12) **"Product"** means a commodity or thing made or manufactured from oil or gas, and derivatives of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzene, wash oil, lubricating oil and blends or mixtures of oil or gas or a derivative thereof.

(13) **"Proration day"** consists of 24 consecutive hours that begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

(14) **"Proration month"** means the calendar month that begins at 7:00 a.m. on the first day of the month and ends at 7:00 a.m. on the first day of the next succeeding month.

(15) **"Proration period"** means for oil the proration month and for gas the 12-month period that begins at 7:00 a.m. on January 1 of each year and ends at 7:00 a.m. on January 1 of the succeeding year or other period designated by general or special order of the division.

(16) **"Proration schedule"** means the division orders authorizing the production, purchase and transportation of oil, casinghead gas and gas from the various units of oil or of gas in allocated pools.

(17) **"Proration unit"** means the area in a pool that can be effectively and efficiently drained by one well as determined by the division or commission (see Subsection B of Section 70-2-17 NMSA 1978) as well as the area assigned to an individual well for the purposes of allocating allowable production pursuant to a prorationing order for the pool.

(18) **"Prospective spacing unit"** means a hypothetical spacing unit that does not yet have a producing well.

(19) **"PVC"** means poly vinyl chloride.

(20) **"Psi"** means pounds per square inch.

Q. Definitions beginning with the letter "Q". [RESERVED]

R. Definitions beginning with the letter "R".

- (1) **"RCRA"** means the federal Resource Recovery and Conservation Act.
- (2) **"Recomplete"** means the subsequent completion of a well in a different pool from the pool in which it was originally completed.
- (3) **"Regulated NORM"** means NORM contained in oil-field soils, equipment, sludges or other materials related to oil-field operations or processes exceeding the radiation levels specified in 20.3.14.1403 NMAC.
- (4) **"Release"** means breaks, leaks, spills, releases, fires or blowouts involving oil, produced water, condensate, drilling fluids, completion fluids or other chemical or contaminant or mixture thereof, including oil field wastes and gases to the environment.
- (5) **"Remediation plan"** means a written description of a program to address unauthorized releases. The plan may include appropriate information, including assessment data, health risk demonstrations and corrective action or actions. The plan may also include an alternative proposing no action beyond the spill report's submittal.
- (6) **"Responsible person"** means the owner or operator who shall complete a division-approved corrective action for pollution from releases.
- (7) **"Rules"** means the rules enacted pursuant to the Oil and Gas Act, 19.15.2 to 19.15.39 NMAC, as they may be modified or amended.
- (8) **"Royalty interest owner"** means the owner of an interest in oil and gas that does not presently entitle the owner to explore, drill or otherwise develop those minerals, including lessors, royalty interest owners and overriding royalty interest owners. Royalty interests are non-cost bearing.
- (9) **"Run-on"** means rainwater, leachate or other liquid that drains from other land onto any part of a division-approved facility.

S. Definitions beginning with the letter "S".

- (1) **"SAR"** means the sodium adsorption ratio.
- (2) **"Secondary recovery"** means a method of recovering quantities of oil or gas from a reservoir which quantities would not be recoverable by ordinary primary depletion methods.

(3) **"Sediment oil"** means tank bottoms and other accumulations of liquid hydrocarbons on an oil and gas lease, which hydrocarbons are not merchantable through normal channels.

(4) **"Shallow pool"** means a pool that has a depth range from zero to 5000 feet.

(5) **"Shut-in"** means the status of a production well or an injection well that is temporarily closed, whether by closing a valve or disconnection or other physical means.

(6) **"Shut-in pressure"** means the gauge pressure noted at the wellhead when the well is completely shut-in, not to be confused with bottom hole pressure.

(7) **"Significant modification of an abatement plan"** means a change in the abatement technology used excluding design and operational parameters, or relocation of twenty-five percent or more of the compliance sampling stations, for a single medium, as designated pursuant to Subparagraph (d) of Paragraph (2) of Subsection D of 19.15.30.13 NMAC.

(8) **"Soil"** means earth, sediments or other unconsolidated accumulations of solid particles produced by the physical and chemical disintegration of rocks, and that may or may not contain organic matter.

(9) **"Spacing unit"** means the area allocated to a well under a well spacing order or rule. Under the Oil and Gas Act, Paragraph (10) of Subsection B of Section 70-2-12 NMSA 1978, the commission may fix spacing units without first creating proration units. See *Rutter & Wilbanks corp. v. oil conservation comm'n*, 87 NM 286 (1975). This is the area designated on form C-102.

(10) **"Subsurface water"** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or that vegetation may use.

(11) **"Surface waste management facility"** means a facility that receives oil field waste for collection, disposal, evaporation, remediation, reclamation, treatment or storage except:

(a) a facility that utilizes underground injection wells subject to division regulation pursuant to the federal Safe Drinking Water Act, and does not manage oil field wastes on the ground in pits, ponds, below-grade tanks or land application units;

(b) a facility permitted pursuant to the New Mexico environmental improvement board rules or WQCC rules;

(c) a temporary pit as defined in 19.15.17 NMAC;

(d) a below-grade tank or pit that receives oil field waste from a single well, permitted pursuant to 19.15.37 NMAC, regardless of the capacity or volume of oil field waste received;

(e) a facility located at an oil and gas production facility and used for temporary storage of oil field waste generated on-site from normal operations, if the facility does not pose a threat to fresh water, public health, safety or the environment;

(f) a remediation conducted in accordance with a division-approved abatement plan pursuant to 19.15.30 NMAC, a corrective action pursuant to 19.15.29 NMAC or a corrective action of a non-reportable release;

(g) a facility operating pursuant to a division emergency order;

(h) a site or facility where the operator is conducting emergency response operations to abate an immediate threat to fresh water, public health, safety or the environment or as the division has specifically directed or approved; or

(i) a facility that receives only exempt oil field waste, receives less than 50 barrels of liquid water per day (averaged over a 30-day period), has a capacity to hold 500 barrels of liquids or less and is permitted pursuant to 19.15.17 NMAC.

T. Definitions beginning with the letter "T".

(1) **"Tank bottoms"** means that accumulation of hydrocarbon material and other substances that settles naturally below oil in tanks and receptacles that are used in oil's handling and storing, and which accumulation contains more than two percent of BS&W; provided, however, that with respect to lease production and for lease storage tanks, a tank bottom shall be limited to that volume of the tank in which it is contained that lies below the bottom of the pipeline outlet to the tank.

(2) **"TDS"** means total dissolved solids.

(3) **"Temporary abandonment" or "temporarily abandoned status"** means the status of a well that is inactive.

(4) **"Top proration unit allowable for gas"** means the maximum number of cubic feet of gas, for the proration period, the division allocates to a gas producing unit in an allocated gas pool.

(5) **"Top proration unit allowable for oil"** means the maximum number of barrels for oil daily for each calendar month the division allocates on a proration unit basis in a pool to non-marginal units. The division shall determine the top proration unit allowable for a pool by multiplying the applicable depth bracket allowable by the market demand percentage factor in effect.

(6) **"TPH"** means total petroleum hydrocarbons.

(7) **"Treating plant"** means a plant constructed for wholly or partially or being used wholly or partially for reclaiming, treating, processing or in any manner making tank bottoms or other waste oil marketable.

(8) **"Tribal lands"** means those lands for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe. This includes reservations, pueblo land grants, tribal trust lands and individual trust allotments.

(9) **"Tribal leases"** means those leases of minerals or interests in or rights to minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(10) **"Tribal minerals"** means those minerals for which the United States government has a trust responsibility to a native American tribe or a member of a native American tribe.

(11) **"True vertical depth"** means the difference in elevation between the ground level at the surface location of the well and the deepest point in the well bore.

(12) **"Tubingless completion"** means a well completion in which the production string of casing has an outside diameter of 2.875 inches or less.

(13) **"Tubingless multiple completion"** means completion in which two or more common sources of supply are produced through an equal number of casing strings cemented in a common well bore, each such string of casing having an outside diameter of 2.875 inches or less, with the production from each common source of supply completely segregated by cement.

U. Definitions beginning with the letter "U".

(1) **"Underground source of drinking water"** means an aquifer that supplies water for human consumption or that contains ground water having a TDS concentration of 10,000 mg/l or less and that is not an exempted aquifer.

(2) **"Underproduction"** means the amount of oil or the amount of gas during a proration period by which a given proration unit failed to produce an amount equal to that the division authorizes in the proration schedule.

(3) **"Unit of proration for gas"** consists of such multiples of 40 acres as may be prescribed by division-issued special pool orders.

(4) **"Unit of proration for oil"** consists of one 40-acre tract or such multiples of 40-acre tracts as may be prescribed by division-issued special pool orders.

(5) **"Unorthodox well location"** means a location that does not conform to the spacing requirements division rules establish.

(6) **"Unstable area"** means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all a division-approved facility's structural components. Examples of unstable areas are areas of poor foundation conditions, areas susceptible to mass earth movements and karst terrain areas where karst topography is developed because of dissolution of limestone, dolomite or other soluble rock. Characteristic physiographic features of karst terrain include sinkholes, sinking streams, caves, large springs and blind valleys.

(7) **"Upstream facility"** means a facility or operation associated with the exploration, development, production or storage of oil or gas that is not a downstream facility.

V. Definitions beginning with the letter "V". **"Vadose zone"** means unsaturated earth material below the land surface and above ground water, or in between bodies of ground water.

W. Definitions beginning with the letter "W".

(1) **"Waste"**, in addition to its ordinary meaning, includes:

(a) underground waste as those words are generally understood in the oil and gas business, and to embrace the inefficient, excessive or improper use or dissipation of the reservoir energy, including gas energy and water drive, of a pool, and the locating, spacing, drilling, equipping, operating or producing of a well or wells in a manner to reduce or tend to reduce the total quantity of oil or gas ultimately recovered from a pool, and the use of inefficient underground storage of gas;

(b) surface waste as those words are generally understood in the oil and gas business, and to embrace the unnecessary or excessive surface loss or destruction without beneficial use, however caused, of gas of any type or in any form, or oil, or a product thereof, but including the loss or destruction, without beneficial use, resulting from evaporation, seepage, leakage or fire, especially such loss or destruction incident to or resulting from the manner of spacing, equipping, operating or producing a well or wells, or incident to or resulting from the use of inefficient storage or from the production of oil or gas, in excess of the reasonable market demand;

(c) oil production in this state in excess of the reasonable market demand for the oil; the excess production causes or results in waste that the Oil and Gas Act prohibits; reasonable market demand as used herein with respect to oil means the demand for the oil, for reasonable current requirements for current consumption and use within or outside of the state, together with the demand of amounts as are reasonably necessary for building up or maintaining reasonable storage reserves of oil or the products thereof, or both the oil and products;

(d) the non-ratable purchase or taking of oil in this state; the non-ratable taking and purchasing causes or results in waste, as defined in Subparagraphs (a), (b) and (c) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC and causes waste by violating the Oil and Gas Act, Section 70-2-16 NMSA 1978;

(e) the production in this state of gas from a gas well or wells, or from a gas pool, in excess of the reasonable market demand from such source for gas of the type produced or in excess of the capacity of gas transportation facilities for such type of gas; the words "reasonable market demand", as used herein with respect to gas, shall be construed to mean the demand for gas for reasonable current requirements, for current consumption and for use within or outside the state, together with the demand for such amounts as are necessary for building up or maintaining reasonable storage reserves of gas or products thereof, or both the gas and products.

(2) **"Water"** means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water.

(3) **"Water contaminant"** means a substance that could alter if released or spilled water's physical, chemical, biological or radiological qualities. Water contaminant does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954.

(4) **"Watercourse"** means a river, creek, arroyo, canyon, draw or wash or other channel having definite banks and bed with visible evidence of the occasional flow of water.

(5) **"Water pollution"** means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or property use.

(6) **"Well blowout"** means a loss of control over and subsequent eruption of a drilling or workover well or the rupture of the casing, casinghead or wellhead of an oil or gas well or injection or disposal well, whether active or inactive, accompanied by the sudden emission of fluids, gaseous or liquid, from the well.

(7) **"Well bore"** means the interior surface of a cased or open hole through which drilling, production or injection operations are conducted.

(8) **"Wellhead protection area"** means the area within 200 horizontal feet of a private, domestic fresh water well or spring used by less than five households for domestic or stock watering purposes or within 1000 horizontal feet of any other fresh water well or spring. Wellhead protection areas does not include areas around water

wells drilled after an existing oil or gas waste storage, treatment or disposal site was established.

(9) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. This definition does not include constructed wetlands used for wastewater treatment purposes.

(10) "Working interest owner" means the owner of an operating interest under an oil and gas lease who has the exclusive right to exploit the oil and gas minerals. Working interests are cost bearing.

(11) "WQCC" means the New Mexico water quality control commission.

[19.15.2.7 NMAC - Rp, 19.15.1.7 NMAC, 12/1/2008; A, 3/31/2015; A, 6/30/2016; A, 6/26/2018; A, 1/15/2019; A, 10/13/2020; A, 8/23/2022]

19.15.2.8 GENERAL OPERATIONS/WASTE PROHIBITED:

A. The production or handling of oil or gas of any type or in any form or the handling of oil or gas products in a manner, under conditions or in an amount as to constitute or result in waste is prohibited.

B. Operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal and storage wells or other facilities in a manner that prevents waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas or allow either to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.

[19.15.2.8 NMAC - Rp, 19.15.1.13 NMAC, 12/1/2008]

19.15.2.9 ORDERS:

The division or commission may issue orders, including division or commission special pool orders when required and the orders shall prevail against rules if in conflict with them.

[19.15.2.9 NMAC - Rp, 19.15.1.11 NMAC, 12/1/2008]

19.15.2.10 ONLINE APPLICATION AND SUBMITTALS:

A. The division shall establish online application and submittal procedures on the division's website for the electronic filing of all forms, applications and other written documents and information with the division.

B. All applications that require the payment of a fee, as provided in Section 70-2-39 NMSA 1978, shall include the fee payment with the application.

C. A person whose filing is made untimely due to a technical failure of the division's web-based online application process may request an extension of time. Technical failures not originating with the division's process, such as problems with the filer's equipment, software, or telecommunications facility will not constitute a basis for relief.

[19.15.2.10 NMAC - N, 8/23/2022]

19.15.2.11 EMERGENCY ORDERS AND RULES:

A. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, in the event the division or commission finds an emergency exists that requires an order's or rule's issuance without a hearing, the emergency rule or order shall have the same validity as if the division or commission held a hearing before the division or commission after due notice. The emergency rule or order shall remain in force no longer than 15 days from its effective date.

B. Notwithstanding other provisions of 19.15.2 NMAC through 19.15.39 NMAC, if the division or commission finds an emergency exists, the division or commission may conduct a hearing on an application within less than 30 days after party files an application and the director may set the notice period at the director's discretion.

[19.15.2.11 NMAC - Rp, 19.15.14.1225 NMAC, 12/1/2008]

19.15.2.12 FILING AND NOTIFICATION:

All requirements in the rules:

A. to file a form or application with the division or commission, including documents required to be filed with district offices or the Santa Fe office, shall be accomplished by using the applicable online process on the division's website,

B. to otherwise notify, advise, contact, or report to the division, including to any unit of the division (such as a bureau or office) or any division official (such as the director or a bureau chief), may be accomplished by electronic mail or as otherwise provided on the division's website; the division shall provide contact instructions on the division's website, and

C. to file an original financial assurance instrument with the division as provided in 19.15.8 NMAC shall require delivery to the Santa Fe office unless otherwise directed by the division.

[19.15.2.12 NMAC - Rp, 19.15.15.1304 NMAC, 12/1/2008; 19.15.2.12 NMAC - Rp, 19.15.2.12 NMAC, 8/23/2022]

19.15.2.13 COMPUTATION OF TIME:

In computing a period of time prescribed by the Oil and Gas Act, the rules or an order, the division and commission shall comply with the Uniform Statute and Rule Construction Act, Section 12-2A-7 NMSA 1978.

[19.15.2.13 NMAC - Rp, 19.15.14.1226 NMAC, 12/1/2008; A, 8/23/2022]

19.15.2.14 MEETINGS BY TELECONFERENCE:

Pursuant to Section 10-15-1 NMSA 1978, commission members may participate in commission meetings and hearings by conference telephone or other similar communications equipment when it is otherwise difficult or impossible for members to attend the meeting or hearing in person. Each member participating by conference telephone or other similar communications equipment shall be identified when speaking. Participants shall be able to hear each other at the same time. Members of the public hearing attending the meetings or hearing shall be able to hear commission members who speak during the meeting or hearing.

[19.15.2.14 NMAC - Rp, 19.15.1.20 NMAC, 12/1/2008]

19.15.2.15 AUTHORITY TO COOPERATE WITH OTHER AGENCIES:

The division may from time to time enter into arrangements with state and federal governmental agencies, industry committees and individuals with respect to special projects, services and studies relating to oil and gas conservation and the associated protection of fresh waters.

[19.15.2.15 NMAC - Rp, 19.15.1.17 NMAC, 12/1/2008]

19.15.2.16 DUTIES AND AUTHORITY OF DIVISION PERSONNEL:

Division personnel have the authority and duty to enforce division rules. Upon a showing by an operator that changes are necessary to avoid waste or protect public health or the environment, division personnel may allow minor deviations from approved field operational plans such as drilling and plugging plans. The operator shall file a Form C-103 as a notice of intention showing the change of plans within two business days of the approval.

[19.15.2.16 NMAC - Rp, 19.15.15.1303, 12/1/2008; A, 8/23/2022]

19.15.2.17 ORGANIZATIONAL UNITS:

When necessary to assist in the administration of the Oil and Gas Act, the director may divide the state into districts or other organizational units as appropriate. Upon establishment of, or revisions to, such units, the director shall provide or amend a map on the division's website with the boundaries of the units. Contact information for the units, including any assigned personnel, shall be maintained on the division's website.

[19.15.2.17 NMAC - Rp, 19.15.15.1301 NMAC, 12/1/2008; 19.15.2.17 NMAC - Rp, 19.15.2.17 NMAC, 8/23/2022]

19.15.2.18 RENUMBERING OR REORGANIZATION OF RULES:

When the commission approves reorganization or renumbering of division rules, either through amendment or repeal and replacement, persons with permits, orders or agreements that reference rules that have been reorganized or renumbered shall comply with the rules as reorganized or renumbered.

[19.15.2.18 NMAC - N, 12/1/2008]

PART 3: RULEMAKING

19.15.3.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.3.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, 11/14/2017]

19.15.3.2 SCOPE:

19.15.3 NMAC applies to persons or entities engaged in rulemaking proceedings before the commission.

[19.15.3.2 NMAC - Rp, 19.15.14.2 NMAC, 12/1/2008]

19.15.3.3 STATUTORY AUTHORITY:

19.15.3 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6 NMSA 1978, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and Section 70-2-7 NMSA 1978, which provides that the division shall prescribe by rule its hearing procedures. The 2017 amendments are authorized by

Section 70-2-12.2 NMSA 1978 (2016), which provides for the appeal of commission rules and Laws 2017, Chapter 137, which provides for uniform rulemaking procedures.

[19.15.3.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/2008; A, 11/14/2017]

19.15.3.4 DURATION:

Permanent.

[19.15.3.4 NMAC - Rp, 19.15.14.4 NMAC, 12/1/2008]

19.15.3.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.3.5 NMAC - Rp, 19.15.14.5 NMAC, 12/1/2008]

19.15.3.6 OBJECTIVE:

To establish procedures for commission rulemaking proceedings.

[19.15.3.6 NMAC - Rp, 19.15.14.6 NMAC, 12/1/2008]

19.15.3.7 DEFINITIONS

See Section 14-4-2 NMSA 1978 (2017) for the definitions of "**proceeding**", "**proposed rule**" and "**rule**". As used in 19.15.3 NMAC:

A. "Party" means the applicant or any person filing a pre-hearing statement.

B. "Technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments or statements of policy or position concerning matters at issue in the hearing.

[19.15.3.7 NMAC - N, 12/1/2008; A, 11/14/2017]

19.15.3.8 RULEMAKING INITIATION:

A. Any person may file an application with the commission to adopt, amend or repeal any rule within the commission's jurisdiction. The application shall be in writing and specifically identify the rule the applicant proposes to adopt, amend or repeal. The application shall include the following:

- (1)** a brief summary of the proposed rule's intended effect;
- (2)** a draft of the proposed rule;

- (3) the applicant's name;
- (4) the applicant's address, or the address of its attorney, including an e-mail address if available; and
- (5) a proposed legal notice for publication, which meets the requirements of Subsection B of 19.15.3.9 NMAC.

B. An applicant shall file the application for rulemaking with the commission clerk. The applicant shall file the application by delivering the application to the commission clerk in person or by mail and shall also send an electronic copy of the application to the commission clerk.

C. Upon receiving an application for rule change the commission clerk shall file the application, and shall deliver a copy to all commissioners within 10 business days of the application's receipt. The commission shall determine, at a public meeting at least 15 days and no later than within 60 days of the application's filing, whether to hold a public hearing on the proposed rule. If the commission decides to hold a public hearing on the proposed rule, the commission may set the date for the hearing and may issue orders specifying procedures for the conduct of the hearing in addition to the procedures in 19.15.3 NMAC, including naming a hearing officer, providing additional public notice and providing for a pre-hearing conference. Prior to the hearing, the chair or other hearing officer appointed by the commission shall have the authority to schedule or continue a hearing, hold a pre-hearing conference and rule on any non-dispositive motions.

D. 19.15.3.8 NMAC shall not apply to special pool orders, which the commission or the division may adopt, amend or rescind in adjudicatory proceedings subject to 19.15.4.9 NMAC and 19.15.4.12 NMAC's notice provisions.

[19.15.3.8 NMAC - Rp, 19.15.14.1201 NMAC, 12/1/2008; A, 11/14/2017]

19.15.3.9 RULEMAKING NOTICE:

A. The commission shall distribute a notice of a proposed rulemaking no later than 30 days before the hearing on the rule change by:

- (1) posting the notice on the division website;
- (2) posting the notice on the sunshine portal;
- (3) making the notice available in the division's district offices;
- (4) sending the notice by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the

subject of the rulemaking proceeding and who have provided a mail or an electronic mail address to the commission;

(5) providing the notice to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees; and

(6) publishing the notice in the New Mexico register and in a newspaper of general circulation in the state.

B. Content. The notice shall include:

(1) a summary of the full text of the proposed rule;

(2) a short explanation of the purpose of the proposed rule;

(3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;

(4) information on how a copy of the full text of the proposed rule may be obtained, including an internet link to the full text;

(5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;

(6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and

(7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

[19.15.3.9 NMAC - Rp, 19.15.14.1202, 12/1/2008; A, 11/14/2017]

19.15.3.10 COMMENTS ON RULEMAKING:

A person may submit written or electronic comments on a proposed rule change, and those comments shall be made part of the hearing record. A person shall provide written comments on the proposed rule change to the commission clerk not later than the date of the scheduled hearing, unless the commission chairman or the commission extends the time for filing comments. The commission chairman or the commission may extend the time for filing written or electronic comments by making an announcement at the hearing, or by posting notice on the division's website. A person may review written or electronic comments on a proposed rule change at the division's Santa Fe office. The division shall post copies of written or electronic comments that persons have filed with the commission clerk on the division's website as soon as practicable after they are filed.

[19.15.3.10 NMAC - Rp, 19.15.14.1203 NMAC, 12/1/2008; A, 11/14/2017]

19.15.3.11 RULEMAKING HEARING PARTICIPATION:

A. Non-technical testimony.

(1) A person may testify or make an un-sworn statement at the rulemaking hearing. A person does not need to file prior notification with the commission clerk to present non-technical testimony at the hearing.

(2) A person may also offer exhibits with the testimony, so long as the exhibits are relevant to the proposed rule change and do not unduly repeat the testimony. A person offering exhibits shall file exhibits prior to the scheduled hearing date or submit them at the hearing.

(3) Members of the public who wish to present non-technical testimony should indicate their intent on a sign-in sheet at the hearing.

B. Technical testimony.

(1) A person, including the division, who intends to present technical testimony or cross-examine witnesses at the hearing or to submit modifications to a proposed rule shall, no later than 10 business days before the scheduled hearing date, file six sets of a pre-hearing statement with the commission clerk. Corporations, partnerships, governmental agencies, political subdivisions, unincorporated associations and other collective entities shall appear only through an attorney or through a duly authorized officer or member.

(2) The pre-hearing statement shall include the person or entity's name and its attorney's name; the names of all witnesses the person or entity will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time the person or entity will need to present its testimony; and any proposed modifications to the proposed rule change with reasons for adopting the modifications. The person or entity shall attach to the pre-hearing statement any exhibits it plans to offer as evidence at the hearing. A corporation or other entity not represented by an attorney shall identify in its pre-hearing statement the person who will conduct its presentation and shall attach a sworn and notarized statement from the corporation's or entity's governing body or chief executive officer attesting that it authorizes that person to represent the corporation or entity.

(3) The commission may exclude any expert witnesses or technical exhibits not identified in or attached to the pre-hearing statement unless the testimony or exhibit is offered solely for rebuttal or the person or entity offering the testimony or exhibits demonstrates good cause for omitting the witness or exhibit from its pre-hearing statement.

(4) The division shall post copies of pre-hearing statements filed with the commission clerk on the division's website as soon as practicable after they are filed. A person may review pre-hearing statements filed with the commission clerk at the division's Santa Fe office.

[19.15.3.11 NMAC - Rp, 19.15.14.1204 NMAC, 12/1/2008; A, 11/14/2017]

19.15.3.12 RULEMAKING HEARINGS:

A. Conduct of hearings.

(1) The rules of civil procedure and the rules of evidence shall not apply.

(2) The commission shall conduct the hearing to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome and without unnecessary repetition. The hearing shall proceed as follows:

(a) the hearing shall begin with a statement from the commission chairman identifying the hearing's nature and subject matter and explaining the procedures to be followed;

(b) the commission may allow parties to make a brief opening statement;

(c) unless otherwise ordered, the applicant, or in the case of commission initiated rulemaking, commission or division staff, shall present its case first;

(d) the commission chairman shall establish an order for other participants' testimony based upon pre-hearing statements, sign-in sheets, the availability of witnesses who cannot be present for the entire hearing and any other appropriate factor;

(e) the commission may allow parties to make a brief closing statement;

(f) if the hearing continues for more than one day, the commission shall provide an opportunity each day for public comment;

(g) at the close of the hearing, the commission shall determine whether to keep the record open for written submittals including arguments and proposed statements of reasons supporting the proposed commission decision; in considering whether the record will remain open, the commission shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted and the necessity for a prompt decision; if the commission keeps the record open, the commission chairman shall announce at the hearing's conclusion the subjects on which the commission will allow submittals and the deadline for filing the submittals; and

(h) if the hearing is not completed on the day that it commences, the commission may, by announcement, continue the hearing as necessary without further notice.

B. Testimony and cross-examination.

(1) The commission shall take all testimony under oath or affirmation, which may be accomplished en masse or individually. However, a person may make an unsworn position statement.

(2) The commission shall admit relevant evidence, unless the commission determines that the evidence is incompetent or unduly repetitious.

(3) A person who testifies at the hearing is subject to cross-examination by the commissioners, commission counsel or a party on the subject matter of the person's direct testimony. A person who presents technical testimony may also be cross-examined on matters related to the person's background and qualifications. The commission may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

C. Exhibits.

(1) A person offering an exhibit shall provide six sets of the exhibit for the commission, copies for each party and five additional copies for others who may attend the hearing.

(2) Exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially.

[19.15.3.12 NMAC - Rp, 19.15.14.1205 NMAC, 12/1/2008, A, 11/14/2017]

19.15.3.13 COMMISSION DELIBERATION AND ACTION:

A. Deliberation. If a quorum of the commission attended the hearing, and if the hearing agenda indicates that a decision might be made at the hearing's conclusion, the commission may immediately deliberate and decide in open session on the proposed rule change. The commission may otherwise deliberate and act in open session at any commission meeting where such deliberation and possible action is listed on the meeting agenda.

B. If, during deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed rule change, the commission may reopen the hearing for additional evidence after notice pursuant to 19.15.3.9 NMAC.

C. Order. The commission shall issue a written order adopting or refusing to adopt the proposed rule change, or adopting the proposed rule change in part, and shall include in the order the reasons for the action taken. The commission's order shall serve as the "concise explanatory statement" required by Section 14-4-5.5 NMSA 1978 (2017).

D. Termination. The commission may terminate a rulemaking at any time by a motion approved at a commission meeting. The commission shall publish a notice of termination in the New Mexico register and provide notice of the termination in the manner provided in 19.15.3.9 NMAC. If the commission does not act within two years after publication of a proposed rule change in the New Mexico register, the rulemaking is automatically terminated unless the commission approves a motion to extend the rulemaking and files a statement of good cause in the record. The commission shall also provide for additional public notice, comment and public hearing.

[19.15.3.13 NMAC - N, 11/14/2017]

19.15.3.14 RECORD:

A. The commission shall maintain a record for each rulemaking proceeding. The record shall be available for public inspection at the commission's Santa Fe office and a copy shall be provided to the sunshine portal.

B. The record shall contain:

(1) a copy of all publications in the New Mexico register relating to the proposed rule;

(2) a copy of any technical information that was relied upon in formulating the final rule;

(3) any official transcript of the public hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing;

(4) a copy of all comments and other material received by the commission during the public comment period and at the public hearing;

(5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the order adopted by the commission; and

(6) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

[19.15.3.14 NMAC - N, 11/14/2017]

19.15.3.15 FILING AND APPEAL:

A. Filing. Any rule adopted under 19.15.3 NMAC, along with the commission order, shall be filed in accordance with the State Rules Act. No rule shall be filed until the latter of 20 days after the commission has entered an order or has refused a rehearing application pursuant to Section 70-2-25 NMSA 1978. The end of the 20-day rehearing period, if no rehearing is requested, or the action of the commission on a rehearing application shall constitute the "adoption of the rule" for the purposes of Subsection D of Section 14-4-5 NMSA 1978 (2017). The rule shall be filed with the state records administrator within 15 days after the adoption of the rule.

B. Notice. Upon filing of the rule, the commission shall provide notice of the adoption of the rule to the public. The notice, which shall include the final rule and order or information on how to obtain a copy of the final rule and order, shall be:

- (1) posted on the division's website;
- (2) posted on the sunshine portal;
- (3) made available in the division's district offices;
- (4) sent by mail or electronic mail to persons who have made a written request for notice from the commission of announcements addressing the subject of the rulemaking proceeding and who have provided a mail or electronic mail address to the commission;
- (5) sent by mail or electronic mail to persons who have participated in the rulemaking and who have provided a mail or electronic mail address to the commission; and
- (6) delivered to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.

C. Corrections. If the state records administrator provides the commission with a record of corrections to the filed rule, as provided in Section 14-4-3 NMSA 1978 (2017), the commission shall within 30 days provide notice of the correction in the same manner as the notice in Subsection A of 19.15.3.9 NMAC.

D. Appeal. Pursuant to Section 70-2-12.2 NMSA 1978, any party of record to the proceeding before the commission or any person adversely affected by a rule adopted under the Oil and Gas Act may appeal to the court of appeals within 30 days after filing of the rule under the State Rules Act.

[19.15.3.15 NMAC - N, 11/14/2017]

PART 4: ADJUDICATION

19.15.4.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.4.1 NMAC - Rp, 19.15.14.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.4.2 SCOPE:

19.15.4 NMAC applies to persons engaged in adjudicatory proceedings before the division or the commission.

[19.15.4.2 NMAC -Rp, 19.15.14.2 NMAC, 12/1/2008]

19.15.4.3 STATUTORY AUTHORITY:

19.15.4 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6 NMSA 1978, which grants the oil conservation division and the oil conservation commission jurisdiction and authority over all matters relating to the conservation of oil and gas, the prevention of waste of oil and gas and of potash as a result of oil and gas operations, the protection of correlative rights and the disposition of wastes resulting from oil and gas operations, and Section 70-2-7 NMSA 1978, which provides that the division shall prescribe by rule its hearing procedures.

[19.15.4.3 NMAC - Rp, 19.15.14.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.4.4 DURATION:

Permanent.

[19.15.4.4 NMAC - Rp, 19.15.14.4 NMAC, 12/1/2008]

19.15.4.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.4.5 NMAC - Rp, 19.15.14.5 NMAC, 12/1/2008]

19.15.4.6 OBJECTIVE:

To establish procedures for adjudicatory hearings before the division or commission.

[19.15.4.6 NMAC - Rp, 19.15.14.6 NMAC, 12/1/2008]

19.15.4.7 DEFINITIONS

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.4.8 INITIATING AN ADJUDICATORY HEARING:

A. The division, attorney general, an operator or producer or other person with standing may file an application with the division for an adjudicatory hearing. The director, upon receiving a division examiner's recommendation, may dismiss an application for an adjudicatory proceeding upon a showing that the applicant does not have standing. The person applying for the hearing or an attorney representing that person shall sign the application requesting an adjudicatory hearing. The application shall include:

- (1) the applicant's name;
- (2) the applicant's address, or the address of the applicant's attorney, including an e-mail address and fax number if available;
- (3) the name or general description of the common source or sources of supply or the area the order sought affects;
- (4) briefly, the general nature of the order sought;
- (5) a proposed legal notice for publication; and
- (6) any other matter division rules or a division order requires.

B. Applicants for adjudicatory hearings shall file written applications with the division clerk at least 30 days before the application's scheduled hearing date.

[19.15.4.8 NMAC - Rp, 19.15.14.1206 NMAC, 12/1/2008]

19.15.4.9 ADJUDICATORY HEARING NOTICE:

A. The division shall publish notice of an adjudicatory hearing in the name of the "State of New Mexico", signed by the director and bearing the commission's seal, stating:

- (1) the adjudicatory hearing's time and place;
- (2) whether the case is set for hearing before the commission or a division examiner;
- (3) the applicant's name and address, or address of the applicant's attorney, including an e-mail address and fax number if available;
- (4) a case name and number;
- (5) a brief description of the hearing's purpose;

(6) a reasonable identification of the adjudication's subject matter that alerts persons who may be affected if the division grants the application;

(7) if the application seeks to adopt, revoke or amend special pool orders; establish or alter a non-standard unit; permit an unorthodox location or establish or affect a well's or proration unit's allowable, the notice shall specify each pool or common source of supply that the division or commission's granting the application may affect; and

(8) if the application seeks compulsory pooling or statutory unitization, the notice shall contain a legal description of the spacing unit or geographical area the applicant seeks to pool or unitize.

B. The division shall publish notice of each adjudicatory hearing before the commission or a division examiner at least 20 days before the hearing by:

(1) posting notice on the division's website;

(2) delivering notice by ordinary first class United States mail or electronic mail to each person who has requested in writing to be notified of such hearings; and

(3) if before the commission, publishing notice in a newspaper of general circulation in the counties the application affects, or if the application's effect will be statewide, in a newspaper of general circulation in the state.

[19.15.4.9 NMAC - Rp, 19.15.14.1207 NMAC, 12/1/2008]

19.15.4.10 PARTIES TO ADJUDICATORY PROCEEDINGS:

A. The parties to an adjudicatory proceeding shall include:

(1) the applicant;

(2) a person to whom statute, rule or order requires notice (not including those persons to whom 19.15.4.9 NMAC requires distribution of hearing notices, who are not otherwise entitled to notice of the particular application), who has entered an appearance in the case; and

(3) a person who properly intervenes in the case.

B. A person entitled to notice may enter an appearance at any time by filing a written notice of appearance with the division or the commission clerk, as applicable, or, subject to the provisions in Subsection C of 19.15.4.10 NMAC, by oral appearance on the record at the hearing.

C. A party who has not entered an appearance at least one business day prior to the pre-hearing statement filing date provided in Paragraph (1) of Subsection B of 19.15.4.13 NMAC shall not be allowed to present technical evidence at the hearing unless the commission chairman or the division examiner, for good cause, otherwise directs.

D. A party shall be entitled to a continuance of any hearing if it did not receive notice of the hearing at least three business days prior to the date for filing a timely appearance as 19.15.4 NMAC provides.

[19.15.4.10 NMAC - Rp, 19.15.14.1208 NMAC, 12/1/2008]

19.15.4.11 ADJUDICATORY PROCEEDING INTERVENTION:

A. A person with standing with respect to the case's subject matter may intervene by filing a written notice of intervention with the division or commission clerk, as applicable, at least one business day before the date for filing a pre-hearing statement. Notice of intervention shall include:

- (1)** the intervenor's name;
- (2)** the intervenor's address, or the address of the intervenor's attorney, including an e-mail address and fax number if available;
- (3)** the nature of intervenor's interest in the application; and
- (4)** the extent to which the intervenor opposes issuance of the order applicant seeks.

B. The division examiner or commission chairman may, at their discretion, allow late intervenors to participate if the intervenor files a written notice on or after the date provided in Subsection A of 19.15.4.8 NMAC, or by oral appearance on the record at the hearing.

C. The division examiner or the commission chairman may strike a notice of intervention on a party's motion if the intervenor fails to show that the intervenor has standing, unless the intervenor shows that intervenor's participation will contribute substantially to the prevention of waste, protection of correlative rights or protection of public health or the environment.

[19.15.4.11 NMAC - Rp, 19.15.14.1209 NMAC, 12/1/2008]

19.15.4.12 NOTICE REQUIREMENTS FOR SPECIFIC ADJUDICATIONS:

A. Applications for the following adjudicatory hearings before the division or commission, in addition to that 19.15.14.9 NMAC requires, as follows:

(1) Compulsory pooling and statutory unitization.

(a) The applicant shall give notice to each owner of an interest in the mineral estate of any portion of the lands the applicant proposes to be pooled or unitized whose interest is evidenced by a written conveyance document either of record or known to the applicant at the time the applicant filed the application and whose interest has not been voluntarily committed to the area proposed to be pooled or unitized (other than a royalty interest subject to a pooling or unitization clause). An applicant seeking compulsory pooling of a standard horizontal spacing unit need not give notice to affected persons in adjoining spacing units or tracts unless the division so directs.

(b) When the applicant has given notice as required in Subsection A of 19.15.4.9 NMAC, of a compulsory pooling application, and those owners the applicant has located do not oppose the application, the applicant may file under the following alternative procedure. The application shall include the following:

(i) a statement that the applicant expects no opposition including the reasons why;

(ii) a map outlining the spacing unit to be pooled, showing the ownership of each separate tract in the proposed unit and the proposed well's location;

(iii) the names and last known addresses of the interest owners to be pooled and the nature and percent of their interests and an attestation that the applicant has conducted a diligent search of all public records in the county where the well is located and of phone directories, including computer searches;

(iv) the names of the formations and pools to be pooled;

(v) a statement as to whether the pooled unit is for gas or oil production or both;

(vi) written evidence of attempts the applicant made to gain voluntary agreement including but not limited to copies of relevant correspondence;

(vii) proposed overhead charges (combined fixed rates) to be applied during drilling and production operations along with the basis for such charges;

(viii) the location and proposed depth of the well to be drilled on the pooled units; and

(ix) a copy of the AFE the applicant, if appointed operator, will submit to the well's interest owners.

(c) Applicants shall provide with all submittals sworn and notarized statements by those persons who prepared submittals, attesting that the information is correct and complete to the best of their knowledge and belief.

(d) The division shall set unopposed pooling applications for hearing. If the division finds the application complete, the information submitted with the application shall constitute the record in the case, and the division shall issue an order based on the record.

(e) At an interested person's request or upon the division's own initiative, the division shall set a pooling application for full hearing with oral testimony by the applicant.

(2) Unorthodox well locations.

(a) If the proposed well location is unorthodox by being located closer to the spacing unit's outer boundary than 19.15.15 NMAC, 19.15.16 NMAC or applicable special pool orders permit, the applicant shall notify the affected persons in each adjoining spacing unit in the same pool or formation located closer to the unorthodox well location than the minimum distance prescribed by the applicable rule or order. If an adjoining tract is not included in a spacing unit in the same pool or formation in which the well may be completed, then for such tract the applicant shall notify affected persons in the same pool or formation in any adjoining quarter-quarter section (if the proposed well will be completed in a pool where the standard spacing unit is 40 acres), or any adjoining quarter section (if the proposed well will be completed in a pool where the standard spacing unit is greater than 40 acres), that is located closer to the unorthodox well location than the minimum setback distance prescribed by the applicable rule or order.

(b) If the proposed well location is unorthodox by being in a different quarter-quarter section or quarter section than Subsection B of 19.15.15.10 NMAC or special pool orders provide, the applicant shall notify affected persons in all spacing units or tracts in the same pool or formation that adjoin the proposed well's spacing unit.

(3) **Non-standard proration unit.** The applicant shall notify all owners of interests in the mineral estate, including mineral interest owners and royalty owners, to be excluded from the proration unit in the quarter-quarter section for 40-acre pools or formations, the one-half quarter section for 80-acre pools or formations, the quarter section for 160-acre pools or formations, the half section for 320-acre pools or formations or section for 640-acre pools or formations in which the non-standard unit is located and to such other persons as the division requires. This requirement shall not apply to applications for non-standard horizontal spacing units pursuant to Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(4) Special pool orders regulating or affecting a specific pool.

(a) Except for non-standard proration unit applications, if the application involves changing the amount of acreage to be dedicated to a well, the applicant shall notify:

- (i)** division-designated operators in the pool; and
- (ii)** owners of interests in the mineral estate in existing spacing units with producing wells.

(b) If the application involves other matters, the applicant shall notify:

- (i)** division-designated operators in the pool; and
- (ii)** division-designated operators of wells within the same formation as the pool and within one mile of the pool's outer boundary that have not been assigned to another pool.

(5) Special orders regarding any division-designated potash area. The applicant shall notify potash lessees, oil and gas operators, oil and gas lessees and unleased mineral interest owners within the designated potash area.

(6) Downhole commingling. The applicant shall notify owners of interests in the mineral estate in the spacing unit if ownership is not common for commingled zones within the spacing unit.

(7) Surface disposal of produced water or other fluids. The applicant shall notify surface owners within one-half mile of the site.

(8) Surface commingling. The applicant shall give notice as Subsection C of 19.15.12.10 NMAC prescribes.

(9) Adjudications not listed above. The applicant shall give notice as the division requires.

B. Type and content of notice. The applicant shall send a notice 19.15.4.9 NMAC requires by certified mail, return receipt requested, to the last known address of the person to whom notice is to be given at least 20 days prior to the application's scheduled hearing date and shall include a copy of the application; the hearing's date, time and place; and how protests may be made. When an applicant has been unable to locate persons entitled to notice after exercising reasonable diligence, the applicant shall provide notice by publication, and submit proof of publication at the hearing. Such proof shall consist of a copy of a legal advertisement that was published at least 10 business days before the hearing in a newspaper of general circulation in the county or counties in which the property is located, or if the application's effect is statewide, in a newspaper of general circulation in this state, together with the newspaper's affidavit of publication.

C. At the hearing, the applicant shall make a record, either by testimony or affidavit, that the applicant or its authorized representative has signed, that the applicant has:

- (1) complied with notice provisions of 19.15.4.9 NMAC;
- (2) conducted a good-faith diligent effort to find the correct addresses of persons entitled to notice; and
- (3) given notice at that correct address as 19.15.4.9 NMAC requires; in addition, the record shall contain the name and address of each person to whom notice was sent and, where proof of receipt is available, a copy of the proof.

D. Evidence of failure to provide notice as 19.15.4.9 NMAC requires may, upon proper showing, be considered cause for reopening the case.

E. In the case of an administrative application where the required notice was sent and a timely filed protest was made, the division shall notify the applicant and the protesting party in writing that the case has been set for hearing and the hearing's date, time and place. No further notice is required.

[19.15.4.12 NMAC - Rp, 19.15.14.1210 NMAC, 12/1/2008; A, 6/26/2018]

19.15.4.13 PLEADINGS, COPIES, PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE:

A. Pleadings. Applicants shall file two sets of pleadings and correspondence in cases pending before a division examiner with the division clerk and six sets of pleadings and correspondence in cases pending before the commission with the commission clerk. For cases pending before the commission, the commission clerk shall disseminate copies of pleadings and correspondence to the commission members. The party filing the pleading or correspondence shall at the same time serve a copy of the pleading or correspondence upon each party who has entered an appearance in the case on or prior to the business day immediately preceding the date when the party files the pleading or correspondence with the division or the commission clerk, as applicable. Parties shall accomplish service by hand delivery or transmission by facsimile or electronic mail to a party who has entered an appearance or, if the party is represented, the party's attorney of record. Service upon a party who has not filed a pleading containing a facsimile number or e-mail address may be made by ordinary first class mail. Parties shall be deemed to have made an appearance when they have either sent a letter regarding the case to the division or commission clerk or made an in person appearance at a hearing before the commission or before a division examiner. A written appearance, however, shall not be complete until the appearing party has provided notice to other parties of record. An initial pleading or written entry of appearance a party other than the applicant files shall include the party's address or the address of the party's attorney and an e-mail and facsimile number if available.

B. Pre-hearing statements.

(1) A party to an adjudicatory proceeding who intends to present evidence at the hearing shall file a pre-hearing statement, and serve copies on other parties or, for parties that are represented, their attorneys in the manner Subsection A of 19.15.4.13 NMAC provides, at least four business days in advance of a scheduled hearing before the division or the commission, but in no event later than 5:00 p.m. mountain time, on the Thursday preceding the scheduled hearing date. The statement shall include:

(a) the names of the party and the party's attorney;

(b) a concise statement of the case;

(c) the names of witnesses the party will call to testify at the hearing, and in the case of expert witnesses, their fields of expertise;

(d) the approximate time the party will need to present its case; and

(e) identification of any procedural matters that are to be resolved prior to the hearing.

(2) A party other than the applicant shall include in its pre-hearing statement a statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reasons for such support or opposition. In cases to be heard by the commission, each party shall include copies of exhibits that it proposes to offer in evidence at the hearing with the pre-hearing statement. The commission may exclude witnesses the party did not identify in the pre-hearing statement, or exhibits the party did not file and serve with the pre-hearing statement, unless the party offers such evidence solely for rebuttal or makes a satisfactory showing of good cause for failure to disclose the witness or exhibit.

(3) A pre-hearing statement filed by a corporation or other entity not represented by an attorney shall identify the person who will conduct the party's presentation at the hearing and include a sworn and notarized statement attesting that the corporation's or entity's governing body or chief executive officer authorizes the person to present the corporation or entity in the matter.

(4) For cases pending before the commission, the commission clerk shall disseminate copies of pre-hearing statements and exhibits to the commission members.

C. Motions for continuance. Parties shall file and serve motions for continuance no later than 48 hours prior to time the hearing is set to begin, unless the reasons for requesting a continuance arise after the deadline, in which case the party shall file the motion as expeditiously as possible after becoming aware of the need for a continuance.

[19.15.4.13 NMAC - Rp, 19.15.14.1211 NMAC, 12/1/2008]

19.15.4.14 CONDUCT OF ADJUDICATORY HEARINGS:

A. Testimony. Hearings before the commission or a division examiner shall be conducted without rigid formality. The division or commission shall take or have someone take a transcript of testimony and preserve the transcript as a part of the division's permanent records. A person testifying shall do so under oath. The division examiner or commission shall designate whether or not an interested party's un-sworn comments and observations are relevant and, if relevant, include the comments and observations in the record.

B. Pre-filed testimony. The director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the commission. The witness shall be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the witness' presence at hearing is waived upon notice to other parties and without their objection. The parties shall number pages of the prepared written testimony, which shall contain line numbers on the left-hand side.

C. Appearances pro se or through an attorney. Parties may appear and participate in hearings either pro se (on their own behalf) or through an attorney. Corporations, partnerships, governmental entities, political subdivisions, unincorporated associations and other collective entities may appear only through an attorney or through a duly authorized officer or member. Participation in adjudicatory hearings shall be limited to parties, as defined in 19.15.4.10 NMAC, except that a representative of a federal, state or tribal governmental agency or political subdivision may make a statement on the agency's or political subdivision's behalf. The commission or division examiner shall have the discretion to allow other persons present at the hearing to make a relevant statement, but not to present evidence or cross-examine witnesses. A person making a statement at an adjudicatory hearing shall be subject to cross-examination by the parties or their attorneys.

[19.15.4.14 NMAC - Rp, 19.15.14.1212 NMAC, 12/1/2008]

19.15.4.15 CONTINUANCE OF AN ADJUDICATORY HEARING:

A division examiner or the commission chair may continue an adjudicatory hearing before a division examiner or the commission held after due notice to a specified time and place without the necessity of notice of the same being served or published.

[19.15.4.15 NMAC - Rp, 19.15.14.1213 NMAC, 12/1/2008]

19.15.4.16 POWER TO REQUIRE ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE; PRE-HEARING PROCEDURE FOR ADJUDICATORY HEARINGS:

A. Subpoenas. The commission or its members and the director or the director's authorized representative have statutory power to subpoena witnesses and to require the production of books, papers, records, other tangible things or electronic data in a proceeding before the commission or division. The director or the director's authorized representative shall issue a subpoena for attendance at a hearing upon a party's written request. The director or the director's authorized representative shall, upon a party's request, issue a subpoena for production of books, papers, records, other tangible things or electronic data in advance of the hearing. The director or the division examiner assigned to hear the case may consider pre-hearing motions, such as motions for protection or quashing of subpoenas, prior to the hearing pursuant to Subsection C of 19.15.4.16 NMAC or to reserve such matters for consideration at a hearing on the merits. The commission and director or the director's authorized representative shall issue subpoenas for witness depositions in advance of the hearing only in extraordinary circumstances for good cause shown.

B. Pre-hearing conferences. The division examiner or the director may hold a pre-hearing conference prior to the hearing on the merits in cases pending before the division or the commission, respectively, either upon a party's request or upon the director or a division examiner giving notice. The pre-hearing conference's purpose shall be to narrow issues, eliminate or resolve other preliminary matters and encourage settlement. The director or examiner may issue a pre-hearing order following the pre-hearing conference. The director or division examiner shall either provide or ensure that written or oral notice of a pre-hearing conference is given to the applicant and to other parties who, at the time such conference is scheduled, have filed appearances in the case.

C. Hearings on motions. The director or a division examiner may rule on motions that are necessary or appropriate for disposition prior to a hearing on the merits. If the case is pending before the commission, the director shall rule on a motion; provided that the director may refer a motion for hearing by a division examiner specifically designated for the purpose, who, if the case is a de novo application, shall not have participated in the case prior to the filing of the application for de novo hearing. Prior to ruling on a motion, the director or division examiner shall give written or oral notice to each party who has filed an appearance in the case and who may have an interest in the motion's disposition (except a party who has indicated that it does not oppose the motion), and shall allow interested parties an opportunity, reasonable under the circumstances, to respond to the motion. The director or division examiner may conduct a hearing on a motion, following written or oral notice to interested parties, either at a pre-hearing conference or otherwise. If the commission or division receives oral testimony at a hearing, the commission or division examiner shall ensure that a record is made of the testimony as at other hearings.

[19.15.4.16 NMAC - Rp, 19.15.14.1214 NMAC, 12/1/2008]

19.15.4.17 RULES OF EVIDENCE AND EXHIBITS FOR ADJUDICATORY HEARINGS:

A. Presentation of evidence. Subject to other provisions of 19.15.4.16 NMAC, the commission or division examiner shall afford full opportunity to the parties at an adjudicatory hearing before the commission or division examiner to present evidence and to cross-examine witnesses. The rules of evidence applicable in a trial before a court without a jury shall not control, but division examiners and the commission may use such rules as guidance in conducting adjudicatory hearings. The commission or division examiner may admit relevant evidence, unless it is immaterial, repetitious or otherwise unreliable. The commission or division examiner may take administrative notice of the authenticity of documents copied from the division's files.

B. Parties introducing exhibits at hearings before the commission or a division examiner shall provide a complete set of exhibits for the court reporter, each commissioner or division examiner and other parties of record.

C. A party requesting incorporation of records from a previous hearing at a commission hearing shall include copies of the record for each commissioner.

[19.15.4.17 NMAC - Rp, 19.15.14.1215 NMAC, 12/1/2008]

19.15.4.18 DIVISION EXAMINER'S QUALIFICATIONS, APPOINTMENT AND REFERRAL OF CASES:

The director shall appoint as division examiners division staff who are licensed attorneys, or who have experience in hydrogeology, hydrology, geology, petroleum engineering, environmental engineering or a related field and a college degree in geology, engineering, hydrology or related field. Nothing in 19.15.4.18 NMAC shall prevent a commission member from serving as a division examiner. The director may refer a matter or proceeding to a division examiner for hearing in accordance with 19.15.4 NMAC.

[19.15.4.18 NMAC - Rp, 19.15.14.1216 NMAC, 12/1/2008]

19.15.4.19 DIVISION EXAMINER'S POWER AND AUTHORITY:

The division examiner to whom the director refers a matter under 19.15.4 NMAC shall have full authority to hold hearings on such matter in accordance with 19.15.4 NMAC, subject only to such limitations as the director may order in a particular case. The division examiner shall have the power to perform all acts and take all measures necessary and proper for the hearing's efficient and orderly conduct, including administering oaths to witnesses, receiving testimony and exhibits offered in evidence and ruling upon such objections as may be interposed. The division examiner shall cause a complete record of the proceedings to be made and transcribed and shall certify the record of the proceedings to the director as provided in 19.15.4.21 NMAC.

[19.15.4.19 NMAC - Rp, 19.15.14.1217 NMAC, 12/1/2008]

19.15.4.20 ADJUDICATORY HEARINGS THAT SHALL BE HELD BEFORE THE COMMISSION:

Notwithstanding other provisions of 19.15.4 NMAC, the hearing on a matter shall be held before the commission if:

- A.** it is a hearing pursuant to Section 70-2-13 NMSA 1978; or
- B.** the director directs the commission to hear the matter.

[19.15.4.20 NMAC - Rp, 19.15.14.1218 NMAC, 12/1/2008]

19.15.4.21 REPORT AND RECOMMENDATIONS FROM DIVISION EXAMINER'S HEARING:

Upon conclusion of a hearing before a division examiner, the division examiner shall promptly consider the proceedings in such hearing, and based upon the hearing's record prepare a written report with recommendations for the division's disposition of the matter or proceeding. The division examiner shall draft a proposed order and submit it to the director with the certified record of the hearing.

[19.15.14.1219 NMAC - Rp, 19.15.14.1219 NMAC, 12/1/2008]

19.15.4.22 DISPOSITION OF CASES HEARD BY DIVISION EXAMINER:

After receipt of the division examiner's report, the director shall enter the division's order, which the director may have modified from the division examiner's proposed order, disposing of the matter.

[19.15.4.22 NMAC - Rp, 19.15.14.1220 NMAC, 12/1/2008]

19.15.4.23 HEARING BEFORE COMMISSION AND STAYS OF DIVISION ORDERS:

A. De novo applications. When the division enters an order pursuant to a hearing that a division examiner held, a party of record whom the order adversely affects has the right to have the matter heard de novo before the commission, provided that within 30 days from the date the division issues the order the party files a written application for de novo hearing with the commission clerk. If a party files an application for a de novo hearing, the commission chairman shall set the matter or proceeding for hearing before the commission.

B. Stays of division or commission orders. A party requesting a stay of a division or commission order shall file a motion with the commission clerk and serve copies of the motion upon the other parties who appeared in the case, as Subsection A of 19.15.4.10 NMAC provides. The party shall attach a proposed stay order to the motion.

The director may grant a stay pursuant to a motion for stay or upon the director's own initiative, after according parties who have appeared in the case notice and an opportunity to respond, if the stay is necessary to prevent waste, protect correlative rights, protect public health or the environment or prevent gross negative consequences to an affected party. A director's order staying a commission order shall be effective only until the commission acts on the motion for stay.

[19.15.4.23 NMAC - Rp, 19.15.14.1221 NMAC, 12/1/2008]

19.15.4.24 COPIES OF COMMISSION AND DIVISION ORDERS:

Within 10 business days after the division or commission issues an order in an adjudicatory case, including an order granting or refusing rehearing or order following rehearing, the division or commission clerk shall mail a copy of such order to each party or its attorney of record. For purposes of 19.15.4.24 NMAC only, the parties to a case are the applicant and each person who has entered an appearance in the case, in person or by attorney, either by filing a protest, pleading or notice of appearance with the division or commission clerk or by entering an appearance on the record at a hearing.

[19.15.4.24 NMAC - Rp, 19.15.14.1222 NMAC, 12/1/2008]

19.15.4.25 REHEARINGS:

Within 20 days after entry of a commission order a party of record whom the order adversely affects may file with the commission clerk an application for rehearing on a matter the order determined, setting forth the respect in which the party believes the order is erroneous. The commission shall grant or refuse the application in whole or in part within 10 business days after the party files it, and the commission's failure to act on the application within such period shall be deemed a refusal and a final disposition of such application. In the event the commission grants the rehearing, the commission may enter a new order after rehearing as the circumstances may require.

[19.15.14.25 NMAC - Rp, 19.15.14.1223 NMAC, 12/1/2008]

19.15.4.26 EX PARTE COMMUNICATIONS:

A. In an adjudicatory proceeding, except for filed pleadings, at no time after a party files an application for hearing shall a party, interested participant or participant's representative advocate a position with respect to the issues the application involves to a commissioner or the division examiner appointed to hear the case unless the other parties of record to the proceedings have an opportunity to be present.

B. The prohibition in Subsection A of 19.15.4.26 NMAC, above, does not apply to those applications that the applicant believes are unopposed. However, in the event that

a party files an objection in a case previously believed to be unopposed, the prohibition in Subsection A of 19.15.4.26 NMAC, above, is immediately applicable.

C. This provision does not prohibit communications between the division's attorney or other division staff and the director that are essential to a case's management.

[19.15.4.26 NMAC - Rp, 19.15.14.1224 NMAC, 12/1/2008]

PART 5: ENFORCEMENT AND COMPLIANCE

19.15.5.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.5.1 NMAC - N, 12/1/2008]

19.15.5.2 SCOPE:

19.15.5 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.5.2 NMAC - N, 12/1/2008]

19.15.5.3 STATUTORY AUTHORITY:

19.15.5 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-31 and Section 70-2-31.1 NMSA 1978.

[19.15.5.3 NMAC – N, 12/1/2008, A, 2/25/2020]

19.15.5.4 DURATION:

Permanent.

[19.15.5.4 NMAC - N, 12/1/2008]

19.15.5.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.5.5 NMAC - N, 12/1/2008]

19.15.5.6 OBJECTIVE:

To establish a process to ensure compliance with the Oil and Gas Act, division rules and division and commission orders.

[19.15.5.6 NMAC - N, 12/1/2008]

19.15.5.7 DEFINITIONS

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.5.8 ENFORCEMENT OF STATUTES AND RULES:

The division is charged with the duty and obligation of enforcing the state's rules and statutes relating to the conservation of oil and gas, including the prevention of waste and the protection of correlative rights, and the protection of public health and the environment. An owner or operator shall obtain information pertaining to the regulation of oil and gas before beginning operations.

[19.15.5.8 NMAC - Rp, 19.15.1.12 NMAC, 12/1/2008, A, 2/25/2020]

19.15.5.9 COMPLIANCE:

A. An operator is in compliance with Subsection A of 19.15.5.9 NMAC if the operator:

- (1)** currently meets the financial assurance requirements of 19.15.8 NMAC;
- (2)** is not subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action;
- (3)** does not have a penalty assessment that is unpaid more than 30 days after issuance of the order assessing the penalty; and
- (4)** has no more than the following number of wells out of compliance with 19.15.25.8 NMAC that are not subject to an agreed compliance or final order setting a schedule for bringing the wells into compliance with 19.15.25.8 NMAC and imposing sanctions if the schedule is not met:
 - (a)** two wells or fifty percent of the wells the operator operates, whichever is less, if the operator operates 100 wells or less;
 - (b)** five wells if the operator operates between 101 and 500 wells;
 - (c)** seven wells if the operator operates between 501 and 1000 wells; and
 - (d)** 10 wells if the operator operates more than 1000 wells.

B. Inactive wells.

(1) The division shall make available on its website, and update daily, an "inactive well list" listing each well, by operator, that according to division records:

(a) shows no production or injection for past 15 months;

(b) does not have its well bore plugged in accordance with 19.15.25.9 NMAC through 19.15.25.11 NMAC;

(c) is not in approved temporary abandonment in accordance with 19.15.25.12 NMAC through 19.15.25.14 NMAC; and

(d) is not subject to an agreed compliance or final order setting a schedule for bringing the well into compliance with 19.15.25.8 NMAC.

(2) A well inactive for more than 15 months creates a rebuttable presumption that the well is out of compliance with 19.15.25.8 NMAC.

C. Financial assurance. The division shall make available on its website and update weekly the status of operators' financial assurance that 19.15.8 NMAC requires, according to division records.

[19.15.5.9 NMAC - Rp, 19.15.1.40 NMAC, 12/1/2008; A, 11/30/2016, A, 2/25/2020]

19.15.5.10 ENFORCEMENT:

A. General. Whenever the division determines that a person violated or is violating the Oil and Gas Act or a provision of any rule, order, permit or authorization issued pursuant to the Oil and Gas Act, the division may seek a sanction by:

(1) issuing a temporary cessation order if it determines that the alleged violation is causing or will cause an imminent danger to public health or safety or a significant imminent environmental harm. The temporary cessation order shall remain in place until the earlier of when the division determines that the alleged violation is abated or 30 days, unless a hearing is held before the division and a new order is issued;

(2) issuing a notice of violation; or

(3) commencing a civil action in district court.

B. Sanctions. The division may seek one or more of the following sanctions:

(1) a civil penalty;

(2) modification, suspension, cancellation or termination of a permit or authorization;

- (3) plugging and abandonment of a well;
- (4) remediation and restoration of a well location and associated facilities, including the removal of surface and subsurface equipment and other materials;
- (5) remediation and restoration of a location affected by a spill or release;
- (6) forfeiture of financial assurance;
- (7) shutting in a well or wells; and
- (8) any other remedy authorized by law.

C. Notice of violation.

(1) A notice of violation issued by the division shall state with reasonable specificity:

- (a) the identity of the alleged violator;
- (b) the nature and factual and legal basis of the alleged violation, including the provision of the Oil and Gas Act or rule, order, permit or authorization allegedly violated;
- (c) whether compliance is required immediately or within a specified time period;
- (d) the sanction(s) available for the alleged violation, the sanction(s) proposed by the division, and a statement that the division will take into consideration the violators good faith efforts to comply with the applicable requirements;
- (e) the availability of a process for informal review and resolution of the alleged violation, and the procedure to initiate the informal review process, including the contact information of the appropriate division employee;
- (f) a statement that if the notice of violation is not informally resolved within 30 days of service, the division will hold a hearing, but that the hearing shall not prohibit the parties from negotiating and settling the notice of violation at any time; and
- (g) the date of the hearing, which shall be no later than 90 days after the date of the notice of violation.

(2) The division shall serve the notice of violation on the alleged violator by certified mail, and may provide the notice of violation by electronic mail if possible.

(3) If during the informal review the division and the alleged violator agree to resolve the alleged violation, they shall incorporate their agreement into a stipulated final order signed by both parties. The stipulated final order shall state that the alleged violator admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives the alleged violator's right of review by the commission.

(4) If the division and the alleged violator fail to enter a stipulated final order within 30 days of service, the division shall hold a hearing at the division's principal office.

D. Civil penalties. A civil penalty assessed by the division shall account for the seriousness of the violation, good faith efforts to comply with the applicable requirement, history of noncompliance under the Oil and Gas Act and other relevant factors. The civil penalty assessed by the division shall not exceed \$2,500 per day of noncompliance for each alleged violation, unless the alleged violation presents a risk either to the health or safety of the public or of causing significant environmental harm, or unless the noncompliance continues beyond the time specified in the notice of violation or stipulated final order, whereupon the civil penalty may not exceed \$10,000 per day of noncompliance for each alleged violation, provided that the civil penalty assessed by the division for an alleged violation shall not exceed \$200,000.

E. Adjudicatory procedures. These adjudicatory procedures shall apply to hearings on temporary cessation orders and notices of violation before the division, and the provisions of 19.15.4 NMAC shall not apply.

(1) General provisions.

(a) Designation of parties. The parties shall be the division and the person served with a notice of violation or order, referred to herein as "respondent".

(b) Representation. Respondent may appear and participate in a hearing either pro se or through counsel, provided that a collective entity, including a corporation, partnership, unincorporated association, political subdivision or governmental agency shall appear only through counsel or a duly authorized officer or member.

(c) Rule applicability. In the absence of a specific provision in this section, the hearing examiner may apply the New Mexico rules of civil procedure and evidence.

(d) Computation of time. In computing any period of time under 19.15.5.10 NMAC the day of the event from which the designated period begins to run shall not be included, and the last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which case the time is extended until the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must

act within a prescribed period after service, and service is by first class mail only, three days is added to the prescribed period.

(e) Extensions of time. The hearing examiner may grant an extension of time to file a document or continue a hearing upon timely motion upon consent of the parties, or for good cause shown after consideration of prejudice to the other party and undue delay to the hearing.

(f) Filing of documents. A party shall file the original of each document and serve a copy on the other party, accompanied by a certificate of service identifying the method and address used to complete service.

(g) Service of documents. A party shall serve each document on the other party or its counsel, as applicable, by personal service or first class mail, or by electronic mail if the parties agree.

(h) Form of documents. Unless otherwise ordered, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, shall contain the caption of the notice of violation or temporary cessation order on the first page and shall be signed by the party or its counsel, as applicable.

(2) Pre-hearing procedures.

(a) Docketing. At the expiration of the 30 day period for informal resolution of a notice of violation, when a party appeals a final order under Subsection E of 19.15.5.10 NMAC, or when the division gives notice that it intends to extend a temporary cessation order, the division shall docket the notice of violation or order for hearing, identify the factual basis for the alleged violation and proposed sanction(s), and serve a notice of docketing on respondent.

(b) Answer. No later than 10 days after service of the notice of docketing, respondent shall file an answer stating its objection, if any, and the factual and legal basis for such objection, to each alleged violation and proposed sanction in the notice of violation or order.

(c) Hearing examiner. The hearing examiner shall have the authority to take all measures necessary to conduct a fair, impartial and efficient adjudication of issues, and to maintain order and avoid undue delay, including the authority to conduct pre-hearing conferences and hearings, rule on procedural and evidentiary motions, govern the examination of witnesses and the admission of evidence, issue orders and prepare a recommended decision. After the division issues the notice of violation, the hearing examiner shall not discuss ex parte the merits of the proceeding with the division or the respondent.

(d) Pre-hearing conference. The hearing examiner may hold a pre-hearing conference to narrow the issues, eliminate or resolve preliminary matters and

encourage settlement, and may issue a pre-hearing order on procedural and evidentiary matters, including a schedule for the filing of motions and testimony, stipulations regarding alleged violations and requested relief, including proposed civil penalties or elements thereof, and any other matter necessary for the efficient conduct of the hearing.

(e) Pre-hearing statements. No later than seven calendar days before the hearing, a party who intends to present evidence at the hearing shall file and serve a statement that contains the following information:

(i) the name, address, employment and qualifications, including education and work history, of each witness;

(ii) a statement identifying the opinions and factual assertions supporting each witness' testimony;

(iii) the exhibits and other evidence to be presented by each witness;
and

(iv) procedural matters that are to be resolved prior to the hearing.

(f) Enforcement. The hearing examiner may enforce the requirements of 19.15.5.10 NMAC by any appropriate means, including the exclusion of testimony, exhibits and other evidence.

(g) Motions.

(i) **General.** All motions, except motions made orally during the hearing, shall be in writing, specify the grounds for the motion, state the relief sought, indicate whether the motion is opposed or unopposed and be served on the other party.

(ii) **Unopposed motions.** An unopposed motion shall state that concurrence of the other party was obtained and shall be accompanied by a proposed order approved by the parties.

(iii) **Opposed motions.** An opposed motion shall state either that concurrence was sought and not obtained, or the reason that concurrence was not sought.

(iv) **Response.** No later than 10 days after service of an opposed motion, the opposing party may file a response. Failure to file a response shall be deemed a waiver of any objection to the granting of the motion.

(v) **Reply.** No later than 10 days after service of a response to an opposed motion, the moving party may file a reply.

(vi) Decision. The hearing examiner shall decide all motions without a hearing, unless otherwise ordered by the hearing examiner sua sponte or upon written request of a party.

(h) Shortening Deadlines. On the written request of the alleged violator showing good cause, the hearing examiner may shorten the deadlines specified in Paragraph (2) of Subsection E of 19.15.10 NMAC to conduct the hearing on the division's application for a temporary cessation order as expeditiously as possible. If the division opposes the request to shorten deadlines, the procedures for opposed motions set forth in Subparagraph (g) of Paragraph (2) of Subsection G of 19.15.5.10 NMAC shall not apply and the hearing examiner shall decide the request, with or without hearing, as quickly as practicable.

(3) Hearing procedures.

(a) General. The hearing examiner shall admit all evidence, unless he or she determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded by the New Mexico rules of evidence is not admissible.

(b) Witness examination. Witnesses shall be examined orally and under oath or affirmation, provided that the parties may stipulate to the admission of the testimony of a witness, or part thereof. Parties shall have the right to cross-examine a witness, provided that the hearing examiner may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony.

(c) Exhibits. A party shall label each exhibit used during the hearing or offered into evidence with a designation identifying the party, the witness using or offering the exhibit and a serial number.

(d) Burden of persuasion. The division has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the alleged violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(4) Post-hearing procedures.

(a) Transcript. The hearing shall be transcribed verbatim. Respondent may order a copy of the transcript from the reporter at its own expense.

(b) Recommended decision. The hearing examiner shall prepare a recommended decision for review by the director.

(c) Final order. The director shall file a final order addressing the material issues of fact and law and may assess a sanction for each alleged violation, which shall be served on the division and the respondent.

F. Commission review. No later than 30 days after the director serves the final order, a party may file a notice of appeal with the commission and shall serve the notice of appeal on the other party. The commission shall schedule a hearing on the appeal and notify the parties of the date and time of the hearing. The commission shall conduct a de novo review, provided however, that the parties may stipulate to the issues to be heard and to the admission of all or part of the record before the division. The commission shall conduct the hearing in accordance with the adjudicatory procedures in Paragraph (1), Subparagraphs (c) through (g) of Paragraph (2), Paragraph (3) and Subparagraph (a) of Paragraph (4) of Subsection E of 19.15.5.10 NMAC.

G. Rehearings. A party may file an application for rehearing with the commission pursuant to Section 70-2-25 NMSA 1978.

H. Payment of civil penalty. Respondent shall pay the full amount of the civil penalty assessed in the final order (i) no later than 30 days after the director serves the final order, or (ii) if respondent files a notice of appeal to the commission or the district court pursuant to Section 70-2-25 NMSA 1978, no later than 30 days after the commission or the district court files a final order or the appeal is withdrawn.

I. Resolution after commencement of hearing. If the parties agree to resolve a notice of violation at any time after the commencement of a hearing, they shall file a stipulated final order signed by both parties. The stipulated final order shall state that respondent admits the division's jurisdiction to file the notice of violation, consents to the specified relief, including the civil penalty, if any, and waives respondent's right of review by the commission or the court, as applicable.

J. Publication. On or about October 1 of each year, the division shall publish a list identifying the temporary cessation orders and notices of violation issued during the preceding year, along with the civil penalty paid, if any.

K. Reservation. Nothing in 19.15.5.10 NMAC precludes the division from bringing any other action and seeking any relief allowed by the Oil and Gas Act.

[19.15.5.10 NMAC – Rp, 19.15.5.10 NMAC, 2/25/2020]

19.15.5.11 ENFORCEABILITY OF PERMITS AND ADMINISTRATIVE ORDERS:

A person who conducts an activity pursuant to a permit, administrative order or other written authorization or approval from the division shall comply with every term, condition and provision of the permit, administrative order, authorization or approval.

[19.15.5.11 NMAC - Rp, 19.15.1.41 NMAC, 12/1/2008]

PART 6: TAX INCENTIVES

19.15.6.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.6.1 NMAC - N, 12/1/08]

19.15.6.2 SCOPE:

19.15.6 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico.

[19.15.6.2 NMAC - N, 12/1/08]

19.15.6.3 STATUTORY AUTHORITY:

19.15.6 NMAC is adopted pursuant to NMSA 1978, Section 7-29A-1 *et seq.* and Section 7-29B-1 *et seq.*

[19.15.6.3 NMAC - N, 12/1/08]

19.15.6.4 DURATION:

Permanent.

[19.15.6.4 NMAC - N, 12/1/08]

19.15.6.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.6.5 NMAC - N, 12/1/08]

19.15.6.6 OBJECTIVE:

To establish procedures for the certification of eligibility for the enhanced oil recovery project tax incentive, the production restoration project tax incentive, the well workover project tax incentive and the stripper well tax incentive.

[19.15.6.6 NMAC - N, 12/1/08]

19.15.6.7 DEFINITIONS

A. "Average daily production" means the number derived by dividing the total volume of oil or gas production from the stripper well property reported to the division

during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year.

B. "Eligible well" means an oil or gas well that produces or an injection well that injects and is integral to production, for any period of time during the preceding calendar year.

C. "Expansion or expanded use" means a significant change or modification as the division determines in:

(1) the technology or process used for the displacement of oil from an oil well or division-designated pool; or

(2) the expansion, extension or increase in size of the geologic area or adjacent geologic area that could reasonably be determined to represent a new or unique area of activity.

D. "Operator":

(1) for purposes of 19.15.6.8 NMAC, means the person responsible for an EOR project's actual physical operation; and

(2) for purposes of 19.15.6.9 NMAC, means the person responsible for an oil or gas well's actual physical operation.

E. "Positive production response" means that the rate of oil production from the wells or pools an EOR project affects is greater than the rate that would have occurred without the project.

F. "Project area" means a pool or a portion of a pool that EOR operations directly affect.

G. "Primary recovery" means the displacement of oil from an oil well or division-designated pool into the well bore by means of the natural pressure of the oil well or pool, including artificial lift.

H. "Production restoration incentive tax exemption" means the severance tax exemption for natural gas or oil produced from an approved production restoration project found in NMSA 1978, Section 7-29-4.

I. "Production restoration project" means returning to production a gas or oil well, including an injection well that has previously produced, which had no more than 30 days of production in a period of 24 consecutive months beginning on or after January 1, 1993 the division has approved and certified.

J. "Recovered oil tax rate" means the tax rate set forth in NMSA 1978, Section 7-29-4, on oil produced from an EOR project.

K. "Routine maintenance" means repair or like-for-like replacement of downhole equipment or other procedure an operator performs to maintain the well's current production.

L. "Secondary recovery project" means an EOR project that:

(1) occurs subsequent to the completion of primary recovery and is not a tertiary recovery project;

(2) involves the application, in accordance with sound engineering principles of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or other division accepted and approved secondary recovery method that can reasonably be expected to result in an increase, determined in light of the facts and circumstances, in the amount of oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

M. "Stripper well property" means an oil or gas producing property that the taxation and revenue department assigns a single production unit number (PUN) and:

(1) if an oil producing property, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year;

(2) if a gas producing property, produced a daily average of less than 60,000 cubic feet of gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both oil and gas, produced a daily average of less than 10 barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of gas the well produced to barrels of oil by using a ratio of 6000 cubic feet to one barrel of oil.

N. "Stripper well incentive tax rates" means the tax rates set for stripper well properties by NMSA 1978, Sections 7-29-4 and 7-31-4.

O. "Termination" means the operator's discontinuance of an EOR project.

P. "Tertiary recovery project" means an EOR project that:

(1) occurs subsequent to a secondary recovery project's completion;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or

other division accepted and approved tertiary recovery method that can reasonably be expected to result in an increase, determined in light of the facts and circumstances, in the amount of oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

Q. "Well" means a well bore with single or multiple completions, including all horizons and producing formations from the surface to total depth.

R. "Well workover incentive tax rate" means the tax rate NMSA 1978, Section 7-29-4 imposes on gas or oil produced from a well workover project.

S. "Well workover project" means a procedure the operator of a gas or oil well undertakes that is intended to increase production from the well and that the division has approved and certified.

T. "Workover" means a procedure the operator undertakes that is intended to increase production but is not routine maintenance and includes:

(1) re-entry into the well to drill deeper, to sidetrack to a different location, to recompleat for production or to restore production from a zone that has been temporarily abandoned;

(2) recompleat by re-perforation of a zone from which gas or oil has been produced or by perforation of a different zone;

(3) repair or replacement of faulty or damaged casing or related downhole equipment;

(4) fracturing, acidizing or installing compression equipment; or

(5) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well.

[19.15.6.7 NMAC - Rp, 19.15.1.30 NMAC, 19.15.1.31 NMAC; 19.15.1.32 NMAC, and 19.15.1.33 NMAC, 12/1/08]

19.15.6.8 ENHANCED OIL RECOVERY PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of EOR projects or expansions of EOR projects for the recovered oil tax rate pursuant to the New Mexico Enhanced Oil Recovery Act, NMSA 1978, Sections 7-29A-1 through 7-29A-5.

B. 19.15.6.8 NMAC applies to:

- (1)** EOR projects;
- (2)** expansions of existing EOR projects;
- (3)** the expanded use of enhanced oil recovery technology in existing EOR projects; and
- (4)** the change from a secondary recovery project to a tertiary recovery project.

C. To be eligible for the tax rate the operator shall apply for and receive division approval. No project or expansion the division approved prior to March 6, 1992 qualifies.

D. Application.

(1) The operator shall file applications with the division's Santa Fe office. The operator shall also file one copy of the application and attachments with the appropriate division district office.

(2) The operator or its authorized representative having knowledge of the facts in the application shall execute and certify an application, which shall contain:

- (a)** the operator's name and address;
- (b)** the project area's description including:
 - (i)** a plat outlining the project area;
 - (ii)** a description of the project area by section, township and range; total acres; and
 - (iii)** the name of the subject pool and formation;
- (c)** the status of operations in the project area:
 - (i)** if unitized, the unit name and the date and number of the division order approving the unit plan of operation;
 - (ii)** if an application for approval of a unit plan has been made, the date the application was filed with the division; and
 - (iii)** if not unitized, identification of each lease in the project area by lessor, lessee and legal description;
- (d)** the method of recovery to be used:

- (i) identification of the fluids to be injected;
- (ii) if the division has approved the project, the date and number of the division order; and
- (iii) if the division has not approved the project, the date the application for approval was filed with the division on form C-108;

(e) the project description:

- (i) a list of producing wells;
- (ii) a list of injection wells;
- (iii) the capital costs of additional facilities;
- (iv) the total project cost;
- (v) the estimated total value of the additional production that will be recovered as a result of the project;
- (vi) the anticipated date for commencement of injection;
- (vii) the type of fluid to be injected and the anticipated volumes; and if the application is made for an expansion of an existing project, an explanation of what changes in technology the operator will use or what additional geographic area the operator will add to the project area; and

(f) production data including graphs, charts and other supporting data showing the production history and production forecast of oil, gas, casinghead gas and water from the project area.

E. Approval and certification.

(1) Project approval. The division shall approve an EOR project and designate the project area for the recovered oil tax rate when the operator proves that:

(a) the application of the proposed enhanced recovery techniques to the reservoir should result in an increase in the amount of oil that may be ultimately recovered;

(b) the project area has been so depleted that it is prudent to apply enhanced recovery techniques to maximize the ultimate recovery of oil; and

(c) the application is economically and technically reasonable and has not been prematurely filed.

(2) Positive production response certification.

(a) For the recovered oil tax rate to apply to oil produced from an approved qualified EOR project, the operator shall demonstrate a positive production response to the division and file an application for certification of a positive production response with the division's Santa Fe office, which shall include:

- (i)** a copy of the division's approval of the EOR project or expansion;
- (ii)** a plat of the affected area showing all injection and producing wells with completion dates; and
- (iii)** production graphs and supporting data demonstrating a positive production response and showing the volumes of water or other substances that have been injected on the lease or unit since initiation of the EOR project.

(b) The director may administratively approve an application and certify a positive production response or, at the director's discretion or at the applicant's request, may set the application for hearing.

(c) The division shall certify that a positive production response occurred and notify the secretary of taxation and revenue; this certification and notice shall set forth the date the certification was made and the date the positive production response occurred provided however:

(i) for a secondary recovery project, the application for certification of a positive production response shall occur not later than five years from the date the division issued the certification of approval for the EOR project or expansion; and

(ii) for a tertiary recovery project, the application for certification of a positive production response must occur not later than seven years from the date the division issues the certification of approval for the EOR project or expansion.

F. Reporting requirements.

(1) The operator of an approved EOR project shall report annually on the project's status and confirm that the project is still a viable EOR project as approved. The operator shall file the report for the year ending May 31 with the division's Santa Fe office. The report shall contain:

- (a)** the date and number of the division's certification order for the project;
- (b)** production graphs showing oil, gas and water production;
- (c)** a graph showing the volumes of fluid injected and the average injection pressures; and

(d) additional data the director deems necessary for continued approval.

(2) The director may set for hearing the continued approval of an EOR project.

G. Termination. When the operator terminates active operation of an EOR project or expansion, the operator shall notify the division and the secretary of taxation and revenue in writing not later than the 30th day after the EOR project's termination or expansion.

[19.15.6.8 NMAC - Rp, 19.15.1.30 NMAC, 12/1/08]

19.15.6.9 PRODUCTION RESTORATION PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of production restoration projects for the production restoration incentive tax exemption pursuant to the Natural Gas and Crude Oil Production Incentive Act, NMSA 1978, Sections 7-29B-1 through 7-29B-6.

B. 19.15.6.9 NMAC applies to gas or oil wells division records show had 30 days or less production in a period of 24 consecutive months beginning on or after January 1, 1993 upon which the operator commenced operations to restore production after June 16, 1995.

C. To be eligible for the exemption, the operator shall apply for and receive division approval. No production restoration project commenced prior to June 16, 1995 qualifies.

D. Applications.

(1) An operator shall file an application with the division within 12 months of the production restoration.

(2) The operator shall file the application on behalf of the project's interest owners.

(3) The operator shall file the application on form C-139 using the division's web-based online application.

E. Approval, certification, notification and hearing.

(1) Project approval and certification.

(a) The division shall approve a project and issue a certification to the operator designating the gas or oil well as a production restoration project when the operator proves that:

(i) after June 16, 1995, the operator has commenced a process to return the well to production; and

(ii) division records show the well had 30 days or less of production in any period of 24 consecutive months beginning on or after January 1, 1993.

(b) The exemption shall apply beginning the first day of the month following the date the operator returned the well to production as certified by the division.

(2) Notification to the secretary of taxation and revenue. The division shall notify the secretary of taxation and revenue of the approval. This notice shall identify the gas or oil well as a production restoration project and certify the date production was restored.

(3) Hearing. The division shall consider applications without a hearing. If the appropriate division district office denies an application, the division upon the applicant's request shall set the application for hearing. An application the appropriate division district office has not acted upon within 30 days from the date it is filed shall be deemed denied.

[19.15.6.9 NMAC - Rp, 19.15.1.31 NMAC, 12/1/08]

19.15.6.10 WELL WORKOVER PROJECT TAX INCENTIVE:

A. The division shall accept applications for qualification of well workover projects for the well workover incentive tax rate pursuant to the Natural Gas and Crude Oil Production Incentive Act, NMSA 1978, Sections 7-29B-1 through 7-29B-6.

B. 19.15.6.10 NMAC applies to a gas or oil well upon which the operator has commenced a workover after June 16, 1995 that is intended to increase the well's production.

C. To be eligible for the incentive tax rate, the operator shall apply for and receive division approval. No well workover project the operator commences prior to June 16, 1995 qualifies.

D. Application.

(1) The operator shall file the application with the division within 12 months of the workover's completion.

(2) The operator shall file on behalf of the project's interest owners.

(3) The operator shall retain the data used in the application in its files during the period of time the well qualifies for and receives the well workover incentive tax rate.

(4) The operator shall file the application on form C-140 using the division's web-based online application.

E. Approval, certification, notification and hearing.

(1) Project approval and certification.

(a) The division shall approve a workover and issue a certification of approval to the operator designating the gas or oil well as a well workover project when the operator proves that:

(i) the operator has undertaken approved workover procedures on the well that are intended to increase production; and

(ii) the production curve or data tabulation from production data reflects a positive production increase from the workover.

(b) The incentive tax rate shall apply beginning the first day of the month following the date the operator completed the workover as certified by the division.

(2) Notification to the secretary of taxation and revenue. The division shall notify the secretary of taxation and revenue of the approval by identifying the gas or oil well as a well workover project and certifying the date the operator completed the project.

(3) Hearings and requests for additional information.

(a) The division shall consider applications without a hearing. If the appropriate division district office denies an application, the division upon the applicant's request shall set the application for hearing. An application the division district office does not act on within 30 days from the date it is filed is deemed denied.

(b) The division may request additional information from the operator to support an application. When the division requests additional information, the 30-day approval period shall begin to run on the date the operator provides the requested data.

F. Certifications prior to July 1, 1999. Well workover projects the division certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective July 1, 1999.

[19.15.6.10 NMAC - Rp, 19.15.1.32 NMAC, 12/1/08]

19.15.6.11 STRIPPER WELL TAX INCENTIVE:

A. Qualification of stripper well properties for the stripper well incentive tax rates in NMSA 1978, Sections 7-29-4 and 7-31-4, requires division certification. The division shall certify stripper well properties for calendar year 1998 no later than June 30, 1999 and no later than June 1 of each succeeding year for the preceding calendar year.

B. 19.15.6.11 NMAC applies to a property that the division certifies as a stripper well property after June 30, 1999.

C. Certification, notification and hearing.

(1) The division shall determine which wells qualify as stripper well properties.

(2) Upon certification of properties as stripper well properties, the division shall notify the operator and the secretary of taxation and revenue of that certification.

(3) The operator shall notify the interest owners of the certification of the property as a stripper well property.

(4) An operator may make a written request that the division reevaluate a property for stripper well status.

(5) If the division denies stripper well certification to a property, the division upon the operator's request shall set the matter for hearing.

[19.15.6.11 NMAC - Rp, 19.15.1.33 NMAC, 12/1/08]

PART 7: FORMS AND REPORTS

19.15.7.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.7.1 NMAC - Rp, 19.15.13.1 NMAC, 12/1/2008; A, 05/25/2021]

19.15.7.2 SCOPE:

19.15.7 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico.

[19.15.7.2 NMAC - Rp, 19.15.13.2 NMAC, 12/1/2008]

19.15.7.3 STATUTORY AUTHORITY:

19.15.7 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.7.3 NMAC - Rp, 19.15.13.3 NMAC, 12/1/2008]

19.15.7.4 DURATION:

Permanent.

[19.15.7.4 NMAC - Rp, 19.15.13.4 NMAC, 12/1/2008]

19.15.7.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.7.5 NMAC - Rp, 19.15.13.5 NMAC, 12/1/2008]

19.15.7.6 OBJECTIVE:

To provide for the filing of reports to enable the division to carry out its statutory mandates under the Oil and Gas Act.

[19.15.7.6 NMAC - Rp, 19.15.13.6 NMAC, 12/1/2008]

19.15.7.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.7.8 GENERAL:

A. Development of forms and applications. The division shall develop standard forms and applications for the purposes required by the commission in any rule. The division may also develop online forms, applications and other submittal processes to provide standard mechanisms for any other required notices, requests, applications, or reports. All submittal processes for forms and applications shall be available on the division's website.

B. Additional data. 19.15.7 NMAC does not limit or restrict the division's authority to require the furnishing of additional reports, data or other information relative to the production, transportation, storing, refining, processing or handling of oil, gas or products in the state as may appear to the division to be necessary or desirable, either generally or specifically, for compliance with or implementation of the Oil and Gas Act.

C. Books and records. A person subject to the Oil and Gas Act shall make and keep appropriate books and records for a period of not less than five years, covering operations in New Mexico, in order to make and substantiate the reports the division requires.

D. Written notices, requests, permits and reports. A person required to file notices, requests, permits or reports shall use the division's website in accordance with the instructions provided on the website or required on a form or in any rule covering a form's use or special order pertaining to its use. The following list of forms is intended for informational purposes and does not limit the division's authority to establish new forms or revise existing forms:

- (1) form C-101 - application for permit to drill, deepen or plug back;
- (2) form C-102 - well location and acreage dedication plat;
- (3) form C-103 - sundry notices and reports on wells;
- (4) form C-104 - request for allowable and authorization to transport oil and gas;
- (5) form C-105 - well completion or recompletion report and log;
- (6) form C-106 - notice of intention to utilize automatic custody transfer equipment;
- (7) form C-107 - application for multiple completion;
- (8) form C-107-A - application for downhole commingling;
- (9) form C-107-B - application for surface commingling (diverse ownership);
- (10) form C-108 - application to dispose of produced water by injection into a porous formation;
- (11) form C-109 - application for discovery allowable and creation of a new pool;
- (12) form C-111 - gas transporter's monthly report (sheet 1 and sheet 2);
- (13) form C-112 - transporter's and storer's monthly report;
- (14) form C-112-A - receipts continuation sheet;
- (15) form C-112-B - deliveries continuation sheet;
- (16) form C-113 - refiner's monthly report (sheet 1 and sheet 2);
- (17) form C-115 - operator's monthly report;
- (18) form C-115B - volume of vented and flared natural gas;

- (19) form C-115-EDP - operator's monthly report (electronic data processing);
- (20) form C-116 - gas-oil ratio tests;
- (21) form C-117-A - tank cleaning, sediment oil removal, transportation of miscellaneous hydrocarbons and disposal permit;
- (22) form C-117-B - monthly sediment oil disposal statement;
- (23) form C-118 - treating plant operator's monthly report (sheet 1 and sheet 2);
- (24) form C-120-A - monthly water disposal report;
- (25) form C-121 - oil purchaser's nomination;
- (26) form C-121-A - purchaser's gas nomination;
- (27) form C-122 - multi-point and one point back pressure test for gas wells;
- (28) form C-122-A - gas well test data sheet-San Juan basin (initial deliverability test, blue paper; annual deliverability test, white);
- (29) form C-122-B - initial potential test data sheet;
- (30) form C-122-C - deliverability test report;
- (31) form C-122-D - worksheet for calculation of static column wellhead pressure (P_w);
- (32) form C-122-E - worksheet for stepwise calculation of (surface) (subsurface) pressure (P_c and P_w);
- (33) form C-122-F - worksheet for calculation of wellhead pressures (P_c or P_w) from known bottom hole pressure (P_f or P_s);
- (34) form C-122-G - worksheet for calculation of static column pressure at gas liquid interface;
- (35) form C-123 - request for the creation of a new pool;
- (36) form C-124 - reservoir pressure report;
- (37) form C-125 - gas well shut-in pressure report;
- (38) form C-126 - permit to transport recovered load oil;

- (39) form C-127 - request for allowable change;
- (40) form C-129 - report of vented or flared natural gas;
- (41) form C-130 - notice of disconnection;
- (42) form C-131-A - monthly gas storage report;
- (43) form C-131-B - annual LPG storage report;
- (44) form C-133 - authorization to move produced water exhibit "A";
- (45) form C-134 - application for exception to division order R-8952, 19.15.18.18 NMAC or 19.15.36 NMAC;
- (46) form C-135 - gas well connection, reconnection or disconnection notice;
- (47) form C-136 - application for approval to use an alternate gas measurement method;
- (48) form C-137 - application for waste management facility;
- (49) form C-137-EZ - registration/final closure report for small landfarm;
- (50) form C-138 - request for approval to accept solid waste;
- (51) form C-139 - application for qualification of production restoration project and certification of approval;
- (52) form C-140 - application for qualification of well workover project and certification of approval;
- (53) form C-141 - release notification and corrective action;
- (54) form C-144 - pit, closed-loop system, below-grade tank or proposed alternative method permit or closure plan application;
- (55) form C-145 - change of operator;
- (56) form C-146 - change of operator name;
- (57) form C-147 - permit or registration for recycling and re-use of produced water, drilling fluids and liquid oil field waste; and
- (58) form C-148 - reporting for recycling and re-use of produced water, drilling fluids and liquid oil field waste.

[19.15.7.8 NMAC - Rp, 19.15.13.1100 NMAC, 12/1/2008; A, 5/25/2021; A, 8/23/2022]

19.15.7.9 FORM REQUIREMENTS ON FEDERAL OR TRIBAL LANDS OR MINERALS:

A. For wells on federal lands, accessing federal minerals or lands or minerals owned by a Native American nation, tribe, pueblo, or individual allottee in New Mexico, an operator shall file the applicable federal forms with the BLM (as may be updated from time to time by the BLM) in lieu of filing the following forms with the division:

- (1) applications for permit to drill, deepen or plug back (C-101),
- (2) sundry notices and reports on wells (C-103), and
- (3) well completion or recompletion reports and logs (C-105).

B. For geophysical logs, electrical logs or other testing results obtained from a well on federal lands or minerals and required for the Form C-105, the operator shall submit an electronic copy of the results to the division using the online submittal process.

C. All such forms filed with the BLM involving federal lands or minerals are subject to division approval in the same manner and to the same extent as the corresponding division forms. All forms approved or processed to completion by the BLM for wells on federal lands or accessing federal minerals shall be filed with division for approval using the online application process on the division's website no later than the time period in the rules for the equivalent division form or five business days after the BLM approves or processes to completion if no deadline is provided, except:

(1) for subsequent reports of work performed that are first reported to the BLM on a C-103 or a C-105 equivalent, if within 30 days of submittal, the BLM has not approved or processed to completion such submittal, the operator shall within 10 days file the state equivalent form with the division; and

(2) once the BLM processes to completion or approves the federal submittal, the operator shall file within ten business days the submittal processed to completion or approved by the BLM.

D. All such forms filed exclusively for lands or minerals owned by a Native American nation, tribe, pueblo or individual allottee shall be filed with the division using the online application process on the division's website as soon as is practicable after federal approval or processing to completion. Such forms involving exclusively lands or minerals that a Native American nation, tribe, pueblo or individually allottee owns are not subject to division review or approval unless such review or approval is authorized by a written agreement between the Native American nation, tribe, pueblo and the division.

E. For other reports on wells on federal land or minerals, the operators shall file the applicable state forms with the division, including forms C-104 and C-115.

[19.15.7.9 NMAC - Rp, 19.15.1.16 NMAC, 12/1/2008; 19.15.7.9 NMAC - Rp, 19.15.7.9 NMAC, 8/23/2022]

19.15.7.10 [RESERVED]:

[19.15.7.10 NMAC - Rp, 19.15.15.1302 NMAC, 12/1/2008; Repealed, 8/23/2022]

19.15.7.11 [RESERVED]:

[19.15.7.11 NMAC - Rp, 19.15.1.14 NMAC, 12/1/2008; Repealed, 8/23/2022]

19.15.7.12 APPLICATION FOR PERMIT TO DRILL, DEEPEN OR PLUG BACK (FORM C-101):

Form C-101 is the form an operator uses to apply for a permit to drill, deepen, re-enter or plug a well back to a different pool or complete or re-complete a well in an additional pool.

[19.15.13.12 NMAC - Rp, 19.15.13.1101 NMAC, 12/1/2008]

19.15.7.13 WELL LOCATION AND ACREAGE DEDICATION PLAT (FORM C-102):

A. Form C-102 is a dual purpose form the operator uses to show the well's exact location and the acreage dedicated to the well. The form is also used to show the ownership and status of each lease contained within the dedicated acreage. When there is more than one working interest or royalty owner on a given lease, designation of the majority owner et al. is sufficient.

B. An operator shall fill out and certify the information required on form C-102 except the well location on the plat. A professional surveyor, registered in the state of New Mexico, or surveyor approved by the division, shall plot and certify the well location on the plat from the section's outer boundaries.

C. An operator shall file amended form C-102 in the event there is a change in the information the operator previously submitted. The operator does not need to provide certification of the well location when filing amended form C-102.

[19.15.13.13 NMAC - Rp, 19.15.13.1102 NMAC, 12/1/2008]

19.15.7.14 SUNDRY NOTICES AND REPORTS ON WELLS (FORM C-103):

Form C-103 is a dual purpose form the operator files with the appropriate division district office to obtain division approval prior to commencing certain operations and to report various completed operations.

A. Form C-103 as a notice of intention.

(1) An operator shall file form C-103 and obtain the division's approval prior to:

(a) effecting a change of plans from those the division previously approved on form C-101 or form C-103;

(b) altering a drilling well's casing program or pulling casing or otherwise altering an existing well's casing installation;

(c) making multiple completions in a well;

(d) placing a well in approved temporary abandonment;

(e) plugging and abandoning a well;

(f) performing remedial work on a well that, when completed, will affect the well's original status (this includes making new perforations in existing wells or squeezing old perforations in existing wells, but does not apply to new wells in the process of being completed nor to old wells being deepened or plugged back to another zone when the division has authorized the recompletion by an approved form C-101, application for permit to drill, re-enter, deepen plug back or add a zone, nor to acidizing, fracturing or cleaning out previously completed wells, nor to installing artificial lift equipment); or

(g) downhole commingling in well bores, within pools or areas that the division has established as pre-approved pools or areas.

(2) In the case of well plugging operations, the notice of intention shall include a detailed statement of the proposed work including plans for shooting and pulling casing; plans for mudding, including the mud's weight; plans for cementing, including number of sacks of cement and depths of plugs; restoration and remediation of the location; and the time and date of the proposed plugging operations. The operator shall file a complete log of the well on form C-105 with the notice of intention to plug the well, if the operator has not previously filed the log (see 19.15.7.16 NMAC); the division shall not release the financial assurance until the operator complies with this requirement.

B. Form C-103 as a subsequent report.

(1) The operator shall file form C-103 as a subsequent report of operations in accordance with 19.15.7.14 NMAC as applicable to the particular operation being reported.

(2) The operator shall use form C-103 in reporting such completed operations as:

(a) commencement of drilling operations;

(b) casing and cement test;

(c) altering a well's casing installation;

(d) work to secure approved temporary abandonment;

(e) plugging and abandonment;

(f) plugging back or deepening within the same pool;

(g) remedial work;

(h) installation of artificial lifting equipment; or

(i) other operations that affect the well's original status but that are not specifically covered in 19.15.7.14 NMAC.

C. Report of commencement of drilling operations. Within 10 days following the commencement of drilling operations, the operator shall file a report of commencement on form C-103. The report shall indicate the hour and the date the operator spudded the well.

D. Report of results of test of casing and cement job; report of casing alteration. The operator shall file a report of casing and cement test within 10 days following the setting of each string of casing or liner. The operator shall file the report on form C-103 and include a detailed description of the test method employed and the results obtained by the test and any other pertinent information 19.15.16.10 NMAC requires. The report shall also indicate the top of the cement and the means by which the operator determined the top. It shall also indicate any changes from the casing program previously authorized for the well.

E. Report of temporary abandonment. The operator shall file a notice of work to secure approved temporary abandonment within 30 days following the work's completion. The report shall present a detailed account of the work done on the well, including location and type of plugs used, if any, and status of surface and downhole equipment and any other pertinent information relative to the well's overall status.

F. Report on plugging of well.

(1) The operator shall file a report of plugging operations within 30 days following completion of plugging operations on a well. The operator shall file the report on form C-103, which shall include the date the operator began plugging operations and the date the operator completed the work, a detailed account of the manner in which the operator performed the work including the depths and lengths of the various plugs set, the nature and quantities of materials employed in the plugging operations including the weight of the mud used, the size and depth of all casing left in the hole and any other pertinent information. (See 19.15.25 NMAC regarding plugging operations.)

(2) The division shall not approve a plugging report until the operator demonstrates compliance with Subsection B of 19.15.25.10 NMAC. The operator shall contact the appropriate division district office when the operator has restored the location in order to arrange for a division representative's inspection of the plugged well and the location.

G. Report of remedial work. The operator shall file a report of remedial work performed on a well within 30 days following the work's completion. The operator shall file the report on form C-103 and present a detailed account of the work done and the manner in which the operator performed the work; the daily production of oil, gas and water both prior to and after the remedial operation; the size and depth of shots; the quantity and type of crude, chemical or other materials the operator employed in the operation; and any other pertinent information. Among the remedial work an operator shall report on form C-103 are the following:

(1) report on shooting, fluid fracturing or chemical treatment of a previously completed well;

(2) report of squeeze job;

(3) report on setting of liner or packer;

(4) report of installation of pumping equipment or gas lift facilities; or

(5) report of any other remedial operations that are not specifically covered herein.

H. Report on deepening or plugging back within the same pool. An operator shall file a report of deepening or plugging back within 30 days following completion of the operations on a well. The operator shall file the report on form C-103 and present a detailed account of work done and the manner in which the operator performed the work. If the operator recompletes the well in the same pool, the operator shall also report the daily production of oil, gas and water both prior to and after recompletion. If the well is recompleted in another pool, the operator shall file forms C-101, C-102, C-

104 and C-105 in accordance with 19.15.7.12 NMAC, 19.15.7.13 NMAC, 19.15.7.15 NMAC and 19.15.7.16 NMAC.

I. Other reports on wells. The operator shall submit reports on other operations that affect the well's original status but that are not specifically covered in 19.15.7.14 NMAC to the division on form C-103 10 days following the operation's completion.

[19.15.7.14 NMAC - Rp, 19.15.13.1103 NMAC, 12/1/2008]

19.15.7.15 REQUEST FOR ALLOWABLE AND AUTHORIZATION TO TRANSPORT OIL AND GAS (FORM C-104):

An operator shall file with the division a complete form C-104 to request the division assign an allowable to a newly completed or re-completed well or a well completed in an additional pool or issue an operator authorization to transport oil or gas from the well.

[19.15.7.15 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/2008]

19.15.7.16 WELL COMPLETION OR RECOMPLETION REPORT AND LOG (FORM C-105):

A. Within 45 days following the completion or recompletion of a well, the operator shall file form C-105 with the division accompanied by a summary of special tests conducted on the well, including drill stem tests. In addition, the operator shall file a copy of electrical and radio-activity logs run on the well with form C-105. If the division does not receive form C-105 with attached logs and summaries within the specified 45-day period, the division shall withhold the allowable for the well or suspend injection authority, as appropriate, until the operator has complied with 19.15.7.16 NMAC.

B. In the case of a dry hole, a complete record of the well on form C-105 with the attachments listed in Subsection A of 19.15.7.16 NMAC shall accompany the notice of intention to plug the well, unless previously filed. The division shall not approve the plugging report or release the bond the operator has complied with 19.15.7.16 NMAC.

C. The division shall not keep form C-105 and accompanying attachments confidential unless the well's owner requests in writing that the division keep it confidential. Upon such request, the division shall keep these data confidential for 90 days from the date of the well's completion, provided, however, that the report, logs and other attached data may, when pertinent, be introduced in a public hearing before division examiners, the commission or in a court of law, regardless of the request that they be kept confidential.

[19.15.7.16 NMAC - Rp, 19.15.13.1105 NMAC, 12/1/2008; A, 9/26/2017; A, 8/23/2022]

19.15.7.17 NOTICE OF INTENTION TO UTILIZE AUTOMATIC CUSTODY TRANSFER EQUIPMENT (FORM C-106):

An operator intending to use an ACT system shall file form C-106, when applicable, in accordance with Subsection A of 19.15.18.15 NMAC.

[19.15.7.17 NMAC - Rp, 19.15.13.1106 NMAC, 12/1/2008]

19.15.7.18 APPLICATION FOR MULTIPLE COMPLETION (FORM C-107):

An operator shall file form C-107, when applicable, in accordance with Subsection A of 19.15.16.15 NMAC.

[19.15.7.18 NMAC - Rp, 19.15.13.1107 NMAC, 12/1/2008]

19.15.7.19 APPLICATION FOR AUTHORIZATION TO INJECT (FORM C-108):

An operator shall file form C-108 in accordance with Subsection B of 19.15.26.8 NMAC.

[19.15.7.19 NMAC - Rp, 19.15.13.1108 NMAC, 12/1/2008]

19.15.7.20 APPLICATION FOR DISCOVERY ALLOWABLE AND CREATION OF A NEW POOL (FORM C-109):

An operator shall file form C-109, when applicable, in accordance with 19.15.20.16 NMAC.

[19.15.7.20 NMAC - Rp, 19.15.13.1109 NMAC, 12/1/2008]

19.15.7.21 GAS TRANSPORTER'S MONTHLY REPORT (FORM C-111):

A. An operator shall complete and maintain for the division's inspection, form C-111 monthly in accordance with Subsections B, C and D of 19.15.7.21 NMAC. The transporter shall itemize information on sheet no. 2 of form C-111 by pool, by operator and by lease, in alphabetical order.

B. An operator of a gas gathering system, gas transportation system, recycling system, fuel system, gas lift system, gas drilling operation, etc. shall complete and maintain for division inspection form C-111 each month. The form shall cover gas, casinghead gas and carbon dioxide gas taken into a system during the preceding month and shall show the gas' source and its disposition.

C. An operator of a gasoline plant, cycling plant or other plant at which gasoline, butane, propane, kerosene, oil or other products are extracted from gas within the state shall complete and maintain for the division's inspection form C-111 each month. The form shall cover gas, casinghead gas and carbon dioxide gas the plant has taken during the preceding month and shall show the gas' source and its disposition. If an operator owns more than one plant in a given division district, the operator shall file sheet no. 1 of form C-111 for each plant. In preparing sheet no. 2, the operator shall consolidate

requisitions for plants in the district, itemized in the order described in the Subsection A of 19.15.7.21 NMAC.

D. Where a producer takes gas and uses it for any of the above uses, the producer shall complete and maintain for division inspection form C-111 itemizing such gas. The producer shall also include this gas on form C-115. The producer shall also include gas used on the lease from which it was produced for consumption in lease houses, treaters, compressors, combustion engines and other similar equipment, or gas that is flared, on the form C-115 but shall not include it on form C-111.

[19.15.7.21 NMAC - Rp, 19.15.13.1111 NMAC, 12/1/2008]

19.15.7.22 TRANSPORTER'S AND STORER'S MONTHLY REPORT (FORM C-112):

A transporter or storer of oil and liquid hydrocarbons within the state shall complete and maintain for division inspection for each calendar month a form C-112 containing complete information and data indicated by the form respecting stocks of oil and liquid hydrocarbons on hand and receipts and deliveries of oil and liquid hydrocarbons by pipeline and trucks within the state, and receipts and deliveries from leases to storers or refiners; between transporters within the state; between storers and refiners within the state.

[19.15.7.22 NMAC - Rp, 19.15.13.1112 NMAC, 12/1/2008]

19.15.7.23 REFINER'S MONTHLY REPORT (FORM C-113):

A refiner of oil within the state shall file for each calendar month form C-113 containing the information and data indicated by the form respecting oil and products involved in the refiner's operation during each month. The refiner shall file the completed form C-113 for each month and postmark it on or before the 15th day of the next succeeding month.

[19.15.7.23 NMAC - Rp, 19.15.13.1113 NMAC, 12/1/2008]

19.15.7.24 OPERATOR'S MONTHLY REPORT (FORM C-115):

A. An operator shall file a form C-115 for each non-plugged well completion for which the division has approved a form C-104 and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well within the state, setting forth complete information and data indicated on the forms in the order, format and style the director prescribes. The operator shall estimate oil production from wells producing into common storage as accurately as possible on the basis of periodic tests.

B. An operator shall file form C-115 using the division's web-based online application on or before the 15th day of the second month following the month of production. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would be an economic or other hardship.

C. If an operator fails to file a form C-115 that the division accepts, the division shall, within 30 days of the appropriate filing date, notify the operator by electronic mail or letter of its intent to cancel the operator's authorization to transport or inject if the operator does not file an acceptable and complete form C-115. The notice shall inform the operator of the right to request a hearing pursuant to 19.15.4.8 NMAC. If the operator does not either file an acceptable and complete form C-115 or request a hearing on the proposed cancellation within 60 days of the original due date of the form C-115, the division may cancel the operator's authority to transport from or inject into all wells it operates.

[19.15.7.24 NMAC - Rp, 19.15.13.1115 NMAC, 12/1/2008; A, 11/14/2017; A, 05/25/2021]

19.15.7.25 VENTED AND FLARED NATURAL GAS (FORM C-115B):

A. An operator shall file form C-115B in accordance with 19.15.27 NMAC and 19.15.28 NMAC.

B. An operator shall file form C-115B using the division's web-based online application on or before the 15th day of the second month following the month in which venting or flaring occurred. An operator may apply to the division for exemption from the electronic filing requirement based upon a demonstration that such requirement would be an economic or other hardship.

[19.15.7.25 NMAC – N, 05/25/2021]

19.15.7.26 GAS-OIL RATIO TESTS (FORM C-116):

An operator shall make and report gas-oil ratio tests on form C-116 as prescribed in 19.15.18.8 NMAC and applicable special pool orders. The operator shall file the form C-116.

[19.15.7.26 NMAC – Rn, 19.15.7.25 NMAC, 05/25/2021]

19.15.7.27 TANK CLEANING, SEDIMENT OIL REMOVAL, TRANSPORTATION OF MISCELLANEOUS HYDROCARBONS AND DISPOSAL PERMIT (FORM C-117-A) AND MONTHLY SEDIMENT OIL DISPOSAL STATEMENT (FORM C-117-B):

A. An operator shall file form C-117-A with the appropriate division district office in accordance with Subsections B, C and H of 19.15.18.17 NMAC.

B. An operator shall file form C-117-B with the division's Santa Fe office and the appropriate division district office in accordance with Subsection D of 19.15.18.17 NMAC.

[19.15.7.27 NMAC – Rn, 19.15.7.26 NMAC, 05/25/2021]

19.15.7.28 TREATING PLANT OPERATOR'S MONTHLY REPORT (FORM C-118):

A treating plant operator shall file on a monthly basis form C-118 with the appropriate division district office. The form C-118 shall contain all the information the form requires. Column 1 of sheet 1-A of form C-118 entitled permit number, references form C-117-A, for each lot of oil the operator picked up for processing.

[19.15.7.28 NMAC – Rn, 19.15.7.27 NMAC, 05/25/2021]

19.15.7.29 MONTHLY WATER DISPOSAL REPORT (Form C-120-A):

An operator of a produced water disposal system shall report its operations on form C-120-A. The operator shall file form C-120-A in duplicate, with one copy to the division's Santa Fe office and one copy to the appropriate division district office, and shall postmark the form no later than the 15th day of the second succeeding month.

[19.15.7.29 NMAC – Rn & A, 19.15.7.28 NMAC, 05/25/2021]

19.15.7.30 PURCHASER'S NOMINATION FORMS (FORM C-121 and FORM C-121-A):

A. Unless the director requests otherwise, a person expecting to purchase oil from producing wells in New Mexico during the second and third succeeding two months shall file form C-121 with the division's Santa Fe office not later than the 20th day of each odd-numbered month. As an example, nominations submitted by the 20th day of July shall indicate the amount of oil the purchaser desires to purchase daily during September and October.

B. The person shall file form C-121-A with the division's Santa Fe office by the first day of the month during which the division will consider at the gas allowable hearing the nominations for the purchase of gas from producing wells in New Mexico during the succeeding month. As an example, purchaser's nominations to take gas from a pool during the month of August would be considered by the division at a hearing during July, and should be submitted to the Santa Fe office of the division by July 1.

C. In addition to the monthly gas nominations, the purchaser shall file 12-month nominations in accordance with the appropriate special pool orders.

[19.15.7.30 NMAC – Rn, 19.15.7.31 NMAC, 05/25/2021]

19.15.7.31 MULTIPOINT AND ONE POINT BACK PRESSURE TEST FOR GAS WELL (FORM C-122):

- A. Gas well test data sheet - San Juan basin (form C-122-A)
- B. Initial potential test data sheet (form C-122-B)
- C. Deliverability test report (form C-122-C)
- D. Worksheet for calculation of static column wellhead pressure (P_w) (form C- 122-D)
- E. Worksheet for stepwise calculation of (surface) (subsurface) pressure (P_c & P_w) (P_f & P_s) (form C-122-E)
- F. Worksheet for calculation of wellhead pressures (P_c or P_w) from known bottom hole pressure (P_f or P_s) (form C-122-F)
- G. Worksheet for calculation of status column pressure at gas liquid interface (form C-122-G). The operator shall file the forms listed in Subsections A through F of 19.15.7.30 NMAC with the appropriate division district office in accordance with the provisions of the *manual for back-pressure testing of natural gas wells or gas well testing manual for northwest New Mexico*, 19.15.19.8 NMAC and applicable special pool orders and proration orders.

[19.15.7.31 NMAC – Rn, 19.15.7.30 NMAC, 05/25/2021]

19.15.7.32 REQUEST FOR THE CREATION OF A NEW POOL (FORM C-123):

The appropriate division district office shall provide the operator of a well that requires the creation of a pool written instructions regarding the filing of form C-123.

[19.15.7.32 NMAC – Rn, 19.15.7.31 NMAC, 05/25/2021]

19.15.7.33 RESERVOIR PRESSURE REPORT (FORM C-124):

- A. An operator shall file form C-124 to report bottom hole pressures as required under the provisions of 19.15.18.9 NMAC and applicable special pool orders.
- B. An operator shall state the name of the pool; the pool datum, if established; the name of the operator and lease; the well number; the wellhead elevation above sea level; the date of the test; the total time the well was shut in prior to the test, the subsurface temperature in degrees fahrenheit at the test depth; the depth in feet at which the operator made the subsurface pressure test; the observed pressure in psi gauge corrected for calibration and temperature; the corrected pressure computed from

applying to the observed pressure the appropriate correction for difference in test depth and reservoir datum plane; and any other information required on form C-124.

[19.15.7.33 NMAC – Rn, 19.15.7.32 NMAC, 05/25/2021]

19.15.7.34 GAS WELL SHUT-IN PRESSURE TESTS (FORM C-125):

An operator shall file form C-125 to report shut-in pressure tests on gas wells as required under the provisions of special pool orders.

[19.15.7.34 NMAC – Rn, 19.15.7.33 NMAC, 05/25/2021]

19.15.7.35 PERMIT TO TRANSPORT RECOVERED LOAD OIL (FORM C-126):

An applicant to transport recovered load oil shall file form C-126 with the appropriate division district office in conformance with 19.15.20.15 NMAC.

[19.15.7.35 NMAC – Rn, 19.15.7.34 NMAC, 05/25/2021]

19.15.7.36 REQUEST FOR ALLOWABLE CHANGE (FORM C-127):

An oil producer shall file form C-127 with the appropriate division district office not later than the 10th day of the month preceding the month for which an oil producer is requesting oil well allowable changes.

[19.15.7.36 NMAC – Rn, 19.15.7.35 NMAC, 05/25/2021]

19.15.7.37 [RESERVED]:

[19.15.7.37 NMAC – Rn, 19.15.7.36 NMAC, 5/25/2021; Repealed, 8/23/2022]

19.15.7.38 REPORT OF VENTED OR FLARED NATURAL GAS (FORM C-129):

An operator shall file form C-129 when applicable, in accordance with 19.15.27 NMAC and 19.15.28 NMAC.

[19.15.7.38 NMAC – Rn & A, 19.15.7.37 NMAC, 05/25/2021]

19.15.7.39 NOTICE OF DISCONNECTION (FORM C-130):

A. An operator shall file form C-130 with the division as provided in 19.15.19.13 NMAC.

B. An operator shall state to the best of its knowledge the reasons for disconnecting a gas well from gas transportation facilities.

C. The division shall furnish the New Mexico public regulation commission with a form C-130 indicating that a disconnected gas well may or will be reconnected to a gas transportation facility for ultimate distribution to consumers outside of the state.

[19.15.7.39 NMAC – Rn, 19.15.7.38 NMAC, 05/25/2021]

19.15.7.40 MONTHLY GAS STORAGE REPORT (FORM C-131-A); ANNUAL LPG STORAGE REPORT (FORM C-131-B):

A. An operator of an underground gas storage project shall report its operation monthly on form C-131-A. The operator shall file form C-131-A with the division's Santa Fe office with a copy to the appropriate division district office and shall postmark it not later than the 24th day of the next succeeding month.

B. An operator of underground liquefied petroleum gas storage projects approved by the division shall report its operations annually on form C-131-B.

[19.15.7.40 NMAC – Rn, 19.15.7.39 NMAC, 05/25/2021]

19.15.7.41 AUTHORIZATION TO MOVE PRODUCED WATER:

A. A transporter of produced water shall obtain the division's approval of form C-133 in accordance with 19.15.34 NMAC prior to transportation.

B. Approval of a single form C-133 is valid for leases the transporter serves.

[19.15.7.41 NMAC – Rn, 19.15.7.40 NMAC, 05/25/2021]

19.15.7.42 GAS WELL CONNECTION, RECONNECTION OR DISCONNECTION NOTICE:

A gas transporter accepting gas for delivery from a wellhead or central point of delivery shall notify the division within 30 days of a new connection or reconnection to or disconnection from the gathering or transportation system by filing form C-135 with the appropriate division district office.

[19.15.7.42 NMAC – Rn, 19.15.7.41 NMAC, 05/25/2021]

19.15.7.43 APPLICATION FOR APPROVAL TO USE AN ALTERNATE GAS MEASUREMENT METHOD (FORM C-136):

A. An operator shall use form C-136 to request and obtain division approval for use of an alternate procedure for measuring gas production from a well that is not capable of producing more than 15 MCFD (Paragraph (1) of Subsection B of 19.15.19.9 NMAC) or for a well that has a producing capacity of 100 MCFD or less and is on a multi-well lease (Paragraph (2) of Subsection B of 19.15.19.9 NMAC).

B. An operator shall fill out the applicable information required on form C-136 with the required supplemental information attached, and file it with the appropriate division district office.

[19.15.7.43 NMAC – Rn, 19.15.7.42 NMAC, 05/25/2021]

19.15.7.44 APPLICATION FOR PRODUCTION RESTORATION PROJECT (C-139):

A. An operator shall use the division's web-based online application to apply for the production restoration tax incentive.

B. An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the production restoration tax incentive. The operator shall then enter the date it began the production restoration, the date the well returned to production and the process the operator used to return the well to production. The operator shall certify that the information is complete and correct.

[19.15.7.44 NMAC – Rn, 19.15.7.43 NMAC, 05/25/2021]

19.15.7.45 APPLICATION FOR WELL WORKOVER PROJECT (C-140):

A. An operator shall use the division's web-based online application to apply for the well workover tax incentive.

B. An operator shall enter a user identification number and password that it has obtained from the division and select the well for which the operator is requesting the well workover tax incentive. The operator shall enter the date that it commenced the well workover and the date it completed the well workover. The operator shall attach a description of the workover procedure it performed to increase production and a production curve or data tabulation showing at least 12 months of production prior to the well workover and at least three months of production following the well workover to reflect a positive production increase.

[19.15.7.45 NMAC – Rn, 19.15.7.44 NMAC, 05/25/2021]

PART 8: FINANCIAL ASSURANCE

19.15.8.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.8.1 NMAC - N, 12/1/2008; A, 1/15/2019]

19.15.8.2 SCOPE:

19.15.8 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.8.2 NMAC - N, 12/1/2008]

19.15.8.3 STATUTORY AUTHORITY:

19.15.8 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-14 NMSA 1978.

[19.15.8.3 NMAC - N, 12/1/2008; A, 1/15/2019]

19.15.8.4 DURATION:

Permanent.

[19.15.8.4 NMAC - N, 12/1/2008]

19.15.8.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.8.5 NMAC - N, 12/1/2008]

19.15.8.6 OBJECTIVE:

To establish financial assurance requirements for persons, firms, corporations or associations who have drilled or acquired, are drilling or propose to drill or acquire an oil, gas or injection or other service well to furnish financial assurance acceptable to the division.

[19.15.8.6 NMAC - N, 12/1/2008]

19.15.8.7 DEFINITIONS

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.8.8 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE:

A. The operator shall file financial assurance documents with the division's Santa Fe office and obtain approvals and releases of financial assurance from that office.

B. Financial assurance documents shall be on forms prescribed by or otherwise acceptable to the division.

C. The division may require proof that the individual signing for an entity on a financial assurance document or an amendment to a financial assurance document has the authority to obligate that entity.

D. Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance documents on forms prescribed by the division. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on forms prescribed by the division.

[19.15.8.8 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.9 CATEGORIES AND AMOUNTS OF FINANCIAL ASSURANCE FOR WELL PLUGGING:

A. Applicability. An operator who has drilled or acquired, is drilling or proposes to drill or acquire an oil, gas or injection or other service well within this state shall furnish a financial assurance acceptable to the division in accordance with 19.15.8.9 NMAC and in the form of an irrevocable letter of credit, plugging insurance policy or cash or surety bond running to the state of New Mexico conditioned that the well be plugged and abandoned and the location restored and remediated in compliance with commission rules, unless the well is covered by federally required financial assurance.

B. A financial assurance shall be conditioned for well plugging and abandonment and location restoration and remediation only, and not to secure payment for damages to livestock, range, crops or tangible improvements or any other purpose.

C. Active wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC and are not subject to Subsection D of 19.15.8.9 NMAC in one of the following categories:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance in the following amounts covering all the wells of the operator subject to Subsection C of 19.15.8.9 NMAC:

(a) \$50,000 for one to 10 wells;

(b) \$75,000 for 11 to 50 wells;

(c) \$125,000 for 51 to 100 wells; and

(d) \$250,000 for more than 100 wells.

D. Inactive wells. An operator shall provide financial assurance for wells that are covered by Subsection A of 19.15.8.9 NMAC that have been in temporarily abandoned status for more than two years or for which the operator is seeking approved temporary abandonment pursuant to 19.15.25.13 NMAC in one of the following categories:

(1) a one well financial assurance in the amount of \$25,000 plus \$2 per foot of the projected depth of a proposed well or the depth of an existing well; the depth of a well is the true vertical depth for vertical and horizontal wells and the measured depth for deviated and directional wells; or

(2) a blanket plugging financial assurance covering all wells of the operator subject to Subsection D of 19.15.8.9 NMAC:

(a) \$150,000 for one to five wells;

(b) \$300,000 for six to 10 wells;

(c) \$500,000 for 11 to 25 wells; and

(d) \$1,000,000 for more than 25 wells.

E. Operators who have on file with the division a blanket financial assurance that does not cover additional wells shall file additional single well bond financial assurance for any wells not covered by the existing blanket bond or, in the alternative, may file a replacement blanket bond.

[19.15.8.9 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015; A, 1/15/2019]

19.15.8.10 ADDITIONAL REQUIREMENTS FOR CASH AND SURETY BONDS:

A. Surety bonds shall be issued by a reputable corporate surety authorized by the office of the superintendent of insurance to do business in the state.

B. The operator shall deposit cash representing the full amount of the bond in an account in a federally-insured financial institution located within the state, such account to be held in trust for the division. Authorized representatives of the operator and the depository institution shall execute a document evidencing the cash bond's terms and conditions. The operator shall file the document with the division prior to the bond's effective date. If the operator's financial status or reliability is unknown to the director, the director may require the filing of a financial statement or such other information as may be necessary to evaluate the operator's ability to fulfill the bond's conditions. From time to time, any accrued interest over and above the bond's face amount may be paid to the operator.

[19.15.8.10 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.11 ADDITIONAL REQUIREMENTS FOR LETTERS OF CREDIT:

A. The division may accept irrevocable letters of credit issued by national or state-chartered banking associations.

B. Letters of credit shall be irrevocable for a term of not less than five years, unless the applicant shows good cause for a shorter time period.

C. Letters of credit shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 30 days prior to expiration.

D. The division may forfeit and collect a letter of credit if not replaced by an approved financial assurance at least 30 days before the expiration date.

E. Authorized representatives of the operator and the depository institution shall execute a document evidencing the letter of credit's terms and conditions.

[19.15.8.11 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 6/30/2015]

19.15.8.12 RELEASE OF FINANCIAL ASSURANCE:

A. The division shall release a financial assurance document upon the operator's or surety's written request if all wells drilled or acquired under that financial assurance have been plugged and abandoned and the location restored and remediated and released pursuant to 19.15.25.9 NMAC through 19.15.25.11 NMAC, or have been covered by another financial assurance the division has approved.

B. Transfer of a property or a change of operator does not of itself release a financial assurance. The division shall not approve a request for change of operator for a well until the new operator has the required financial assurance in place.

[19.15.8.12 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

19.15.8.13 FORFEITURE OF FINANCIAL ASSURANCE:

A. Upon the operator's failure to properly plug and abandon and restore and remediate the location of a well or wells a financial assurance covers, the division shall give notice to the operator and surety, if applicable, and hold a hearing as to whether the well or wells should be plugged and abandoned and the location restored and remediated in accordance with a division-approved plugging program. If it is determined at the hearing that the operator has failed to plug and abandon the well and restore and remediate the location as provided for in the financial assurance or division rules, the director shall issue an order directing the well to be plugged or abandoned and the

location restored and remediated in a time certain. Such an order may also direct the forfeiture of the financial assurance upon the failure or refusal of the operator, surety or other responsible party to properly plug and abandon the well and restore and remediate the location.

B. If the financial assurance's proceeds exceed the costs the division incurred plugging and abandoning the well and restoring and remediating the location the financial assurance covers, the division shall return the excess to the surety or the operator, as appropriate.

C. If the financial assurance's proceeds are not sufficient to cover all the costs the division incurred in plugging and abandoning the well and restoring and remediating the location, the division may seek indemnification from the operator as provided in Subsection E of Section 70-2-14 NMSA 1978.

D. The division shall deposit forfeitures and funds collected pursuant to a judgment in a suit for indemnification in the oil and gas reclamation fund.

[19.15.9.13 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008]

19.15.8.14 EFFECTIVE DATES:

A. 19.15.8 NMAC applies to wells drilled or acquired after December 15, 2005.

B. As to all other wells, 19.15.8 NMAC is effective January 1, 2008.

C. The 2018 amendments to 19.15.8.9 NMAC apply to applications for permits to drill, deepen or plug back and applications for approved temporary abandonment filed on or after January 15, 2019, and for all other wells on April 15, 2019.

[19.15.8.14 NMAC - Rp, 19.15.3.101 NMAC, 12/1/2008; A, 1/15/2019]

19.15.8.15 ADDITIONAL REQUIREMENTS FOR PLUGGING INSURANCE POLICIES:

A. The plugging insurance policy must be issued by a company authorized by the office of the superintendent of insurance to do business in New Mexico.

B. The policy shall name a specific well and name the state of New Mexico as the owner of the policy and contingent beneficiary.

C. The policy shall name a primary beneficiary who agrees to plug the specified wellbore.

D. The policy shall be fully prepaid and cannot be canceled or surrendered.

E. The policy shall continue in effect until the specified wellbore has been plugged.

F. The policy shall provide that benefits will be paid when, but not before, the specified wellbore has been plugged in accordance with division rules in effect at the time of plugging.

G. The policy shall provide benefits that are not less than an amount equal to the one-well financial assurance required by division rules. If, subsequent to an operator obtaining an insurance policy, the one-well financial assurance requirement applicable to the operator's well covered by said policy increases, either because the well is deepened or the division's rules are amended, the operator will meet the additional financial assurance requirement by complying with one of the requirements below.

(1) The operator's existing policy benefit equals or exceeds the revised requirement.

(2) The operator obtains and files with the division within 30 days an amendment increasing the policy benefit by the amount of the increase in the applicable financial assurance requirement.

(3) The operator obtains financial assurance equal to the amount, if any, by which the revised requirement exceeds the policy benefit and files said financial assurance with the division within 30 days.

[19.15.8.15 NMAC - N, 6/30/2015]

19.15.8.16 DUTY TO REPORT:

Any operator who filed for bankruptcy shall provide notice to the division, in writing, through the processes provided for under the rules of the United States bankruptcy court.

[19.15.8.16 NMAC - N, 6/30/2015]

PART 9: WELL OPERATOR PROVISIONS

19.15.9.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.9.1 NMAC - N, 12/1/08]

19.15.9.2 SCOPE:

19.15.9 NMAC applies to persons or entities operating oil or gas wells within New Mexico.

[19.15.9.2 NMAC - N, 12/1/08]

19.15.9.3 STATUTORY AUTHORITY:

19.15.9 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.9.3 NMAC - N, 12/1/08]

19.15.9.4 DURATION:

Permanent.

[19.15.9.4 NMAC - N, 12/1/08]

19.15.9.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.9.5 NMAC - N, 12/1/08]

19.15.9.6 OBJECTIVE:

To require an operator of a well or wells to register with the division prior to commencing operations and to require the reporting of a change of operator or a change of name to the division.

[19.15.9.6 NMAC - N, 12/1/08]

19.15.9.7 DEFINITIONS

[RESERVED]

[See 19.15.2 NMAC for definitions.]

[19.15.9.7 NMAC - N, 12/1/08]

19.15.9.8 OPERATOR REGISTRATION:

A. Prior to commencing operations, an operator of a well or wells in New Mexico shall register with the division as an operator. Applicants shall provide the following to the financial assurance administrator in the division's Santa Fe office:

(1) an oil and gas registration identification (OGRID) number obtained from the division, the state land office or the taxation and revenue department;

(2) a current address of record to be used for notice and a current emergency contact name and telephone number for each district in which the operator operates wells; and

(3) the financial assurance 19.15.8 NMAC requires.

B. The division may deny registration as an operator if:

(1) the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC;

(2) an officer, director, partner in the applicant or person with an interest in the applicant exceeding 25 percent, is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(3) the applicant is or was within the past five years an officer, director, partner or person with an interest exceeding 25 percent in another entity that is not currently in compliance with Subsection A of 19.15.5.9 NMAC;

(4) the applicant is a corporation or limited liability company and is not registered with the public regulation commission to do business in New Mexico; or

(5) the applicant is a limited partnership and is not registered with the New Mexico secretary of state to do business in New Mexico.

C. An operator shall inform the division of its current address of record and emergency contact names and telephone numbers by submitting changes in writing to the division's financial assurance administrator in the division's Santa Fe office within 30 days of the change.

D. The division may require an operator or applicant to identify its current and past officers, directors and partners and its current and past ownership interest in other operators.

[19.15.9.8 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.9 CHANGE OF OPERATOR:

A. A change of operator occurs when the entity responsible for a well or a group of wells changes. A change of operator may result from a sale, assignment by a court, a change in operating agreement or other transaction. Under a change of operator, wells are moved from the OGRID number of the operator of record with the division to the new operator's OGRID number.

B. The operator of record with the division and the new operator shall apply for a change of operator by jointly filing a form C-145 using the division's web-based online

application. If the operator of record with the division is unavailable, the new operator shall apply to the division for approval of change of operator without a joint application. The operator shall make such application in writing and provide documentary evidence of the applicant's right to assume operations. The new operator shall not commence operations until the division approves the application for change of operator.

C. The director or the director's designee may deny a change of operator if:

(1) the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC; or

(2) the new operator is acquiring wells, facilities or sites subject to a compliance order requiring remediation or abatement of contamination, or compliance with 19.15.25.8 NMAC, and the new operator has not entered into an agreed compliance order setting a schedule for compliance with the existing order.

D. In determining whether to grant or deny a change of operator when the new operator is not in compliance with Subsection A of 19.15.5.9 NMAC, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

[19.15.9.9 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.10 CHANGE OF NAME:

A. A change of operator name occurs when the name of the entity responsible for a well or wells changes but the entity does not change. For a change of name, the OGRID number remains the same, but division records are changed to reflect the new operator name.

B. An operator shall apply for a change of name by filing a form C-146 using the division's web-based online application and supplying documentary proof that the change is a name change and not a change of operator. If the operator is a corporation, limited liability company or limited partnership, the name must be registered with the public regulation commission or the New Mexico secretary of state, as applicable. The division shall not approve a change of name until the state land office and the taxation and revenue department have cleared the change of name on the OGRID.

[19.15.9.10 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

19.15.9.11 EXAMPLES OF CHANGE OF OPERATOR AND CHANGE OF NAME:

A. Mr. Smith, a sole proprietor, operates five wells under the name "Smith oil company". Mr. Smith changes the name of his company to "Smith production company". The name of the entity operating the wells has changed, but the entity has not changed. Mr. Smith should apply for a change of name.

B. Mr. Smith incorporates his business, changing from the sole proprietorship, "Smith production company", to a corporation: "Smith production company, inc.". The entity responsible for the wells has changed, and Mr. Smith and "Smith production company, inc." should apply for a change of operator.

C. Smith production company, inc., a New Mexico operator, merges with XYZ, inc., which does not operate in New Mexico. At the surviving entity's election, this transaction may be treated as a change of name from Smith production company, to XYZ, inc., maintaining the existing OGRID, or as a change of operator, with a new OGRID.

D. Two New Mexico operators, Smith production company, inc. and Jones production company, inc., merge. The surviving corporation is Jones production company, inc. A different entity now operates the wells Smith production company, formerly operated, and the wells must be placed under that entity's OGRID. Jones production company, inc. and Smith production company, inc. should apply for a change of operator as to the wells Smith production company, inc. operated.

[19.15.9.11 NMAC - Rp, 19.15.3.100 NMAC, 12/1/08]

PART 10: SAFETY

19.15.10.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.10.1 NMAC - N, 12/1/08]

19.15.10.2 SCOPE:

19.15.10 NMAC applies to persons or entities engaged in oil and gas development and production within New Mexico.

[19.15.10.2 NMAC - N, 12/1/08]

19.15.10.3 STATUTORY AUTHORITY:

19.15.10 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.10.3 NMAC - N, 12/1/08]

19.15.10.4 DURATION:

Permanent.

[19.15.10.4 NMAC - N, 12/1/08]

19.15.10.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.10.5 NMAC - N, 12/1/08]

19.15.10.6 OBJECTIVE:

To establish safety procedures for drilling and production of oil and gas wells.

[19.15.10.6 NMAC - N, 12/1/08]

19.15.10.7 DEFINITIONS

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

[19.15.10.7 NMAC - N, 12/1/08]

19.15.10.8 SAFETY PROCEDURES FOR DRILLING AND PRODUCTION:

A. An operator shall:

(1) clean oil wells into a pit permitted pursuant to 19.15.17 NMAC or a tank, not less than 40 feet from the derrick floor and 150 feet from a fire hazard;

(2) produce flowing oil wells through an oil and gas separator of ample capacity and in good working order;

(3) not place or leave a boiler or portable electric lighting generator nearer than 150 feet to a producing well or oil tank; and

(4) remove rubbish or debris that might constitute a fire hazard to a distance of at least 150 feet from the vicinity of wells and tanks and burn or dispose of waste in a manner as to avoid creating a fire hazard.

B. When coming out of the hole with drill pipe, the operator shall circulate drilling fluid until equalized and subsequently maintain drilling fluid level at a height sufficient to control bottom hole pressures. During course of drilling, the operator shall test blowout preventers at least once each 24-hour period.

[19.15.10.8 NMAC - Rp, 19.15.3.114 NMAC, 12/1/08]

PART 11: HYDROGEN SULFIDE GAS

19.15.11.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.11.1 NMAC - N, 12/1/08]

19.15.11.2 SCOPE:

19.15.11 NMAC applies to a person subject to the division's jurisdiction, including a person engaged in drilling, stimulating, injecting into, completing, working over or producing an oil, gas or carbon dioxide well or a person engaged in gathering, transporting, storing, processing or refining of oil, gas or carbon dioxide. 19.15.11 NMAC does not exempt or otherwise excuse surface waste management facilities the division permits pursuant to 19.15.36 NMAC from more stringent conditions on the handling of hydrogen sulfide required of such facilities by 19.15.36 NMAC or more stringent conditions in permits issued pursuant to 19.15.36 NMAC, nor shall the facilities be exempt or otherwise excused from the requirements set forth in 19.15.11 NMAC by virtue of permitting under 19.15.36 NMAC.

[19.15.11.2 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.3 STATUTORY AUTHORITY:

19.15.11 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.11.3 NMAC - N, 12/1/08]

19.15.11.4 DURATION:

Permanent.

[19.15.11.4 NMAC - N, 12/1/08]

19.15.11.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.11.5 NMAC - N, 12/1/08]

19.15.11.6 OBJECTIVE:

To require oil and gas operations be conducted in a manner that protects the public from exposure to hydrogen sulfide gas.

[19.15.11.6 NMAC - N, 12/1/08]

19.15.11.7 DEFINITIONS:

A. "ANSI" means the American national standards institute.

B. "Area of exposure" means the area within a circle constructed with a point of escape at its center and the radius of exposure as its radius.

C. "Dispersion technique" is a mathematical representation of the physical and chemical transportation characteristics, dilution characteristics and transformation characteristics of hydrogen sulfide gas in the atmosphere.

D. "Escape rate" means the maximum volume (Q) that is used to designate the possible rate of escape of a gaseous mixture containing hydrogen sulfide, as set forth in 19.15.11 NMAC.

(1) For existing gas facilities or operations, the escape rate is calculated using the maximum daily rate of the gaseous mixture produced or handled or the best estimate thereof. For an existing gas well, the escape rate is calculated using the current daily absolute open flow rate against atmospheric pressure or the best estimate of that rate.

(2) For new gas operations or facilities, the escape rate is calculated as the maximum anticipated flow rate through the system. For a new gas well, the escape rate is calculated using the maximum open-flow rate of offset wells in the pool or reservoir, or the pool or reservoir average of maximum open-flow rates.

(3) For existing oil wells, the escape rate is calculated by multiplying the producing gas/oil ratio by the maximum daily production rate or the best estimate of the maximum daily production rate.

(4) For new oil wells, the escape rate is calculated by multiplying the producing gas/oil ratio by the maximum daily production rate of offset wells in the pool

or reservoir, or the pool or reservoir average of the producing gas/oil ratio multiplied by the maximum daily production rate.

(5) For facilities or operations not mentioned, the escape rate is calculated using the actual flow of the gaseous mixture through the system or the best estimate of the actual flow of the gaseous mixture through the system.

E. "GPA" means the gas processors association.

F. "LEPC" means the local emergency planning committee established pursuant to the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. section 11001.

G. "NACE" means the national association of corrosion engineers.

H. "Potentially hazardous volume" means the volume of hydrogen sulfide gas of such concentration that:

- (1) the 100-ppm radius of exposure includes a public area;
- (2) the 500-ppm radius of exposure includes a public road; or
- (3) the 100-ppm radius of exposure exceeds 3000 feet.

I. "Public area" means a building or structure that is not associated with the well, facility or operation for which the radius of exposure is being calculated and that is used as a dwelling, office, place of business, church, school, hospital or government building, or a portion of a park, city, town, village or designated school bus stop or other similar area where members of the public may reasonably be expected to be present.

J. "Public road" means a federal, state, municipal or county road or highway.

K. "Radius of exposure" means the radius constructed with the point of escape as its starting point and its length calculated using the following Pasquill-Gifford derived equation, or by such other method as the division may approve:

(1) for determining the 100-ppm radius of exposure: $X = [(1.589)(\text{hydrogen sulfide concentration})(Q)]^{0.6258}$, where "X" is the radius of exposure in feet, the "hydrogen sulfide concentration" is the decimal equivalent of the mole or volume fraction of hydrogen sulfide in the gaseous mixture and "Q" is the escape rate expressed in cubic feet per day (corrected for standard conditions of 14.73 psi absolute and 60 degrees fahrenheit);

(2) for determining the 500-ppm radius of exposure: $X = [(0.4546)(\text{hydrogen sulfide concentration})(Q)]^{0.6258}$, where "X" is the radius of exposure in feet, the "hydrogen sulfide concentration" is the decimal equivalent of the mole or volume fraction of hydrogen sulfide in the gaseous mixture and "Q" is the escape rate

expressed in cubic feet per day (corrected for standard conditions of 14.73 psi absolute and 60 degrees fahrenheit);

(3) for a well being drilled, completed, recompleted, worked over or serviced in an area where insufficient data exists to calculate a radius of exposure but where hydrogen sulfide could reasonably be expected to be present in concentrations in excess of 100 ppm in the gaseous mixture, a 100-ppm radius of exposure equal to 3000 feet is assumed.

[19.15.11.7 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.8 REGULATORY THRESHOLD:

A. Determination of hydrogen sulfide concentration.

(1) Each person shall determine the hydrogen sulfide concentration in the gaseous mixture within wells, facilities or operations either by testing (using a sample from each well, facility or operation); testing a representative sample; or using process knowledge in lieu of testing. If the person uses a representative sample or process knowledge, the concentration derived from the representative sample or process knowledge shall be reasonably representative of the hydrogen sulfide concentration within the well, facility or operation.

(2) The person shall conduct the tests used to make the determination referred to in Paragraph (1) of Subsection A of 19.15.11.8 NMAC in accordance with applicable ASTM or GPA standards or by another division-approved method.

(3) If the person conducted a test prior to January 31, 2003 that otherwise meets the requirements of Paragraphs (1) and (2) of Subsection A of 19.15.11.8 NMAC, new testing is not required.

(4) If a change or alteration may materially increase the hydrogen sulfide concentration in a well, facility or operation, the person shall make a new determination in accordance with 19.15.11 NMAC.

B. Concentrations determined to be below 100 ppm. If the hydrogen sulfide concentration in a given well, facility or operation is less than 100 ppm, the person is not required to take further actions pursuant to 19.15.11 NMAC.

C. Concentrations determined to be above 100 ppm.

(1) If the person determines the hydrogen sulfide concentration in a given well, facility or operation is 100 ppm or greater, then the person shall calculate the radius of exposure and comply with applicable requirements of 19.15.11 NMAC.

(2) If calculation of the radius of exposure reveals that a potentially hazardous volume is present, the person shall provide results of the hydrogen sulfide concentration determination and the calculation of the radius of exposure to the division. For a well, facility or operation, the person shall accomplish the determination, calculation and submission 19.15.11.8 NMAC requires before operations begin.

D. Recalculation. The person shall calculate the radius of exposure if the hydrogen sulfide concentration in a well, facility or operation increases to 100 ppm or greater. The person shall also recalculate the radius of exposure if the actual volume fraction of hydrogen sulfide increases by a factor of 25 percent in a well, facility or operation that previously had a hydrogen sulfide concentration of 100 ppm or greater. If calculation or recalculation of the radius of exposure reveals that a potentially hazardous volume is present, the person shall provide the results to the division within 60 days.

[19.15.11.8 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.9 HYDROGEN SULFIDE CONTINGENCY PLAN:

A. When required. If a well, facility or operation involves a potentially hazardous volume of hydrogen sulfide, the person shall develop a hydrogen sulfide contingency plan that the person will use to alert and protect the public in accordance with the Subsections B through I of 19.15.11.9 NMAC.

B. Plan contents.

(1) API guidelines. The person shall develop the hydrogen sulfide contingency plan with due consideration of paragraph 7.6 of the guidelines in the API publication Recommended Practices for Oil and Gas Producing and Gas Processing Plant Operations Involving Hydrogen Sulfide, RP-55, most recent edition, or with due consideration to another division-approved standard.

(2) Required contents. The hydrogen sulfide contingency plan shall contain information on the following subjects, as appropriate to the well, facility or operation to which it applies.

(a) Emergency procedures. The hydrogen sulfide contingency plan shall contain information on emergency procedures the person will follow in the event of a release and shall include, at a minimum, information concerning the responsibilities and duties of personnel during the emergency, an immediate action plan as described in the API document referenced in Paragraph (1) of Subsection B of 19.15.11.9 NMAC, and telephone numbers of emergency responders, public agencies, local government and other appropriate public authorities. The plan shall also include the locations of potentially affected public areas and public roads and shall describe proposed evacuation routes, locations of road blocks and procedures for notifying the public, either through direct telephone notification using telephone number lists or by means of

mass notification and reaction plans. The plan shall include information on the availability and location of necessary safety equipment and supplies.

(b) Characteristics of hydrogen sulfide and sulfur dioxide. The hydrogen sulfide contingency plan shall include a discussion of the characteristics of hydrogen sulfide and sulfur dioxide.

(c) Maps and drawings. The hydrogen sulfide contingency plan shall include maps and drawings that depict the area of exposure and public areas and public roads within the area of exposure.

(d) Training and drills. The hydrogen sulfide contingency plan shall provide for training and drills, including training in the responsibilities and duties of essential personnel and periodic on-site or classroom drills or exercises that simulate a release, and shall describe how the person will document the training, drills and attendance. The hydrogen sulfide contingency plan shall also provide for training of residents as appropriate on the proper protective measures to be taken in the event of a release, and shall provide for briefing of public officials on issues such as evacuation or shelter-in-place plans.

(e) Coordination with state emergency plans. The hydrogen sulfide contingency plan shall describe how the person will coordinate emergency response actions under the plan with the division and the New Mexico state police consistent with the New Mexico hazardous materials emergency response plan.

(f) Activation levels. The hydrogen sulfide contingency plan shall include the activation level and a description of events that could lead to a release of hydrogen sulfide sufficient to create a concentration in excess of the activation level.

C. Plan activation. The person shall activate the hydrogen sulfide contingency plan when a release creates a hydrogen sulfide concentration greater than the activation level set forth in the hydrogen sulfide contingency plan. At a minimum, the person shall activate the plan whenever a release may create a hydrogen sulfide concentration of more than 100 ppm in a public area, 500 ppm at a public road or 100 ppm 3000 feet from the site of release.

D. Submission.

(1) Where submitted. The person shall submit the hydrogen sulfide contingency plan to the division.

(2) When submitted. The person shall submit a hydrogen sulfide contingency plan for a new well, facility or operation before operations commence. The hydrogen sulfide contingency plan for a drilling, completion, workover or well servicing operation shall be on file with the division before operations commence and may be submitted separately or along with the APD or may be on file from a previous submission. A

person shall submit a hydrogen sulfide contingency plan within 180 days after the person becomes aware or should have become aware that a public area or public road is established that creates a potentially hazardous volume where none previously existed.

(3) Electronic submission. A filer who operates more than 100 wells or who operates an oil pump station, compressor station, refinery or gas plant shall submit each hydrogen sulfide contingency plan in electronic format. The filer may submit the hydrogen sulfide contingency plan through electronic mail, through an Internet filing or by delivering electronic media to the division, so long as the electronic submission is compatible with the division's systems.

E. Failure to submit plan. A person's failure to submit a hydrogen sulfide contingency plan when required may result in denial of an application for permit to drill, cancellation of an allowable for the subject well or other enforcement action appropriate to the well, facility or operation.

F. Review, amendment. The person shall review the hydrogen sulfide contingency plan any time a subject addressed in the plan materially changes and make appropriate amendments. If the division determines that a hydrogen sulfide contingency plan is inadequate to protect public safety, the division may require the person to add provisions to the plan or amend the plan as necessary to protect public safety.

G. Retention and inspection. The hydrogen sulfide contingency plan shall be reasonably accessible in the event of a release, maintained on file at all times and available for division inspection.

H. Annual inventory of contingency plans. On an annual basis, each person required to prepare one or more hydrogen sulfide contingency plans pursuant to 19.15.11 NMAC shall file with the appropriate local emergency planning committee and the state emergency response commission an inventory of the wells, facilities and operations for which plans are on file with the division and the name, address and telephone number of a point of contact.

I. Plans required by other jurisdictions. The person may submit a hydrogen sulfide contingency plan the BLM or other jurisdiction require that meets the requirements of 19.15.11.9 NMAC to the division in satisfaction of 19.15.11.9 NMAC.

[19.15.11.9 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.10 SIGNS, MARKERS:

For each well, facility or operation involving a hydrogen sulfide concentration of 100 ppm or greater, the person shall install and maintain signs or markers that conform with the current ANSI standard Z535.1-2002 (Safety Color Code), or some other division-approved standard. The sign or marker shall be readily readable, and shall contain the

words "poison gas" and other information sufficient to warn the public that a potential danger exists. The person shall prominently post signs or markers at locations, including entrance points and road crossings, sufficient to alert the public that a potential danger exists.

[19.15.11.10 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.11 PROTECTION FROM HYDROGEN SULFIDE DURING DRILLING, COMPLETION, WORKOVER AND WELL SERVICING OPERATIONS:

A. API standards. The person shall conduct drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater with due consideration to the guidelines in the API publications Recommended Practice for Oil and Gas Well Servicing and Workover Operations Involving Hydrogen Sulfide, RP-68, and Recommended Practices for Drilling and Well Servicing Operations Involving Hydrogen Sulfide, RP-49, most recent editions, or some other division-approved standard.

B. Detection and monitoring equipment. Drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater shall include hydrogen sulfide detection and monitoring equipment as follows.

(1) Each drilling and completion site shall have an accurate and precise hydrogen sulfide detection and monitoring system that automatically activates visible and audible alarms when the hydrogen sulfide's ambient air concentration reaches a predetermined value the operator sets, not to exceed 20 ppm. The operator shall locate a sensing point at the shale shaker, rig floor and bell nipple for a drilling site and the cellar, rig floor and circulating tanks or shale shaker for a completion site.

(2) For workover and well servicing operations, the person shall locate one operational sensing point as close to the well bore as practical. Additional sensing points may be necessary for large or long-term operations.

(3) The operator shall provide and maintain as operational hydrogen sulfide detection and monitoring equipment during drilling when drilling is within 500 feet of a zone anticipated to contain hydrogen sulfide and continuously thereafter through all subsequent drilling.

C. Wind indicators. Drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater shall include wind indicators. The person shall have equipment to indicate wind direction present and visible at all times. The person shall install at least two devices to indicate wind direction at separate elevations that visible from all principal working areas at all times. When a sustained hydrogen sulfide concentration is detected in excess of 20 ppm at a detection point, the person shall display red flags.

D. Flare system. For drilling and completion operations in an area where it is reasonably expected that a potentially hazardous hydrogen sulfide volume will be encountered, the person shall install a flare system to safely gather and burn hydrogen-sulfide-bearing gas. The person shall locate flare outlets at least 150 feet from the well bore. Flare lines shall be as straight as practical. The person shall equip the flare system with a suitable and safe means of ignition. Where noncombustible gas is to be flared, the system shall provide supplemental fuel to maintain ignition.

E. Well control equipment. When the 100 ppm radius of exposure includes a public area, the following well control equipment is required.

(1) Drilling. The person shall install a remote-controlled well control system that is operational at all times beginning when drilling is within 500 vertical feet of the formation believed to contain hydrogen sulfide and continuously thereafter during drilling. The well control system shall include, at a minimum, a pressure and hydrogen-sulfide-rated well control choke and kill system including manifold and blowout preventer that meets or exceeds the specifications in API publications Choke and Kill Systems, 16C and Blowout Prevention Equipment Systems for Drilling Wells, RP 53 or other division-approved specifications. The person shall use mud-gas separators. The person shall test and maintain these systems pursuant to the specifications referenced, according to the requirements of 19.15.11 NMAC, or as the division otherwise approves.

(2) Completion, workover and well servicing. The person shall install a remote controlled pressure and hydrogen-sulfide-rated well control system that meets or exceeds API specifications or other division-approved specifications that is operational at all times during a well's completion, workover and servicing.

F. Mud program. Drilling, completion, workover and well servicing operations involving a hydrogen sulfide concentration of 100 ppm or greater shall use a hydrogen sulfide mud program capable of handling hydrogen sulfide conditions and well control, including de-gassing.

G. Well testing. Except with prior division approval, a person shall conduct drill-stem testing of a zone that contains hydrogen sulfide in a concentration of 100 ppm or greater only during daylight hours and not permit formation fluids to flow to the surface.

H. If hydrogen sulfide encountered during operations. If hydrogen sulfide was not anticipated at the time the division issued a permit to drill but is encountered during drilling in a concentration of 100 ppm or greater, the operator shall satisfy the requirements of 19.15.11 NMAC before continuing drilling operations. The operator shall notify the division of the event and the mitigating steps that the operator has or is taking as soon as possible, but no later than 24 hours following discovery. The division may grant verbal approval to continue drilling operations pending preparation of a required hydrogen sulfide contingency plan.

[19.15.11.11 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.12 PROTECTION FROM HYDROGEN SULFIDE AT OIL PUMP STATIONS, PRODUCING WELLS, TANK BATTERIES AND ASSOCIATED PRODUCTION FACILITIES, PIPELINES, REFINERIES, GAS PLANTS AND COMPRESSOR STATIONS:

A. API standards. A person shall conduct operations at oil pump stations and producing wells, tank batteries and associated production facilities, refineries, gas plants and compressor stations involving a hydrogen sulfide concentration of 100 ppm or greater with due consideration to the guidelines in the API publication Recommended Practices for Oil and Gas Producing and Gas Processing Plant Operations Involving Hydrogen Sulfide, RP-55, latest edition or some other division-approved standard.

B. Security. A person shall protect well sites and other unattended, fixed surface facilities involving a hydrogen sulfide concentration of 100 ppm or greater from public access by fencing with locking gates when the location is within 1/4 mile of a public area. For the purposes of Subsection B of 19.15.11.12 NMAC, a surface pipeline is not considered a fixed surface facility.

C. Wind direction indicators. Oil pump stations, producing wells, tank batteries and associated production facilities, pipelines, refineries, gas plants and compressor stations involving a hydrogen sulfide concentration of 100 ppm or greater shall have equipment to indicate wind direction. The person shall install wind direction equipment that is visible from all principal working areas at all times.

D. Control equipment. When the 100 ppm radius of exposure includes a public area, the following additional measures are required.

(1) The person shall install and maintain in good operating condition safety devices, such as automatic shut-down devices, to prevent hydrogen sulfide's escape. Alternatively, the person shall establish safety procedures to achieve the same purpose.

(2) A well shall possess a secondary means of immediate well control through the use of an appropriate christmas tree or downhole completion equipment. The equipment shall allow downhole accessibility (reentry) under pressure for permanent well control.

E. Tanks or vessels. The person shall chain each stair or ladder leading to the top of a tank or vessel containing 300 ppm or more of hydrogen sulfide in the gaseous mixture or mark it to restrict entry.

[19.15.11.12 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.13 PERSONNEL PROTECTION AND TRAINING:

The person shall provide persons responsible for implementing a hydrogen sulfide contingency plan training in hydrogen sulfide hazards, detection, personal protection and contingency procedures.

[19.15.11.13 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.14 STANDARDS FOR EQUIPMENT THAT MAY BE EXPOSED TO HYDROGEN SULFIDE:

Whenever a well, facility or operation involves a potentially hazardous hydrogen sulfide volume, the person shall select equipment with consideration for both the hydrogen sulfide working environment and anticipated stresses and shall use NACE Standard MR0175 (latest edition) or some other division-approved standard for selection of metallic equipment or, if applicable, use adequate protection by chemical inhibition or other methods that control or limit hydrogen sulfide's corrosive effects.

[19.15.11.14 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.15 EXEMPTIONS:

A person may petition the director or the director's designee for an exemption to a requirement of 19.15.11 NMAC. A petition shall provide specific information as to the circumstances that warrant approval of the exemption requested and how the person will protect public safety. The director or the director's designee, after considering all relevant factors, may approve an exemption if the circumstances warrant and so long as the person protects public safety.

[19.15.11.15 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

19.15.11.16 NOTIFICATION OF THE DIVISION:

The person shall notify the division upon a release of hydrogen sulfide requiring activation of the hydrogen sulfide contingency plan as soon as possible, but no more than four hours after plan activation, recognizing that a prompt response should supersede notification. The person shall submit a full report of the incident to the division on form C-141 no later than 15 days following the release.

[19.15.11.16 NMAC - Rp, 19.15.3.118 NMAC, 12/1/08]

PART 12: POOLS

19.15.12.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.12.1 NMAC - N, 12/1/08]

19.15.12.2 SCOPE:

19.15.12 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.12.2 NMAC - N, 12/1/08]

19.15.12.3 STATUTORY AUTHORITY:

19.15.12 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-16 and Section 70-2-17.

[19.15.12.3 NMAC - N, 12/1/08]

19.15.12.4 DURATION:

Permanent.

[19.15.12.4 NMAC - N, 12/1/08]

19.15.12.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.12.5 NMAC - N, 12/1/08]

19.15.12.6 OBJECTIVE:

To regulate oil and gas operations that involve commingling of oil or gas from different pools or leases, in order to prevent waste and protect correlative rights.

[19.15.12.6 NMAC - N, 12/1/08]

19.15.12.7 DEFINITIONS

A. "Diverse ownership" means leases or pools have different working, royalty or overriding royalty interest owners or different ownership percentages of the same working, royalty or overriding royalty interest owners.

B. "Identical ownership" means leases or pools have the same working, royalty and overriding royalty owners in exactly the same percentages.

C. "Lease" means a contiguous geographical area of identical ownership overlying a pool or portion of a pool. An area pooled, unitized or communitized, either by agreement or by division order, or a participating area shall constitute a lease. If there is diversity of

ownership between different pools, or between different zones or strata, then each such pool, zone or stratum having diverse ownership shall be considered a separate lease.

[19.15.12.7 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

19.15.12.8 CLASSIFYING AND DEFINING POOLS:

The division shall determine whether a particular well or pool is a gas or oil well, or a gas or oil pool, and from time to time classify and reclassify wells and name pools accordingly, and shall determine the limits of a pool or pools producing oil or gas and from time to time re-determine such limits.

[19.15.12.8 NMAC - Rp, 19.15.1.15 NMAC, 12/1/08]

19.15.12.9 SEGREGATION OF PRODUCTION FROM DIFFERENT POOLS OR LEASES:

A. Pool segregation required. An operator shall produce each pool as a single common source of supply and complete, case, maintain and operate wells in the pool so as to prevent communication within the well bore with other pools. An operator shall at all times segregate oil or gas produced from each pool. The combination commingling of production, before marketing, with production from other pools without division approval is prohibited.

B. Lease segregation required. An operator shall not transport oil or gas from a lease until it has been accurately measured or determined by other methods acceptable to the division. An operator shall at all times segregate production from each lease. The combination or commingling of production, before marketing, with production from other leases without division approval is prohibited.

C. Exceptions. The division may permit exceptions to Subsections A and B of 19.15.12.9 NMAC for surface commingling, downhole commingling and off-lease storage or measurement pursuant to 19.15.12.10 NMAC, 19.15.12.11 NMAC and 19.15.12.12 NMAC, respectively. Exceptions granted by previous division orders remain in effect in accordance with their terms and conditions.

[19.15.12.9 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

19.15.12.10 SURFACE COMMINGLING - OIL, GAS OR OIL AND GAS:

A. To prevent waste, to promote conservation and to protect correlative rights, the division may grant exceptions to permit the surface commingling of oil or gas in common facilities from two or more pools, two or more leases or combinations of pools and leases provided that:

(1) the division shall approve the method the applicant uses to allocate the production to the various leases or pools to be commingled;

(2) if state, federal or tribal lands are involved, the operator has notified the state land office or BLM, as applicable, of the proposed commingling; and

(3) the operator has met the other applicable requirements in 19.15.12.10 NMAC.

B. Specific requirements and provisions for commingling of leases, pools or leases and pools with identical ownership.

(1) Measurement and allocation methods.

(a) Well test method. If all wells or units to be commingled are marginal and are physically incapable of producing the top proration unit allowable for their respective pools, or if all affected pools are unprorated, the division shall permit commingling without separately measuring the production from each pool or lease. Instead, the operator may determine the production from each well and from each pool or lease from well tests conducted periodically, but no less than annually. The well test method shall not apply to wells or units that can produce an amount of oil equal to the top proration unit allowable for the pool but are restricted because of high gas-oil ratios. The operator of a marginal commingling installation shall notify the division any time a well or unit commingled under 19.15.12.10 NMAC becomes capable of producing the top proration unit allowable for its pool, at which time the division shall require separate measurement.

(b) Metering method. The operator may determine production from each pool or lease by separately metering before commingling.

(c) Subtraction method. If production from all except one of the pools or leases to be commingled is separately measured, the operator may determine the production from the remaining pool or lease by the subtraction method as follows:

(i) for oil, the net production from the unmetered pool or lease shall be the difference between the net pipeline runs with the beginning and ending stock adjustments and the sum of the net production of the metered pools or leases;

(ii) for gas, the net production from the unmetered pool or lease shall be the difference between the volume recorded at the sales meter and the sum of the volumes recorded at the individual pool or lease meters.

(d) Top allowable producers. If a well or unit in a prorated pool to be commingled can physically be produced at top proration unit allowable rates (even if restricted because of high gas-oil ratios), the division may permit commingling only if the

operator or a gatherer, transporter or processor meters the production from the unit prior to commingling, or determines it by the subtraction method.

(e) Alternative methods. An operator may determine production from each pool or lease to be commingled by other methods the division has specifically approved prior to commingling. The division shall determine what evidence is necessary to support a request to use an alternative method.

(2) Prior to commingling, the applicant shall notify the division by filing form C-103 in the division's Santa Fe office with the following information set forth in the form or attached to the form:

(a) identification of each of the leases, pools or leases and pools to be commingled;

(b) the method of allocation the applicant will use; if the applicant proposes using the well test method for production from a prorated pool, the notification to the division shall be accompanied by a tabulation of production showing that the average daily production of an affected proration unit over a 60-day period has been below the top proration unit allowable for the subject pool (or for a newly drilled well without a 60-day production history, a tabulation of the available production) or other evidence acceptable to the division to establish that the well or wells on the unit are not capable of producing the top proration unit allowable; if the proposed allocation method is other than an approved method provided in Subsection B of 19.15.12.10 NMAC, the operator shall submit evidence of the method's reliability;

(c) a certification by a licensed attorney or qualified petroleum landman that the ownership in the pools and leases to be commingled is identical as defined in 19.15.12.7 NMAC; and

(d) evidence of notice to the state land office or the BLM, if required.

(3) Approval. The division may authorize commingling without a notice or hearing and the operator may commence commingling upon the division's approval of form C-103, subject to compliance with any conditions of the approval the division noted, provided that the operator shall not commence commingling involving state, federal or tribal leases unless or until approved by the state land office or the BLM, as applicable.

C. Specific requirements and provisions for commingling of leases, pools or leases and pools with diverse ownership.

(1) Measurement and allocation methods. Where there is diversity of ownership between two or more leases, two or more pools or between different pools and leases, the division shall only permit surface commingling of production from the leases and pools if the operator accurately meters production from each of such pools

or leases or determines the production by other methods the division has specifically approved prior to commingling.

(2) Meter proving and calibration frequencies.

(a) Oil. The operator shall test each meter used in oil production accounting for accuracy as follows: monthly, if more than 100,000 barrels of oil per month are measured through the meter; quarterly, if between 10,000 and 100,000 barrels of oil per month are measured through the meter; and semi-annually, if less than 10,000 barrels of oil per month are measured through the meter.

(b) Gas. For each gas sales and allocation meter, the operator shall test the metering equipment's accuracy at the point of delivery or allocation following the initial installation and following repair and retested: quarterly, if 100 MCFGPD or more are measured through the meter; and semi-annually, if less than 100 MCFGPD are measured through the meter.

(c) Correction and adjustment. If a meter proving and calibration test reveals inaccuracy in the metering equipment of more than two percent, the operator shall correct the volume measured and adjust the meter to zero error. The operator shall submit a corrected report adjusting the volume of oil or gas measured and showing the calculations made in correcting the volumes. The operator shall correct the volumes back to the time the inaccuracy occurred, if known. If the time is unknown, the operator shall correct the volumes for the last half of the period elapsed since the last calibration date. If a test reveals an inaccuracy of less than two percent, the operator shall adjust the meter, but correction of prior production is not required.

(3) Low production gas wells. For gas wells producing less than 15 MCFGPD, the operator may estimate production as an acceptable alternative to individual well measurement provided that commingling of production from different pools or leases does not take place unless otherwise authorized pursuant to 19.15.12 NMAC.

(4) Approval process.

(a) In general. Where there is diversity of ownership, the division may grant an exception to the requirements of 19.15.12.9 NMAC to permit surface commingling of production from different leases, pools or leases and pools only after notice and an opportunity for hearing as provided in Paragraph (4) of Subsection C of 19.15.12.10 NMAC.

(b) Application. The operator shall submit an application for administrative approval to the division's Santa Fe office on form C-107-B, which shall contain a list of the parties (interest owners) owning an interest in the production to be commingled (including owners of royalty and overriding royalty interests whether or not they have a right or option to take their interests in kind) and a method of allocating production to ensure the protection of correlative rights.

(c) Notice. The applicant shall notify the interest owners in accordance with 19.15.4.12 NMAC. The applicant shall submit a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, notified each of the interest owners by sending them a copy of the application and the attachments to the application, by certified mail, return receipt requested, and advising them that they must file any objection in writing with the division's Santa Fe office within 20 days from the date the division received the application. The division may approve the application administratively, without hearing, upon receipt of written waivers from interest owners, or if no interest owner has filed an objection within the 20-day period. If the division receives an objection, it shall set the application for hearing. The division shall notify the applicant, who shall give formal notice of the hearing to each party who has filed an objection and to such other persons as the division directs.

(d) Hearing ordered by the division. The division may set for hearing an application for administrative approval of surface commingling, and, in such case, the applicant shall give notice of the hearing in the manner the division directs.

(e) Notice by publication. When an applicant is unable to locate all interest owners after exercising reasonable diligence, the applicant shall provide notice by publication and submit proof of publication with the application. Such proof shall consist of a copy of the legal advertisement that was published in a newspaper of general circulation in the county or counties in which the commingled production is located. The advertisement shall include:

(i) the applicant's name, address, telephone number and contact party;

(ii) the location by section, township and range of the leases from which production will be commingled and the location of the commingling facility;

(iii) the source of all commingled production by pool name; and

(iv) a notation that interested parties must file objections or requests for hearing in writing with the division's Santa Fe office within 20 days after publication, or the division may approve the application.

(f) Effect of protest. The division shall include protests and requests for hearing it receives in the case file; provided however, the division shall not consider the protest as evidence. If the protesting party does not appear at the hearing, the division may grant application without receiving additional evidence in support of the application.

(g) Additions. A surface commingling order may authorize, prospectively, the inclusion of additional pools or leases within defined parameters set forth in the order, provided that:

(i) the notice to the interest owners includes a statement that authorization for subsequent additions is being sought and of the parameters for the additions the applicant proposes, and

(ii) the division finds that subsequent additions within defined parameters will not, in reasonable probability, reduce the commingled production's value or otherwise adversely affect the interest owners; a subsequent application to amend an order to add to the commingled production other leases, pools or leases and pools that are within the defined parameters requires notice only to the owners of interests in the production to be added, unless the division otherwise directs.

(h) State, federal or tribal lands. Notwithstanding the issuance of an exception under 19.15.12.10 NMAC, an operator shall not commence commingling involving state, federal or tribal leases unless or until approved by the state land office or the BLM, as applicable.

[19.15.12.10 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

19.15.12.11 DOWNHOLE COMMINGLING:

A. The director may grant an exception to 19.15.12.9 NMAC to permit the commingling of multiple producing pools in existing or proposed well bores when the following conditions are met.

(1) The fluids from each pool are compatible and combining the fluids will not damage the pools.

(2) The commingling will not jeopardize the efficiency of present or future secondary recovery operations in the pools to be commingled.

(3) The bottom perforation of the lower zone is within 150 percent of the depth of the top perforation in the upper zone and the lower zone is at or below normal pressure with normal pressure assumed to be 0.433 psi per foot of depth. If the pools to be commingled are not within this vertical interval, then evidence is required to demonstrate that commingling will not result in shut-in or flowing well bore pressures in excess of any commingled pool's fracture parting pressure. The fracture parting pressure is assumed to be 0.65 psi per foot of depth unless the applicant submits other measured or calculated pressure data acceptable to the division.

(4) The commingling will not result in the permanent loss of reserves due to cross-flow in the well bore.

(5) Fluid-sensitive formations that may be subject to damage from water or other produced liquids are protected from contact with the liquids produced from other pools in the well.

(6) If any of the pools being commingled is prorated, or the well's production has been restricted by division order in any manner, the allocated production from each producing pool in the commingled well bore shall not exceed the top oil or gas allowable rate for a well in that pool or rate restriction applicable to the well.

(7) The commingling will not reduce the value of the total remaining production.

(8) Correlative rights will not be violated.

B. The director may rescind authority to commingle production in a well bore and require the operator produce the pools separately if, in the director's opinion, waste or reservoir damage is resulting, correlative rights are being impaired or the efficiency of a secondary recovery project is being impaired, or any changes or conditions render the installation no longer eligible for downhole commingling.

C. When the conditions set forth in Subsection A of 19.15.12.11 NMAC are satisfied, the director may approve a request to downhole commingle production in one of the following ways.

(1) Individual exceptions. An operator shall file applications to downhole commingle in well bores located outside of an area subject to a downhole commingling order issued in a "reference case" and not within a pre-approved pool or area on form C-107-A with the division.

(a) The director may administratively approve a form C-107-A in the absence of a valid objection filed within 20 days after the division's receipt of the application if, in the director's opinion, waste will not occur and correlative rights will not be impaired.

(b) In those instances where the ownership or percentages between the pools to be commingled is not identical, applicant shall send a copy of form C-107-A to interest owners in the spacing unit by certified mail, return receipt requested.

(c) The applicant shall send copies of form C-107-A to the state land office for wells in spacing units containing state lands or the BLM for wells in spacing units containing federal or tribal lands.

(d) The director may set an administratively filed form C-107-A for hearing.

(2) Exceptions for wells located in pre-approved pools or areas. Applicants shall file applications to downhole commingle in well bores within pools or areas that have been established by the division as "pre-approved pools or areas" pursuant to Paragraph (2) of Subsection D of 19.15.12.11 NMAC on form C-103 at the appropriate division district office. The district supervisor of the appropriate division district office may approve the proposed downhole commingling following receipt of form C-103. In addition to the information required by form C-103, the applicant shall include:

(a) the number of the division order that established pre-approved pool or area;

(b) the names of pools to be commingled;

(c) perforated intervals;

(d) allocation method and supporting data;

(e) a statement that the commingling will not reduce the total remaining production's value;

(f) in those instances where the ownership or percentages between the pools to be commingled is not identical, a statement attesting that applicant sent notice to the interest owners in the spacing unit by certified mail, return receipt requested of its intent to apply for downhole commingling and no objection was received within 20 days of sending this notice; and

(g) a statement attesting that applicant sent a copy of form C-103 to the state land office for wells in spacing units containing state lands or the BLM for wells in spacing units containing federal or tribal lands using sundry notice form 3160-5.

(3) Exceptions for wells located in areas subject to a downhole commingling order issued in a "reference case". Applicants shall file applications to downhole commingle in well bores within an area subject to a division order that excepted any of the criteria required by 19.15.12.11 NMAC or form C-107-A with the district supervisor of the appropriate division district office and, except for the place of filing, shall meet the requirements of the applicable order issued in that "reference case".

D. Applications for establishing a "reference case" or for pre-approval of downhole commingling on an area-wide or pool-wide basis.

(1) Reference cases. If sufficient data exists for a lease, pool, formation or geographical area to render it unnecessary to repeatedly provide the data on form C-107-A, an operator may except any of the various criteria required under 19.15.12.11 NMAC or set forth in form C-107-A by establishing a "reference case". The division, upon its own motion or application from an operator, may establish "reference cases" either administratively or by hearing. Upon division approval of such "reference cases" for specific criteria, the division shall require subsequent form C-107-A only to cite the division order number that established the exceptions and not require the applicant to submit data for those criteria. The division may approve applications involving exceptions to the specific criteria required by 19.15.12.11 NMAC or by form C-107-A after the applicant sends notice to the interest owners in the affected spacing units by certified mail, return receipt requested, based on evidence that the approval would adequately satisfy the conditions of Subsection A of 19.15.12.11 NMAC.

(2) Pre-approval of downhole commingling on a pool-wide or area-wide basis. If sufficient data exists for multiple formations or pools that have previously been commingled or are proposed to be commingled, the division, upon its own motion or application from an operator, may establish downhole commingling on a pool-wide or area-wide basis either administratively or by hearing.

(a) Applications for pre-approval shall include the data required by form C-107-A, a list of the names and address of operators in the pools, previous orders authorizing downhole commingling for the pools or area and a map showing the location of wells in the pools or area and indicating those wells approved for downhole commingling.

(b) The director may approve applications for pre-approval of downhole commingling on a pool-wide or area-wide basis after the applicant sends notice to operators in the affected pools or area by certified mail, return receipt requested, based on evidence that such approval adequately satisfies the conditions of 19.15.12.11 NMAC.

(c) Upon approval of certain pools or areas for downhole commingling, an operator may obtain approval for subsequent applications for approval to downhole commingle wells within those pools or areas by filing form C-103 in accordance with Paragraph (2) of Subsection C of 19.15.12.11 NMAC.

(3) The division shall maintain and continually update a list of pre-approved pools or areas in Subsection E of 19.15.12.11 NMAC.

E. Pre-approved pools and areas. Downhole commingling is approved within the following pool combinations or geographical areas (provided, however, that the operator shall file form C-103 with the appropriate division district office in accordance with the procedure set forth in Paragraph (2) of Subsection C of 19.15.12.11 NMAC):

Pre-approved pools or geographic areas for downhole commingling, permian basin	
All Blinebry, Tubb, Drinkard, Blinebry-Tubb, Blinebry-Drinkard and Tubb-Drinkard pool combinations within the following geographic area in Lea County:	
township 18 south, ranges 37, 38 and 39 east	township 23 south, ranges 36, 37 and 38 east
township 19 south, ranges 36, 37, 38 and 39 east	township 24 south, ranges 36, 37 and 38 east
township 20 south, ranges 36, 37, 38 and 39 east	township 25 south, ranges 36, 37 and 38 east
township 21 south, ranges 36, 37 and 38 east	township 26 south, ranges 36, 37 and 38 east
township 22 south, ranges 36, 37 and 38 east	
Blinebry pools	

6660	Blinebry oil and gas pool (oil)	34200	Justis-Blinebry pool
72480	Blinebry oil and gas pool (pro gas)	46990	monument-Blinebry pool
6670	west Blinebry pool	47395	Nadine-Blinebry pool
12411	Cline lower paddock-Blinebry pool	47400	west Nadine paddock-Blinebry pool
29710	Hardy-Blinebry pool	47960	oil center-Blinebry pool
31700	east Hobbs-Blinebry pool	96314	north Teague lower paddock-Blinebry assoc.
31680	Hobbs upper-Blinebry pool	58300	Teague paddock-Blinebry pool
31650	Hobbs lower-Blinebry pool	59310	east Terry-Blinebry pool
33230	house-Blinebry pool	63780	Weir-Blinebry pool
33225	south house-Blinebry pool	63800	east Weir-Blinebry pool
Tubb pools			
12440	Cline-Tubb pool	47530	west Nadine-Tubb pool
77120	Fowler-Tubb pool	58910	Teague-Tubb pool
26635	south Fowler-Tubb pool	96315	north Teague-Tubb associated pool
78760	house-Tubb pool	60240	Tubb oil and gas pool (oil)
33460	east house-Tubb pool	86440	Tubb oil and gas pool (pro gas)
33470	north house-Tubb pool	87080	Warren-Tubb pool
47090	monument-Tubb pool	87085	east Warren-Tubb pool
47525	Nadine-Tubb pool		
Drinkard pools			
7900	south Brunson Drinkard-abo pool	47505	west Nadine-Drinkard pool
12430	Cline Drinkard-abo pool	47510	Nadine Drinkard-Abo pool
15390	D-K Drinkard pool	57000	Skaggs-Drinkard pool
19190	Drinkard pool	96768	northwest Skaggs-Drinkard pool
19380	south Drinkard pool	58380	Teague-Drinkard pool
26220	Fowler-Drinkard pool	96313	north Teague Drinkard-Abo pool
28390	Goodwin-Drinkard pool	63080	Warren-Drinkard pool
31730	Hobbs-Drinkard pool	63120	east Warren-Drinkard pool
33250	house-Drinkard pool	63840	Weir-Drinkard pool
47503	east Nadine-Drinkard pool		
Blinebry-Tubb pools			
62965	Warren Blinebry-Tubb oil and gas pool		
Tubb-Drinkard pools			
18830	dollarhide Tubb-Drinkard pool	33600	imperial Tubb-Drinkard pool
29760	Hardy Tubb-Drinkard pool	35280	Justis Tubb-Drinkard pool
96356	north Hardy Tubb-Drinkard pool		
pool-combinations, Lea county			
airstrip-bone spring (960) and airstrip-wolfcamp (970) pools			

Baish-wolfcamp (4480) and maljamar-abo (43250) pools	
Blinebry oil and gas and Wantz-abo (62700) pools	
Blinebry oil and gas and south Brunson-Ellenburger (8000) pools	
Blinebry oil and gas and paddock (49210) pools	
cerca lower-wolfcamp (11800) and cerca upper-pennsylvanian (11810) pools	
Drinkard (19190) and paddock (49210) pools	
Drinkard (19190) and Wantz-abo (62700) pools	
Drinkard (19190) and Wantz-granite wash (62730) pools	
lazy J penn (37430) and south Baum-wolfcamp (4967) pools	
mesa verde-Delaware (96191) and mesa verde-bone spring (96229) pools	
west red tank-Delaware (51689) and red tank-bone spring (51683) pools	
south shoe bar-wolfcamp (56300) and south shoe bar upper-penn (56285) pools	
Skaggs-glorieta (57190) and Skaggs-Drinkard (57000) pools	
west Triste draw-Delaware (59945) and south sand dunes bone spring (53805) pools	
Triste draw-Delaware (59930) and Triste draw-bone spring (96603) pools	
Tubb oil and gas and paddock (49210) pools	
north vacuum-Abo (61760) and vacuum-wolfcamp (62340) pools	
vacuum-Blinebry (61850) and vacuum-Glorieta (62160) pools	
vacuum-Blinebry (61850) and vacuum-Drinkard (62110) pools	
vacuum upper-penn (62320) and vacuum-wolfcamp (62340) pools	
Wantz-abo (62700) and Wantz-granite wash (62730) pools	
pool combinations, Eddy county	
red lake queen-grayburg-san andres (51300) and northeast red lake-glorieta yeso (96836) pools	
pool combination, San Juan basin	

basin-dakota (71599) and angels peak-Gallup associated (2170) pools

basin-dakota (71599) and Armenta-Gallup (2290) pools

basin-dakota (71599) and Baca-Gallup (3745) pools

basin-dakota (71599) and bisti lower-Gallup (5890) pools

basin-dakota (71599) and BS mesa-Gallup (72920) pools

basin-dakota (71599) and Calloway-Gallup (73700) pools

basin-dakota (71599) and devils fork-Gallup associated (17610) pools

basin-dakota (71599) and ensenada-Gallup (96321) pools

basin-dakota (71599) and flora vista-Gallup (76640) pools

basin-dakota (71599) and Gallegos-Gallup associated (26980) pools

basin-dakota (71599) and ice canyon-Gallup (93235) pools

basin-dakota (71599) and Kutz-Gallup (36550) pools

basin-dakota (71599) and Largo-Gallup (80000) pools

basin-dakota (71599) and otero-Gallup (48450) pools

basin-dakota (71599) and Tapacito-Gallup associated (58090) pools

basin-dakota (71599) and wild horse-Gallup (87360) pools

basin-dakota (71599) and Aztec-pictured cliffs (71280) pools

basin-dakota (71599) and Ballard-pictured cliffs (71439) pools

basin-dakota (71599) and blanco-pictured cliffs (72359) pools

basin-dakota (71599) and south blanco-pictured cliffs (72439) pools

basin-dakota (71599) and Fulcher Kutz-pictured cliffs (77200) pools

basin-dakota (71599) and west Kutz-pictured cliffs (79680) pools

basin-dakota (71599) and Tapacito-pictured cliffs (85920) pools

basin-fruitland coal (71629) and Aztec-pictured cliffs (71280) pools

basin-fruitland coal (71629) and Ballard-pictured cliffs (71439) pools

basin-fruitland coal (71629) and blanco-pictured cliffs (72359) pools

basin-fruitland coal (71629) and east blanco-pictured cliffs (72400) pools

basin-fruitland coal (71629) and south blanco-pictured cliffs (72439) pools

basin-fruitland coal (71629) and carracas-pictured cliffs (96154) pools

basin-fruitland coal (71629) and choza mesa-pictured cliffs (74960) pools

basin-fruitland coal (71629) and Fulcher Kutz-pictured cliffs (77200) pools

basin-fruitland coal (71629) and west Kutz-pictured cliffs (79680) pools

basin-fruitland coal (71629) and Gavilan-pictured cliffs (77360) pools

basin-fruitland coal (71629) and gobernador-pictured cliffs (77440) pools

basin-fruitland coal (71629) and huerfano-pictured cliffs (78840) pools

basin-fruitland coal (71629) and Potwin-pictured cliffs (83000) pools

basin-fruitland coal (71629) and Tapacito-pictured cliffs (85920) pools

basin-fruitland coal (71629) and twin mounds fruitland sand-pictured cliffs (86620) pools

basin-fruitland coal (71629) and W. A. W. fruitland sand-pictured cliffs (87190) pools

blanco-mesaverde (72319) and basin-dakota (71599) pools

blanco-mesaverde (72319) and blanco-pictured cliffs (72359) pools

blanco-mesaverde (72319) and south blanco-pictured cliffs (72439) pools

blanco-mesaverde (72319) and gobernador-pictured cliffs (77440) pools

blanco-mesaverde (72319) and west lindrith Gallup-dakota (39189) pools

blanco-mesaverde (72319) and Tapacito-pictured cliffs (85920) pools

blanco-mesaverde (72319) and Armenta-Gallup (2290) pools
blanco-mesaverde (72319) and BS mesa-Gallup (72920) pools
blanco-mesaverde (72319) and Calloway-Gallup (73700) pools
blanco-mesaverde (72319) and ensenada-Gallup (96321) pools
blanco-mesaverde (72319) and flora vista-Gallup (76640) pools
blanco-mesaverde (72319) and Largo-Gallup (80000) pools
blanco-mesaverde (72319) and west lindrith Gallup-Dakota (39189) pools
blanco-mesaverde (72319) and McDermott Gallup (81050) pools
blanco-mesaverde (72319) and Potter-Gallup (50387) pools
blanco-mesaverde (72319) and Tapacito-Gallup associated (58090) pools
blanco-mesaverde (72319) and wild horse-Gallup (87360) pools
otero-chacra (82329) and Aztec-pictured cliffs (71280) pools
otero-chacra (82329) and basin-dakota (71599) pools
otero-chacra (82329) and blanco-mesaverde (72319) pools
otero-chacra (82329) and south blanco-pictured cliffs (72439) pools
otero-chacra (82329) and Fulcher Kutz-pictured cliffs (77200) pools

[19.15.12.11 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

PART 13: COMPULSORY POOLING

19.15.13.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.13.1 NMAC - N, 12/1/08]

19.15.13.2 SCOPE:

19.15.13 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.13.2 NMAC - N, 12/1/08]

19.15.13.3 STATUTORY AUTHORITY:

19.15.13 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12 and Section 70-2-17.

[19.15.13.3 NMAC - N, 12/1/08]

19.15.13.4 DURATION:

Permanent.

[19.15.13.4 NMAC - N, 12/1/08]

19.15.13.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.13.5 NMAC - N, 12/1/08]

19.15.13.6 OBJECTIVE:

To establish requirements for implementation of the division's statutory authority to pool interests in oil and gas spacing units.

[19.15.13.6 NMAC - N, 12/1/08]

19.15.13.7 DEFINITIONS:

A. "Infill well" means a well in a compulsory pooled proration or spacing unit to be completed in a pool in which an existing well drilled pursuant to the compulsory pooling order has been completed and not plugged and abandoned.

B. "Operator", for the purposes of 19.15.13 NMAC, means the division or commission appointed operator of a compulsory pooled proration or spacing unit, or its successor.

C. "Pooled working interest" means a working interest or unleased mineral interest that is pooled by division or commission order and not by voluntary agreement of the owner of the interest, except for an unleased mineral interest on federal, state or tribal lands.

[19.15.13.7 NMAC - N, 12/1/08]

19.15.13.8 CHARGE FOR RISK:

A. General rule. Compulsory pooling orders the division enters pursuant to NMSA 1978, Section 70-2-17, as amended, may provide for the recovery, out of the share of production allocable to the working interest of a party that elects not to pay its proportionate share of well costs in advance, in addition to reasonable well costs and costs of supervision and management, of a charge for risk associated with the drilling, completion or working over and re-completion of each unit well for which the order provides. Unless otherwise ordered pursuant to Subsection D of 19.15.13.8 NMAC, the charge for risk is 200 percent of well costs.

B. Well costs shall include the reasonable costs of drilling, reworking, diverting, deepening, plugging back and testing the well; completing the well in a formation pooled by the order; and equipping the well for production.

(1) If, however, a well was previously completed in another formation or bottom hole location, or was previously abandoned without completion, well costs as to that well shall mean only the reasonable costs of re-entering, reworking, diverting, deepening, plugging back or testing the well; completion in the pooled formation or formations and; if necessary, reequipping the well for production, unless the division determines that allowance of all or some portion of historical costs of drilling is just and reasonable due to particular circumstances.

(2) If a well is completed in two or more formations having diverse ownership or a different risk charge percentage, the order shall provide for allocation of well costs between the formations.

(3) As to an interest owner who elects not to pay its share of well costs associated with a specific well in advance, as provided in the applicable order, well costs shall include costs of a subsequent operation undertaken to secure or enhance production from a formation pooled by the order prior to the time that the entire amount of the non-consenting owner's share of well costs and applicable risk charge have been recovered from the non-consenting owner's share of the well's production. The costs shall include expenses for reworking, diverting, deepening, plugging back, testing, completion or recompletion and equipping for production, but not ordinary operating expenses.

(4) Well costs shall also include reasonable costs of drilling, testing, completing and equipping a substitute well if, in the drilling of a well pursuant to a compulsory pooling order, the operator loses the hole or encounters mechanical difficulties rendering it impracticable to drill to the objective depth and the substitute well is located within 330 feet of the original well and the operator commences drilling within 10 days of the original well's abandonment.

C. An applicant for compulsory pooling is not required to present technical evidence justifying the risk charge provided in Subsection A of 19.15.13.8 NMAC.

D. Exceptions. A person responding to a compulsory pooling application who seeks a different risk charge than that provided in Subsection A of 19.15.13.8 NMAC shall so state in a timely pre-hearing statement filed with the division and served on the applicant in accordance with 19.15.4.13 NMAC, and shall have the burden to prove the justification for the risk charge sought by relevant geologic or technical evidence. The hearing examiner may allow a responding party who has not filed a pre-hearing statement, but who appears in person or by attorney at the hearing, to offer evidence in support of a different risk charge than that Subsection A of 19.15.13.8 NMAC provides, but in such cases the hearing examiner shall allow a continuance of the hearing, if requested, to enable the applicant to present rebuttal evidence.

[19.15.13.8 NMAC - Rp, 19.15.1.35 NMAC, 12/1/08]

19.15.13.9 INFILL WELLS:

Whenever 19.15.15 NMAC or an applicable pool order authorizes one or more infill wells within a proration or spacing unit pooled by division or commission order pursuant to NMSA 1978, Section 70-2-17, either the operator or an owner of a pooled working interest may, at any time after completion of the initial well provided in the pooling order, propose drilling of an infill well.

[19.15.13.9 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.10 PROPOSAL BY THE OPERATOR:

A. If the operator proposes an infill well, it shall notify each pooled working interest owner of the proposal by certified mail, return receipt requested, specifying the proposed well's location and depth and including a schedule of estimated well costs and a statement of each pooled working interest owner's gross working interest percentage.

B. Each pooled working interest owner may elect to participate in the proposed infill well by notice in writing to the operator within 30 days after the owner receives the proposal, provided that the election to participate shall not be effective unless the owner so electing pays to the operator the amount of the owner's share of estimated well costs within 30 days after the date of transmission of its notice of election to participate.

C. A pooled working interest owner not electing to participate in the proposed infill well shall be deemed to have elected to become a non-consenting owner with respect to the infill well. The operator shall withhold from the proceeds of the well's production accruing to the working interest of a non-consenting owner the non-consenting owner's share of costs, as defined in 19.15.13 NMAC, of the infill well, together with a risk charge computed at the same rate as provided in the pooling order with respect to the initial well. The operator shall distribute the amounts withheld from the non-consenting owner's share of production for well costs and risk charges proportionately to the persons who have advanced the infill well's cost.

D. Unless it withdraws the proposal the operator shall commence drilling of the proposed infill well no later than 120 days after the expiration of the initial notice period of 30 days. The director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for the extension, without notice or hearing. If the operator has not commenced drilling within the time provided no election previously made shall be binding on a party. If the operator still desires to drill the infill well, it shall resubmit written notice proposing the well as if no prior proposal had been made.

[19.15.13.10 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.11 PROPOSAL BY POOLED WORKING INTEREST OWNER:

A. If a pooled working interest owner proposes an infill well, it shall notify the operator of the proposal by certified mail, return receipt requested, specifying the proposed well's location and depth and including a schedule of estimated well costs. The proposing owner shall mail a copy of the proposal to each of the other pooled working interest owners, or their successors in title as identified by documents of record in the office of the clerk of the county where the proposed well will be located, at the same time that it mails the proposal to the operator.

B. The operator shall, within 60 days after receipt of such notice, either propose an infill well at the specified location and depth as an operator proposal pursuant to 19.15.13.10 NMAC, or notify the owner proposing the well that it declines to do so.

(1) If the operator proposes the well and fewer than all working interest owners elect to participate, the operator may withdraw the proposal unless the originally proposing owner, within 30 days of receipt of notice of such occurrence, advances the share of estimated well costs allocable to all non-consenting owners of pooled working interests.

(2) If the operator proposes the well and all owners consent to the well or the originally proposing owner advances the share of well costs allocable to an otherwise unsubscribed interest, the operator shall commence drilling the proposed infill well within 120 days after it receives notice that either condition has occurred. The director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for the extension, without notice or hearing. Well costs applicable to a non-consenting owner of a pooled working interest, together with the risk charge provided in the original pooling order, shall be recoverable out of the non-consenting owner's share of production as in other cases.

C. If the operator declines to propose a well proposed to it by a pooled working interest owner or fails to commence the well within the time provided, the proposing owner may apply to the division for an order authorizing the drilling of the proposed infill well under the compulsory pooling order's terms. The owner filing the application shall give notice of the application as provided in 19.15.4.12 NMAC to the owners of working

interests in the proration or spacing unit, including those whose interests in the proration or spacing unit are pooled by agreement, and, if the proration or spacing unit includes state, federal or tribal minerals, to the state land office or the BLM, as applicable.

[19.15.13.11 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.12 REFUND OF MONEY ADVANCED:

If the operator does not commence an infill well proposed pursuant to 19.15.13.10 NMAC within the time provided, including an extension the division allows, it shall refund amounts it received from a pooled party as advance payment of well costs for the well within 10 days after the expiration of the time provided for commencement of drilling, together with interest on the amount received calculated at the rate of bank of America prime plus three percentage points.

[19.15.13.12 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

19.15.13.13 DETERMINATION OF REASONABLE COSTS:

The provision of the applicable compulsory pooling order regarding reporting of actual well costs to the division and to pooled working interest owners, opportunity for objections to those costs, determinations of reasonableness of well costs and adjustment of the amount paid to a participating pooled working interest owner to reflect reasonable well costs shall apply to a well drilled pursuant to 19.15.13.10 NMAC or 19.15.13.11 NMAC.

[19.15.13.13 NMAC - Rp, 19.15.1.36 NMAC, 12/1/08]

PART 14: DRILLING PERMITS

19.15.14.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.14.1 NMAC - N, 12/1/2008; A, 6/26/2018]

19.15.14.2 SCOPE:

19.15.14 NMAC applies to persons engaged in drilling oil and gas wells within New Mexico.

[19.15.14.2 NMAC - N, 12/1/2008]

19.15.14.3 STATUTORY AUTHORITY:

19.15.14 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.14.3 NMAC - N, 12/1/2008]

19.15.14.4 DURATION:

Permanent.

[19.15.14.4 NMAC - N, 12/1/2008]

19.15.14.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.14.5 NMAC - N, 12/1/2008]

19.15.14.6 OBJECTIVE:

To require an operator to obtain a permit prior to commencing drilling, deepening or re-entry operations or before plugging a well back to a different pool or completing or re-completing a well in an additional pool and to establish procedures for application for and approval or denial of the permit.

[19.15.14.6 NMAC - N, 12/1/2008]

19.15.14.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.14.8 PERMIT TO DRILL, DEEPEN OR PLUG BACK:

A. Permit required. An operator is required to obtain a permit approved by the division prior to commencing drilling, deepening or re-entry operations, commencing an additional lateral, plugging a well back to a different pool, or completing or re-completing a well in an additional pool.

B. Mineral owner or working interest owner consent required.

(1) An operator shall not file an application for permit to drill nor commence drilling operations until the operator has either:

(a) received the consent of at least one working interest owner or owner of an unleased mineral interest at the proposed bottom hole location; or

(b) obtained a compulsory pooling order from the division.

(2) In addition, an operator filing an application for permit to drill a horizontal well shall comply with Paragraph (1) of Subsection A of 19.15.16.15 NMAC.

[19.15.14.8 NMAC - Rp, 19.15.3.102 NMAC, 12/1/2008; A, 2/15/2012; A, 4/16/2012; A, 6/26/2018]

19.15.14.9 APPLICATIONS:

An operator shall file a complete form C-101 and complete form C-102 with the division and meet the following requirements, if applicable:

A. an applicant for a permit to drill a well within the corporate limits of a city, town or village shall give notice to the duly constituted governing body of the city, town or village or its duly authorized agent and certify on form C-101 that it gave such notice;

B. an applicant for a permit to drill in a quarter-quarter section containing an existing well or wells operated by another operator shall concurrently file a plat or other acceptable document locating and identifying the well or wells, furnish a copy of the application to the other operator or operators in the quarter-quarter section and certify on form C-101 that it furnished the copies; and

C. an applicant for a permit to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall also comply with Subsection B of 19.15.15.12 NMAC.

[19.15.14.9 NMAC - Rp, 19.15.3.102 NMAC and 19.15.13.1101 NMAC, 12/1/2008]

19.15.14.10 APPROVAL OR DENIAL OF A PERMIT TO DRILL, DEEPEN OR PLUG BACK:

A. The director or the director's designee may deny a permit to drill, deepen or plug back if the applicant is not in compliance with Subsection A of 19.15.5.9 NMAC. In determining whether to grant or deny the permit, the director or the director's designee shall consider such factors as whether the non-compliance with Subsection A of 19.15.5.9 NMAC is caused by the operator not meeting the financial assurance requirements of 19.15.8 NMAC, being subject to a division or commission order finding the operator to be in violation of an order requiring corrective action, having a penalty assessment that has been unpaid for more than 70 days since the issuance of the order assessing the penalty or having more than the allowed number of wells out of compliance with 19.15.25.8 NMAC. If the non-compliance is caused by the operator having more than the allowed number of wells not in compliance with 19.15.25.8 NMAC, the director or director's designee shall consider the number of wells not in compliance, the length of time the wells have been out of compliance and the operator's efforts to bring the wells into compliance.

B. The division may impose conditions on an approved permit to drill, deepen or plug back.

C. If the division denies the permit it shall return the form C-101 to the applicant with the cause for rejection stated.

[19.15.14.10 NMAC - Rp, 19.15.3.102 NMAC and 19.15.13.1101 NMAC, 12/1/2008]

19.15.14.11 APPROVED FORM C-101 AT WELL SITE:

The operator shall keep a copy of the approved form C-101 at the well site during drilling operations.

[19.15.14.11 NMAC - Rp, 19.15.3.102 NMAC, 12/1/2008]

PART 15: WELL SPACING AND LOCATION

19.15.15.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.15.1 NMAC - N, 12/1/2008; A, 6/26/2018]

19.15.15.2 SCOPE:

19.15.15 NMAC applies to persons engaged in drilling oil and gas wells within New Mexico.

[19.15.15.2 NMAC - N, 12/1/2008]

19.15.15.3 STATUTORY AUTHORITY:

19.15.15 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978, which authorizes the division to establish well spacing.

[19.15.15.3 NMAC - N, 12/1/2008; A, 6/26/2018]

19.15.15.4 DURATION:

Permanent.

[19.15.15.4 NMAC - N, 12/1/2008]

19.15.15.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.15.5 NMAC - N, 12/1/2008]

19.15.15.6 OBJECTIVE:

To classify wells and establish well location and well acreage requirements and procedures for multiple operators within a spacing unit, obtaining approval of unorthodox well locations and for pooling or communitizing small acreage oil lots.

[19.15.15.6 NMAC - N, 12/1/2008]

19.15.15.7 DEFINITIONS

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

[19.15.15.7 NMAC - N, 12/1/2008]

19.15.15.8 CLASSIFICATION OF WELLS: WILDCAT AND DEVELOPMENT WELLS:

A. Wildcat well.

(1) In San Juan, Rio Arriba, Sandoval and McKinley counties, a wildcat well is a well to be drilled the spacing unit of which is a distance of two miles or more from:

(a) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is projected to be drilled; and

(b) a well that has produced oil or gas from the formation to which the proposed well is projected to be drilled.

(2) In all counties except San Juan, Rio Arriba, Sandoval and McKinley, a wildcat well is a well to be drilled the spacing unit of which is a distance of one mile or more from:

(a) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is projected to be drilled; and

(b) a well that has produced oil or gas from the formation to which the proposed well is projected.

B. Development well.

(1) A well that is not a wildcat well is classified as a development well for the nearest pool that has produced oil or gas from the formation to which the well is projected to be drilled. The operator shall space, drill, operate and produce a development well in accordance with the rule or order in effect for that pool, provided the well is completed in that pool.

(2) An operator shall operate and produce a well classified as a development well for a pool but completed in a producing formation not included in that pool's vertical limits in accordance with the rule in effect for the nearest pool that is producing from that formation within the two miles in San Juan, Rio Arriba, Sandoval and McKinley counties or within one mile everywhere else. If there is no designated pool for that producing formation within the two miles in San Juan, Rio Arriba, Sandoval and McKinley counties or within one mile everywhere else, the well shall be re-classified as a wildcat well.

[19.15.15.8 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008]

19.15.15.9 OIL WELL ACREAGE AND WELL LOCATION REQUIREMENTS:

A. A wildcat well that the operator projects to drill as an oil well to a formation and in an area that in the division's opinion may reasonably be presumed to produce oil rather than gas, and each development well for a defined oil pool unless otherwise provided in special pool orders, shall be located on a spacing unit consisting of approximately 40 contiguous surface acres, substantially in the form of a square that is a legal subdivision of the United States public land surveys and is a governmental quarter-quarter section or lot, and shall be located no closer than 330 feet to a boundary of the unit. Unless otherwise provided in applicable special pool order, a 40-acre oil spacing unit may contain up to four wells. Only those 40-acre spacing units committed to active secondary recovery projects shall be permitted more than four wells.

B. If a well drilled as an oil well is completed as a gas well but does not conform to the applicable gas well location requirements, the operator shall apply for administrative approval for a non-standard location before the well can produce. The director may set the application for hearing.

[19.15.15.9 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008]

19.15.15.10 GAS WELL ACREAGE AND WELL LOCATION REQUIREMENTS:

A wildcat well that the operator projects to drill as a gas well to a formation and in an area that in the division's opinion may reasonably be presumed to produce gas rather than oil and each development well for a defined gas pool, unless otherwise provided in special pool orders, shall be spaced and located as follows.

A. 640-acre spacing applies to a deep gas well in Rio Arriba, San Juan, Sandoval or McKinley county that is projected to be drilled to a gas producing formation older than the Dakota formation or is a development well within a gas pool created and defined by

the division after June 1, 1997 in a formation older than the Dakota formation, which formation or pool is located within the surface outcrop of the pictured cliffs formation (*i.e.*, the San Juan basin). The well shall be located on a spacing unit consisting of 640 contiguous surface acres, more or less, substantially in the form of a square that is a section and legal subdivision of the United States public land surveys and shall be located no closer than:

- (1) 1200 feet to an outer boundary of the spacing unit;
- (2) 130 feet to a quarter section line; and
- (3) 10 feet to a quarter-quarter section line or subdivision inner boundary.

B. 320-acre spacing applies to a deep gas well in Lea, Chaves, Eddy or Roosevelt county that is projected to be drilled to a gas producing formation, or is within a defined gas pool, that is in the Wolfcamp or an older formation. The well shall be located on a spacing unit consisting of 320 surface contiguous acres, more or less, comprising any two contiguous quarter sections of a single section that is a legal subdivision of the United States public land surveys provided that:

- (1) the initial well on a 320-acre unit is located no closer than 660 feet to the outer boundary of the quarter section on which the well is located and no closer than 10 feet to a quarter-quarter section line or subdivision inner boundary; and
- (2) only one infill well on a 320-acre unit shall be allowed provided that the well is located in the quarter section of the 320-acre unit not containing the initial well and is no closer than 660 feet to the outer boundary of the quarter section and no closer than 10 feet to a quarter-quarter section line or subdivision inner boundary.

C. 160-acre spacing applies to a gas well not covered above. The well shall be located in a spacing unit consisting of 160 surface contiguous acres, more or less, substantially in the form of a square that is a quarter section and a legal subdivision of the United States public land surveys and shall be located no closer than 660 feet to an outer boundary of the unit and no closer than 10 feet to a quarter-quarter section or subdivision inner boundary.

[19.15.15.10 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008]

19.15.15.11 ACREAGE ASSIGNMENT:

A. Well tests and classification. The operator of a wildcat or development gas well to which more than 40 acres has been dedicated shall conduct a potential test within 30 days following the well's completion and file the test with the division within 45 days following the test's completion. (See 19.15.19.8 NMAC.)

(1) The completion date for a gas well is the date of the conclusion of active completion work on the well.

(2) If the division determines that a well should not be classified as a gas well, the division shall reduce the acreage dedicated to the well to the standard acreage for an oil well.

(3) The operator's failure to file the test within the specified time subjects the well to the acreage reduction.

B. Non-standard spacing units. An operator shall not produce a well that does not have the required amount of acreage dedicated to it for the pool or formation in which it is completed until the division has formed and dedicated a standard spacing unit for the well or approved a non-standard spacing unit.

(1) Division district offices may approve non-standard spacing units without notice when the unorthodox size or shape is necessitated by a variation in the legal subdivision of the United States public land surveys or consists of an entire governmental section, and the non-standard spacing unit is not less than seventy percent or more than one hundred-thirty percent of a standard spacing unit. The operator shall obtain division approval of form C-102 showing the proposed non-standard spacing unit and the acreage contained in the unit.

(2) The director may approve administratively an application for non-standard spacing units after notice and opportunity for hearing when the unorthodox size or shape is necessitated by a variation in the legal subdivision of the United States public land surveys or the following facts exist:

(a) the non-standard spacing unit consists of a single quarter-quarter section or lot or quarter-quarter sections or lots joined by a common side; and

(b) the non-standard spacing unit lies wholly within a single quarter section if the well is completed in a pool or formation for which 40, 80 or 160 acres is the standard spacing unit size; a single half section if the well is completed in a pool or formation for which 320 acres is the standard spacing unit size; or a single section if the well is completed in a pool or formation for which 640 acres is the standard spacing unit size.

(3) An operator shall file an application for administrative approval of a non-standard spacing unit pursuant to Paragraph (2) of Subsection B of 19.15.15.11 NMAC or Paragraph (5) of Subsection B of 19.15.16.15 NMAC, with the division's Santa Fe office that is accompanied by:

(a) a plat showing the spacing unit and an applicable standard spacing unit for that pool or formation, the proposed well dedications and all adjoining spacing units;

(b) a list of affected persons entitled to notice of the application; and

(c) a statement discussing the reasons for the formation of the non-standard spacing unit.

(4) The applicant shall submit a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, notified the affected persons identified on the list described in Paragraph (3) of Subsection B of 19.15.15.11 NMAC by sending a copy of the application, including a copy of the plat described in Paragraph (3) of Subsection B of 19.15.15.11 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they must file the objection in writing with the division within 20 days from the date the division receives the application. The director may approve the application without hearing upon receipt of waivers from all the notified persons or if no person has filed an objection within the 20-day period.

(5) The director may set for hearing an application for administrative approval.

C. Exceptions to number of wells per spacing unit. The director may permit exceptions to 19.15.15 NMAC or special pool orders concerning the number of wells allowed per spacing unit only after notice and opportunity for hearing. An applicant for an exception shall notify all affected persons in adjoining spacing units in the same pool or in adjoining tracts not included in such spacing units.

[19.15.15.11 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.12 SPECIAL RULES FOR MULTIPLE OPERATORS WITHIN A SPACING UNIT:

A. Allowable production. If an operator completes a well in an oil pool or prorated gas pool, located within a proration unit containing an existing well or wells producing from that pool and operated by a different operator, unless all operators of wells producing from that proration unit agree, the allowable production from the newly completed well shall not exceed the difference between the allowable production for the proration unit and the actual production from the pool of the existing well or wells within the proration unit. The division may authorize exceptions to Subsection A of 19.15.15.12 NMAC after hearing following appropriate notice.

B. Notice requirements.

(1) An operator who intends to operate a well in a spacing or proration unit containing an existing well or wells operated by another operator shall, prior to filing the application for permit to drill, deepen or plug back for the well, furnish written notification of its intent to the operator of each existing well, and, if the unit includes state, federal or tribal minerals, to the state land office or BLM, as applicable; provided that separate notification to the BLM is not required if the operator will file the application with the BLM pursuant to 19.15.7.11 NMAC.

(2) The operator shall send the notices by certified mail, return receipt requested, and shall specify the proposed well's location and depth.

(3) The applicant shall submit with its application for permit to drill, deepen or plug back either

(a) a statement attesting that, at least 20 days before the date that the application was submitted to the division, the applicant sent notices to the designated parties, by certified mail, return receipt requested, advising them that if they have an objection they must deliver a written statement of objection to the proposing operator within 20 days of the date the operator mailed the notice, and that it has received no such objection; or

(b) written waivers from all persons required to be notified (the BLM's approval of the application being deemed equivalent to waiver by that agency); in event of objection, the division may approve the application only after hearing.

C. Transfer of wells. If an operator transfers operation of less than all its wells located within a spacing or proration unit to another operator, and the spacing unit includes state, federal or tribal minerals, the operator shall, prior to filing form C-145 to effectuate the transfer, notify in writing the state land office or BLM, as applicable, of the transfer.

D. Compulsory pooled units. No provision of 19.15.15 NMAC authorizes the operation of a producing well within a unit described in an existing compulsory pooling order by an operator other than the operator designated in the order.

E. Federal or state exploratory units. No provision of 19.15.15 NMAC authorizes a producing well's operation within a federal exploratory unit or state exploratory unit by an operator other than the unit's designated operator except as provided by BLM regulations or state land office rules applicable to the unit.

[19.15.15.12 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.13 UNORTHODOX LOCATIONS:

A. Well locations within a secondary recovery, tertiary recovery or pressure maintenance project for producing wells or injection wells that are unorthodox based on 19.15.15.9 NMAC's requirements and are necessary for an efficient production and injection pattern are authorized, provided that the unorthodox location within the project is no closer than the required minimum distance to the outer boundary of the lease or unitized area, and no closer than 10 feet to a quarter-quarter section line or subdivision inner boundary. These locations only require such prior approvals as are necessary for an orthodox location.

B. The director may grant an exception to the well location requirements of 19.15.15.9 NMAC, 19.15.15.10 NMAC and 19.15.16.15 NMAC or special pool orders after notice and opportunity for hearing when the exception is necessary to prevent waste or protect correlative rights.

C. The operator shall submit applications for administrative approval pursuant to Subsection B of 19.15.15.13 NMAC to the division's Santa Fe office accompanied by a plat showing the spacing unit, the proposed unorthodox well location and the adjoining spacing units and wells; a list of affected persons entitled to notice pursuant to Paragraph (2) of Subsection A of 19.15.4.12 NMAC; and information evidencing the need for the exception. The division shall give notice as required in 19.15.4.9 NMAC and the operator shall give notice as required by Paragraph (2) of Subsection A of 19.15.4.12 NMAC.

D. The applicant shall submit a statement attesting that the applicant, on or before the date that the applicant submitted the application to the division, sent notification to the affected persons by furnishing a copy of the application, including a copy of the plat described in Subsection C of 19.15.15.13 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they shall file it in writing with the division within 20 days from the date the division receives the application. The director may approve the unorthodox location upon receipt of waivers from all the affected persons or if no affected person has filed an objection within the 20-day period.

E. The director may set for hearing an application for administrative approval of an unorthodox location.

F. Whenever the division approves an unorthodox location, it may order any action necessary to offset an advantage of the unorthodox location.

[19.15.15.13 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.14 EFFECT OF NON-STANDARD UNITS ON ALLOWABLES:

A. If the drilling tract is within a prorated/allocated oil pool or is subsequently placed within the pool and the drilling tract consists of less than 39½ acres or more than 40½ acres, the top proration unit allowable for the well shall be increased or decreased in the proportion that the number of acres in the drilling tract bears to 40.

B. If the drilling tract is within a prorated/allocated gas pool or is subsequently placed within the pool and the drilling tract consists of less than 158 acres or more than 162 acres in 160-acre pools, less than 316 acres or more than 324 acres in 320-acre pools or less than 632 acres or more than 648 acres in 640-acre pools, the top allowable for the well shall be decreased or increased in the proportion that the number of acres in the drilling tract bears to a standard spacing unit for the pool.

C. In computing acreage under Subsections A and B of 19.15.15.14 NMAC, less than one quarter acre shall not be counted but one-half acre or more shall count as one acre.

D. The provisions of Subsections A and B of 19.15.15.14 NMAC apply only to wells completed after January 1, 1950.

[19.15.15.14 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008]

19.15.15.15 DIVISION-INITIATED EXCEPTIONS:

To prevent waste, the division may, after hearing, set different spacing requirements and require different acreage for drilling tracts in a defined oil or gas pool.

[19.15.15.15 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

19.15.15.16 POOLING OR COMMUNITIZATION OF SMALL OIL LOTS:

A. The division may approve the pooling or communitization of fractional oil lots of 20.49 acres or less with a contiguous oil spacing unit when the ownership is common and the tracts are part of the same lease with the same royalty interests if the following requirements are satisfied:

(1) the operator applies to the division's Santa Fe office for administrative approval with an application accompanied by:

(a) a plat showing the dimensions and acreage involved, the acreage's ownership, the location of existing and proposed wells and adjoining spacing units;

(b) a list of affected persons in the oil lots and the contiguous spacing unit to be pooled or communitized; and

(c) a statement discussing the reasons for the pooling or communitization; and

(2) the applicant submits a statement attesting that the applicant, on or before the date the applicant submitted the application to the division, sent notification to the affected persons by submitting a copy of the application, including a copy of the plat described in Paragraph (1) of Subsection A of 19.15.15.16 NMAC, by certified mail, return receipt requested, advising them that if they have an objection they must file it in writing with the division within 20 days from the date the division receives the application.

B. The director may approve the application upon receipt of waivers from all the notified persons or if no person has filed an objection within the 20-day period.

C. The director may set for hearing an application for administrative approval.

D. The division may consider the common ownership and common lease requirements met if the applicant furnishes with the application a copy of an executed pooling agreement communitizing the tracts involved.

[19.15.15.16 NMAC - Rp, 19.15.3.104 NMAC, 12/1/2008; A, 6/26/2018]

PART 16: DRILLING AND PRODUCTION

19.15.16.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.16.1 NMAC - Rp, 19.15.3.1 NMAC, 12/1/2008; A, 6/26/2018]

19.15.16.2 SCOPE:

19.15.16 NMAC applies to persons engaged in the drilling and production of oil and gas wells within New Mexico.

[19.15.16.2 NMAC - Rp, 19.15.3.2 NMAC, 12/1/2008]

19.15.16.3 STATUTORY AUTHORITY:

19.15.16 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.16.3 NMAC - Rp, 19.15.3.3 NMAC, 12/1/2008; A, 6/26/2018]

19.15.16.4 DURATION:

Permanent.

[19.15.16.4 NMAC - Rp, 19.15.3.4 NMAC, 12/1/2008]

19.15.16.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.16.5 NMAC - Rp, 19.15.3.5 NMAC, 12/1/2008]

19.15.16.6 OBJECTIVE:

To regulate the drilling and production of oil and gas wells within the state.

[19.15.16.6 NMAC - Rp, 19.15.3.6 NMAC, 12/1/2008]

19.15.16.7 DEFINITIONS:

These definitions apply specifically to 19.15.16 NMAC. For additional definitions that may apply see 19.15.2 NMAC.

A. "Azimuth" means the deviation in the horizontal plane of a well bore expressed in terms of compass degrees.

B. "Completed interval" means that portion of a well bore or lateral that is:

- (1) cased, cemented and perforated;
- (2) an open hole; or
- (3) isolated by a packer or other non-permeable means and open to the formation.

C. "Deviated well" means a well bore that is intentionally deviated from vertical but not with an intentional azimuth.

D. "Directional well" means a well bore that is intentionally deviated from vertical with an intentional azimuth but is not a horizontal well.

E. "First take point" means the shallowest measured depth of the well bore where the completed interval starts.

F. "Horizontal spacing unit" means the spacing unit dedicated to a horizontal well.

G. "Horizontal well" means a well bore with one or more laterals that extend a minimum of 100 feet laterally in the target zone. A well with multiple laterals from a common well bore in the same or different target zones or formations shall be considered one well.

H. "Infill horizontal well" means a horizontal well the completed interval or intervals of which are located wholly within the horizontal spacing unit dedicated to a previously drilled or proposed horizontal well in the same pool and that the operator designates as an infill horizontal well on form C-102. For the purposes of this definition, "proposed" means that an APD has been submitted to a regulatory agency.

I. "Kick-off point" means the point at which a directional or horizontal well is intentionally deviated from the vertical.

J. "Last take point" means the deepest measured depth of the well bore where the completed interval ends.

K. "Lateral" means the portion of a directional or horizontal well past the point where the well bore has been intentionally deviated from the vertical.

L. "Multi-lateral well" means a horizontal well with multiple laterals from a common well bore in the same or different target zones or formations.

M. "Open hole" means that portion of a well bore or lateral that is:

(1) not cased, or

(2) cased, but the casing is not cemented in place, and is not otherwise isolated from the formation.

N. "Terminus" means the farthest point drilled along the well bore or lateral.

O. "Tract" means a legal subdivision of the United States public survey substantially in the form of a square or rectangle.

P. "Unitized area" means any area where ownership of production from the relevant pool or formation is consolidated pursuant to an agreement, whether voluntary and filed in the county land records, or approved by federal or state authority, including but not limited to a statutory unit, an approved enhanced recovery unit, a participating area in a federal exploratory unit, a federal unit which does not provide for participating areas, a state exploratory unit or a communitized unit if all interests in the communitized unit are committed to the communitization agreement.

Q. "Vertical well" means a well that does not have an intentional departure or course deviation from the vertical.

[19.15.16.7 NMAC - Rp, 19.15.3.111 NMAC, 12/1/2008; A, 2/15/2012; A, 6/26/2018]

19.15.16.8 SIGN ON WELLS:

A. An operator shall identify wells and related facilities the division regulates by a sign, which shall remain in place until the operator plugs and abandons the well and closes the related facilities.

B. For drilling wells, the operator shall post the sign on the derrick or not more than 20 feet from the well.

C. The sign shall be of durable construction and the lettering shall be legible and large enough to be read under normal conditions at a distance of 50 feet.

D. The wells on each lease or property shall be numbered in non-repetitive, logical and distinctive sequence.

E. An operator shall have 90 days from the effective date of an operator name change to change the operator name on the well sign unless the division grants an extension of time, for good cause shown along with a schedule for making the changes.

F. Each sign shall show the:

- (1)** well number;
- (2)** property name;
- (3)** operator's name;
- (4)** location by footage, quarter-quarter section, township and range (or unit letter can be substituted for the quarter-quarter section); and
- (5)** API number.

[19.15.16.8 NMAC - Rp, 19.15.3.103 NMAC, 12/1/2008]

19.15.16.9 SEALING OFF STRATA:

A. During the drilling of an oil well, injection well or other service well, the operator shall seal and separate the oil, gas and water strata above the producing or injection horizon to prevent their contents from passing into other strata.

B. The operator shall ensure that fresh waters and waters of present or probable value for domestic, commercial or stock purposes are confined to their respective strata and are adequately protected by division-approved methods. The operator shall take special precautions by methods satisfactory to the division in drilling and abandoning wells to guard against loss of artesian water from the strata in which it occurs, and the contamination of artesian water by objectionable water, oil or gas.

C. The operator shall ensure that water is shut off and excluded from the various oil- and gas-bearing strata that are penetrated. The operator shall ordinarily make water shut-offs by cementing casing.

[19.15.16.9 NMAC - Rp, 19.15.3.106 NMAC, 12/1/2008]

19.15.16.10 CASING AND TUBING REQUIREMENTS:

A. The operator shall equip a well drilled for oil or gas with surface and intermediate casing strings and cement as may be necessary to effectively seal off and isolate all water-, oil- and gas-bearing strata and other strata encountered in the well down to the

casing point. In addition, the operator shall equip a well completed for oil or gas production with a string of properly cemented production casing at sufficient depth to ensure protection of oil- and gas-bearing strata encountered in the well, including the strata to be produced.

B. The operator shall use sufficient cement on surface casing to fill the annular space behind the casing to the top of the hole, provided that authorized division field personnel may allow exceptions to this requirement when known conditions in a given area render compliance impracticable.

C. Cementing shall be by pump and plug method unless the division expressly authorizes some other method.

D. Cementing shall be with conventional-type hard-setting cements to which the operator has added additives (lighteners, densifiers, extenders, accelerators, retarders, etc.) to suit conditions in the well.

E. Authorized division field personnel may, when conditions warrant, allow exceptions to Subsection D of 19.15.16.10 NMAC and permit the operator to use oil-base casing packing material in lieu of hard-setting cements on intermediate and production casing strings; provided that when the operator uses such materials on the intermediate casing string, the operator places conventional-type hard-setting cements throughout all oil- and gas-bearing zones and throughout at least the lowermost 300 feet of the intermediate casing string. When the operator uses such materials on the production casing string, the operator shall place conventional-type hard-setting cements throughout all oil- and gas-bearing zones that shall extend upward a minimum of 500 feet above the uppermost perforation or, in the case of an open-hole completion, 500 feet above the production casing shoe.

F. The operator shall test casing strings and prove satisfactory as provided in Subsection I of 19.15.16.10 NMAC.

G. After cementing, but before commencing tests Subsection I of 19.15.16.10 NMAC requires, all casing strings shall stand cemented in accordance with one of the options in Paragraphs (1) and (2) of Subsection G of 19.15.16.10 NMAC. Regardless of which option the operator chooses, the casing shall remain stationary and under pressure for at least eight hours after the operator places the cement. Casing shall be under pressure if the operator uses some acceptable means of holding pressure or if the operator employs one or more float valves to hold the cement in place. The operator shall either

(1) allow casing strings to stand cemented a minimum of 18 hours prior to commencing tests; an operator using this option shall report on form C-103 the actual time the cement was in place before the operator initiated tests; or

(2) in the counties of San Juan, Rio Arriba, McKinley, Sandoval, Lea, Eddy, Chaves and Roosevelt only, allow casing strings to stand cemented until the cement reaches a compressive strength of at least 500 psi in the "zone of interest" before commencing tests; provided however, that the operator shall not commence tests until the cement is in place for at least eight hours.

(a) The "zone of interest" for surface and intermediate casing strings is the bottom 20 percent of the casing string, but is no more than 1000 feet nor less than 300 feet of the bottom-part of the casing unless the casing is set at less than 300 feet. The "zone of interest" for production casing strings includes the interval or intervals where immediate completion is contemplated.

(b) To determine that a minimum compressive strength of 500 psi has been attained, the operator shall use the typical performance data for the particular cement mix used in the well, at the minimum temperature indicated for the zone of interest by Figure 107-A, Temperature Gradient Curves. Typical performance data used shall be that data the cement manufacturer or a competent materials testing agency furnishes, as determined in accordance with the latest edition of API publication Recommended Practice for Testing Well Cements, RP 10B-2.

(See Temperature Gradient - Page 17A)

H. An operator using the compressive strength criterion in Paragraph (2) of Subsection G of 19.15.16.10 NMAC shall report the following information on form C-103:

(1) volume of cement slurry in cubic feet and brand name of cement and additives, percent additives used and sequence of placement if the operator uses more than one type cement slurry;

(2) approximate temperature of cement slurry when mixed;

(3) estimated minimum formation temperature in zone of interest;

(4) estimate of cement strength at time of casing test; and

(5) actual time cement in place prior to starting test.

I. The operator shall test casing strings except conductor pipe after cementing and before commencing other operations on the well. The operator shall file form C-103 with the division for each casing string reporting the grade and weight of pipe used. In the case of combination strings utilizing pipe of varied grades or weights, the operator shall report the footage of each grade and weight used. The operator shall also report results of the casing test, including actual pressure held on pipe and the pressure drop observed on the same form C-103.

(1) The operator shall pressure test casing strings in wells drilled with rotary tools. Minimum casing test pressure shall be approximately one-third of the manufacturer's rated internal yield pressure except that the test pressure shall not be less than 600 psi and need not be greater than 1500 psi. In cases where combination strings are involved, the above test pressure shall apply to the lowest pressure rated casing used. The operator shall apply test pressures for a period of 30 minutes. If a drop of more than ten percent of the test pressure occurs the casing shall be considered defective and the operator shall apply corrective measures.

(2) The operator may test casing strings in wells drilled with cable tools as outlined in Paragraph (1) of Subsection I of 19.15.16.10 NMAC, or by bailing the well dry in which case the hole shall remain satisfactorily dry for a period of at least one hour before the operator commences further operations on the well.

J. Well tubing requirements.

(1) The operator shall tube flowing oil wells equipped with casing larger in size than two and seven-eighths inch OD.

(2) The operator shall tube gas wells equipped with casing larger in size than three and one-half inch OD.

(3) The operator shall set tubing as near the bottom as practical and tubing perforations shall not be more than 250 feet above top of pay zone.

(4) The district supervisor of the appropriate division district office, upon application, may grant exceptions to these requirements, provided waste will not be caused.

(5) The district supervisor may request that the director review an application. The operator shall submit information and give notice as the director requests. The division may approve un-protested applications after 20 days of receipt of the application and supporting information. If a person protests the application, or the director decides, the division shall set the application for hearing.

[19.15.16.10 NMAC - Rp, 19.15.3.107 NMAC, 12/1/2008]

19.15.16.11 DEFECTIVE CASING OR CEMENTING:

If a well appears to have a defective casing program or faultily cemented or corroded casing that will permit or may create underground waste or contamination of fresh waters, the operator shall give written notice to the division within five working days and proceed with diligence to use the appropriate method and means to eliminate the hazard. If the hazard of waste or contamination of fresh water cannot be eliminated, the operator shall properly plug and abandon the well.

[19.15.16.11 NMAC - Rp, 19.15.3.108 NMAC, 12/1/2008]

19.15.16.12 BLOWOUT PREVENTION:

(See Subsection B of 19.15.10 NMAC also)

A. The operator shall install and maintain blowout preventers in good working order on drilling rigs operating in areas of known high pressures at or above the projected depth of the well and in areas where pressures that will be encountered are unknown, and on workover rigs working on wells in which high pressures are known to exist.

B. The operator shall install and maintain blowout preventers in good working order on drilling rigs and workover rigs operating within the corporate limits of a city, town or village, or within 1320 feet of habitation, a school or a church, wherever located.

C. An operator, when filing form C-101 or form C-103 for an operation requiring blowout prevention equipment in accordance with Subsections A and B of 19.15.16.12 NMAC, shall submit a proposed blowout prevention program for the well. The district supervisor may modify the program as submitted if, in the district supervisor's judgment, modification is necessary.

[19.15.16.12 NMAC - Rp, 19.15.3.109 NMAC, 12/1/2008]

19.15.16.13 PULLING OUTSIDE STRINGS OF CASING:

In pulling outside strings of casing from an oil or gas well, the operator shall keep and leave the space outside the casing left in the hole full of mud-laden fluid or cement of adequate specific gravity to seal off fresh and salt water strata and strata bearing oil or gas not producing.

[19.15.16.13 NMAC - Rp, 19.15.3.110 NMAC, 12/1/2008]

19.15.16.14 DEVIATION TESTS AND WELLBORE SURVEYS; VERTICAL, DEVIATED AND DIRECTIONAL WELLS:

A. Vertical and deviated well bores.

(1) Deviation tests required. An operator shall test a vertical or deviated well that is drilled or deepened at reasonably frequent intervals to determine the deviation from the vertical. The operator shall make the tests at least once each 500 feet or at the first bit change succeeding 500 feet. The operator shall file with the division along with its form C-104 a tabulation of deviation tests run that is sworn to and notarized.

(2) Excessive deviation. When the deviation averages more than five degrees in a 500-foot interval, the operator shall include the calculations of the hole's maximum possible horizontal displacement. When the maximum possible horizontal

displacement exceeds the distance to the appropriate unit's nearest outer boundary line the operator shall run a directional survey to establish the location of the well's completed interval.

(3) Unorthodox well locations. If the results of the directional survey of a vertical or deviated well indicate that the completed interval is more than 50 feet from the approved surface location and closer than the minimum setback requirements to the applicable unit's outer boundary, then the well is considered unorthodox. To obtain authority to produce the well, the operator shall file an application with the division's Santa Fe office, and shall follow the process outlined in Subsection C of 19.15.15.13 NMAC to obtain approval of the unorthodox well location.

(4) Directional survey requirements. Upon the director's request, the operator shall directionally survey a vertical or deviated well. The operator shall file directional surveys run on a well, in division-approved format, with the division upon the well's completion. The division shall not approve a form C-104 for the well until the operator has filed the directional surveys.

B. Directional well bores.

(1) Directional drilling. The appropriate division district office may grant a permit to directionally drill a well bore if every point of the completed interval is projected to be located at a distance greater than or equal to the minimum setback distance from the applicable spacing unit's outer boundaries or at an unorthodox well location the division previously approved.

(2) Unorthodox well locations. If all or part of a directional well's completed interval is projected to be located less than the minimum distance from the outer boundary of the well's spacing unit, the well's location is considered unorthodox. To obtain approval for the well's location, the operator shall file an application in the division's Santa Fe office in accordance with Subsection C of 19.15.15.13 NMAC.

(3) Directional surveys required. An operator shall run a directional survey on each well drilled pursuant to Subsection B of 19.15.16.14 NMAC. The operator shall file a directional survey, in division-approved format, with the division upon the well's completion. The division shall not approve a form C-104 for the well until the operator files the directional survey. The well's location will be considered unorthodox if the directional survey indicates that part of a well's completed interval, as drilled, is located more than 50 feet from its projected location and closer to an outer boundary of the spacing unit than applicable minimum setback distance. For previously approved unorthodox well locations, the well's as-drilled location is unorthodox if the directional survey indicates that any part of the completed interval is located more than 50 feet (or, if less, twenty-five percent of the previously authorized distance) closer to the outer boundary of the spacing unit than the approved location.

C. Directional survey specifications. Directional surveys that 19.15.16.14 NMAC requires shall have shot points no more than 200 feet apart and shall be run by competent surveying companies. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits.

[19.15.16.14 NMAC - Rp, 19.15.3.111 NMAC, 12/1/2008; A, 2/15/2012; A, 6/26/2018]

19.15.16.15 HORIZONTAL WELLS:

A. General provisions.

(1) An operator shall not file an application for permit to drill nor commence the drilling of a horizontal oil or gas well until the operator has either:

(a) received the consent of at least one working interest owner or unleased mineral interest owner of each tract (in the target pool or formation) in which any part of the horizontal oil or gas well's completed interval will be located; or

(b) obtained a compulsory pooling order from the division for an appropriate horizontal spacing unit.

(2) Each horizontal well shall be dedicated to a standard horizontal spacing unit or an approved non-standard horizontal spacing unit, except for infill horizontal wells and multi-lateral horizontal wells described in Subparagraph (a) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC, which may be dedicated to an existing or proposed horizontal spacing unit.

(3) A horizontal spacing unit that does not meet the following criteria for a standard horizontal spacing unit shall be considered a non-standard horizontal spacing unit and must be approved pursuant to the process described in Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(4) Subject to Paragraph (9) of Subsection B of 19.15.16.15 NMAC, horizontal spacing units can overlap other horizontal spacing units or vertical well spacing units.

B. Well spacing.

(1) Standard horizontal spacing units for horizontal oil wells. In lieu of an oil spacing unit described in Subsection A of 19.15.15.9 NMAC, the operator shall dedicate to each horizontal oil well a standard horizontal spacing unit that meets the following criteria.

(a) The horizontal spacing unit shall comprise one or more contiguous tracts that the horizontal oil well's completed interval penetrates, each of which consists of a governmental quarter-quarter section or equivalent.

(b) In addition to tracts the horizontal oil well penetrates, the operator may include quarter-quarter sections or equivalent tracts in the standard horizontal spacing unit that are located within 330 feet of the proposed horizontal oil well's completed interval (measured along a line perpendicular to the proposed completed interval or its tangent).

(c) If, however, the perimeter of the area that includes all the tracts that the horizontal oil well penetrates encloses an area that is substantially rectangular, then the operator may not bring in additional tracts that would result in a non-rectangular horizontal spacing unit.

(d) The horizontal spacing unit shall contain at least the minimum acreage required by existing or subsequently adopted special pool orders for a spacing unit in any pool where all or part of the horizontal oil well's completed interval is located.

(2) Exception for pools with larger spacing. If the horizontal oil well is located entirely or partially in a pool for which existing or subsequently adopted special pool orders prescribe oil spacing units larger than 40 acres, then the horizontal spacing unit may, as an alternative to quarter-quarter sections, comprise one or more tracts of the size and configuration so prescribed, provided that the standard horizontal spacing unit shall include only such tracts that are oriented in the same direction. If a horizontal oil well's completed interval is located within two or more pools for the same formation, and the operator elects to construct a standard horizontal spacing unit utilizing tracts of the size and configuration prescribed by special pool orders, the operator shall use tracts of the maximum tract size prescribed for any of the included pools.

(3) Standard horizontal spacing units for horizontal gas wells. In lieu of a gas spacing unit described in 19.15.15.10 NMAC, the operator shall dedicate to each horizontal gas well a standard horizontal spacing unit that meets all the following criteria.

(a) The horizontal spacing unit shall comprise one or more contiguous tracts that the horizontal gas well's completed interval penetrates, each of which consists of a governmental quarter section or equivalent.

(b) In addition to tracts the well penetrates, the operator may include quarter sections or equivalent tracts in the standard horizontal spacing unit that are located within 330 feet of the proposed horizontal gas well's completed interval (measured along a line perpendicular to the proposed completed interval or its tangent).

(c) If, however, the perimeter of the area that includes all the tracts that the horizontal gas well penetrates encloses an area that is substantially rectangular, then the operator may not bring in additional tracts that would result in a non-rectangular horizontal spacing unit.

(d) The horizontal spacing unit shall contain at least the minimum acreage required by 19.15.15.10 NMAC or by existing or subsequently adopted special pool orders for a spacing unit in any pool where all or part of the horizontal gas well's completed interval is located.

(4) Exception for pools with larger spacing. If the horizontal gas well is located entirely or partially in an area or pool for which 19.15.15.10 NMAC or existing or subsequently adopted special pool orders prescribe gas spacing units larger than 160 acres, then the horizontal spacing unit may, as an alternative to quarter sections, comprise one or more tracts of the size and configuration so prescribed, provided that the standard horizontal spacing unit shall include only such tracts that are oriented in the same direction. If a horizontal gas well's completed interval is located within two or more pools for the same formation, and the operator elects to construct a standard horizontal spacing unit utilizing tracts of the size and configurations prescribed by 19.15.15.10 NMAC or special pool orders, the operator shall use the maximum tract size prescribed for any of the included pools.

(5) Non-standard horizontal spacing units.

(a) Administrative approval. The division may approve non-standard horizontal spacing units for horizontal oil or gas wells after notice and opportunity for hearing, if necessary to prevent waste or protect correlative rights, in accordance with the procedures provided for director approval of non-standard spacing units in Paragraphs (3) through (5) of Subsection B of 19.15.15.11 NMAC.

(b) Notice. The operator shall give notice of any application for approval of a non-standard horizontal spacing unit, by certified mail, return receipt requested, to affected persons in all tracts that:

(i) are excluded from the horizontal spacing unit, if the horizontal spacing unit would be a standard horizontal spacing unit except for the exclusion of such tracts; or

(ii) adjoin the non-standard horizontal spacing unit, in all other cases.

(c) Form of notice. The notice shall comply with Paragraph (4) of Subsection B of 19.15.15.11 NMAC.

(d) Unless otherwise authorized by the division, the operator shall not commence drilling in the proposed non-standard spacing unit until the division issues a final order granting the application.

(6) State, federal or tribal lands. If the horizontal spacing unit includes state, federal or tribal minerals, the operator shall send a copy of form C-102 to the applicable affected persons identified in Subparagraphs (d) and (e) of Paragraph (8) of Subsection A of 19.15.2.7 NMAC. No horizontal spacing unit may be designated that lies partly

within, and partly outside of, a state exploratory unit, or a federal exploratory unit or participating area if the horizontal spacing unit includes state trust lands, without the written consent of the commissioner of public lands.

(7) Multi-lateral horizontal wells.

(a) Multiple laterals in the same pool or formation and oriented such that the completed interval of each lateral is located entirely within the boundaries of a horizontal spacing unit for the longest lateral may be dedicated to the same horizontal spacing unit.

(b) Except as provided in Subparagraph (a) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC, the operator of a multi-lateral horizontal well shall dedicate a separate horizontal spacing unit to each lateral.

(c) The division may grant exceptions to the requirements of Subparagraphs (a) and (b) of Paragraph (7) of Subsection B of 19.15.16.15 NMAC pursuant to Paragraph (5) of Subsection B of 19.15.16.15 NMAC.

(8) Unitized areas. For a horizontal well the completed interval of which is located wholly within a unitized area or an area with uniform ownership as to the mineral estate in the objective formation, the horizontal spacing unit configuration requirements of Subparagraph (c) of Paragraph (1) and Subparagraph (c) of Paragraph (3) of Subsection B of 19.15.16.15 NMAC do not apply.

(9) Existing and subsequent wells in horizontal spacing units.

(a) Existing wells. Existing wells in spacing units, horizontal or otherwise, that are wholly or partially included in a new horizontal spacing unit remain dedicated to their existing spacing units and are not part of the new horizontal spacing unit unless otherwise agreed by all working interest owners in the existing and new spacing units. If all owners (and BLM or state land office, if federal or state minerals are included, and the appropriate governmental authority if tribal minerals are included, in the old or new spacing unit) agree to re-dedicate the existing well to the new horizontal spacing unit, the operator shall file an amended form C-102 reflecting the re-dedication, and shall attach a certificate to the effect that all owners have agreed in writing thereto.

(b) Subsequent wells in existing spacing units. Subject to the terms of any applicable operating agreement, or to 19.15.13 NMAC or any applicable compulsory pooling order as to any compulsory pooled interests:

(i) a horizontal well that will have a completed interval partially in an existing well's spacing unit, and in the same pool or formation, may be drilled only with the approval of, or, in the absence of approval, after notice to, all operators and working interest owners of record or known to the applicant in the existing and new well's spacing units;

(ii) any subsequent well, horizontal or otherwise, with a completed interval located wholly within an existing well's horizontal spacing unit, and in the same pool or formation, if not designated as an infill horizontal well, may be drilled only with the approval of, or, in the absence of approval, after notice to, all operators and working interest owners of record or known to the applicant in the existing and new well's spacing units; and

(iii) the notice procedures of Subsection B of 19.15.15.12 NMAC shall apply to notices required pursuant to Items (i) or (ii) of Subparagraph (b) of Paragraph (9) of Subsection B of 19.15.16.15 NMAC.

(c) The provisions of 19.15.13.10 NMAC and 19.15.13.11 NMAC shall apply to any proposal to drill an infill horizontal well in a horizontal spacing unit subject to a compulsory pooling order unless the order includes specific provisions for such additional well.

(10) Pooling of horizontal spacing units. Whenever the operator of any horizontal well shall dedicate thereto lands comprising a standard or approved non-standard horizontal spacing unit in which there are two or more separately owned parcels of land, or royalty interests or undivided interests in oil or gas minerals which are separately owned, or any combination thereof, that have not been previously pooled for oil and gas production from the horizontal spacing unit, the operator shall obtain voluntary agreements pooling said lands or interests or an order of the division pooling said lands before producing the horizontal well.

(11) Protests. Without limitation of any other right or remedy, an owner of a tract that adjoins a proposed or existing horizontal spacing unit but is not included therein who contends that a horizontal well in the adjoining horizontal spacing unit is impairing, or will impair, the owner's correlative rights may file a protest with the division. The division, after notice and hearing, may grant such relief as it determines to be necessary and appropriate, including, but not limited to, imposing a limitation on the rate or amount of production from the adjoining horizontal spacing unit.

C. Setbacks.

(1) Generally. The following setback distances shall apply to each horizontal well.

(a) The distance in the horizontal plane from any point in the completed interval to any outer boundary of the horizontal spacing unit, measured along a line perpendicular to the completed interval or to the tangent thereof, shall be a minimum of 330 feet for an oil well or 660 feet for a gas well.

(b) The first and last take point of a horizontal well shall be no closer than 100 feet for an oil well or 330 feet for a gas well, in the horizontal plane, to any outer boundary of the horizontal spacing unit.

(2) District office to approve. The appropriate division district office may grant a permit for a horizontal well provided every point in the well's completed interval complies with the setback requirements described above or is located at an unorthodox well location the division has approved.

(3) Surface location. A horizontal well's surface location may be located anywhere inside or outside the boundaries of the horizontal spacing unit, provided the completed interval is located at an orthodox, or division-approved unorthodox, well location within the horizontal spacing unit.

(4) Internal setbacks. No internal setbacks are applicable within the horizontal spacing unit.

(5) Unorthodox well locations. The horizontal well's location is considered unorthodox if:

(a) any part of the horizontal well's completed interval is projected to be closer to an outer boundary of the horizontal spacing unit than allowed by Paragraph (1) of Subsection C of 19.15.16.15 NMAC, or other applicable rule or special pool order;

(b) a directional survey shows that the horizontal well's first or last take point, as drilled, is located closer to the outer boundary of the horizontal spacing unit than allowed by Subparagraph (b) of Paragraph (1) of Subsection C of 19.15.16.15 NMAC;

(c) a directional survey shows that any part of the horizontal well's completed interval, as drilled, is more than 50 feet from its projected location and closer to the outer boundary of the horizontal spacing unit than allowed by Subparagraph (a) of Paragraph (1) of Subsection C of 19.15.16.15 NMAC or other applicable rule or special pool order; or

(d) for previously approved unorthodox well locations, if a directional survey shows that any part of the completed interval is located more than 50 feet (or, if less, twenty-five percent of the previously authorized distance) closer to the outer boundary of the horizontal spacing unit than the approved location.

(6) Approval of unorthodox well locations. To obtain approval for the unorthodox well location, the operator shall file an application in the division's Santa Fe office in accordance with the procedures described in Subsections B, C and D of 19.15.15.13 NMAC. For Subparagraph (a) of Paragraph (5) of Subsection C of 19.15.16.15 NMAC, the operator shall obtain approval for the location before drilling the well. For Subparagraphs (b), (c) and (d) of Paragraph (5) of Subsection C of 19.15.16.15 NMAC, the operator shall obtain approval for the as-drilled location before producing the horizontal well.

(7) Unitized areas. For a horizontal well the completed interval of which is located wholly within in a unitized area or an area with uniform ownership as to the

mineral estate in the objective formation, the setbacks prescribed in Subsection C of 19.15.16.15 NMAC apply only to the outer boundaries of the unitized area, area of uniform ownership or of any uncommitted tract or partially committed tract, instead of the outer boundaries of the horizontal spacing unit.

D. Allowables.

(1) Oil allowables and gas-oil ratios. Unless the division determines, after notice and hearing, that to prevent waste a reduced allowable must be assigned to a pool, the division shall assign to a horizontal oil well in an oil pool an oil allowable equal to the amount of oil that the horizontal oil well can produce. If any non-marginal proration unit exists in the same pool as a horizontal oil well, the division shall assign to each oil well located in the unit an allowable equal to its productive capacity. Production of gas or oil from any horizontal oil well shall not be limited by a limiting gas-oil ratio as provided in Subsection A of 19.15.20.13 NMAC.

(2) Gas allowables. The division shall assign to a horizontal gas well completed in a prorated gas pool an allowable equal to the amount of gas the horizontal gas well can produce. If any non-marginal gas proration unit exists in the same pool as a horizontal gas well, the division shall assign a top proration unit allowable for gas to such unit that is equal to the amount of gas than the unit can produce.

(3) Effective dates. Paragraphs (1) and (2) of Subsection D of 19.15.16.15 NMAC shall apply to all pools and areas of the state commencing on the first day of the first month after June 26, 2018 but shall cease to apply to any particular pool on the date of any order, hereafter issued following notice and hearing, whereby the division or commission determines that reduced allowables for such pool are necessary to prevent waste.

E. Other matters.

(1) Directional survey requirements. The operator of each horizontal well shall run a directional survey and file the directional survey, in a division-approved format, upon the well's completion. Directional surveys shall have shot points no more than 200 feet apart and shall be run by competent surveying companies. The division shall allow exceptions to the minimum shot point spacing provided the survey's accuracy is still within acceptable limits. The division shall not approve a form C-104 for the well until the operator has filed the required directional survey.

(2) Downhole commingling.

(a) Pools or laterals in the same formation. Provisions of 19.15.12.11 NMAC requiring approval for downhole commingling do not apply to commingling of oil or gas within a single lateral of a horizontal well bore that is produced from adjacent pools within the same formation, or from multiple laterals of a single well bore that are

completed in the same pool or formation and dedicated to the same horizontal spacing unit.

(b) Other multi-lateral wells. Except as provided in Subparagraph (a) of Paragraph (2) of Subsection E of 19.15.16.15 NMAC, horizontal wells with multiple laterals shall only be produced pursuant to division-approved downhole commingling authority obtained pursuant to 19.15.12.11 NMAC, unless pool segregation is maintained until the fluids reach the wellhead.

(3) Conflicts with existing rules or special pool orders. Provisions of statewide rules or special pool orders in effect on February 15, 2012 that limit the number of wells that may simultaneously produce from the portion of a pool or area underlying a spacing unit, or a particular portion of a spacing unit, do not apply to horizontal wells. Provisions of statewide rules or special pool rules in effect on June 26, 2018, save and except the special provisions for the Purple Sage; Wolfcamp (Gas) Pool in ordering paragraphs (1) through (7) of division order R-14262, that conflict with any of any provisions in 19.15.16.15 NMAC do not apply to horizontal wells. Special pool orders or amendments thereto adopted after June 26, 2018 shall prevail over rules as provided in 19.15.2.9 NMAC.

(4) Transitional provisions. Any horizontal well drilled, commenced or permitted prior to June 26, 2018 shall retain as its horizontal spacing unit the standard or non-standard spacing unit or project area originally dedicated thereto. If that area is not a standard horizontal spacing unit as provided in Subsection B of 19.15.16.15 NMAC, that area is hereby approved as a non-standard horizontal spacing unit for the horizontal well so drilled, commenced or permitted.

[19.15.16.15 NMAC - Rp, 19.15.3.112 NMAC, 12/1/2008; 19.15.16.15 NMAC - N, 2/15/2012; A, 6/26/2018; A, 11/27/2018]

19.15.16.16 MULTIPLE COMPLETIONS; BRADENHEAD GAS WELLS:

A. Multiple completions.

(1) Filing. An operator intending to multiple complete shall file form C-101 or C-103 with the division for approval before completing and C-104 after completing along with information required by the form instructions.

(2) Operation and testing.

(a) The operator shall complete and produce wells so that commingling of hydrocarbons from separate pools does not occur.

(b) The operator shall commence a segregation or packer leakage test within 20 days after the multiple completion. The operator shall also make segregation tests or packer leakage tests any time the packer is disturbed. The operator shall conduct other

tests and determinations the division requires. The operator shall notify the appropriate division district office 48 hours in advance of tests so the district office may schedule personnel to witness the tests. Offset operators may witness such tests and shall advise the operator in writing if they desire to be notified of the tests. The operator shall file test results with the division within 20 days of test completion. In the event a segregation or packer leakage test indicates communication between separate pools, the operator shall immediately notify the division and commence corrective action on the well.

(c) The operator shall equip wells so that reservoir pressure may be determined for each of the separate pools, and may install meters so that the gas or oil produced from each of the separate pools may be accurately measured.

(d) No multiple completion shall produce in a manner unnecessarily wasting reservoir energy.

(e) The division may require the operator to properly plug a zone of a multiple-completed well if the plugging appears necessary to prevent waste, protect correlative rights or protect ground water, public health or the environment.

B. Bradenhead gas wells.

(1) The division may permit production of gas from a bradenhead gas well only after hearing, except as noted in Paragraph (3) of Subsection B of 19.15.16.16 NMAC.

(2) The operator shall submit the application for a hearing to the division in triplicate and include an exhibit showing the location of wells on applicant's lease and offset wells on offset leases, together with a diagrammatic sketch showing the casing program, formation tops, estimated top of cement on each casing string run and other pertinent data, including drill stem tests.

(3) The director may grant an exception to Subsection A of 19.15.16.16 NMAC's requirements without notice and hearing where the operator files the application in due form, and when the lowermost producing zone involved in the completion is an oil or gas producing zone within an oil or gas pool's defined limits and the producing zone to be produced through the bradenhead connection is a gas producing zone within a gas pool's defined limits. The applicant shall include with the application a written stipulation that the applicant has properly notified offset operators.

(4) The applicant shall furnish operators who offset the lease upon which the subject well is located a copy of the application. The director shall wait at least 10 days before approving gas production from the bradenhead gas well, and shall approve the production only in the absence of an offset operator's objection. If an operator objects to the completion the director shall consider the matter only after proper notice and hearing.

(5) The division may waive the 10-day waiting period requirement if the applicant furnishes the division with the written consent to the production of gas from the bradenhead connection by the offset operators involved.

(6) Subsection B of 19.15.16.16 NMAC shall apply only to wells completed after January 1, 1950 or, in Lea County after February 1, 1937, as bradenhead gas wells.

[19.15.16.16 NMAC - Rp, 19.15.3.113 NMAC, 12/1/2008; 19.15.16.16 NMAC - Rn & A, 19.15.16.15 NMAC, 2/15/2012]

19.15.16.17 SHOOTING AND CHEMICAL TREATMENT OF WELLS:

If shooting, fracturing or treating a well injures the producing formation, injection interval, casing or casing seat and may create underground waste or contaminate fresh water, the operator shall within five working days notify in writing the division and proceed with diligence to use the appropriate method and means for rectifying the damage. If shooting, fracturing or chemical treating results in the well's irreparable injury the division may require the operator to properly plug and abandon the well.

[19.15.16.17 NMAC - Rp, 19.15.3.115 NMAC, 12/1/2008; 19.15.16.17 NMAC - Rn, 19.15.16.16 NMAC, 2/15/2012]

19.15.16.18 WELL AND LEASE EQUIPMENT:

A. The operator shall install and maintain Christmas tree fittings or wellhead connections in first class condition so that necessary pressure tests may easily be made on flowing wells. On oil wells the Christmas tree fittings shall have a test pressure rating at least equivalent to the calculated or known pressure in the reservoir from which production is expected. On gas wells the Christmas tree fittings shall have a test pressure equivalent to at least 150 percent of the calculated or known pressure in the reservoir from which production is expected.

B. The operator shall install and maintain valves in good working order to permit pressures to be obtained on both casing and tubing. The operator shall equip each flowing well to control properly the flowing of each well, and in case of an oil well, produce the well into an oil and gas separator of a type the industry generally uses.

[19.15.16.18 NMAC - Rp, 19.15.3.117 NMAC, 12/1/2008; 19.15.16.18 NMAC - Rn, 19.15.16.17 NMAC, 2/15/2012]

19.15.16.19 LOG, COMPLETION AND WORKOVER REPORTS:

A. Completion report. Within 45 days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different common source of supply, the operator shall file a completion report with the division on form C-105. For the purpose of

19.15.16.19 NMAC, a hole drilled or cored below fresh water or that penetrates oil- or gas-bearing formations or that an owner drills is presumed to be a well drilled for oil or gas. The operator shall signify on form C-105, or alternatively on form C-103, whether the well has been hydraulically fractured.

B. Hydraulic fracture disclosure. For a hydraulically fractured well, the operator shall also complete and file with the FracFocus chemical disclosure registry a completed hydraulic fracturing disclosure within 45 days after completion, recompletion or other hydraulic fracturing treatment of the well. The hydraulic fracturing disclosure shall be completed on a then current edition of the hydraulic fluid product component information form published by FracFocus and shall include complete and correct responses disclosing all information called for by the FracFocus form, provided that:

(1) the division does not require the reporting of information beyond the material safety data sheet data as described in 29 C.F.R. 1910.1200;

(2) the division does not require the reporting or disclosure of proprietary, trade secret or confidential business information; and

(3) the division shall download and archive New Mexico FracFocus submissions on a quarterly basis.

C. If the FracFocus chemical disclosure registry is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment(s) were performed shall file the information required by the then most recent FracFocus form with the division along with Well Completion Report (form C-105) or Sundry Notice (form C-103) reporting the hydraulic fracture treatment and file the information on the FracFocus internet website when the website is again operable. If the FracFocus chemical disclosure registry is discontinued or becomes permanently inoperable, the operator shall continue filing the information with the division until otherwise provided by rule or order.

[19.15.16.19 NMAC - Rp, 19.15.13.1104 NMAC, 12/1/2008; 19.15.16.19 NMAC - Rn & A, 19.15.16.18 NMAC, 2/15/2012; A, 9/26/2017]

19.15.16.20 ALLOWABLES AND AUTHORIZATION TO TRANSPORT OIL AND GAS:

A. The division may assign an allowable to a newly completed or re-completed well or a well completed in an additional pool or issue an operator authorization to transport oil or gas from the well if the operator:

(1) has filed a complete form C-104;

(2) has provided a sworn and notarized tabulation of all deviation tests the operator has run on the well, and directional surveys with calculated bottom hole

location, in accordance with the requirements of 19.15.16.14 NMAC or 19.15.16.15 NMAC;

(3) has dedicated a standard spacing unit or horizontal spacing unit for the pool in which the well is completed, a standard spacing unit or horizontal spacing unit has been communitized or pooled and dedicated to the well or the division has approved a non-standard spacing unit or horizontal spacing unit; and

(4) complies with Subsection A of 19.15.5.9 NMAC.

B. The allowable the division assigns to an oil well is effective at 7:00 a.m. on the completion date, provided the division receives form C-104 during the month of completion. The date of completion shall be that date when new oil is delivered into the stock tanks. Unless otherwise specified by special pool orders, the allowable the division assigns to a gas well is effective at 7:00 a.m. on the date of connection to a gas transportation facility, as evidenced by an affidavit of connection from the transporter to the division, or the date of receipt of form C-104 by the division, whichever date is later.

[19.15.16.20 NMAC – Rn, 19.15.16.19 NMAC, 2/15/2012; A, 6/26/2018]

19.15.16.21 WATER USE REPORT:

A. For a hydraulically fractured well, an operator shall report, on form C-103 or C-105, the amount of water reported on the disclosure required by Subsection B of 19.15.16.19 NMAC and the breakdown of that amount by:

- (1) produced water;
- (2) water other than produced water that has 10,000 or more mg/l TDS;
- (3) water other than produced water that has more than 1,000 mg/l TDS but less than 10,000 mg/l TDS; and
- (4) water other than produced water that has 1,000 mg/l TDS or less.

B. All such reports shall be compiled and reported monthly on the division section of the department website.

[19.15.16.21 NMAC – N, 10/13/2020]

PART 17: PITS, CLOSED-LOOP SYSTEMS, BELOW-GRADE TANKS AND SUMPS

19.15.17.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.17.1 NMAC - Rp, 19.15.17.1 NMAC, 6/28/13]

19.15.17.2 SCOPE:

19.15.17 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.17.2 NMAC - Rp, 19.15.17.2 NMAC, 6/28/13]

19.15.17.3 STATUTORY AUTHORITY:

19.15.17 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.17.3 NMAC - Rp, 19.15.17.3 NMAC, 6/28/13]

19.15.17.4 DURATION:

Permanent.

[19.15.17.4 NMAC - Rp, 19.15.17.4 NMAC, 6/28/13]

19.15.17.5 EFFECTIVE DATE:

June 28, 2013, unless a later date is cited at the end of a section.

[19.15.17.5 NMAC - Rp, 19.15.17.5 NMAC, 6/28/13]

19.15.17.6 OBJECTIVE:

To regulate pits, closed-loop systems, and below-grade tanks and sumps used in connection with oil and gas operations for the protection of fresh water, public health and the environment.

[19.15.17.6 NMAC - Rp, 19.15.17.6 NMAC, 6/28/13]

19.15.17.7 DEFINITIONS:

A. "Alluvium" means detrital material that water or other erosional forces have transported and deposited at points along a watercourse's flood plain. It typically is composed of sands, silts and gravels; exhibits high porosity and permeability; and generally carries fresh water.

B. "Below-grade tank" means a vessel with greater than a five barrel capacity, excluding sumps and pressurized pipeline drip traps, installed within an excavation or buried below the surrounding ground surface's elevation. Below-grade tank does not

include an above-ground storage tank that is located above or at the surrounding ground surface's elevation and is surrounded by berms.

C. "Closed-loop system" means a system that uses above ground steel tanks for the management of drilling fluids.

D. "Continuously flowing watercourse" means a river, stream or creek that is named or delineated by a solid blue line on a USGS quadrangle map having a scale factor of 1:24,000, or an irrigation channel, or a water course that typically has water flowing during the majority of the days of the year. This does not include ephemeral washes, arroyos, and similar depressions that do not have flowing water during the majority of the days of the year.

E. "Division-approved facility" means a division-permitted surface waste management or injection facility, a facility permitted pursuant to 20.6.2 NMAC, a facility approved pursuant to 19.15.35.8 NMAC or other facility that the division specifically approves for the particular purpose. The division shall not approve any facility not otherwise permitted unless it finds that the facility's use for the specified purpose will protect fresh water, public health and the environment and comply with other applicable federal or state statutes, federal regulations, state rules and local ordinances.

F. "Emergency pit" means a pit that is constructed during an emergency to contain a spill in the event of a release.

G. "Exception" means authorization from the division's Santa Fe office to depart from the requirements of 19.15.17 NMAC.

H. "Floodplain" means US army corps of engineers or FEMA documented 100-year floodplain.

I. "Life-form ratio" means the relative percentage of regionally native plant species in each of the following classifications: shrubs, forbs, and grasses.

J. "Low chloride fluids" means water-based fluids that contain less than 15,000 mg/liter of chlorides as determined by field or laboratory analysis.

K. "Measureable" means a layer of oil, the thickness of which is discernible by color cutting or other acceptable method.

L. "Multi-well fluid management pit" means a pit used for the storage, treatment and recycling of stimulation fluids and flow-back water during the drilling and completion of multiple wells. Multi-well fluid management pits may not be used for the disposal of drilling, completion or other waste. Multi-well fluid management pits may be located either onsite or offsite of a well drilling location and may remain in use until all wells with approved application for permit to drill that are identified in the pit permit are completed. Any addition of wells or extensions for permits to drill identified in the pit permit shall go

to hearing. Any containment structure such as a pond, pit, or other impoundment that holds only fresh water that has not been treated for oil field purposes, is not a multi-well fluid management pit.

M. "Onsite" means within the boundaries of a single lease where exploration and production waste is generated.

N. "Permanent pit" means a pit used for collection, retention or storage of produced water or brine that is constructed with the conditions and for the duration provided in its permit, and is not a temporary pit.

O. "Restore" means to return a site to its former condition, in the manner and to the extent required by applicable provisions of 19.15.17 NMAC.

P. "Significant watercourse" means a watercourse with a defined bed and bank either named or identified by a dashed blue line on a USGS 7.5 minute quadrangle map or the next lower order tributary with a defined bed and bank of such watercourse.

Q. "Sump" means a subgrade impermeable vessel that is partially buried in the ground, is in contact with the ground surface, or is a collection device incorporated within a secondary containment system, which remains predominantly empty, serves as a drain or receptacle for de minimis releases on an intermittent basis and is not used to store, treat, dispose of or evaporate products or wastes. Buckets, pails, drip pans or similar vessels that are not in contact with the ground surface are not sumps.

R. "Temporary pit" means a pit, including a drilling or workover pit, which is constructed with the intent that the pit will hold liquids and mineral solids. Temporary pits may be used for one or more wells and must be located at one of the associated permitted well drilling locations. Temporary pits must be closed within six months from the date the operator releases the drilling or workover rig from the first well using the pit. Any containment structure such as a pond, pit, or other impoundment that holds only fresh water that has not been treated for oil field purposes, is not a temporary pit.

S. "Variance" means authorization from the appropriate division district office to depart from the requirements of 19.15.17 NMAC. A variance may not be obtained where exceptions are required by a provision of 19.15.17 NMAC.

T. "Visible" when used with respect to oil on the surface of a pit means any amount of oil whether measurable or a sheen on the pit's liquid surface.

[19.15.17.7 NMAC - Rp, 19.15.17.7 NMAC, 6/28/13]

19.15.17.8 PERMIT OR REGISTRATION REQUIRED:

A. A person shall not construct or use a pit except in accordance with a division-issued permit. Only an operator may apply for a division-issued permit. After June 16,

2008, an unlined pit is prohibited and the division shall not issue a permit for an unlined pit.

B. The division may issue a single permit for all pits or division-approved alternative methods associated with a single application for permit to drill.

C. All below-grade tanks installed after June 28, 2013 must be registered with the appropriate division district office. The operator shall file a single registration for all below-grade tanks associated with a single application for permit to drill.

D. Closed-loop systems and sumps do not require a division-issued permit or registration with the division's district office.

[19.15.17.8 NMAC - Rp, 19.15.17.8 NMAC, 6/28/13]

19.15.17.9 PERMIT APPLICATION AND REGISTRATION:

A. An operator shall use the appropriate form C-144 to apply to the division for a permit to construct or use a pit or proposed alternative method, or to register a below-grade tank. The operator shall submit the form C-144 either separately or as an attachment to a permit application for a facility with which the pit, below-grade tank or proposed alternative method will be associated. An operator shall use a C-101, C-103 or applicable bureau of land management form to notify the appropriate division district office of construction or use of a closed-loop system.

B. The permit application shall include a detailed plan as follows.

(1) Permanent pits. A registered professional engineer shall certify engineering, design and construction specifications as contained in the plan for permanent pits. The plan shall include:

(a) a quality control/quality assurance construction and installation plan;

(b) operating and maintenance procedures;

(c) a closure plan;

(d) a hydrogeologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the division's Santa Fe office to evaluate the actual and potential effects on soils, surface water and ground water;

(e) detailed information on dike protection and structural integrity; and leak detection, including an adequate fluid collection and removal system;

(f) liner specifications and compatibility;

- (g)** freeboard and overtopping prevention;
- (h)** prevention of nuisance or hazardous odors, including H₂S;
- (i)** an emergency response plan, unless the permanent pit is part of a facility that has an integrated contingency plan;
- (j)** type of oil field waste stream;
- (k)** climatological factors, including freeze-thaw cycles;
- (l)** a monitoring and inspection plan;
- (m)** erosion control; and
- (n)** other pertinent information the environmental bureau in the division's Santa Fe office requests.

(2) Temporary pits. The plan for design and construction of a temporary pit shall follow applicable liner manufacturers' requirements. The permit application also shall include operating and maintenance procedures, a closure plan and hydrogeologic data that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate compliance with the siting criteria of 19.15.17.10 NMAC. In the absence of site-specific ground water data, the operator can provide a reasonable determination of probable ground water depth using data generated by models, cathodic well lithology, published information or other tools as approved by the appropriate division district office. The plan for a temporary pit may incorporate by reference a standard design for multiple temporary pits that the operator files with the application or has previously filed with the appropriate division district office. The operator may utilize, with approval by the appropriate division district office, standardized plans for pit construction, pit closure, and other plans which will remain approved until a subsequent plan is either required by the appropriate division district office or is submitted by the operator and approved by the appropriate division district office. A copy of the approved standardized plan shall be included in the division's electronic well file for each associated well.

(3) Below-grade tanks. The registration of a below-grade tank shall include operating and maintenance procedures, a closure plan and a hydrogeologic report that demonstrates compliance with the siting criteria of 19.15.17.10 NMAC. In the absence of site-specific ground water data, the operator can provide a reasonable determination of probable ground water depth using data generated by models, cathodic well lithology, published information or other tools as approved by the appropriate division district office. The registration of a below-grade tank may incorporate by reference a standard design for multiple below-grade tanks that the operator files with the application or has previously filed with the appropriate division district office. The operator may utilize, with

approval by the appropriate division district office, standardized plans for below-grade tank construction, and other plans which will remain approved until a subsequent plan is either required by the appropriate division district office or is submitted by the operator and approved by the appropriate division district office. A copy of the approved standardized plan shall be included in the division's electronic well file for each associated well.

(4) Multi-well fluid management pits. The design and construction plan for a multi-well fluid management pit shall follow applicable liner manufacturers' requirements. The permit application also shall include operating and maintenance procedures, a list of wells with approved application for permit to drill associated with the pit, a closure plan and hydrogeologic data that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the appropriate division district office to evaluate compliance with the siting criteria of 19.15.17.10 NMAC. In the absence of site-specific ground water data, the operator can provide a reasonable determination of probable ground water depth using data generated by models, cathodic well lithology, published information or other tools as approved by the appropriate division district office. The plan for a multi-well fluid management pit may incorporate by reference a standard design for multiple fluid management pits that the operator files with the application or has previously filed with the appropriate division district office. The operator may utilize, with approval by the appropriate division district office, standardized plans for pit construction, pit closure, and other plans which will remain approved until a subsequent plan is either required by the appropriate division district office or is submitted by the operator and approved by the appropriate division district office.

C. Filing of permit application.

(1) Permanent pits: An operator shall file an application on form C-144, including required attachments, with the division's Santa Fe office to request approval to use or construct a permanent pit and shall provide a copy to the appropriate division district office.

(2) Temporary pits, and multi-well fluid management pits. An operator shall file an application on form C-144, including required attachments, with the appropriate division district office. If the operator plans to use a temporary pit, or multi-well fluid management pit, the operator shall provide the proposed pit location on form C-102.

[19.15.17.9 NMAC - Rp, 19.15.17.9 NMAC, 6/28/13]

19.15.17.10 SITING REQUIREMENTS:

A. Except as otherwise provided in 19.15.17 NMAC.

(1) An operator shall not locate a temporary pit containing low chloride fluid:

(a) where ground water is less than 25 feet below the bottom of the pit; a variance may be granted for a pit used solely to cavitate a coal bed methane well and where the operator demonstrated that the proposed operation will protect groundwater during the temporary pit's use;

(b) within (i) 100 feet of any continuously flowing watercourse or any other significant watercourse, or (ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within (i) 200 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or (ii) 300 feet of any other fresh water well or spring, in existence at the time of the initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 100 feet of a wetland;

(g) within the area overlying a subsurface mine, unless a variance is granted that approves the proposed location based upon the operator's demonstration that the temporary pit's construction and use will not compromise the subsurface integrity;

(h) within an unstable area, unless a variance is granted upon a demonstration that the operator has incorporated engineering measures into the design to ensure that the temporary pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(2) Unless a variance is specifically provided for in Paragraph (1) of Subsection A of 19.15.17.10 NMAC, an operator must obtain an exception to locate a temporary pit containing low chloride fluids inside setbacks set forth in Paragraph (1) of Subsection A of 19.15.17.10 NMAC.

(3) An operator shall not locate a temporary pit containing fluids that are not low chloride fluids:

(a) where ground water is less than 50 feet below the bottom of the pit; a variance may be granted for a pit used solely to cavitate a coal bed methane well and where the operator demonstrated that the proposed operation will protect groundwater during the temporary pit's use;

(b) within (i) 300 feet of any continuously flowing watercourse or any other significant watercourse or (ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within (i) 500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or (ii) 1,000 feet of any other fresh water well or spring, in existence at the time of the initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 300 feet of a wetland;

(g) within the area overlying a subsurface mine, unless a variance is granted that approves the proposed location based upon the operator's demonstration that the temporary pit's construction and use will not compromise the subsurface integrity;

(h) within an unstable area, unless a variance is granted upon a demonstration that the operator has incorporated engineering measures into the design to ensure that the temporary pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(4) An operator must obtain a variance to locate a temporary pit containing non-low chloride fluids inside setbacks set forth in Paragraph (3) of Subsection A of 19.15.17.10 NMAC. The operator must obtain an exception to locate a non-low chloride fluids temporary pit inside setbacks set forth in Paragraph (1) of Subsection A of 19.15.17.10 NMAC.

(5) An operator shall not locate a permanent pit or multi-well fluid management pit:

(a) where ground water is less than 50 feet below the bottom of the permanent pit;

(b) within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark), unless the division's Santa Fe office approves an alternative distance based upon the operator's demonstration that surface and ground water will be protected;

(c) within 1000 feet from a permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within 500 feet of a spring or a fresh water well used for domestic or stock watering purposes, in existence at the time of initial application;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 500 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the operator obtains an exception and demonstrates that the pit's construction and use will not compromise subsurface integrity;

(h) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the pit's integrity is not compromised; or

(i) within a 100-year floodplain.

(6) An operator must obtain an exception to locate a permanent pit or multi-well fluid management pit inside setbacks set forth in Paragraph (5) of Subsection A of 19.15.17.10 NMAC.

(7) An operator shall not locate material excavated from a pit's construction:

(a) within 100 feet of a continuously flowing watercourse or a significant watercourse;

(b) 200 feet from a lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 100 feet of a wetland; or

(d) within a 100-year floodplain.

(8) An operator shall not locate a below-grade tank:

(a) within 100 feet of a continuously flowing watercourse, significant watercourse, lakebed, sinkhole, wetland or playa lake (measured from the ordinary high-water mark);

(b) within 200 feet of a spring or a fresh water well used for public or livestock consumption;

(c) where depth to ground water is less than 25 feet below the bottom of the tank.

B. An emergency pit is exempt from the siting criteria of 19.15.17 NMAC.

C. Closure for burial trenches and in place closure.

(1) An operator shall not implement trench or in-place closure:

(a) where ground water is less than 25 feet below the bottom of the buried waste;

(b) within 100 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(c) within 300 feet from an occupied permanent residence, school, hospital, institution or church in existence at the time of initial application;

(d) within 300 feet of a spring or private, domestic fresh water well used for domestic or stock watering purposes;

(e) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended, unless the municipality specifically approves;

(f) within 300 feet of a wetland;

(g) within the area overlying a subsurface mine, unless the division specifically approves the proposed location based upon the operator's demonstration that subsurface integrity will not be compromised;

(h) within an unstable area, unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the onsite closure method will prevent contamination of fresh water and protect public health and the environment; or

(i) within a 100 year floodplain.

(2) An operator must obtain a variance to locate a burial trench inside setbacks set forth in Paragraph (3) of Subsection A of 19.15.17.10 NMAC. The operator must obtain an exception to locate a burial trench inside setbacks set forth in Paragraph (1) of Subsection A of 19.15.17.10 NMAC.

[19.15.17.10 NMAC - Rp, 19.15.17.10 NMAC, 6/28/13]

19.15.17.11 DESIGN AND CONSTRUCTION SPECIFICATIONS:

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

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

C. Signs. The operator shall post an upright sign not less than 12 inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the pit or below-grade tank, unless the pit or below-grade tank is located on a site where there is an existing well, signed in compliance with 19.15.16.8 NMAC, that is operated by the same operator. The operator shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the operator's name; the location of the site by quarter-quarter or unit letter, section, township and range; and emergency telephone numbers.

D. Fencing.

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

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

(3) The operator shall fence any other pit or below-grade tank to exclude livestock with a four foot fence that has at least four strands of barbed wire evenly spaced in the interval between one foot and four feet above ground level.

E. Netting. The operator shall ensure that a permanent pit, a multi-well fluid management pit, or an open top tank is screened, netted or otherwise rendered non-hazardous to wildlife, including migratory birds. Where netting or screening is not feasible, the operator shall on a monthly basis inspect for, and within 30 days of discovery, report discovery of dead migratory birds or other wildlife to the appropriate

wildlife agency and to the appropriate division district office in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring.

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

- (1)** The operator shall design and construct a temporary pit to ensure the confinement of liquids to prevent releases.
- (2)** A temporary pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. The operator shall construct a temporary pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the temporary pit in a safe manner to prevent contamination of fresh water and protect public health and the environment.
- (3)** The operator shall design and construct a temporary pit with a geomembrane liner. The geomembrane liner shall consist of 20- mil string reinforced LLDPE or equivalent liner material that the appropriate division district office approves. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 Method 9090A.
- (4)** The operator shall minimize liner seams and orient them up and down, not across, a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall field weld and test liner seams.
- (5)** Construction shall avoid excessive stress-strain on the liner.
- (6)** Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity.
- (7)** The operator shall anchor the edges of all liners in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep, unless anchoring to encountered bedrock provides equivalent anchoring.
- (8)** The operator shall ensure that the liner is protected from any fluid force or mechanical damage at any point of discharge into or suction from the lined temporary pit.

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

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

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

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

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

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

(3) The primary (upper) liner and secondary (lower) liner shall be geomembrane liners. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material the division's Santa Fe office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner compatibility shall comply with EPA SW-846 Method 9090A, or subsequent relevant publication.

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

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

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

(7) The operator shall place a leak detection system between the upper and lower geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction; and to facilitate clean-out maintenance. The material the operator places between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior sub-grade and of drainage lines and laterals shall be at least a two percent grade, i.e., two feet vertical drop per 100 horizontal feet. The piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the permanent pit's perimeter. The operator may install alternative methods that the division's Santa Fe office approves.

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

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

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

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

H. Drying pads associated with closed-loop systems.

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

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

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

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

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

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

(2) A below-grade tank shall have a properly constructed foundation consisting of a level base free of rocks, debris, sharp edges or irregularities to prevent punctures, cracks or indentations of the liner or tank bottom.

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

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

(a) An operator may construct and use a below-grade tank that does not have double walls provided that the below-grade tank's side walls are open for visual inspection for leaks, the below-grade tank's bottom is elevated a minimum of six inches above the underlying ground surface and the below-grade tank is underlain with a geomembrane liner, which may be covered with gravel, to divert leaked liquid to a location that can be visually inspected. The operator shall equip below-grade tanks designed in this manner with a properly operating automatic high-level shut-off control device and manual controls to prevent overflows. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material that the appropriate division district office approves. The geomembrane liner shall have a

hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner compatibility shall comply with EPA SW-846 Method 9090A, or subsequent relevant EPA publication.

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

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

(5) The operator of a single walled below-grade tank constructed and installed prior to June 16, 2008 that has the side walls open for visual inspection and that does not meet all the requirements in Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC is not required to equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC so long as it demonstrates integrity. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly drain the below-grade tank and remove it from service and comply with the closure requirements of 19.15.17.13 NMAC.

(6) The operator of a single walled below-grade tank constructed and installed prior to June 16, 2008 and where any portion of the tank sidewall is below the ground surface and not visible shall equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC, or close it, by June 16, 2013. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly drain the below-grade tank, remove it from service and comply with the closure requirements of 19.15.17.13 NMAC.

(7) The operator of a double walled below-grade tank constructed and installed prior to June 16, 2008 and which does not meet all the requirements in Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC is not required to equip or retrofit the below-grade tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC so long as it demonstrates integrity. If the existing below-grade tank does not demonstrate integrity, the operator shall promptly drain the below-grade tank, remove it from service and comply with the closure requirements of 19.15.17.13 NMAC.

J. Multi-well fluid management pits. The operator shall design and construct a multi-well fluid management pit in accordance with the following requirements.

(1) The operator shall design and construct the pit to ensure the confinement of liquids to prevent releases and to prevent overtopping due to wave action or rainfall.

(2) The pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or

irregularities to prevent the liner's rupture or tear. Geotextile is required under the liner where needed to reduce localized stress-strain or protuberances that may otherwise compromise the liner's integrity. The operator shall construct a multi-well fluid management pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The levee shall have an outside grade no steeper than three horizontal feet to one vertical foot (3H:1V). The levee's top shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance. The appropriate division district office may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the pit in a manner that provides equivalent or better protection to fresh water, public health and the environment.

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

(4) The primary (upper) liner and secondary (lower) liner shall be geomembrane liners. The geomembrane liner shall consist of 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner material that the division's district office approves. The geomembrane liner shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner compatibility shall comply with EPA SW-846 Method 9090A or subsequent relevant publication.

(5) The appropriate division's district office may approve other liner media if the operator demonstrates to the satisfaction of the appropriate division's district office that the alternative liner protects fresh water, public health, and the environment as effectively as the specified media.

(6) The operator shall minimize liner seams and orient them up and down, not across, a slope. The operator shall use factory welded seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field welding and testing.

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

(8) The operator shall place a leak detection system between the upper and lower geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection. The operator may install alternative methods that the appropriate division's district office approves.

(9) The operator shall maintain a multi-well fluid management pit to prevent run-on of surface water. A multi-well fluid management pit shall be surrounded by a berm, ditch or other diversion to prevent run-on of surface water.

K. Burial trenches for closure. The operator shall design and construct a burial trench in accordance with the following requirements.

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

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

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

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

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

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

[19.15.17.11 NMAC - Rp, 19.15.17.11 NMAC, 6/28/13]

19.15.17.12 OPERATIONAL REQUIREMENTS:

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

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

(2) The operator shall recycle, reuse, reclaim or dispose of all drilling fluids in a manner consistent with division rules.

(3) The operator shall not discharge into or store any hazardous waste in a pit, closed-loop system, below-grade tank or sump.

(4) If a pit liner's integrity is compromised above the liquid's surface then the operator shall repair the damage or initiate replacement of the liner within 48 hours of discovery or seek a variance from the appropriate division district office.

(5) If a pit or below-grade tank develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the operator shall remove all liquid above the damage or leak within 48 hours of discovery, notify the appropriate division office pursuant to 19.15.29 NMAC and repair the damage or replace the pit liner or below-grade tank as applicable.

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

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

(8) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain an unanticipated release.

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

(1) Only fluids or mineral solids generated or used during the drilling, completion or workover process may be discharged into a temporary pit. The operator shall maintain a temporary pit free of miscellaneous solid waste or debris. Immediately after cessation of a drilling or workover operation, the operator shall remove any visible layer of oil from the surface of a drilling or workover pit.

(2) The operator shall maintain at least two feet of freeboard for a temporary pit. For temporary extenuating circumstances an operator may maintain a freeboard of

less than two feet. In such circumstances the operator shall maintain a log describing such circumstances and make the log available to the division upon request.

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

(4) The operator shall remove all free liquids from the surface of a temporary pit within 60 days from the date that the operator releases the last drilling or workover rig associated with the relevant pit permit. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103 upon well or workover completion. The appropriate division district office may grant an extension of up to two months, not to exceed temporary pit life span under Subsection R of 19.15.17.7 NMAC.

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

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

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

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

(3) The operator shall inspect the pit weekly while the pit has fluids and document at least monthly until the pit is closed. Inspections will include monitoring of the leak detection system. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request.

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

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

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

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

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

(5) The operator of a below-grade tank who discovers that the below-grade tank does not demonstrate integrity or that the below-grade tank develops any of the conditions identified in Paragraph (5) of Subsection A of 19.15.17.12 NMAC shall repair the damage or close the existing below-grade tank pursuant to the closure requirements of 19.15.17.13 NMAC.

(6) The operator of a below-grade tank who equips or retrofits the existing tank to comply with Paragraphs (1) through (4) of Subsection I of 19.15.17.11 NMAC shall visually inspect the area beneath the below-grade tank during the retrofit and document any areas that are wet, discolored or showing other evidence of a release on form C-141. The operator shall measure and report to the division the concentration of contaminants in the wet or discolored soil with respect to the standards set forth in Table I of 19.15.17.13 NMAC. If there is no wet or discolored soil or if the concentration of contaminants in the wet or discolored soil is less than the standard set forth in Table I of 19.15.17.13 NMAC, then the operator shall proceed with the closure requirements of 19.15.17.13 NMAC prior to initiating the retrofit or replacement.

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

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

(2) The operator shall maintain records of sump inspections and make the records available for the appropriate division district office's review upon request.

F. Multi-well fluid management pits. An operator shall maintain and operate a multi-well fluid management pit in accordance with the following additional requirements.

(1) No operator shall place any substances in the pit other than stimulation fluids, produced water used for stimulation and drilling, and flow back from multiple wells.

(2) The operator shall remove any visible layer of oil from the surface of the pit.

(3) The operator shall maintain at least three feet of freeboard for the pit.

(4) The operator shall inspect the pit weekly while the pit has fluids and document at least monthly until the pit is closed. Inspections will include monitoring of the leak detection system. The operator shall maintain a log of such inspections and make the log available for the appropriate division district office's review upon request.

(5) The operator shall remove all fluids within 60 days from the date the operator ceases all stimulation operations associated with the pit permit. The appropriate division district office may grant an extension of up to two months.

[19.15.17.12 NMAC - Rp, 19.15.17.12 NMAC, 6/28/13]

19.15.17.13 CLOSURE AND SITE RECLAMATION REQUIREMENTS:

A. Closure plans. A closure plan that an operator submits in an application or registration pursuant to Subsection B of 19.15.17.9 NMAC, or any other closure plan required pursuant to 19.15.17 NMAC, shall describe the proposed closure method and the proposed procedures and protocols to implement and complete the closure.

B. Closure plans for a multi-well fluid management pit shall be filed with the appropriate division district office and shall describe the proposed procedures and protocols for the removal of all unused stimulation liquids and the disposition of liner materials and other pit contents.

C. Closure where wastes are destined for disposal at division approved off-site facilities. This subsection applies to permanent pits, temporary pits, multi-well fluid management pits, drying pads and tanks associated with closed-loop systems and below-grade tanks.

(1) Notwithstanding the following, the operator of any pit or below-grade tank shall not commence closure without first obtaining approval of the closure plan submitted with the permit application or registration pursuant to 19.15.17.9 NMAC.

(2) The operator shall close the pit, drying pad or below-grade tank by first removing all contents and, if applicable, synthetic liners and transferring those materials to a division approved facility.

(3) The operator shall test the soils beneath the pit, drying pad for closed-loop system or below-grade tank as follows.

(a) At a minimum, a five point composite sample to include any obvious stained or wet soils, or other evidence of contamination shall be taken under the liner or the below-grade tank and that sample shall be analyzed for the constituents listed in Table I of 19.15.17.13 NMAC.

(b) If any contaminant concentration is higher than the parameters listed in Table I of 19.15.17.13 NMAC, the division may require additional delineation upon

review of the results and the operator must receive approval before proceeding with closure.

(c) If all contaminant concentrations are less than or equal to the parameters listed in Table I of 19.15.17.13 NMAC, then the operator can proceed to backfill the pit, pad, or excavation with non-waste containing, uncontaminated, earthen material.

D. Closure where wastes are destined for burial in place or into nearby division approved pits or trenches. This subsection applies to waste from temporary pits and closed-loop systems, when such waste may be disposed of in place in the existing temporary pit or disposed of at a nearby temporary pit or burial trench that is not a permitted commercial facility regulated under 19.15.36 NMAC. A nearby temporary pit or burial trench that receives waste from another temporary pit must be onsite within the same lease.

(1) The operator shall not commence closure without first obtaining approval of the closure plan submitted with the permit application.

(2) The operator shall demonstrate and comply with the siting criteria set forth in Subsection C of 19.15.17.10 NMAC.

(3) Prior to closure the operator shall remove all free liquids reasonably achievable from the pit or drying pad and tank associated with a closed-loop system and dispose of such liquids at a division approved facility.

(4) When closing a temporary pit the operator shall stabilize or solidify the remaining temporary pit contents to a capacity sufficient to support the final cover of the temporary pit. When transferring the waste contents from a drying pad and tank associated with a closed-loop system into a temporary pit or burial trench, the operator shall stabilize or solidify the waste contents to a capacity sufficient to support the final cover of the temporary pit or burial trench. The operator shall not mix the contents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to contents. The waste mixture must pass the paint filter liquids test (EPA SW-846, Method 9095 or other test methods approved by the division).

(5) The operator shall collect, at a minimum, a five point composite of the contents of the temporary pit or drying pad/tank associated with a closed-loop system to demonstrate that, after the waste is solidified or stabilized with soil or other non-waste material at a ratio of no more than 3:1 soil or other non-waste material to waste, the concentration of any contaminant in the stabilized waste is not higher than the parameters listed in Table II of 19.15.17.13 NMAC.

(6) If, after appropriate stabilization, the concentrations of all contaminants in the contents from a temporary pit or drying pad and tank associated with a closed-loop system are less than or equal to the parameters of listed in Table II of 19.15.17.13

NMAC, the operator may either proceed to dispose of wastes in an existing temporary pit or construct a burial trench for disposal of these wastes.

(7) If the concentration of any contaminant in the contents, after mixing with soil or non-waste material to a maximum ratio of 3:1, from a temporary pit or drying pad/tank associated with a closed-loop system is higher than constituent concentrations shown in Table II of 19.15.17.13 NMAC, then closure must proceed in accordance with Subsection C of 19.15.17.13 NMAC.

(8) Upon achieving all applicable waste stabilization in the temporary pit or transfer of stabilized wastes to the temporary pit or burial trench, the operator shall:

(a) fold the outer edges of the trench liner to overlap the waste material in the trench prior to the installation of the geomembrane cover;

(b) install a geomembrane cover over the waste material in the lined trench or temporary pit; the operator shall install the geomembrane cover in a manner that prevents the collection of infiltration water in the lined trench or temporary pit and on the geomembrane cover after the soil cover is in place; the geomembrane cover shall consist of a 20-mil string reinforced LLDPE liner or equivalent cover that the appropriate division district office approves; the geomembrane cover shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions; cover compatibility shall comply with EPA SW-846 Method 9090A;

(c) cover the pit/trench with non-waste containing, uncontaminated, earthen materials and construct a soil cover prescribed by the division in Paragraph (3) of Subsection H of 19.15.17.13 NMAC.

(9) If the operator has removed the wastes and the liner to a burial trench pursuant to this subsection, the operator shall test the soils beneath the temporary pit as follows.

(a) At a minimum, a five point composite sample to include any obvious stained or wet soils, or other evidence of contamination shall be taken under the liner or the below-grade tank and that sample shall be analyzed for the constituents listed in Table I of 19.15.17.13 NMAC.

(b) If any contaminant concentration is higher than the parameters listed in Table I of 19.15.17.13 NMAC, the division may require additional delineation upon review of the results and the operator must receive approval before proceeding with closure.

(c) If all contaminant concentration are less than or equal to the parameters listed in Table I of 19.15.17.13 NMAC, then the operator can proceed to backfill the pit, pad, or excavation with non-waste containing, uncontaminated, earthen material.

E. Closure notice.

(1) The operator shall notify the surface owner by certified mail, return receipt requested that the operator plans closure operations at least 72 hours, but not more than one week, prior to any closure operation. Notice shall include well name, API number and location. Evidence of mailing of the notice to the address of the surface owner shown in the county tax records is sufficient to demonstrate compliance with this requirement.

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

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

(4) When onsite burial occurs on private land, the operator shall file a deed notice identifying the exact location of the onsite burial with the county clerk in the county where the onsite burial occurs.

F. Closure report and burial identification.

(1) Within 60 days of closure completion, the operator shall submit a closure report on form C-144, with necessary attachments to document all closure activities including sampling results; information required by 19.15.17 NMAC; and details on back-filling, capping and covering, where applicable. In the closure report, the operator shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in the approved closure plan. If the operator used a temporary pit, the operator shall provide a plat of the pit location on form C-1 05 within 60 days of closing the temporary pit.

(2) If the operator elects to conduct onsite burial under Subsection D of 19.15.17.13 NMAC, the operator shall report the exact location of the onsite burial on form C-105 filed with the division.

(3) The operator shall place a steel marker at the center of an onsite burial. The steel marker shall be not less than four inches in diameter and shall be cemented in

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

G. Timing requirements for closure. An operator shall close a pit, drying pad associated with a closed-loop system or below-grade tank within the following time periods.

(1) An operator shall close a permitted permanent pit within 60 days of cessation of operation of the pit in accordance with a closure plan approved by the appropriate office.

(2) An operator shall close a permitted temporary pit within six months from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103, filed with the division, upon the well's or work-over's completion. The appropriate division district office may grant an extension not to exceed three months.

(3) An operator shall close a drying pad used for a closed-loop system within six months from the date that the operator releases the drilling or workover rig. The operator shall note the date of the drilling or workover rig's release on form C-105 or C-103, filed with the division, upon the well's or work-over's completion. The appropriate division district office may grant an extension not to exceed six months.

(4) Closure methods for below-grade tanks.

(a) Within 60 days of cessation of operations, the operator shall remove liquids and sludge from a below-grade tank prior to implementing a closure method and shall dispose of the liquids and sludge in a division-approved facility.

(b) Within six months of cessation of operations, the operator shall remove the below-grade tank and dispose of it in a division-approved facility or recycle, reuse, or reclaim it in a manner that the appropriate division district office approves. If there is any equipment associated with a below-grade tank, then the operator shall remove the equipment, unless the equipment is required for some other purpose.

(5) An operator shall close a multi-well fluid management pit within six months from the date that the operator ceases all stimulation operations on all wells identified in the permit. The operator shall note the date of the cessation of drilling and stimulation operations on form C-105 or C-103 filed with the division. The appropriate division district office may grant an extension for closure not to exceed six months.

H. Reclamation of pit locations, onsite burial locations and drying pad locations.

(1) Site contouring.

(a) Once the operator has closed a pit or trench or is no longer using a drying pad, below-grade tank or an area associated with a closed-loop system, pit, trench or below-grade tank, the operator shall reclaim the pit location, drying pad location, below-grade tank location or trench location and all areas associated with the closed-loop system, pit, trench or below-grade tank including associated access roads to a safe and stable condition that blends with the surrounding undisturbed area. The operator shall substantially restore the impacted surface area to the condition that existed prior to oil and gas operations by placement of the soil cover as provided in Paragraph (2) of Subsection H of 19.15.17.13 NMAC, recontour the location and associated areas to a contour that approximates the original contour and blends with the surrounding topography and re-vegetate according to Paragraph (5) in Subsection H of 19.15.17.13 NMAC.

(b) The operator may propose an alternative to the re-vegetation or recontouring requirement if the operator demonstrates to the appropriate district office that the proposed alternative provides equal or better prevention of erosion, and protection of fresh water, public health and the environment. The proposed alternative shall be agreed upon by the surface owner. The operator shall submit the proposed alternative, with written documentation that the surface owner agrees to the alternative, to the division for approval.

(c) Areas reasonably needed for production operations or for subsequent drilling operations shall be compacted, covered, paved, or otherwise stabilized and maintained in such a way as to minimize dust and erosion to the extent practicable.

(2) Soil cover designs for drying pads associated with closed-loop systems and below-grade tanks. The soil cover for closures after site contouring, where the operator has removed the below-grade tank or drying pad contents and liner, and if necessary remediated the soil beneath the below-grade tank or drying pad liner to chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0, shall consist of the background thickness of topsoil or one foot of suitable material, whichever is greater.

(3) Soil cover designs for reclamation of pit locations and onsite burial locations. The soil cover for burial in-place or trench burial shall consist of a minimum of four feet of non-waste containing, uncontaminated, earthen material with chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0. The soil cover shall include either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

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

(5) Reclamation and re-vegetation.

(a) Reclamation of areas no longer in use. All areas disturbed by the closure of pits and below-grade tanks, except areas reasonably needed for production operations or for subsequent drilling operations, shall be reclaimed as early and as nearly as practicable to their original condition or their final land use and shall be maintained to control dust and minimize erosion to the extent practicable.

(b) Topsoils and subsoils shall be replaced to their original relative positions and contoured so as to achieve erosion control, long-term stability and preservation of surface water flow patterns. The disturbed area then shall be reseeded in the first favorable growing season following closure of a pit, drying pad associated with a closed-loop system or below-grade tank.

(c) Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent (50%) of pre-disturbance levels and a total percent plant cover of at least seventy percent (70%) of pre-disturbance levels, excluding noxious weeds.

(d) Other regulatory requirements. The re-vegetation and reclamation obligations imposed by other applicable federal or tribal agencies on lands managed by those agencies shall supersede these provisions and govern the obligations of any operator subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.

(e) The operator shall notify the division when reclamation and re-vegetation are complete.

Table I			
Closure Criteria for Soils Beneath Below-Grade Tanks, Drying Pads Associated with			
Closed-Loop Systems and Pits where Contents are Removed			
Depth below bottom of pit to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
≤50 feet	Chloride	EPA 300.0	600 mg/kg
	TPH	EPA SW-846	100 mg/kg
		Method 418.1	

	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
51 feet-100 feet	Chloride	EPA 300.0	10,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
> 100 feet	Chloride	EPA 300.0	20,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg

*Or other test methods approved by the division

**Numerical limits or natural background level, whichever is greater

Table II Closure Criteria for Burial Trenches and Waste Left in Place in Temporary Pits			
Depth below bottom of pit to groundwater less	Constituent	Method*	Limit**

than 10,000 mg/l TDS			
25-50 feet	Chloride	EPA Method 300.0	20,000 mg/kg
	TPH	EPA SW-846 Method 418.1	100 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
51-100 feet	Chloride	EPA Method 300.0	40,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg
> 100 feet	Chloride	EPA Method 300.0	80,000 mg/kg
	TPH	EPA SW-846 Method 418.1	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8015M	10 mg/kg

*Or other test methods approved by the division

**Numerical limits or natural background level, whichever is greater

[19.15.17.13 NMAC - Rp, 19.15.17.13 NMAC, 6/28/13]

19.15.17.14 EMERGENCY ACTIONS:

A. Permit not required. In an emergency an operator may construct a pit without a permit to contain fluids, solids or wastes, if an immediate danger to fresh water, public health or the environment exists.

B. Construction standards. The operator shall construct an emergency pit, to the extent possible given the emergency, in a manner that is consistent with the requirements for a temporary pit specified in 19.15.17 NMAC and that prevents the contamination of fresh water and protects public health and the environment.

C. Notice. The operator shall notify the appropriate division district office as soon as possible (if possible before construction begins) of the need for such pit's construction.

D. Use and duration. A pit constructed in an emergency may be used only for the emergency's duration. If the emergency lasts more than 48 hours, then the operator shall seek the appropriate division district office's approval for the pit's continued use. The operator shall remove all fluids, solids or wastes within 48 hours after cessation of use unless the appropriate division district office extends that time period.

[19.15.17.14 NMAC - Rp, 19.15.17.14 NMAC, 6/28/13]

19.15.17.15 EXCEPTIONS AND VARIANCES:

A. Variances.

(1) An operator shall demonstrate with a complete application to the appropriate division district office that the requested variance provides equal or better protection of fresh water, public health and the environment. The appropriate division district office shall approve or deny the variance within 60 days of receipt of the complete application.

(2) If the appropriate division district office denies the variance then it shall notify the operator within 60 days of receipt of the complete application for the reasons of denial by certified mail, return receipt requested. If the operator requests a hearing within 10 days after receipt of such notice, the division shall set the matter for hearing, with notice to the operator and the appropriate division district office.

(3) An application for a variance shall include:

(a) a statement in detail explaining why the applicant wants to vary from the requirement of 19.15.17 NMAC, and

(b) a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.

(4) If a variance goes to hearing pursuant to Paragraph (2) of Subsection A of 19.15.17.15 NMAC, in addition to the hearing process required by 19.15.4 NMAC, the application for hearing shall include:

(a) a copy of the complete application submitted for a variance under Paragraph (3) of Subsection A of 19.15.17.15 NMAC;

(b) proof of notification to the surface owner of the location of the requested variance.

(5) The division clerk will set the application for hearing as soon as practicable.

B. Exceptions.

(1) An operator may apply to the division's Santa Fe office for an exception that is allowed by a provision of 19.15.17 NMAC.

(2) The operator shall give written notice by certified mail, return receipt requested, to:

(a) the surface owner of record where the exception is requested, or will be located;

(b) surface owners of record within one-half mile of such location;

(c) the county commission of the county where the pit, or proposed alternative is, or will be, located;

(d) the appropriate city official if the pit, or proposed alternative is, or will be, located within city limits, within one-half mile of the city limits or within the city's zoning and planning jurisdiction;

(e) federal agencies managing lands within one-half mile of such location;

(f) affected tribal or pueblo governments; and

(g) such other persons as the division's Santa Fe office may direct.

(3) Receipt of notice that is given pursuant to this sub-part shall not be construed as an indication of standing to request a hearing pursuant to Paragraph (6) of Subsection B of 19.15.17.15 NMAC.

(4) The operator shall issue public notice by publication one time in a newspaper of general circulation in the county where the pit, or proposed alternative, is, or will be located. Required written and public notices require the division's Santa Fe

office's approval. The division shall post notice of the application on the division's website.

(5) An operator shall demonstrate with a complete application to the Santa Fe office that the requested exception provides equal or better protection of fresh water, public health and the environment. The Santa Fe office shall approve or deny the exception within 90 days of receipt of the complete application.

(6) Within 30 days after the operator or the division sends notice of the requested exception anyone may submit comments to the director and any person with standing to contest the requested exception may request a hearing. If the director determines that a request for hearing presents issues that have technical merit or there is significant interest from the affected public, then the director may cause the matter to be set for hearing. If the director determines that a hearing is not necessary due to technical merit, significant public interest or otherwise then the Santa Fe office may grant the exception without a hearing. The Santa Fe office may grant the exception administratively if the Santa Fe office receives no comments or requests for hearing within the time for commenting.

(7) If the Santa Fe office denies the exception then it shall notify the operator within 90 days of receipt of the complete application for the reasons of denial by certified mail, return receipt requested. If the operator requests a hearing within 21 days after receipt of such notice, the division shall set the matter for hearing, with notice to the operator and the appropriate division district office.

(8) An application for an exception shall include:

(a) a statement in detail explaining why the applicant wants an exception to the requirement of 19.15.17 NMAC, and

(b) a detailed written demonstration that the exception will provide equal or better protection of fresh water, public health and the environment.

(9) If an exception goes to hearing pursuant to Subsection B of 19.15.17.15 NMAC, in addition to the requirements of 19.15.4 NMAC, the hearing application shall include:

(a) a copy of the complete application submitted for the exception; and

(b) a proof of notification of the hearing application to parties identified in Paragraph (2) of Subsection B of 19.15.17.15 NMAC.

(10) The division clerk will set the application for hearing as soon as practicable.

[19.15.17.15 NMAC - Rp, 19.15.17.15 NMAC, 6/28/13]

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

A. The division shall review all applications to permit facilities subject to 19.15.17 NMAC. Within 30 days of receiving an application the division shall make an administrative completeness determination or provide written notice of deficiencies to the application's signatory. The application will be considered complete if written notice is not provided by the division within the 30 day evaluation period.

B. Whether or not the division deems an application to be administratively complete within the 30 day evaluation period, the division shall also have an additional 30 days to approve, deny or approve with conditions an application. If the division does not take action within the 60 days review period, then the application is deemed denied and the operator may file an application for hearing with the division clerk.

C. Conditions. The division may impose conditions or requirements that it determines are necessary and proper for the protection of fresh water, public health, and the environment provided the conditions or requirements are based on the provisions of the Oil and Gas Act 70-2 NMSA or current division regulations. The division shall incorporate such additional conditions or requirements into the permit.

D. Denial of application. The division shall deny, in writing, an application for a permit if it finds that the application and materials that the operator submitted for consideration with the application do not sufficiently demonstrate that the operator can construct, operate and close the proposed pit, or proposed alternative in a manner that is protective of fresh water, public health, and the environment.

E. Revocation, suspension or modification of a permit. The operator may apply to the division for a modification of the permit pursuant to 19.15.17 NMAC. The operator shall demonstrate that the proposed modification complies with the applicable provisions of 19.15.17 NMAC. The division may revoke, suspend or impose additional operating conditions or limitations on a permit at any time, after notice and opportunity for a hearing, if the division determines that the operator or the permitted facility is in material breach of any applicable statutes or rules, or that such action is necessary for the protection of fresh water, public health or the environment. The division shall notify the operator by certified mail, return receipt requested, of any intended revocation, suspension or imposition of additional conditions, and the operator shall have 10 days after receipt of notification to request a hearing pursuant to 19.15.4 NMAC. The division may suspend a permit or impose additional conditions or limitations without hearing in an emergency to forestall an imminent threat to fresh water, public health, or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended.

F. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. The division's approval of an application to transfer a well or other facility with which a permitted pit is associated shall constitute approval of the transfer of the permit for the pit.

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

[19.15.17.16 NMAC - Rp, 19.15.17.16 NMAC, 6/28/13]

PART 18: PRODUCTION OPERATING PRACTICES

19.15.18.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.18.1 NMAC - N, 12/1/2008; A, 05/25/2021]

19.15.18.2 SCOPE:

19.15.18 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.18.2 NMAC - N, 12/1/08]

19.15.18.3 STATUTORY AUTHORITY:

19.15.18 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.18.3 NMAC - N, 12/1/2008; A, 05/25/2021]

19.15.18.4 DURATION:

Permanent.

[19.15.18.4 NMAC - N, 12/1/08]

19.15.18.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.18.5 NMAC - N, 12/1/08]

19.15.18.6 OBJECTIVE:

To regulate the production of oil and gas wells within the state in order to prevent waste, protect correlative rights and protect public health and the environment.

[19.15.18.6 NMAC - N, 12/1/08]

19.15.18.7 DEFINITIONS:

"Drip" means a liquid hydrocarbon incidentally accumulating in a gas gathering or transportation system.

[19.15.2.7 NMAC - Rp, Subsection A of 19.15.5.314 NMAC, 12/1/08]

19.15.18.8 GAS-OIL RATIO AND PRODUCTION TESTS:

A. An operator shall take a gas-oil ratio test no sooner than 20 days nor later than 30 days following the completion or recompletion of each oil well, if:

- (1)** the well is a wildcat, or
- (2)** the well is located in a pool that is not exempt from 19.15.18.8 NMAC's requirements.

B. Provisions of 19.15.18.8 NMAC that are applicable to the pool shall govern wells completed within one mile of the outer boundary of a defined oil pool producing from the same formation. The operator shall report the test results to the division on form C-116 within 10 days following the test's completion. The gas-oil ratio the operator reports shall become effective for proration purposes on the first day of the calendar month following the date they are reported.

C. Each operator shall take an annual gas-oil ratio test of each producing oil well, located within a pool not exempted from the requirements of 19.15.18.8 NMAC, during a period the division prescribes. The division shall establish a gas-oil ratio survey schedule setting forth the period in which operators are to take gas-oil ratio tests for each pool where the division requires a test. The gas-oil ratio test shall be a test the division designates, made by the method and in the manner the division in its discretion may prescribe from time to time.

D. An operator shall file the results of gas-oil ratio tests taken during survey periods with the division on form C-116 not later than the 10th of the month following the close of the survey period for the pool in which the well is located. The gas-oil ratios thus reported shall become effective for proration purposes on the first day of the second month following the survey period's close. Unless the operator files form C-116 within the required time limit, the division shall not assign a further allowable to the affected well until the operator file form C-116.

E. In the case of special tests taken between regular gas-oil ratio surveys, the gas-oil ratio becomes effective for proration purposes upon the date the division receives form C-116 reporting the test results. A special test does not exempt a well from the regular survey.

F. During a gas-oil ratio test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than twenty-five percent.

G. The director may exempt such pools as the director deems proper from the gas-oil ratio test requirements of 19.15.18.8 NMAC. The exemption shall be by division order directed to the operators in the pool being exempted.

H. The director may require annual productivity tests of oil wells in pools exempt from gas-oil ratio tests, during a period the division prescribes. The division shall establish an oil well productivity survey schedule setting forth the period in which productivity tests are to be taken for each pool where the division requires the tests.

I. An operator shall file the results of productivity tests taken during survey periods with the division on form C-116 (with the word "exempt" inserted in the column normally used for reporting gas production) not later than the 10th of the month following the close of the survey period for the pool in which the well is located. Unless the operator files form C-116 within the required time limit, the division shall not assign further allowables to the affected well until the operator files form C-116.

J. In the case of special productivity tests taken between regular test survey periods, which result in a change of allowable assigned to the well, the allowable change shall become effective upon the date the division receives form C-116. A special test does not exempt a well from the regular survey.

K. During the productivity test, an operator shall not produce a well at a rate exceeding the top proration unit allowable for the pool in which it is located by more than twenty-five percent.

[19.15.18.8 NMAC - Rp, 19.15.5.301 NMAC, 12/1/2008; A, 05/25/2021]

19.15.18.9 BOTTOM HOLE PRESSURE TESTS:

The operator shall make a bottom hole pressure test on the discovery well of a new pool and shall report the results of the test to the division within 30 days after the discovery well's completion. On or before December 1 of each calendar year the division shall designate the months in which operators shall take bottom hole pressure tests in designated pools. The division shall include in the designated list the required shut-in pressure time and datum of tests to be taken in each pool. In the event a newly discovered pool is not included in the division's list, the division shall issue a supplementary bottom hole pressure schedule. Tests the division designates shall only apply to flowing wells in each pool. A person qualified by both training and experience to make such test shall make the test with an approved bottom hole pressure instrument that is calibrated against an approved dead-weight tester at intervals frequent enough to ensure its accuracy within one percent. Unless the division otherwise designates, all wells shall remain completely shut in for at least 24 hours prior to the test. In the event

the division does not establish a definite datum the operator shall obtain the bottom hole determination as close as possible to the mid-point of the reservoir's productive sand. The operator shall report the test results to the division on form C-124, which shall contain the information required by Subsection B of 19.15.7.32 NMAC.

[19.15.18.9 NMAC - Rp, 19.15.5.302 NMAC, 12/1/08]

19.15.18.10 CONTROL OF MULTIPLE COMPLETED WELLS:

The operator shall at all times operate, produce and maintain multiple completed wells that the division has authorized in a manner to ensure the complete segregation of the various common sources of supply. The division may require the operator take tests the division deems necessary to determine the effectiveness of segregation of the different common sources of supply.

[19.15.18.10 NMAC - Rp, 19.15.5.304 NMAC, 12/1/08]

19.15.18.11 [RESERVED]

[19.15.18.11 NMAC - Rp, 19.15.5.305 NMAC, 12/1/2008; Repealed, 05/25/2021]

19.15.18.12 [RESERVED]

[19.15.18.12 NMAC - Rp, 19.15.5.306 NMAC, 12/1/2008; Repealed, 05/25/2021]

19.15.18.13 OPERATION AT BELOW ATMOSPHERIC PRESSURE:

A. An operator may use vacuum pumps, gathering system compressors or other devices to operate a well or gathering system at below atmospheric pressure only if that operator has:

(1) executed a written agreement with the operator of the downstream gathering system or pipeline to which the well or gathering system so operated is immediately connected allowing operation of the well or gathering system at below atmospheric pressure; and

(2) filed a sundry notice in the appropriate division district office for each well operated at below atmospheric pressure or served by a gathering system operated at below atmospheric pressure, within 90 days before beginning operation at below atmospheric pressure, notifying the division that the well or gathering system serving the well is being operated at below atmospheric pressure.

B. A gathering system operator may use vacuum pumps, gathering system compressors or other devices to operate a gathering system at below atmospheric pressure, or may accept gas originating from a well operated at below atmospheric pressure or that has been carried by an upstream gathering system operated at below

atmospheric pressure, only if that operator has executed a written agreement with the operator of the downstream gathering system or pipeline to which the gathering system is immediately connected allowing delivery of gas from a well or gathering system that has been operated at below atmospheric pressure into the downstream gathering system or pipeline.

[19.15.18.13 NMAC - Rp, 19.15.5.307 NMAC, 12/1/08]

19.15.18.14 PRODUCED WATER:

An operator shall report monthly on form C-115 the amount of water produced with the oil and gas from each well.

[19.15.18.14 NMAC - Rp, 19.15.5.308 NMAC, 12/1/2008; A, 05/25/2021]

19.15.18.15 AUTOMATIC CUSTODY TRANSFER EQUIPMENT:

A. Oil shall be received and measured in facilities of an approved design. The facilities shall permit the testing of each well at reasonable intervals and may be comprised of manually gauged, closed stock tanks for which the operator of the ACT system has prepared proper strapping tables, or of ACT equipment. The division shall permit ACT equipment's use only after the operator complies with the following. The operator shall file with the division form C-106 and receive approval for use of the ACT equipment prior to transferring oil through the ACT system. The carrier shall not accept delivery of oil through the ACT system until the division has approved form C-106.

B. The operator of the ACT system shall submit form C-106 to the appropriate division district office, which is accompanied by the following:

(1) plat of the lease showing all wells that the any well operator will produce into the ACT system;

(2) schematic diagram of the ACT equipment, showing on the diagram all major components such as surge tanks and their capacity, extra storage tanks and their capacity, transfer pumps, monitors, reroute valves, treaters, samplers, strainers, air and gas eliminators, back pressure valves and metering devices (indicating type and capacity, *i.e.* whether automatic measuring tank, positive volume metering chamber, weir-type measuring vessel or positive displacement meter); the schematic diagram shall also show means employed to prove the measuring device's accuracy; and

(3) letter from transporter agreeing to utilization of ACT system as shown on schematic diagram.

C. The division shall not approve form C-106 unless the operator of the ACT system will install and operate the ACT system in compliance with the following requirements.

(1) Provision is made for accurate determination and recording of uncorrected volume and applicable temperature, or of temperature corrected volume. The system's overall accuracy shall equal or surpass manual methods.

(2) Provision is made for representative sampling of the oil transferred for determination of API gravity and BS&W content.

(3) Provision is made if required by either the oil's producer or the transporter to give adequate assurance that the ACT system runs only merchantable oil.

(4) Provision is made for set-stop counters to stop the flow of oil through the ACT system at or prior to the time the allowable has been run. Counters shall provide non-reset totalizers that are visible for inspection at all times.

(5) Necessary controls and equipment are enclosed and sealed, or otherwise arranged to provide assurance against, or evidence of, accidental or purposeful mismeasurement resulting from tampering.

(6) The ACT system's components are properly sized to ensure operation within the range of their established ratings. All system components that require periodic calibration or inspection for proof of continued accuracy are readily accessible; the frequency and methods of the calibration or inspection shall be as set forth in Paragraph (12) of Subsection C of 19.15.18.15 NMAC.

(7) The control and recording system includes adequate fail-safe features that provide assurance against mismeasurement in the event of power failure, or the failure of the ACT system's component parts.

(8) The ACT system and allied facilities include fail-safe equipment as may be necessary, including high level switches in the surge tank or overflow storage tank that, in the event of power failure or malfunction of the ACT or other equipment, will shut down artificially lifted wells connected to the ACT system and will shut in flowing wells at the well-head or at the header manifold, in which latter case the operator of the ACT system shall pressure test all flowlines to at least 1½ times the maximum well-head shut-in pressure prior to the ACT system's initial use and every two years thereafter.

(9) As an alternative to the requirements of Paragraph (8) of Subsection C of 19.15.18.15 NMAC the producer shall provide and at all times maintain a minimum of available storage capacity above the normal high working level of the surge tank to receive and hold the amount of oil that may be produced during maximum unattended time of lease operation.

(10) In all ACT systems employing automatic measuring tanks, weir-type measuring vessels, positive volume metering chambers or any other volume measuring container, the container and allied components shall be properly calibrated prior to initial use and shall be operated, maintained and inspected as necessary to ensure against

incrustation, changes in clingage factors, valve leakage or other leakage and improper action of floats, level detectors, etc.

(11) In ACT systems employing positive displacement meters, the meter and allied components shall be properly calibrated prior to initial use and shall be operated, maintained and inspected as necessary to ensure against oil mismeasurement.

(12) The operator of the ACT system shall check the measuring and recording devices of ACT systems for accuracy at least once each month unless it has obtained an exception to such determination from the division. Where applicable, the operator of the ACT system shall use API standard 1101, Measurement of Petroleum Hydrocarbons by Positive Displacement Meter. Meters may be proved against master meters, portable prover tanks or prover tanks permanently installed on the lease. If the operator of the ACT system uses permanently installed prover tanks, the distance between the opening and closing levels and the provision for determining the opening and closing readings shall be sufficient to detect variations of 5/100 of one percent. The operator of the ACT system shall file reports of determination on the division form entitled "meter test report" or on another acceptable form in duplicate with the appropriate division district office.

(13) To obtain an exception to the requirement in Paragraph (12) of Subsection C of 19.15.18.15 NMAC that all measuring and recording devices be checked for accuracy once each month, either the producer or transporter may file a request with the director setting forth facts pertinent to the exception. The application shall include a history of the average factors previously obtained, both tabulated and plotted on a graph of factors versus time, showing that the particular installation has experienced no erratic drift. The applicant shall also furnish evidence that the other interested party has agreed to the exception. The director may then set the frequency for determination of the system's accuracy at the interval which the director deems prudent.

D. The division may revoke its approval of an ACT system's form C-106 if the system's operator fails to operate it in compliance with 19.15.18.15 NMAC.

[19.15.18.15 NMAC - Rp, 19.15.5.309 NMAC, 12/1/08]

19.15.18.16 TANKS, OIL TANKS, FIRE WALLS AND TANK IDENTIFICATION:

A. No person shall store or retain oil in earthen reservoirs or in open receptacles. Dikes or fire walls are not required except an operator shall erect and maintain fire walls around permanent oil tanks or tank batteries that are within the corporate limits of a city, town or village, or where such tanks are closer than 150 feet to a producing oil or gas well or 500 feet to a highway or inhabited dwelling or closer than 1000 feet to a school or church, or where the tanks are so located that the division deems them an objectional hazard. Where fire walls are required, fire walls shall form a reservoir having a capacity one-third larger than the capacity of the enclosed tank or tanks.

B. The operator shall identify oil tanks, tank batteries, ACT systems, tanks used for produced water collection or disposal and tanks used for sediment oil treatment or storage by a sign posted on or not more than 50 feet from the tank, tank battery or system. The sign shall be of durable construction and the operator shall keep the lettering on the sign in a legible condition; the lettering shall be large enough to be legible under normal conditions at a distance of 50 feet and the sign shall identify the operator's name, the name of the lease being served by the tank or system, if any, and the location of the tank or system by unit letter, section, township and range.

[19.15.18.16 NMAC - Rp, 19.15.5.310 NMAC, 12/1/2008; A, 05/25/2021]

19.15.18.17 SEDIMENT OIL, TANK CLEANING AND TRANSPORTATION OF MISCELLANEOUS HYDROCARBONS:

A. No person shall clean a tank of sediment oil or remove sediment oil from a lease without the appropriate division district office's prior approval. The lease operator or the company contracted or otherwise authorized to perform the tank cleaning may receive authorization for tank cleaning by obtaining division approval on form C-117-A. No operator, contractor or other party shall clean a tank of sediment oil or remove sediment oil from a lease without an approved copy of form C-117-A at the site.

B. No person shall destroy sediment oil without the appropriate division district office's approval of an application to destroy the sediment oil on form C-117-A. Unless a person receiving an authorization to destroy sediment oil utilizes the authorization to destroy sediment oil within 10 days after division approval of the form C-117-A the authorization is automatically revoked. However, the district supervisor may approve one 10 day extension for good cause shown.

C. A person, other than a treating plant operator, who cleans a tank of sediment oil and removes sediment oil from a lease shall file form C-117-B with the division setting out all information the form requires.

D. A person taking possession of or disposing of sediment oil shall test a representative sample of sediment oil in a manner designed to accurately estimate the percentage of good oil expected to be recovered from the sediment oil. The person shall perform the test prior to transport and prior to commingling with sediment oil from other leases or sources and record the results on form C-117-A. The division recommends the standard centrifugal tests prescribed by API publication Sediment and Water, Sect: 4: Determination of Sediment and Water in Crude Oil by the Centrifuge Method (Field Procedure), MPMS 10.4. The person may use other test procedures if the procedures reliably predict the percentage of good oil to be recovered from sediment oil.

E. A person taking possession of or disposing of sediment oil shall report sediment oil removed from storage on form C-115 together with the form C-117-A permit number.

F. Except in an emergency, no person shall deliver miscellaneous hydrocarbons to a treating plant or other facility until that person has obtained division approval on form C-117-A.

G. Whenever an emergency exists that requires delivery of miscellaneous hydrocarbons to a treating plant or other facilities prior to approval of form C-117-A, the transporter of the hydrocarbons shall notify the supervisor of the appropriate division district office of the emergency's nature and extent on the first working day following the emergency and shall file form C-117-A within two working days following the emergency. For prolonged emergencies, the district supervisor may authorize the extended movement of miscellaneous hydrocarbons to a treating plant or other facilities during the emergency period and shall approve a form C-117-A filed subsequent to the emergency's conclusion covering the entire volume of miscellaneous hydrocarbons transported.

[19.15.18.17 NMAC - Rp, 19.15.5.311 NMAC, 12/1/08]

19.15.18.18 EMULSION, BASIC SEDIMENTS AND TANK BOTTOMS:

The operator shall operate wells producing oil in a manner that reduces as much as practicable the formation of emulsion and basic sediments. No person shall allow these substances and tank bottoms to pollute fresh waters or cause surface damage.

[19.15.18.18 NMAC - Rp, 19.15.5.313 NMAC, 12/1/08]

19.15.18.19 GATHERING, TRANSPORTING AND SALE OF DRIP:

A. The waste of drip is prohibited when it is economically feasible to salvage the drip.

B. A person may move and sell drip, provided it complies with 19.15.18.19 NMAC.

C. A person shall not transport or sell drip until the gas transporter files form C-104 designating the drip transporter authorized to remove the drip from its gas gathering or transportation system.

D. Each month, a person transporting drip within the state shall complete and maintain for division inspection form C-112, showing the amount, source and disposition of drip handled during the reporting period, and such other reports as the division may require.

E. Prior to commencement of operations, every person transporting drip directly from a gas gathering or transportation system shall file with the division plats drawn to scale, locating and identifying each drip trap that the person is authorized to service.

F. A person transporting drip directly from a gas gathering or transportation system shall keep a record of daily acquisitions from each drip trap that the person is authorized to service and make the records available at all reasonable times for inspection by the division or its authorized representatives.

G. A gas transporter shall, on or before the first day of November of each year, file with the division maps of its entire gas gathering and transportation systems, locating and identifying on the map each drip trap in the systems, the maps to be accompanied by a report, on a division-prescribed form, showing the disposition being made of the drip from each of the drip traps.

[19.15.18.19 NMAC - Rp, 19.15.5.314 NMAC, 12/1/08]

PART 19: NATURAL GAS PRODUCTION OPERATING PRACTICE

19.15.19.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.19.1 NMAC - Rp, 19.15.6.1 NMAC, 12/1/2008; A, 05/25/2021]

19.15.19.2 SCOPE:

19.15.19 NMAC applies to persons engaged in gas development and production within New Mexico.

[19.15.19.2 NMAC - Rp, 19.15.6.2 NMAC, 12/1/08]

19.15.19.3 STATUTORY AUTHORITY:

19.15.19 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.19.3 NMAC - Rp, 19.15.6.3 NMAC, 12/1/2008; A, 05/25/2021]

19.15.19.4 DURATION:

Permanent.

[19.15.19.4 NMAC - Rp, 19.15.6.4 NMAC, 12/1/08]

19.15.19.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.19.5 NMAC - Rp, 19.15.6.5 NMAC, 12/1/08]

19.15.19.6 OBJECTIVE:

To regulate the gas production within the state in order to prevent waste, protect correlative rights and protect public health and the environment.

[19.15.19.6 NMAC - Rp, 19.15.6.6 NMAC, 12/1/08]

19.15.19.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.19.8 METHOD OF DETERMINING GAS WELL POTENTIAL:

A. An operator shall conduct tests to determine the daily open flow potential volumes of gas wells from which gas is being used or marketed. The operator shall report the tests on division-prescribed forms within 60 days after

- (1) the date of the well's initial connection to a gas transportation facility; and
- (2) the date of reconnection following workover.

B. To establish comparable open flow capacity, the operator shall test wells in accordance with the division's Manual for back-pressure testing of natural gas wells. If the division approves the alternate method for testing, the operator shall test all wells producing from a common source of supply in a uniform and comparable manner.

C. The operator of a gas well that is not connected to a gas gathering facility shall test the well within 30 days following a christmas tree's installation. The operator shall take the tests in accordance with the procedure for testing unconnected gas well contained in the division's *manual for back-pressure testing of natural gas wells*. The operator shall report the tests on form C-122 in compliance with 19.15.7.31 NMAC and file it within 10 days following the test's completion.

[19.15.19.8 NMAC - Rp, 19.15.6.401 NMAC, 12/1/08]

19.15.19.9 GAS FROM GAS WELLS TO BE MEASURED:

A. The transporter of gas produced shall account for the gas by metering or other division-approved method and report it to the division. The owner or operator of the gas transportation facility shall report gas produced from a gas well and delivered to a gas transportation facility. The well operator shall report gas produced from a gas well and required to be reported by 19.15.19.9 NMAC that is not delivered to and reported by a gas transportation facility.

B. An operator may apply to the district supervisor, using form C-136, for approval of one of the following procedures for measuring gas.

(1) In the event a well is not capable of producing more than 15 MCFD, a measurement method agreed upon by the operator and transporter whereby the parties establish by annual test the producing rate of the well under normal operating conditions and apply that rate to the period of time the well is in a producing status. If the well is capable of producing greater than five MCFD, the transporter shall attach a device to the line that determines the actual time period that the well is flowing.

(2) An operator may produce a well that has a producing capacity of 100 MCFD or less and that is on a multi-well lease without the well being separately metered when the gas is measured using a lease meter at a CPD. The lease's ownership shall be common throughout including working interest, royalty and overriding royalty ownership.

(3) If normal operating conditions change, either party may request a new well test, the cost of which the party requesting the new well test shall bear unless the parties otherwise agree.

C. The operator and transporter shall report the well volumes on forms C-115 and C-111 based upon the approved method of measurement and, in the case of a CPD, upon the method of allocation of production to individual wells the district supervisor approves.

[19.15.19.9 NMAC - Rp, 19.15.6.403 NMAC, 12/1/08]

19.15.19.10 [RESERVED]

[19.15.19.10 NMAC – Rp, 19.15.6.404 NMAC, 12/1/2008; Repealed, 05/25/2021]

19.15.19.11 STORAGE GAS:

With the exception of the requirement to meter and report monthly the amount of gas injected and the amount of gas withdrawn from storage, in the absence of waste 19.15.19 NMAC shall not apply to gas being injected into or removed from storage. (See 19.15.7.40 NMAC)

[19.15.19.11 NMAC - Rp, 19.15.6.405 NMAC, 12/1/08]

19.15.19.12 CARBON DIOXIDE:

The rules relating to gas, gas wells and gas reservoirs including those provisions relating to well locations, acreage dedication requirements, casing and cementing requirements and measuring and reporting of production also apply to carbon dioxide gas, carbon dioxide wells and carbon dioxide reservoirs.

[19.15.19.12 NMAC - Rp, 19.15.6.406 NMAC, 12/1/08]

19.15.19.13 DISCONNECTION OF GAS WELLS:

The operator shall report gas wells that are disconnected from intrastate gas transportation facilities to the division within 30 days of the date of disconnection. The operator shall file the notice on form C-130 in compliance with 19.15.7.39 NMAC.

[19.15.19.13 NMAC - Rp, 19.15.6.407 NMAC, 12/1/08]

PART 20: OIL PRORATION AND ALLOCATION

19.15.20.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.20.1 NMAC - Rp, 19.15.7.1 NMAC, 12/1/08]

19.15.20.2 SCOPE:

19.15.20 NMAC applies to persons engaged in oil development and production within New Mexico.

[19.15.20.2 NMAC - Rp, 19.15.7.2 NMAC, 12/1/08]

19.15.20.3 STATUTORY AUTHORITY:

19.15.20 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-16 and Section 70-2-17.

[19.15.20.3 NMAC - Rp, 19.15.7.3 NMAC, 12/1/08]

19.15.20.4 DURATION:

Permanent.

[19.15.20.4 NMAC - Rp, 19.15.7.4 NMAC, 12/1/08]

19.15.20.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.20.5 NMAC - Rp, 19.15.7.5 NMAC, 12/1/08]

19.15.20.6 OBJECTIVE:

To establish requirements implementing the division's statutory authority to prorate and allocate oil production.

[19.15.20.6 NMAC - Rp, 19.15.7.6 NMAC, 12/1/08]

19.15.20.7 DEFINITIONS:

A. "Date of completion" means the date when new oil is delivered into the stock tanks.

B. "Marginal unit" means a proration unit that is incapable of producing the top proration unit allowable for the pool in which it is located as evidenced by well tests, production history or other report or form the operator files with the division.

C. "Non-marginal unit" means a proration unit that is incapable of producing top proration unit allowable for the pool in which it is located and to which the division has assigned a top proration unit allowable.

D. "Recovered load oil" means oil or liquid hydrocarbon that has been used in an operation in an oil or gas well, and that has been recovered as a merchantable product.

[19.15.20.7 NMAC - Rp, 19.15.7.7 NMAC, Subsection D of 19.15.7.503 NMAC and Subsection B of 19.15.7.508 NMAC, 12/1/08]

19.15.20.8 REGULATION OF OIL POOLS:

A. To prevent waste, the division shall prorate and distribute the allowable production among the producers in a pool upon a reasonable basis and recognizing correlative rights.

B. After notice and hearing, the division, in order to prevent waste and protect correlative rights, may enter special orders pertaining to a pool.

[19.15.20.8 NMAC - Rp, 19.15.7.501 NMAC, 12/1/08]

19.15.20.9 RATE OF PRODUCING WELLS:

A. Daily tolerance.

(1) Oil wells located on units capable of producing their allowables may overproduce one day and underproduce another. No unit capable of producing its allowable, except for the purpose of testing, in the process of completing or recompleting a well or for tests made for the purpose of obtaining scientific data, shall produce any day more than 125 percent of the daily top proration unit allowable for the pool in which the well is located. (Subject to the foregoing, an underproduction may be made up by production from the same unit within the same month, and in like manner

any overproduction shall be adjusted or balanced by underproduction from the same unit, within the same proration period).

(2) Certain wells must, as a matter of practicality, be produced at daily rates in excess of 125 percent of the daily top proration unit allowable for the pool in which the wells are located. The director may grant exceptions to the provisions of Paragraph (1) of Subsection A of 19.15.20.9 NMAC, without formal hearing, where an operator has filed application setting out the reasons for the requested exception.

(a) Applicants for the exceptions shall, at the time of filing, furnish each operator in the pool in which the well is located a copy of the application.

(b) The applicant shall include in an application for exception or attach to the application a formal written statement that the applicant has served every operator in the pool in which the well is located with a copy of the application.

(3) The director shall wait at least 10 days after receipt before approving the application, and shall approve the application only in absence of objection from an operator or interested party, or in the director's discretion. In the event the director fails to approve the application, the division after notice shall hear and determine the matter.

B. Monthly tolerance. No unit shall produce during any one proration period more than the unit's allowable production for the proration period plus a tolerance of not to exceed five days allowable production. This permissive tolerance of overproduction from a unit is subject to all other provisions of 19.15.20.9 NMAC and particularly to the provisions of Subsection D of 19.15.20.9 NMAC. The operator shall adjust or balance permissive tolerance of overproduction from a unit by subsequent corresponding underproduction from the same unit. The division shall consider overproduction within the permitted tolerance as oil produced against the allowable production assigned to the unit for the proration period during which the overproduction is adjusted or balanced by underproduction.

C. Production in excess of monthly allowable, plus tolerance.

(1) Oil produced from a unit in excess of the assigned monthly allowable plus the permissive proration period tolerance shall be "illegal oil" as defined in the Oil and Gas Act, unless the excess oil:

(a) is produced as a result of mistake or error;

(b) results from mechanical failure beyond the operator's immediate control;
or

(c) results from essential tests of the unit within the purview of division rules.

(2) Whenever production from a unit for a proration period exceeds the assigned allowable, plus the permitted tolerance authorized in Subsection B of 19.15.20.9 NMAC and the cause of the excess reasonably falls within Subparagraphs (a), (b) or (c) of Paragraph (1) of Subsection C of 19.15.20.9 NMAC, the producer or operator shall briefly set forth the excess production's cause together with a proposed plan for production adjustment in the comments area of form C-115 for the month in which the excess production occurs. The excess production shall be considered as oil produced against the allowable assigned to the unit for the following proration period, and it may be transported from the lease tanks only as and when the unit accrues daily allowable to offset the excess production.

D. General.

(1) The tolerance permitted on a daily or monthly basis as provided in Subsections A and B of 19.15.20.9 NMAC does not increase a producing unit's allowable or grant an operator authority to market or a transporter authority to transport any quantity of oil in excess of the unit's allowable.

(2) The possession of a quantity of oil in lease storage at the end of a proration period in excess of five days allowable plus any rerun allowable oil is a violation of 19.15.20.9 NMAC, unless the operator reports the possession in the manner and within the time provided in Subsection C of 19.15.20.9 NMAC for filing form C-115.

E. Storage records. Producers and transporters of oil shall maintain adequate records showing unrun allowable oil in storage at the end of each proration period. The storage oil shall be the amount of oil in tanks from which oil is measured and delivered to the transporter.

[19.15.20.9 NMAC - Rp, 19.15.7.502 NMAC, 12/1/08]

19.15.20.10 AUTHORIZATION FOR PRODUCTION OF OIL:

A. Except as provided below, the daily top proration unit allowable for an oil pool is 100 percent of the depth bracket allowable for the pool determined pursuant to 19.15.20.12 NMAC.

B. The division may, within five days prior to the end of the month, determine the likelihood the total producing capacity of all oil wells in the state exceeding anticipated reasonable market demand for oil from the state. If the division determines that the capacity may exceed the anticipated reasonable market demand, and that a market demand factor of less than 100 percent may be necessary to prevent waste, it shall immediately institute proper proceedings for a hearing to be held before the 20th day of the following month to determine actual reasonable market demand up to a maximum of six months.

C. At the hearing the division shall consider all evidence of market demand for oil from this state, and if it determines that the market demand percentage factor should be less than 100 percent, issue an order establishing the market demand factor and set a date for the next market demand hearing.

D. The division shall multiply the market demand factor established by the applicable depth bracket allowable for each well and each pool to determine its unit allowable. A fraction of a barrel is regarded as a full barrel in determining top proration unit allowable. Upon initial establishment of a market demand factor, and from time to time thereafter, the division shall issue a proration schedule authorizing the production of oil from the various proration units in the various pools in the state. A well completed or recompleted after the schedule's issuance and for which the division has approved form C-104, shall, by supplement to the schedule, be authorized a daily allowable equal to the top proration unit allowable in effect. The allowable for the well is effective at 7:00 a.m. on the date of the completion, provided the operator submits form C-104 and the division approves the form within 10 days following the completion date; otherwise the allowable is effective on the date the division approves the form C-104.

E. A non-marginal unit may produce the top proration unit allowable without waste and subject to the provisions of 19.15.18.7 NMAC, 19.15.20.9 NMAC and 19.15.20.13 NMAC and all other applicable rules.

F. A marginal unit may produce any amount of oil that it is capable of producing without waste up to the pool's top proration unit allowable, subject to the provisions of 19.15.18.7 NMAC, 19.15.20.9 NMAC and 19.15.20.13 NMAC and all other applicable rules if the division has assigned an allowable to the unit to authorize the production.

G. A penalized non-marginal unit is a proration unit to which, because of an excessive gas-oil ratio, the division has assigned an allowable determined in accordance with the procedure in 19.15.20.13 NMAC. In calculating a penalized allowable, a fraction of a barrel is regarded as a full barrel.

H. The division shall make and distribute a periodic tabulation of all supplements to the current proration schedule.

I. The division shall adhere to 19.15.15.14 NMAC in fixing top proration unit allowables.

J. If it becomes necessary for an oil transporter to resort to pipeline proration, the transporter shall, as soon as possible and not later than 24 hours after the effective date of the pipeline proration, notify the division of its decision to prorate. Upon receipt of the notice from the transporter, the division may take such emergency action as it deems proper or upon its own motion, after notice, hold a hearing for the purpose of considering any action within its authority to preserve and protect correlative rights.

K. In case of pipeline proration an operator the pipeline proration affects may apply to the division for authorization to have an underproduction resulting from the pipeline proration included in subsequent proration schedules. The operator shall apply upon a division-prescribed form and file it with the division within 30 days after the close of the first proration period in which the pipeline proration underproduction occurred. The authorization is limited to wells capable of producing the daily top proration unit allowable for the period.

L. In approving the application the division shall determine the time period during which the underproduction shall be made up without injury to the well or pool, and shall include the time period in the regularly approved proration schedules following the pipeline proration's conclusion.

[19.15.20.10 NMAC - Rp, 19.15.7.503 NMAC, 12/1/08]

19.15.20.11 AUTHORIZATION FOR PRODUCTION OF OIL WHILE COMPLETING, RECOMPLETING OR TESTING AN OIL WELL:

A. If an operator does not have sufficient lease storage to hold oil produced from a well during its drilling, completing, recompleting or testing, the operator may produce and sell from the well an amount of oil necessary to drill, complete, recomplete or test the well; provided however, that the operator shall file with the division a written application stating the circumstances at the well and setting forth in the application the estimated amount of oil to be produced during the aforementioned operations, and provided further that the division approves the application. Oil produced during drilling, completion or recompletion or testing a well shall be charged against the well's allowable production.

B. The division shall not place a well on the proration schedule until the operator files with the division and the division approves the form C-104.

[19.15.20.11 NMAC - Rp, 19.15.7.504 NMAC, 12/1/08]

19.15.20.12 DEPTH BRACKET ALLOWABLES:

A. Subject to the market demand percentage factor determined pursuant to 19.15.20.10 NMAC, the daily oil allowable for each oil pool in the state shall equal the appropriate depth bracket allowable below. The depth of the casing shoe or the top perforation in the casing, whichever is higher, in the first well completed in the pool shall determine the pool's depth classification. Daily oil allowables for each of the several ranges of depth and spacing patterns are as follows, shown in barrels:

<u>POOL DEPTH RANGE</u>	<u>DEPTH BRACKET ALLOWABLE</u>		
	<u>40 Acres</u>	<u>80 Acres</u>	<u>160 Acres</u>
0 to 4999 feet	80	160	
5000 to 5999	107	187	347

6000 to 6999	142	222	382
7000 to 7999	187	267	427
8000 to 8999	230	310	470
9000 to 9999	275	355	515
10,000 to 10,999	320	400	560
11,000 to 11,999	365	445	605
12,000 to 12,999	410	490	650
13,000 to 13,999	455	535	695
14,000 to 14,999	500	580	740
15,000 to 15,999	545	625	785
16,000 to 16,999	590	670	830
17,000 and deeper	635	715	875

B. The 40-acre depth bracket allowables apply to all undesignated wells not governed by special pool orders and to all pools developed on the normal 40-acre statewide spacing unit.

C. The 80-acre and 160-acre depth bracket allowables apply to wells governed by applicable special pool orders the division issues as an exception to the normal 40-acre statewide spacing unit.

D. The division may, where deemed appropriate, assign to a given pool a special depth bracket allowable at variance to the depth bracket allowable normally assigned to a pool of similar depth and spacing. The special allowable may be more or less than the regular depth bracket allowable and shall be assigned only after notice and hearing.

E. In assigning a lesser than regular depth bracket allowable, the division may consider, among other pertinent factors, reservoir damage, casinghead gas production and disposition, water production and disposition, transportation facilities, the prevention of surface or underground waste and the protection of correlative rights.

F. The division shall assign a greater than regular depth bracket allowable only after sufficient reservoir information is available to ensure that the allowable can be produced without damage to the reservoir and without causing surface or underground waste. The division shall also consider the availability of oil transportation and marketing facilities; casinghead gas transportation, processing and marketing facilities; water disposal facilities; the protection of correlative rights; and other pertinent factors.

[19.15.20.12 NMAC - Rp, 19.15.7.505 NMAC, 12/1/08]

19.15.20.13 GAS-OIL RATIO LIMITATION:

A. In allocated pools containing a well or wells producing from a reservoir that contains both oil and gas, each proration unit shall produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the pool's top unit oil allowable. In the event the division has not set a gas-oil ratio limit for a particular oil

pool, the limiting gas-oil ratio shall be 2000 cubic feet of gas for each barrel of oil produced. In allocated oil pools the division shall place all producing wells, whether oil or casinghead gas, on the oil proration schedule.

B. Unless specifically exempted by division order issued after hearing, the division shall place a gas-oil ratio limitation on all allocated oil pools, and penalize all proration units having a gas-oil ratio exceeding the pool's limit in accordance with the following procedure.

(1) A proration unit that, on the basis of the latest official gas-oil ratio test, has a gas-oil ratio that exceeds the limiting gas-oil ratio and has the capacity to produce above the top casinghead gas volume calculated by Subsection A of 19.15.20.13 NMAC for the pool in which it is located may produce daily that number of barrels of oil that the division determines by multiplying the current top proration unit allowable by a fraction, the numerator of which shall be the limiting gas-oil ratio for the pool and the denominator of which shall be the well's official test gas-oil ratio, and the proration unit shall be designated non-marginal.

(2) A unit containing a well or wells producing from a reservoir that contains both oil and gas shall produce only that volume of gas equivalent to the applicable limiting gas-oil ratio multiplied by the top proration unit allowable currently assigned to the pool.

(3) A marginal unit may produce the same volume of gas that it would be permitted to produce if it were a non-marginal unit.

C. The division shall indicate non-marginal proration units to which gas-oil ratio adjustments are applied in the proration schedule with adjusted allowables stated.

D. In cases of new pools, the limit shall be 2000 cubic feet per barrel until such time as changed by division order issued after a hearing. Upon petition and after notice and hearing according to law, the division shall determine or redetermine the specific gas-oil ratio limit that is applicable to a particular allocated oil pool.

[19.15.20.13 NMAC - Rp, 19.15.7.506 NMAC, 12/1/08]

19.15.20.14 UNITIZED AREAS:

After petition and notice and hearing, the division may approve the combining of contiguous developed proration units into a unitized area.

[19.15.20.14 NMAC - Rp, 19.15.7.507 NMAC, 12/1/08]

19.15.20.15 RECOVERED LOAD OIL:

A. An operator may run recovered load oil from the lease on which it is recovered, provided the operator obtains division approval of form C-126. The operator shall file form C-126 with the appropriate division district office. Upon approval, the division shall return one copy to the operator and send one copy to the designated transporter as authority to transport the oil.

B. 19.15.20.15 NMAC applies only to oil that has been obtained from a source other than the lease on which it is used.

[19.15.20.15 NMAC - Rp, 19.15.7.508 NMAC, 12/1/08]

19.15.20.16 OIL DISCOVERY ALLOWABLE:

A. In addition to the normally assigned allowable, the division may assign an oil discovery allowable to a well completed as a bona fide discovery well in a new common source of supply. The oil discovery allowable shall be in the amount of five barrels for each foot of depth of the well from the surface of the ground to the top of the perforations in the new pool or the depth of the casing shoe, whichever is higher. In counties where there is no other current oil production, and in a county when the discovery is the deepest oil production in the county, the oil discovery allowable shall be 10 barrels per foot of depth.

B. The date of discovery the division uses to determine the well that should properly receive the oil discovery allowable for a new pool is the date the operator completes the well and runs new oil into stock tanks. Provided however, an operator drilling through and discovering a new oil pool in the course of drilling to a lower horizon may file an affidavit of the discovery within seven days after making drill stem tests of the pool, accompanying the affidavit with all available pool data. If, prior to the well's completion, another operator claims discovery of a similar pool and there are reasonable grounds to believe the pools are one and the same, the division shall not assign a discovery allowable to either well until after the initial well for which the affidavit was filed is completed. If at that time the operator of the initial well formally applies for the discovery allowable in the pool, the division shall determine after hearing which well receives the discovery allowable.

C. To obtain an oil discovery allowable, the owner of a discovery well shall file form C-109 with the appropriate division district office and the division's Santa Fe office. Each copy of the form shall be accompanied by the following.

(1) A map depicting all wells within a two-mile radius of the discovery well. The owner of the discovery shall clearly show producing oil and gas wells and the formations from which they are producing or have produced as well as all dry holes and the depths to which they were drilled. Maps shall be on a scale one inch equals 1000 feet and shall also indicate the names of all lessees of record in the depicted area.

(2) A complete electrical log of the subject well with the tops and bottoms of producing formations in the subject well and in nearby wells identified thereon.

(3) If the application is based on horizontal separation, a sub-surface structural map of the producing formations for which the owner of the discovery seek the discovery allowable, showing seismic or geological interpretation of the subject structure and any troughs, faults, pinch-outs, etc., that separate the subject well from nearby wells producing from the same formation or formations.

(4) A geological cross-section prepared from electrical logs of the subject well and nearby wells establishing horizontal as well as vertical separation from other wells depicted on the plat that are producing or have produced from the discovery formation or formations.

(5) A summary of all available reservoir data including bottom hole pressure data, fluid levels, core analyses, reservoir liquid characteristics and any other pertinent data on the subject reservoir as well as other nearby reservoirs that may help establish whether the subject well is in fact a discovery.

D. If, in the division staff's opinion, good cause exists to bring the pool for hearing as a discovery, and the division has received no objection from another operator, the division shall place the pool on the first available hearing docket for inclusion by the staff in its regular pool nomenclature case. If the staff disagrees with the applicant's contention that a new pool has been discovered or if within 10 days after receiving a copy of the application another operator files with the division an objection to the creation of a new pool and the assignment of a discovery allowable, the division shall notify the applicant. The applicant will be expected to present the evidence supporting the applicant's case. Or, if the applicant so desires, the division may set the application for separate hearing on other than the nomenclature docket for presentation of evidence by the applicant.

E. The effective date of a well's discovery allowable is 7:00 a.m. on the first day of the month next succeeding the month in which the division approves the discovery.

F. The total discovery allowable attributable to each zone in the well shall be produced over a two-year period commencing with the time of authorization. The well's daily allowable for each pool receiving the discovery allowable shall not exceed the daily top proration unit allowable for the pool plus the total pool discovery allowable divided by 730 days (731 days if a leap year is included).

G. A discovery well may produce only that volume of gas equivalent to the applicable limiting gas-oil ratio for the pool multiplied by the top proration unit allowable for the pool plus the daily oil discovery allowable. In addition to all other statewide rules not specifically excepted in 19.15.20.16 NMAC, the provisions of 19.15.20.9 NMAC relating to daily tolerance, monthly tolerance and underproduction and overproduction

shall apply to oil discovery allowables as well as to regular allowables for discovery wells.

H. Nothing contained in 19.15.20.16 NMAC prohibits the division from curtailing the discovery allowables of wells during times of depressed market demand. However, the division shall reinstate such discovery allowables for production at the earliest possible date. Further, when it appears reservoir damage or waste may result from production of the oil discovery allowable within the normal two-year period, the division may, after notice and hearing, extend the period.

[19.15.20.16 NMAC - Rp, 19.15.7.509 NMAC, 12/1/08]

PART 21: GAS PRORATION AND ALLOCATION

19.15.21.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.21.1 NMAC - Rp, 19.15.8.1 NMAC, 12/1/08]

19.15.21.2 SCOPE:

19.15.21 NMAC applies to persons engaged in gas development and production within New Mexico.

[19.15.21.2 NMAC - Rp, 19.15.8.2 NMAC, 12/1/08]

19.15.21.3 STATUTORY AUTHORITY:

19.15.21 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-12, Section 70-2-16 and Section 70-2-17.

[19.15.21.3 NMAC - Rp, 19.15.8.3 NMAC, 12/1/08]

19.15.21.4 DURATION:

Permanent.

[19.15.21.4 NMAC - Rp, 19.15.8.4 NMAC, 12/1/08]

19.15.21.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.21.5 NMAC - Rp, 19.15.8.5 NMAC, 12/1/08]

19.15.21.6 OBJECTIVE:

To establish requirements implementing the division's statutory authority to prorate and allocate gas production to prevent waste and protect correlative rights.

[19.15.21.6 NMAC - Rp, 19.15.8.6 NMAC, 12/1/08]

19.15.21.7 DEFINITIONS:

A. "Acreage factor" means a GPU's acreage factor determined to the nearest hundredth of a unit by dividing the acreage assigned to the GPU by a number equal to the number of acres in a standard GPU for the pool. However, the acreage tolerance provided in Subparagraph (b) of Paragraph (1) of Subsection A of 19.15.8.21.12 NMAC shall apply.

B. "AD factor" means an acreage multiplied by the deliverability factor is calculated in pools in which acreage and deliverability are proration factors. The product obtained by multiplying the acreage factor by the calculated deliverability (expressed as MCF per day) for that GPU is known as the AD factor for that GPU. The AD factor is computed to the nearest whole unit.

C. "Allocation hearing" means a hearing the division holds twice each year to determine pool allocations for the ensuing allocation period.

D. "Allocation period" means a six-month period beginning at 7:00 a.m. April 1 and October 1 of each year.

E. "Balancing date" means the date beginning at 7:00 a.m. April 1 of each year; the 12 months following this date is the gas proration period.

F. "Broker" means a third party who negotiates contracts for purchase and resale.

G. "Classification period" means a three month period beginning at 7:00 a.m. on April 1, July 1, October 1 and January 1 of each year.

H. "Deliverability pressure" means the designated delivery pressure at which pipeline companies can accept gas from gas wells depending on the pipeline's capacity.

I. "Gas pool" means a pool that the division has designated as a gas pool after notice and hearing.

J. "Gas proration unit (GPU)" means the acreage allocated to a well, or in the case of an infill well or wells to a group of wells, for purposes of spacing and proration. A GPU may be either of a standard or nonstandard size as provided in 19.15.21 NMAC.

K. "Gas purchaser" means the purchaser (where the producer first exchanges ownership of the gas to the purchaser for an agreed value) of the gas from a gas well or GPU.

L. "Gas transporter" means a taker of gas, the party servicing the well meter or the party responsible for measuring the gas sold from the well or beneficially used off-lease. This could be at the wellhead, at any other point on the lease or at a division-authorized point where connection is made for gas transportation or utilization (other than is necessary for maintaining the well's producing ability). The gas transporter can be the gatherer, transporter, producer or a delegate of one of those parties. The gas transporter shall be identified on form C-115 and shall be responsible for creating and maintaining form C-111 as required under 19.15.7.21 NMAC's provisions.

M. "Infill well" means an additional producing well on a GPU that serves as a companion well to an existing well on the GPU.

N. "Marginal GPU" means a proration unit that is incapable of producing or has not produced the non-marginal allowable based on pool allocation factors. Marginal GPUs do not accrue over or underproduction.

O. "Non-marginal GPU" means a proration unit receiving an allowable based upon pool allocation factors. Non-marginal proration units accrue over or underproduction.

P. "Overproduction" means the volume of gas produced on a GPU in a month greater than the assigned non-marginal allowable (does not include gas used in maintaining the GPU's wells' producing ability). Overproduction accumulates month to month during the proration period.

Q. "Prorated gas pool" means a gas pool in which, after notice and hearing, the division allocates production according to 19.15.21 NMAC and any applicable special pool orders.

R. "Proration period" means the 12-month period beginning April 1 of each year.

S. "Shadow allowable" means the gas volume calculated for a marginal GPU that is equal to the allowable assigned to a non-marginal GPU in the same pool of the same A (acreage) or A and AD (acreage deliverability) factors as the marginal GPU.

T. "Underproduction" means the volume of assigned non-marginal allowable not produced on a GPU. Underproduction accumulates month to month during the proration period.

[19.15.21.7 NMAC - Rp, 19.15.8.7 NMAC, 12/1/08]

19.15.21.8 ALLOCATION OF GAS PRODUCTION:

When the division determines that allocation of gas production in a designated gas pool is necessary to prevent waste the division, after notice and hearing, shall consider the nominations of purchasers from that gas pool and other relevant data, fix the pool's allowable production and allocate production among the gas wells in the pool delivering to a gas transportation facility upon a reasonable basis and recognizing correlative rights. The division shall include in the pool's proration schedule gas wells that the division finds are being unreasonably discriminated against through denial of access to a gas transportation facility that is reasonably capable of handling the type of gas the wells produce.

[19.15.21.8 NMAC - Rp, 19.15.8.601 NMAC, 12/1/08]

19.15.21.9 PRORATION PERIOD:

The proration period shall be at least six months and the division shall make the pool allowable and allocations of the pool allowable at least 30 days prior to each proration period.

[19.15.21.9 NMAC - Rp, 19.15.8.602 NMAC, 12/1/08]

19.15.21.10 ADJUSTMENT OF ALLOWABLES:

When the actual market demand from an allocated gas pool during a proration period is more than or less than the allowable the division set for the pool for the period, the division shall adjust the gas proration unit allowables for the pool for the next proration period so that each gas proration unit has a reasonable opportunity to produce its fair share of the gas production from the pool and so that correlative rights are protected.

[19.15.21.10 NMAC - Rp, 19.15.8.603 NMAC, 12/1/08]

19.15.21.11 GAS PRORATION UNITS:

Before issuing a proration schedule for an allocated gas pool, the division after notice and hearing shall fix the pool's gas proration unit.

[19.15.21.11 NMAC - Rp, 19.15.8.604 NMAC, 12/1/08]

19.15.21.12 GAS PRORATION RULES:

A. Well acreage and location requirements.

(1) Standard gas proration unit size and well spacing.

(a) Unless otherwise provided for in applicable special pool orders, operators shall drill gas wells in prorated gas pools according to the well spacing and acreage

requirements contained in 19.15.21 NMAC provided that when an operator drills a well in a pool with 640 acre spacing, a government section shall comprise the proration unit.

(b) A GPU an operator drills according to Subparagraph (a) of Paragraph (1) of Subsection A of 19.15.21.12 NMAC that contains acreage within the tolerances below is a standard GPU for calculating allowables:

Standard Proration Unit	Acreage Tolerance
160 acres	158-162 acres
320 acres	316-324 acres
640 acres	632-648 acres

(2) Nonstandard gas proration units.

(a) The district supervisor of the appropriate division district office may approve a nonstandard GPU without notice and hearing when the GPU's unorthodox size and shape is necessitated by a variation in the legal subdivision of the United States public land surveys and the nonstandard GPU is not less than 75 percent nor more than 125 percent of a standard GPU by accepting a form C-102 land plat from the operator showing the proposed nonstandard GPU with the number of acres contained in the proposed nonstandard GPU, and shall assign an allowable to the nonstandard GPU based upon the acreage factor for that acreage.

(b) The division may approve nonstandard proration units and unorthodox locations according to applicable special pool orders or division rules.

B. Nominations.

(1) Gas purchasers or gas transporters shall nominate. Each gas purchaser or each gas transporter shall file with the division its nomination for the amount of gas that it in good faith desires to purchase or expects to transport during the ensuing allocation period from each gas pool 19.15.21 NMAC regulates. The purchaser may delegate the nomination responsibility to the transporter, operator or broker by notifying the division's Santa Fe office. The purchaser shall submit the nomination for each pool to the division's Santa Fe office on form C-121-A by the first day of the month during which the division will consider at its allocation hearing the nominations for the succeeding allocation period. The division shall consider at its allocation hearing the nominations received, actual production and other factors the division deems applicable in determining the amount of gas that may be produced without waste during the ensuing allocation period.

(2) The director may suspend Subsection B of 19.15.21.12 NMAC whenever it appears that the nominations are of little or no value.

(3) Schedule. The division shall issue a gas proration schedule for each allocation period showing the monthly allowable for each GPU that the operator may produce during each month of the ensuing allocation period, each GPUs' current classification and other information as is necessary to show the allowable production status of each GPU on the schedule. The division may issue supplemental proration schedules during an allocation period as necessary to show changes in GPU classification, adjustments to allowables due to changes in market conditions or to reflect other changes the division deems necessary.

(4) Proration of all gas wells within a pool. The division shall include in the proration schedule the gas wells, in the gas pools 19.15.21 NMAC regulates, delivering to a gas transporter, and shall include in the proration schedule wells that the division finds are being unreasonably discriminated against through denial of access to a gas transportation facility, which are reasonably capable of handling the type of gas the wells produce.

C. Allocation and granting of allowables.

(1) Filing of form C-102 and form C-104 required. The division shall not assign a GPU an allowable before receipt of form C-102 and the approval date of form C-104.

(2) How allowables are calculated. The total allowable to be allocated to each gas pool for each allocation period shall equal the estimated market demand as the division determines, plus any adjustments the director deems necessary to equate the total pool allowable to the estimated market demand. The director may make adjustments the director deems necessary to compensate for overproduction, underproduction and other circumstances that may necessitate the adjustment to equate the pool allowable to the anticipated market demand. The director shall establish estimated market demand for each pool from any information the director requires and can consist of nominations from purchasers, transporters or other parties having knowledge of market demand for gas from the pools, actual past production figures, seasonal trends or any other factors the director deems necessary to establish estimated market demand. The director is not required to use all the information requested and can establish market demand by any method the director approves. The division shall assign a monthly allowable to each GPU entitled to an allowable for the ensuing allocation period by allocating the pool allowable among all such GPUs in that pool according to the procedure set forth in 19.15.21 NMAC. Should market conditions indicate a change is necessary, the director may adjust allowables up or down during the six-month allocation period using a maximum of 10 percent as a guideline.

(3) Marginal GPU allowable. The monthly allowable the division assigns to each marginal GPU shall equal the marginal GPU's average monthly production from its latest classification period.

(4) Non-marginal GPU allowable. The division shall determine non-marginal GPU allowables in conformance with the applicable special pool orders.

(a) In pools where acreage is the only proration factor, the division shall allocate the total non-marginal allowables to each GPU in the proportion that each GPU acreage factor bears to the total acreage factor for all non-marginal GPUs.

(b) In pools where acreage and deliverability are proration factors:

(i) the division shall allocate a percentage as set forth in special pool orders of the non-marginal allowable to each GPU in the proportion that each GPU's AD factor bears to the total AD factor for all non-marginal GPU's in the pool; and

(ii) the division shall allocate the remaining non-marginal allowable to non-marginal GPUs among each GPU in the proportion that each GPU's acreage factor bears to the total acreage factor for all non-marginal GPUs in the pool.

(5) New connects assignment of allowables. Allowables to newly completed gas wells shall commence, in pools where acreage is the only proration factor, on the date of first delivery of gas to a gas transporter as demonstrated by an affidavit the transporter furnishes to the appropriate division district office or the approval date of form C-102 and form C-104, whichever is later.

(6) Gas charged against GPU's allowable. Except as provided in the special pool orders, the operator shall charge the volume of produced gas sold or beneficially used other than lease fuel from each GPU against the GPU's allowable; however, the operator shall not charge the gas it uses in maintaining the well's producing ability against the allowable.

(7) Change in acreage. If an operator requests to change the acreage assigned to a GPU, the operator shall file form C-102 with the appropriate division district office. The revised allowable, as the division determines, assigned to the GPU shall be effective on the first day of the month following the division's receipt of the notification.

(8) Minimum allowables. After notice and hearing, the division may assign minimum allowables for prorated gas pools to avoid waste, encourage efficient operations and to prevent wells' premature abandonment. (See special pool orders for minimum allowable amount.) In determining the volume of minimum allowable for a well with a standard proration unit, the division shall take into account economic and engineering factors such as drilling and operating costs, anticipated revenues, taxes and any similar data that establish that the ultimate recovery of hydrocarbons will increase from the pool because of the adoption of a minimum allowable for the pool. Once adopted, the division shall proportionally adjust minimum allowable for wells with nonstandard proration units.

(9) Deliverability tests. In pools where acreage and deliverability are proration factors, an operator shall test wells on non-marginal GPUs in accordance with division rules and the division shall use the test results in calculating deliverabilities for the succeeding proration period. The operator shall test wells on GPUs reclassified to non-marginal within 90 days of the order and thereafter in accordance with the appropriate testing schedule for the pool. Wells on marginal GPUs are exempt from deliverability testing.

D. Balancing of production.

(1) Underproduction. A non-marginal GPU that has an underproduced status as of the end of a gas proration period may carry the underproduction forward in the next gas proration period and may produce the underproduction in addition to the allowable assigned during the succeeding period. The division shall cancel an underproduction carried forward into a gas proration period and remaining unproduced at the end of the gas proration period.

(2) Balancing underproduction. Production during any one month of a gas proration period greater than the allowable the division assigned to a GPU for such a month shall be applied against the underproduction carried into such a period in determining the amount of allowable, if any, to be canceled.

(3) Overproduction. A GPU that has an overproduced status as of the end of a gas proration period shall carry the overproduction forward into the next gas proration period. The overproduction shall be made up by underproduction during the succeeding gas proration period. The division shall shut-in a GPU that has not made up the overproduction carried into a gas proration period by the end of the period until the overproduction is made up.

(a) Twelve-times overproduced, northwest. For the prorated gas pools of northwest New Mexico, if the division determines that a GPU is overproduced in an amount exceeding 12 times its current year January allowable (or, in the case of a newly connected well, a marginal well or a well recently reclassified as non-marginal, 12 times the January allowable assigned to a non-marginal GPU of similar acreage and deliverability factors), it shall be shut in until its overproduction is less than 12 times its January allowable, as determined hereinabove.

(b) Six-times overproduced, southeast. For the prorated gas pools of southeast New Mexico, if the division determines that a GPU is overproduced in an amount exceeding six times its current year January allowable (or, in the case of a newly connected well, a marginal well or a well recently reclassified as non-marginal, six times the January allowable assigned to a non-marginal GPU of a similar acreage factor), the division shall shut-in the GPU until its overproduction is less than six times its January allowable, as determined in Subsection C of 19.15.21 NMAC.

(4) Exception to shut in for overproduction. The director may permit a GPU that is subject to shut-in pursuant to Paragraph (3) of Subsection D of 19.15.21.12 NMAC to produce up to 250 MCF of gas per month upon the operator's proper showing to the director that complete shut-in would cause undue hardship, provided however, the director may rescind permission for a GPU produced greater than the monthly rate the director.

(5) Balancing overproduction. Allowable assigned to a GPU during a one month of a gas proration period greater than the production for the same month shall be applied against the overproduction chargeable to the GPU in determining the overproduction that must be made up pursuant to the provisions of Paragraph (3) of Subsection D of 19.15.21.12 NMAC above.

(6) Exception to balancing overproduction. The director may allow the operator to make up overproduction at a lesser rate than permitted under Paragraph (3) of Subsection D of 19.15.21.12 NMAC upon the operator's showing at public hearing that the lesser rate is necessary to avoid material damage to the well.

(7) Hardship gas wells. If a GPU containing a hardship gas well is overproduced, the operator shall take the necessary steps to reduce production in order to reduce the overproduction. An overproduction existing at the time of a well's designation as a hardship gas well or accruing to the GPU after the designation shall be carried forward until it is made up by underproduction. The division shall not permit a GPU containing a hardship gas well, which GPU is overproduced, to produce at a rate higher than the minimum producing rate the division authorized.

(8) Moratorium on shut-ins. The director may grant a pool-wide moratorium of up to three months as to the shutting in of gas wells in a pool during periods of high demand emergency upon the operator's proper showing that the emergency exists, and that a significant number of the wells in the pool are subject to shut-in pursuant to the provisions of Paragraph (3) of Subsection D of 19.15.21.12 NMAC. The director shall not grant a moratorium beyond three months except after notice and hearing.

(9) The director may reinstate allowable to wells that suffered cancellation of allowable under Paragraph (1) of Subsection D of 19.15.21.12 NMAC or Paragraph (3) of Subsection E of 19.15.21.12 NMAC or loss of allowable due to reclassification of a well under Paragraph (2) of Subsection E of 19.15.21.12 NMAC if the cancellation or loss of allowable was caused by non-access or limited access to the average market demand in the pool rather than inability of the well to produce. Upon petition, with a showing of circumstances that prevented production of the non-marginal allowable, and evidence that the well was capable of producing at allowable rates during the period for which reinstatement is requested, the allowable may be reinstated in such amounts needed to avoid curtailment or shut-in of the well for excessive overproduction. The division may approve the petition administratively or docket the petition for hearing within 30 days after receipt in the division's Santa Fe office.

E. Classification of GPUs.

(1) Reclassification by the director. The director may reclassify a marginal or non-marginal GPU anytime the GPUs producing ability justifies reclassification. The director may suspend the reclassification of GPUs on the director's own initiative, or upon an affected interest owner's proper showing, if it appears that the suspension is necessary to permit underproduced GPUs, which would otherwise be reclassified, a proper opportunity to make up the underproduction.

(2) Reclassification to marginal. The director may reclassify a non-marginal GPU as marginal in either of the following ways.

(a) After the production data is available for the last month of each classification period, the director may reclassify a GPU that had an underproduced status at the beginning of the allocation period to marginal if its highest single month's production during the classification period is less than its average monthly allowable during the period. However, the operator of a GPU so classified, or other affected interest owner, shall have 30 days after receipt of notification of marginal classification in which to submit satisfactory evidence to the division that the GPU is not of marginal character and should not be so classified.

(b) The director may reclassify a GPU that is underproduced more than the overproduction limit as described in Paragraph (3) of Subsection D of 19.15.21.12 NMAC as marginal.

(3) Cancellation of underproduction for marginal GPU. The division shall not permit a GPU that is classified as marginal to accumulate underproduction, and shall cancel an underproduction accrued to a GPU before its classification as marginal.

(4) Reclassification to non-marginal. If, at the end of a classification period, a marginal GPU has produced more gas during the proration period to that time than its shadow allowable for that same period, the division shall reclassify the GPU as a non-marginal GPU.

(5) Reinstatement of status. The division shall reinstate to a GPU reclassified to non-marginal under the provisions of Paragraph (4) of Subsection E of 19.15.21.12 NMAC all underproduction that accrued or would have accrued as a non-marginal GPU from the current proration period. The division may reinstate underproduction from the prior proration period after notice and hearing. Uncompensated-for overproduction accruing to the GPU while marginal shall be chargeable upon reclassification to non-marginal.

F. Reporting of production - C-111 and C-115 reports. Transporters and operators shall create and maintain for division inspection or file, as applicable, gas transportation and production reports pursuant to 19.15.7.21 NMAC and 19.15.7.24 NMAC provided that upon the director's approval as to the specific program to be used, a producer or

transporter of gas may report metered production of gas on a chart-period basis; provided the following provisions apply to each gas well:

- (1) reports for a month shall include not less than 24 or more than 32 reported days;
- (2) reported days may include as many as the last seven days of the previous month but no days of the succeeding month; and
- (3) the total of the monthly reports for a year shall include not less than 360 or more than 368 reported days.

G. For purposes of Subsection F of 19.15.21.12 NMAC, the term "month" means "calendar month" for those reporting on a calendar month basis, and means "reporting month" for those reporting on a chart-period basis according to the exception provided in Subsection F of 19.15.21.12 NMAC.

[19.15.21.12 NMAC - Rp, 19.15.8.605 NMAC, 12/1/08]

19.15.21.13 TESTS AND TEST PROCEDURES FOR PRORATED POOLS IN NORTHWEST NEW MEXICO:

A. Type of tests required for wells completed in prorated gas pools.

(1) **Reclassified GPUs.** An operator of a well on a GPU that the director has reclassified as non-marginal shall conduct deliverability tests on that well within 90 days of the order reclassifying it, unless there are current tests on file with the division or that order requires a new test. A current test is a test that was conducted during the last test period for that pool or later.

(2) **Non-marginal GPUs.** Operators shall conduct deliverability tests on wells on non-marginal GPUs every five years. If the division determines that a well's test data and production data warrant more frequent testing of the well, the division may set up special testing schedules for that well.

(3) **Scheduling of tests.**

(a) **Notification of pools to be tested.** By September 1 of each year the division's Aztec district office shall notify operators of non-marginal GPUs if their wells will be tested during the following test period.

(b) **The operators shall file the results of all deliverability tests required with the Aztec district office within 90 days following the completion of each test. Provided however, that a test completed between December 31 of the test year and March 10 of the following year is due no later than March 31. The division shall not grant an extension of time for filing tests beyond March 31 except after notice and hearing.**

(c) The operator's failure to file a test within the above-prescribed times subjects the GPU to the loss of one day's allowable for each day the test is late.

(d) A well scheduled for testing during its test year may have the conditioning period, test flow period and part of the seven-day shut-in period conducted in December of the previous year provided that, if the seven-day shut-in period immediately follows the test flow period, the operator shall measure the seven-day shut-in pressure in January of the test year. The earliest date that a well can be scheduled for a deliverability test is such that the test flow period would end on December 25 of the previous year.

(e) Downhole commingled wells are to be scheduled for tests on dates for the pool of the well's lowermost prorated completion.

(f) In the event the division shuts-in a well for overproduction, the operator may produce the well for a period of time to secure a test after written notification to the division. The operator shall use gas produced during this testing period in determining the well's over/under produced status.

(g) An operator may schedule a well for a deliverability retest upon notification to the Aztec district office at least 10 days before the operator will commence the test. The retest shall be for substantial reason and is subject to the division's approval. The operator shall conduct a retest in conformance with the deliverability test procedures of 19.15.21.13 NMAC. The division may require the retesting of a well by notification to the operator to schedule the retest. The operator shall identify these tests, as filed on form C-122-A, as "RETEST" in the remarks column.

(4) Witnessing of tests. Any or all of the following may witness a deliverability test: a division representative, an offset operator, a representative of the gas transportation facility connected to the well under test or a representative of the gas transportation facility taking gas from an offset operator.

B. Procedure for testing.

(1) The test shall begin by producing a well in the normal operating manner into the pipeline through either the casing or tubing, but not both, for a period of 14 consecutive days. This is known as the conditioning period. The operator shall not change the production valve and choke settings during either the conditioning or flow periods, except during the first 10 days of the conditioning period when maximum production would over-range the meter chart or location production equipment. The first 10 days of the conditioning period shall not have more than 48 hours of cumulative interruptions of flow. The 11th to 14th days, inclusive of the conditioning period, shall have no interruptions of flow. An interruption of flow that occurs as the well's normal operation as stop-cock flow, intermittent flow or well blow down shall not be counted as shut-in time in either the conditioning or flow period.

(2) The operator shall determine daily flowing rate from an average of seven or eight consecutive producing days, following a minimum conditioning period of 14 consecutive days of production. This is known as the flow period.

(3) The operator shall measure instantaneous pressure by a deadweight gauge or other division-approved method during the seven-day or eight-day flow period at the casinghead, tubinghead and orifice meter, and record it along with instantaneous meter-chart static pressure reading.

(4) If a well is producing through a compressor that is located between the wellhead and the meter run, the operator shall report the meter run pressure and the wellhead casing pressure and the wellhead tubing pressure on form C-122-A. Neither the suction pressure nor the discharge pressure of the compressor is considered wellhead pressure. The operator shall enter a note in the remarks portion on form C-122-A stating: "This well produced through a compressor".

(5) When it is necessary to restrict the flow of gas between the wellhead and the orifice meter, the operator shall determine the ratio of the downstream pressure, psi absolute, to the upstream pressure, psi absolute. When this ratio is 0.57 or less, the operator shall consider critical flow conditions to exist across the restriction.

(6) When more than one restriction between the wellhead and the orifice meter causes the pressures to reflect critical flow between the wellhead and the orifice meter, the operator shall measure the pressures across each of these restrictions to determine whether critical flow exists at any restriction. When critical flow does not exist at any restriction, the operator shall report the pressures taken to disprove the critical flow to the division on form C-122-A in item (n) of the form. When critical flow conditions exist, the operator shall measure the instantaneous flowing pressures required in Paragraph (3) of Subsection B of 19.15.21.13 NMAC during the last 48 hours of the seven-day or eight-day flow period.

(7) When critical flow exists between the wellhead and the orifice meter, the operator shall use the measured wellhead flowing pressure of the string through which the well flowed during the test as P_t when calculating the static wellhead working pressure (P_w) using the method established in Paragraph (9) of Subsection B of 19.15.21.13 NMAC

(8) When critical flow does not exist at any restriction, P_t shall be the corrected average static pressure from the meter chart plus friction loss from the wellhead to the orifice meter.

(9) The operator shall calculate the static wellhead working pressure (P_w) of a well under test seven-day or eight-day average static tubing pressure if the well is flowing through the casing; it shall be the calculated seven-day or eight-day average static casing pressure if the well is flowing through the tubing. The operator shall calculate the static wellhead working pressure (P_w) by applying the tables and

procedures set out in the Gas Well Testing Manual for Northwest New Mexico available from the division.

(10) To obtain the shut-in pressure of a well under test, the operator shall shut-in the well some time during the current testing season for a period of seven to 14 consecutive days, which have been preceded by a minimum of seven days of uninterrupted production. The operator shall measure the shut-in pressure on the seventh to 14th day of shut-in of the well with a deadweight gauge or other division-approved method. The operator shall measure the seven-day shut-in pressure on both the tubing and the casing when communication exists between the two strings. The operator shall use the higher of such pressures as P_c in the deliverability calculation. When the division determines a shut-in pressure to be abnormally low or the well can not be shut-in due to "HARDSHIP" classification, the operator shall determine the shut-in pressure to be used as P_c by one of the following methods:

- (a)** a division-designated value;
- (b)** an average shut-in pressure of all offset wells completed in the same zone; offset wells include the four side and four corner wells, if available; or
- (c)** a calculated surface pressure based on a calculated bottom hole pressure; the operator shall make the calculations in accordance with the examples in the "Gas Well Testing Manual for Northwest New Mexico".

(11) The operator shall take all wellhead pressures, as well as the flowing meter pressure tests that are to be taken during the seven-day or eight-day deliverability test period in Subsection B of 19.15.21.13 NMAC, with a deadweight gauge or other division-approved method. The operator shall record and maintain the pressure readings and the date and time according to the chart in the operator's records with the test information.

(12) The operator shall change and arrange orifice meter charts to reflect upon a single chart the flow data for the gas from each well for the full seven-day or eight-day deliverability test period; however, the division shall not void a test if the operator satisfactorily explains the necessity for using test volumes through two chart periods. The operator shall make corrections for pressure base, measured flowing temperature, specific gravity and supercompressibility, provided however, if the specific gravity of the gas from a well under test is not available, the operator may assume an estimated specific gravity for the well, based upon that of gas from nearby wells, the specific gravity of which has been actually determined by measurement.

(13) The purchasing company that integrates the flow charts shall determine the average flowing meter pressure for the seven-day or eight-day flow period and the corrected integrated volume and furnish them to the operator or testing agency.

(14) The operator shall calculate the seven-day or eight-day flow period volume from the integrated readings as determined from the flow period orifice meter chart. The operator shall divide volume calculated by the number of testing days on the chart to determine the average daily rate of flow during the flow period. The flow period shall have a minimum of seven and a maximum of eight legibly recorded flowing days to be acceptable for test purposes. The operator shall correct the volume used in this calculation to the division's standard conditions of 15.025 psi absolute pressure base, 60 degrees fahrenheit temperature base and 0.60 specific gravity base.

(15) The operator shall calculate the daily volume of flow, as determined from the flow period chart readings, by applying the basic orifice meter formula or other acceptable industry standard practices.

$$Q = C' (h_w P_f)^{.5}$$

Where:

Q = metered volume of flow MCFD @ 15.025 psi absolute, 60 degrees fahrenheit and 0.60 specific gravity.

C' = the 24-hour basic orifice meter flow factor corrected for flowing temperature, gravity and supercompressibility.

h_w = daily average differential meter pressure from flow period chart.

P_f = daily average flowing meter pressure from flow period chart.

(16) The basic orifice meter flow factors, flowing temperature factor and specific gravity factor shall be determined from the tables in the manual.

(17) The operator shall use the daily flow period average corrected flowing meter pressure, psi gauge, to determine the supercompressibility factor. The operator may obtain supercompressibility tables from the division.

(18) When the operator makes a supercompressibility correction for a gas containing either nitrogen or carbon dioxide in excess of two percent, the operator shall determine the gas' supercompressibility factors.

(19) The division may approve use of tables for calculating rates of flow from integrator readings that do not specifically conform to the division's *manual for back-pressure testing of natural gas wells* for determining the daily flow period rates of flow upon the operator's showing that the tables are appropriate and necessary.

(20) The operator shall correct the daily average integrated rate of flow for the seven-day or eight-day flow period for meter error by multiplication by a correction factor. The operator shall determine the correction factor by dividing the square root of

the deadweight flowing meter pressure, psi absolute, by the square root of the chart flowing meter pressure, psi absolute.

(21) The operator shall calculate the deliverability of gas at the deliverability pressure of a well under test from the test data derived from the required tests using the following deliverability formula:

$$\frac{(P_c^2 - P_d^2)^n}{D = Q [(P_c^2 - P_w^2)]}$$

Where:

D = deliverability MCFD at the deliverability pressure, (P_d), (at standard conditions of 15.025 psi absolute, 60 degrees fahrenheit and 0.60 specific gravity).

Q = daily flow rate in MCFD, at wellhead pressure (P_w).

P_c = seven-day shut-in wellhead pressure, psi absolute.

P_d = deliverability pressure, psi absolute, as defined above.

P_w = average static wellhead working pressure, as determined from seven-day or eight-day flow period, psi absolute, and calculated from tables in the manual entitled Pressure Loss Due to Friction Tables for Northwest New Mexico.

n = average pool slope of back pressure curves as follows:

for pictured cliffs and shallower formations, 0.85; and

for formations deeper than pictured cliffs, 0.75.

(Note: Special orders for any specific pool or formation may supersede the above values. Check special pool orders if in doubt.)

(22) The value of the multiplier in the above formula (ratio factor after the application of the pool slope) by which Q is multiplied shall not exceed a limiting value the division determines and announces periodically. The division shall make the determination after a study of the test data of the pool obtained during the previous testing season.

(23) The operator shall test downhole commingled wells in the test year for the pool of the well's lowermost prorated completion and shall use pool slope (n) and the lowermost pool's deliverability pressure. The operator shall use the total flow rate from the downhole commingled well to calculate a value of deliverability. For each prorated gas zone of a downhole commingled well the operator shall file a form C-122-A. Also, in

the summary portion of that form all zones shall indicate the same data for line h, P_c , Q, P_w and P_d . The value shown for deliverability (D) is that percentage of the well's total deliverability that is applicable to this zone. The operator shall place a note in the remarks column that indicates the percentage of deliverability to be allocated to this zone of the well.

(24) The division shall consider a test prescribed in 19.15.21 NMAC acceptable if the average flow rate for the final seven-day or eight-day deliverability test is not more than 10 percent in excess of any consecutive seven-day or eight-day average of the preceding two weeks. The division may declare a deliverability test not meeting this requirement and require the operator to re-test the well.

(25) The operator shall make charts relative to deliverability tests or copies of the charts available to the division upon its request.

(26) Operators shall use only testing agencies, whether individuals, companies, pipeline companies or operators, that maintain a log of all tests they have accomplished including all field test data. The operator shall maintain the data collected pursuant to tests Subsection B of 19.15.21.13 NMAC requires for a period of not less than two years plus the current test year.

(27) Forms C-122-A and C-122-B are adopted for use in the northwest New Mexico area in open form subject to modification by the division as experience may indicate desirable or necessary.

(28) The operator shall conduct and report deliverability tests for gas wells in formations in accordance with 19.15.21.13 NMAC. Provided, however, 19.15.21.13 NMAC is subject to a specific modification or change contained in special pool orders the division adopts for a pool after notice and hearing.

C. Informational tests.

(1) One-point back pressure test. The operator may take a one-point back pressure test on newly completed wells before their connection or reconnection to a gas transportation facility. This test is a required official test, but the operator may take the test for informational purposes. When taken, the operator shall take and report this test as prescribed in Paragraph (2) of Subsection C of 19.15.21.13 NMAC.

(2) Test procedure.

(a) The operator shall accomplish this test after a minimum shut-in of seven days. The operator shall measure the shut-in pressure with a deadweight gauge or other division-approved method.

(b) The flow rate shall be that rate in MCFD measured at the end of a three hour test flow period. The flow from the well shall be for three hours through a positive choke, which has a 3/4 inch orifice.

(c) The operator shall install a two-inch nipple that provides a mechanical means of accurately measuring the pressure and temperature of the flowing gas immediately upstream from the positive choke.

(d) The operator shall calculate the absolute open flow using the conventional back pressure formula as shown in the division's *manual for back-pressure testing of natural gas wells*.

(e) The operator shall report the observed data and flow calculations in duplicate on form C-122.

(f) Non-critical flow shall be considered to exist when the choke pressure is 13 psi gauge or less. When this condition exists the operator shall measure the flow rate with a pitot tube and nipple as specified in the division's *manual for back-pressure testing of natural gas wells* or in the division's manual of tables and procedure for pitot tests. The operator shall install the pitot test nipple immediately downstream from the 3/4-inch positive choke.

(g) The operator shall test a well completed with two-inch nominal size tubing (1.995-inch internal diameter) or larger through the tubing.

(3) The operator may conduct other tests for informational purposes prior to obtaining a pipeline connection for a newly completed well upon receiving specific approval to conduct the other tests from the Aztec district office. The Aztec district office shall base approval of these tests primarily upon the volume of gas to be vented.

[19.5.21.13 NMAC - Rp, 19.15.8.606 NMAC, 12/1/08]

PART 22: HARDSHIP GAS WELLS

19.15.22.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.22.1 NMAC - N, 12/1/08]

19.15.22.2 SCOPE:

19.15.22 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.22.2 NMAC - N, 12/1/08]

19.15.22.3 STATUTORY AUTHORITY:

19.15.22 NMAC is adopted pursuant to NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.22.3 NMAC - N, 12/1/08]

19.15.22.4 DURATION:

Permanent.

[19.15.22.4 NMAC - N, 12/1/08]

19.15.22.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.22.5 NMAC - N, 12/1/08]

19.15.22.6 OBJECTIVE:

To provide an application and approval process for hardship gas well classification.

[19.15.22.6 NMAC - N, 12/1/08]

19.15.22.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.22.8 HARDSHIP GAS WELL:

A. The division shall not classify a well as a hardship gas well except after notice and hearing or upon the division's appropriate administrative action.

B. Wells the division approves as hardship gas wells under 19.15.22.9 NMAC and 19.15.22.10 NMAC have priority access over other gas wells to the current available gas market to the extent that they might otherwise be restricted below the approved minimum flow rate.

[19.15.22.8 NMAC - Rp, 19.15.6.408 NMAC, 12/1/08]

19.15.22.9 APPLICATION FOR HARDSHIP GAS WELL CLASSIFICATION:

A. An operator shall apply for hardship gas well classification in the form the division prescribes and shall include the following:

- (1)** a narrative description of the problems that lead the applicant to believe that underground waste will occur if the well is shut-in or curtailed below its ability to produce;
- (2)** documentation that the applicant has made all reasonable and economic attempts to eliminate or correct the problem or an explanation and justification as to why the applicant did not make such attempts;
- (3)** a well bore sketch;
- (4)** historical data such as permanent loss of productivity after shut-in, frequency and actual costs of swabbing after shut-in or curtailment including length of swab time required, actual cost figures showing the inability to continue operations without special relief or other data that would show that shut-in or curtailment would cause underground waste;
- (5)** if failure to obtain a hardship gas well classification would result in the well's premature abandonment, a calculation of the reserves that would be lost by the failure;
- (6)** the minimum sustainable producing rate as determined by a minimum flow or log-off test or documentation of well production history;
- (7)** a plat or map showing the proration unit dedicated to the well and the offsetting acreage's ownership;
- (8)** the name of the authorized transporter (and purchaser if different) of gas; and
- (9)** other data the applicant considers relevant.

B. The operator shall file an application for hardship gas well classification with the division's Santa Fe office and send a copy to the appropriate division district office.

C. In addition, the applicant shall notify the transporter and purchaser of gas from the well and all offset operators of the application and the requested minimum producing rate and shall so certify to the division in the application.

[19.15.22.9 NMAC - Rp, 19.15.6.409 NMAC, 12/1/08]

19.15.22.10 PROCESSING OF APPLICATIONS FOR HARDSHIP GAS WELLS:

A. The director may administratively approve an application for hardship gas well classification or the director may set the matter for notice and hearing.

B. The division shall list applications that the director is to approve administratively in the dockets of division or commission hearings that are issued from time to time.

(1) If no affected party files a written objection to the proposed administrative action within 20 days following the date of the hearing for which the docket is issued, the director may approve the application. If an affected party files an objection before or within the 20 day period, the division shall set the application for hearing unless the applicant withdraws the application.

(2) The director, on the director's own or upon an affected party's request, may require a minimum flow (log-off) test on the well for which the hardship classification is sought. The applicant shall give notice to the division, the gas transporter and purchaser and the requesting affected party of a minimum flow test conducted following the request, in order that the test may, at the option of the division or the parties, be witnessed. The applicant shall give notice of a minimum flow test conducted prior to submitting a hardship gas well application to the appropriate division district office, the gas transporter and purchaser and offset operators in order that the test may, at the option of the parties, be witnessed.

[19.15.22.10 NMAC - Rp, 19.15.6.410 NMAC, 12/1/08]

19.15.22.11 EMERGENCY HARDSHIP GAS WELL CLASSIFICATION:

A. The district supervisor of the appropriate division district office may grant emergency approval of a hardship gas well classification upon receipt of a copy of the application and attachments and a request by the applicant.

B. The district supervisor shall approve the emergency classification in writing and send a copy to the director, the applicant and the purchaser. The district supervisor may only give emergency approval for 90 days and on a one time only basis.

[19.15.22.11 NMAC - Rp, 19.15.6.411 NMAC, 12/1/08]

19.15.22.12 LIMITS ON HARDSHIP GAS WELL CLASSIFICATION:

A. No hardship gas well classification shall be retained for a period in excess of one year unless the applicant annually requests an extension of the classification and certifies that the well's condition has not substantially changed.

B. The division on its own motion may require that the applicant show cause why the division should not rescind approval of the hardship gas well classification in cases of suspected abuse, changed market conditions or other reason.

C. A well the division has classified as a hardship gas well located in a prorated gas pool shall accumulate over or under production. The division shall not shut in a well classified as a hardship gas well for reason of over production.

D. Affected parties may petition the division for hearing for the purpose of offsetting a ratable take advantage that the operator of a hardship gas well might gain.

[19.15.22.12 NMAC - Rp, 19.15.6.412 NMAC, 12/1/08]

PART 23: OFF LEASE TRANSPORT OF CRUDE OIL OR CONTAMINANTS

19.15.23.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.23.1 NMAC - N, 12/1/08]

19.15.23.2 SCOPE:

19.15.23 NMAC applies to persons engaged in the off-lease transport of oil or contaminants.

[19.15.23.2 NMAC - N, 12/1/08]

19.15.23.3 STATUTORY AUTHORITY:

19.15.23 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which authorizes the division to regulate the transport of oil or gas or their products through the use of certificates of clearance or tenders.

[19.15.23.3 NMAC - N, 12/1/08]

19.15.23.4 DURATION:

Permanent.

[19.15.23.4 NMAC - N, 12/1/08]

19.15.23.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.23.5 NMAC - N, 12/1/08]

19.15.23.6 OBJECTIVE:

To document the transport of oil or lease condensate or liquids that may contain oil, lease condensate, sediment oil or miscellaneous hydrocarbons to verify the location from where they were removed.

[19.15.23.6 NMAC - N, 12/1/08]

19.15.23.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.23.8 DOCUMENTATION REQUIRED:

A. Off-lease transportation of oil or lease condensate by motor vehicle shall be pursuant to an approved form C-104 and shall be accompanied by a run ticket or equivalent document. The documentation shall identify the transporter's name and address, the operator's name, the name of the lease or facility from which the oil was taken, the date of removal, the API gravity of the oil, the observed percentage of BS&W, the volume of oil or opening and closing tank gauges or meter readings and the driver's signature. The document shall provide space for recording of the lease number and for the signature of the operator or the operator's representative.

B. Off-lease transportation of oil or lease condensate by motor vehicle shall be accompanied by documentation sufficient to verify the location of the tanks or facility from which the transporter removed the liquid. The location may be shown on the run ticket or equivalent document or may be carried separately.

C. Off-lease transportation of liquids that may contain oil, lease condensate, sediment oil or miscellaneous hydrocarbons shall be accompanied by a run ticket, work order or equivalent document, *i.e.*, form C-117-A. The documentation shall identify the transporter's name and address, the operator's name, the name of the lease or facility from which the liquid was removed, the nature of the liquid removed including the observed percentage of liquid hydrocarbons, the volume or estimated volume of liquids and the destination.

D. Off-lease transportation of liquids that may contain oil, lease condensate, sediment oil or miscellaneous hydrocarbons shall be accompanied by documentation sufficient to verify the location of the tanks or facility from which the transporter removed the liquid. The location may be shown on the run ticket or equivalent document or may be carried separately.

E. The transporter shall carry the documentation required under Subsections A and B of 19.15.23.8 NMAC in the vehicle during transportation and produce the documentation for examination and inspection by a division employee, a state police officer or other law enforcement officer upon identification and request.

F. Except where the owner and the transporter are the same, one copy of the documentation shall be left at the facility from which the oil or other liquids were removed.

[19.15.23.8 NMAC - Rp, 19.15.10.804 NMAC, 12/1/08]

19.15.23.9 OFF-LEASE TRANSPORTATION OR STORAGE PRIOR TO MEASUREMENT:

A. The division may grant exceptions to the requirements of Subsection B of 19.15.12.9 NMAC administratively, without hearing, to permit production from one lease to be transported prior to measurement to another lease for storage on that lease when:

(1) the operator files an application for off-lease transportation or storage prior to measurement on form C-107-B with the division's Santa Fe office and sends one copy to the appropriate division district office;

(2) the production is from the same common source of supply;

(3) commingling of production from different leases will not result;

(4) there will be no intercommunication of the handling, separating, treating or storage facilities designated to each lease;

(5) parties owning working interests in the production to be transported off lease prior to measurement have been notified of the application in accordance with 19.15.4.12 NMAC and have consented in writing, or the applicant furnishes proof that the parties were notified by registered or certified mail of its intent to transport the production from one lease to another lease for storage prior to measurement, and after a period of 20 days following receipt of the application, no party has filed objection to the application with the division; and

(6) if state, federal or tribal lands are involved, the operator has notified the state land office or the BLM, as applicable.

B. The division may set for hearing an application for approval of off-lease transportation or storage prior to measurement, in which event notice of hearing shall be given, pursuant to 19.15.4.12 NMAC, to owners of working interests in the production to be transported off lease prior to measurement, and to such other owners as the division may direct.

[19.15.23.9 NMAC - Rp, 19.15.5.303 NMAC, 12/1/08]

PART 24: ILLEGAL SALE AND RATABLE TAKE

19.15.24.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.24.1 NMAC - Rp, 19.15.10.1 NMAC and 19.15.11.1 NMAC, 12/1/08]

19.15.24.2 SCOPE:

19.15.24 NMAC applies to those persons involved in the sale, purchase or transport of oil or gas.

[19.15.24.2 NMAC - Rp, 19.15.10.2 NMAC and 19.15.11.2 NMAC, 12/1/08]

19.15.24.3 STATUTORY AUTHORITY:

19.15.24 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11, Section 70-2-19 and Section 70-2-22, which authorizes the division to regulate the sale, purchase or acquisition, or the transportation, refining, processing or handling of oil or gas produced in excess of the amount allowed by statute, rule or commission or division order.

[19.15.24.3 NMAC - Rp, 19.15.10.3 NMAC and 19.15.11.3 NMAC, 12/1/08]

19.15.24.4 DURATION:

Permanent.

[19.15.24.4 NMAC - Rp, 19.15.10.4 NMAC and 19.15.11.4 NMAC, 12/1/08]

19.15.24.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.24.5 NMAC - Rp, 19.15.10.5 and 19.15.11.5 NMAC, 12/1/08]

19.15.24.6 OBJECTIVE:

To regulate oil and gas purchasing and transport.

[19.15.24.6 NMAC - Rp, 19.15.10.6 NMAC and 19.15.11.6 NMAC, 12/1/08]

19.15.24.7 DEFINITIONS

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.24.8 GAS SALES BY LESS THAN ONE HUNDRED PERCENT OF THE OWNERS IN A WELL:

When there are separate owners in a well and where an owner's gas is not being sold with the well's current production, the owner may, if necessary to protect the owner's correlative rights, petition the division for a hearing seeking appropriate relief.

[19.15.24.8 NMAC - Rp, 19.15.6.414 NMAC, 12/1/08]

19.15.24.9 ILLEGAL SALE PROHIBITED:

The sale, purchase or acquisition or the transporting, refining, processing or handling in any other way of oil or of gas in whole or in part (or a gas product so produced) produced in excess of the amount a statute or a division rule or order allows is prohibited.

[19.15.24.9 NMAC - Rp, 19.15.10.801 NMAC and 19.15.11.901 NMAC, 12/1/08]

19.15.24.10 RATABLE TAKE; COMMON PURCHASER OF OIL:

A. A person engaged in the purchase of oil to be transported through pipelines is a common purchaser of oil, and shall without discrimination in favor of one producer as against another in the same field, purchase oil tendered to it that has been lawfully produced in the vicinity of, or that may be reasonably reached by pipelines through which it is transporting oil or the pipelines' gathering branches or that may be delivered to the pipeline or the pipelines' gathering branches by truck or otherwise and shall fully perform all a common purchaser's duties.

B. If a common purchaser does not need all the oil lawfully produced within a field, or if it is unable to purchase all the oil, then it shall purchase from each producer in a field ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portions. However, nothing in Subsection B of 19.15.24.10 NMAC requires more than one pipeline connection for each producing well.

C. In the event a common purchaser of oil is also a producer or is affiliated with a producer, directly or indirectly, the common purchaser shall not discriminate in favor of its own production or in favor of the production of an affiliated producer as against that of others and the common purchaser shall treat the oil produced by the common purchaser or the common purchaser's affiliate as that produced by another producer for the purposes of ratable taking.

D. It shall be unlawful for a common purchaser to unjustly or unreasonably discriminate as to the relative quantities of oil it purchases in various fields of the state; the division to determine the justice or reasonableness, shall consider the production and age of wells in the respective fields and all other factors. It is the intent of

19.15.24.10 NMAC that all fields be allowed to produce and market a just and equitable share of the oil produced and marketed in the state, insofar as the oil can be produced and marketed economically and without waste.

E. In order to preclude premature abandonment, the common purchaser within its purchasing area shall make 100 percent purchases from units of settled production producing 10 barrels or less daily of crude petroleum in lieu of ratable purchases or takings. However, where the common purchaser's takings are curtailed below 10 barrels per unit of crude petroleum daily, then the common purchaser shall purchase equally from all units within its purchasing area, regardless of their producing ability insofar as they are capable of producing.

[19.15.24.10 NMAC - Rp, 19.15.10.802 NMAC, 12/1/08]

19.15.24.11 PRODUCTION OF LIQUID HYDROCARBONS FROM GAS WELLS:

A. Liquid hydrocarbons produced incidental to the authorized production of gas from a well the division has classified as a gas well are legal production.

B. For purposes of 19.15.24.11 NMAC the division shall consider gas produced from a gas well to be authorized production with the following exceptions:

- (1)** when the operator produces the well without an approved form C-104, designating the gas transporter and the oil or condensate transporter for the well; or
- (2)** when the division has directed the operator to shut-in the well.

C. In the event the division directs an operator to shut-in a gas well, the operator and the division shall immediately notify both the gas transporter and oil transporter.

[19.15.24.11 NMAC - Rp, 19.15.10.803 NMAC, 12/1/08]

19.15.24.12 Ratable Take of Gas:

A. A person engaged in purchasing from one or more producers, gas produced from gas wells or casinghead gas produced from oil wells shall be a common purchaser of gas within each common supply source from which it purchases, and shall purchase gas lawfully produced from gas wells or casinghead gas produced from oil wells with which its gas transportation facilities are connected in the pool and other gas lawfully produced within the pool and tendered to a point on its gas transportation facilities.

B. The common purchaser shall make purchases without unreasonable discrimination in favor of one producer against another in the price paid, the quantities purchased, the bases of measurement or the gas transportation facilities afforded for gas of like quantity, quality and pressure available from the wells.

C. In the event the common purchaser is also a producer, the common purchaser shall not discriminate in favor of the common purchaser on production from gas wells or casinghead gas produced from oil wells in which the common purchaser has an interest, direct or indirect, as against other production from gas wells or casinghead gas produced from oil wells in the same pool. For the purposes of 19.15.24.12 NMAC, reasonable differences in prices paid or facilities afforded, or both, do not constitute unreasonable discrimination if the differences bear a fair relationship to differences in quality, quantity or pressure of the gas available or to the relative lengths of time during which the gas will be available to the purchaser. The provisions of Subsection C of 19.15.24.12 NMAC shall not apply to:

- (1)** a well or pool used for storage and withdrawal from storage of gas originally produced not in violation of division rules or orders;
- (2)** a person purchasing gas principally for use in the recovery or production of oil or gas; or
- (3)** a well that the division designates a hardship well.

D. A common purchaser taking gas produced from gas wells or casinghead gas produced from oil wells from a common source of supply shall take ratably under division rules and orders, concerning quantity, as the division or commission promulgates consistent with 19.15.24.12 NMAC. The division or commission, in promulgating the rules and orders may consider the gas' quality and the deliverability, the gas' pressure at the point of delivery, acreage attributable to the well, market requirements in the case of unprorated pools and other pertinent factors.

E. Nothing in 19.15.24.12 NMAC requires, directly or indirectly, a common purchaser to purchase gas of a quality, under a pressure or under other condition by reason of which the common purchaser cannot economically and satisfactorily use the gas by means of the common purchaser's gas transportation facilities then in service.

[19.15.24.12 NMAC - Rp, 19.15.11.902 NMAC, 12/1/08]

PART 25: PLUGGING AND ABANDONMENT OF WELLS

19.15.25.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.25.1 NMAC - Rp, 19.15.4.1 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.2 SCOPE:

19.15.25 NMAC applies to persons that operate oil or gas wells within New Mexico.

[19.15.25.2 NMAC - Rp, 19.15.4.2 NMAC, 12/1/2008]

19.15.25.3 STATUTORY AUTHORITY:

19.15.25 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-12 NMSA 1978, which authorizes the division to require dry or abandoned wells to be plugged so as to confine oil, gas or water in the strata in which they are found and to prevent them from escaping into other strata.

[19.15.25.3 NMAC - Rp, 19.15.4.3 NMAC, 12/1/2008]

19.15.25.4 DURATION:

Permanent.

[19.15.25.4 NMAC - Rp, 19.15.4.4 NMAC, 12/1/2008]

19.15.25.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.25.5 NMAC - Rp, 19.15.4.5 NMAC, 12/1/2008]

19.15.25.6 OBJECTIVE:

To establish requirements for properly abandoning and plugging wells drilled for oil or gas or service wells including seismic, core, exploration or injection wells or placing the wells in temporary abandonment in order to protect public health, fresh water and the environment.

[19.15.25.6 NMAC - Rp, 19.15.4.6 NMAC, 12/1/2008]

19.15.25.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.25.8 WELLS TO BE PROPERLY ABANDONED:

A. The operator of wells drilled for oil or gas or services wells including seismic, core, exploration or injection wells, whether cased or uncased, shall plug the wells as Subsection B of 19.15.25.8 NMAC requires.

B. The operator shall either properly plug and abandon a well or place the well in approved temporary abandonment in accordance with 19.15.25 NMAC within 90 days after:

- (1) a 60 day period following suspension of drilling operations;
- (2) a determination that a well is no longer usable for beneficial purposes; or
- (3) a period of one year in which a well has been continuously inactive.

[19.15.25.8 NMAC - Rp, 19.15.4.201 NMAC, 12/1/2008]

19.15.25.9 NOTICE OF PLUGGING:

A. The operator shall file notice of intention to plug with the division on form C-103 prior to commencing plugging operations. The notice shall provide all the information 19.15.7.14 NMAC requires including operator and well identification and proposed procedures for plugging the well.

B. In addition, the operator shall provide a well bore diagram showing the proposed plugging procedure.

C. The operator shall notify the division 24 hours prior to commencing plugging operations. In the case of a newly drilled dry hole, the operator may obtain verbal approval from the appropriate district supervisor or the district supervisor's representative of the plugging method and time operations are to begin. The operator shall file written notice in accordance with 19.15.25.11 NMAC with the division within 10 days after the district supervisor has given verbal approval.

[19.15.25.9 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.10 PLUGGING:

A. Before an operator abandons a well, the operator shall plug the well in a manner that permanently confines all oil, gas and water in the separate strata in which they are originally found. The operator may accomplish this by using mud-laden fluid, cement and plugs singly or in combination as approved by the division on the notice of intention to plug.

B. The operator shall mark the exact location of plugged and abandoned wells with a steel marker not less than four inches in diameter set in cement and extending at least four feet above mean ground level. The operator name, lease name and well number and location, including unit letter, section, township and range, shall be welded, stamped or otherwise permanently engraved into the marker's metal. A person shall not build permanent structures preventing access to the wellhead over a plugged and

abandoned well without the division's written approval. A person shall not remove a plugged and abandonment marker without the division's written approval.

C. The operator may use below-ground plugged and abandonment markers only with the division's written approval when an above-ground marker would interfere with agricultural endeavors. The below-ground marker shall have a steel plate welded onto the abandoned well's surface or conductor pipe and shall be at least three feet below the ground surface and of sufficient size so that all the information 19.15.16.8 NMAC requires can be stenciled into the steel or welded onto the steel plate's surface. The division may require a re-survey of the well location.

D. As soon as practical, but no later than one year after the completion of plugging operations, the operator shall:

- (1)** level the location;
- (2)** remove deadmen and other junk; and
- (3)** take other measures necessary or required by the division to restore the location to a safe and clean condition.

E. The operator shall close all pits and below-grade tanks pursuant to 19.15.17 NMAC.

F. Upon completion of plugging and clean up restoration operations as required, the operator shall contact the appropriate division district office to arrange for an inspection of the well and location.

[19.15.25.10 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.11 REPORTS FOR PLUGGING AND ABANDONMENT:

A. The operator shall file form C-105 as provided in 19.15.7.16 NMAC.

B. Within 30 days after completing required restoration work, the operator shall file with the division a record of the work done on form C-103 as provided in 19.15.7.14 NMAC.

C. The division shall not approve the record of plugging or release a bond until the operator has filed necessary reports and the division has inspected and approved the location.

[19.15.25.11 NMAC - Rp, 19.15.4.202 NMAC, 12/1/2008]

19.15.25.12 APPROVED TEMPORARY ABANDONMENT:

The division may place a well in approved temporary abandonment for a period of up to five years. Prior to the expiration of an approved temporary abandonment the operator shall return the well to beneficial use under a plan the division approves, permanently plug and abandon the well and restore and remediate the location or apply for a new approval to temporarily abandon the well. An operator is limited to placing the following numbers of wells in approved temporary abandonment:

- A.** one well, if the operator operates between one and five wells; or
- B.** one-third of all wells (rounded to the nearest whole number), if the operator operates more than five wells.

[19.15.25.12 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.13 REQUEST FOR APPROVAL AND PERMIT FOR APPROVED TEMPORARY ABANDONMENT:

A. An operator seeking approval for approved temporary abandonment shall submit on form C-103 a notice of intent to seek approved temporary abandonment for the well describing the proposed temporary abandonment procedure the operator will use. The operator shall not commence work until the division has approved the request. The operator shall give 24 hours' notice to the appropriate division district office before beginning work.

B. The division shall not approve a permit for approved temporary abandonment until the operator furnishes evidence demonstrating that the well's casing and cementing are mechanically and physically sound and in such condition as to prevent:

- (1)** damage to the producing zone;
- (2)** migration of hydrocarbons or water;
- (3)** the contamination of fresh water or other natural resources; and
- (4)** the leakage of a substance at the surface.

C. The operator shall demonstrate both internal and external mechanical integrity pursuant to Subsection A of 19.15.25.14 NMAC.

D. Upon successful completion of the work on the temporarily abandoned well, the operator shall submit a request for approved temporary abandonment to the appropriate division district office on form C-103 together with other information Subsection E of 19.15.7.14 NMAC requires.

E. The division shall not approve a permit for approved temporary abandonment until the operator provides financial assurance for the well that complies with Subsection D of 19.15.8.9 NMAC.

F. The division shall specify the permit's expiration date, which shall be not more than five years from the date of approval.

[19.15.25.13 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008; A, 1/15/2019]

19.15.25.14 DEMONSTRATING MECHANICAL INTEGRITY:

A. An operator may use the following methods of demonstrating internal casing integrity for wells to be placed in approved temporary abandonment:

(1) the operator may set a cast iron bridge plug within 100 feet of uppermost perforations or production casing shoe, load the casing with inert fluid and pressure test to 500 psi surface pressure with a pressure drop of not more than 10 percent over a 30 minute period;

(2) the operator may run a retrievable bridge plug or packer to within 100 feet of uppermost perforations or production casing shoe, and test the well to 500 psi surface pressure for 30 minutes with a pressure drop of not greater than 10 percent over a 30 minute period; or

(3) the operator may demonstrate that the well has been completed for less than five years and has not been connected to a pipeline.

B. During the testing described in Paragraphs (1) and (2) of Subsection A of 19.15.25.14 NMAC the operator shall:

(1) open all casing valves during the internal pressure tests and report a flow or pressure change occurring immediately before, during or immediately after the 30 minute pressure test;

(2) top off the casing with inert fluid prior to leaving the location;

(3) report flow during the test in Paragraph (2) of Subsection A of 19.15.25.14 NMAC to the appropriate division district office prior to completion of the temporary abandonment operations; the division may require remediation of the flow prior to approving the well's temporary abandonment.

C. An operator may use any method approved by the EPA in 40 C.F.R. section 146.8(c) to demonstrate external casing and cement integrity for wells to be placed in approved temporary abandonment.

D. The division shall not accept mechanical integrity tests or logs conducted more than 12 months prior to submittal.

E. The operator shall record mechanical integrity tests on a chart recorder with a maximum two hour clock and maximum 1000 pound spring, which has been calibrated within the six months prior to conducting the test. Witnesses to the test shall sign the chart. The operator shall submit the chart with form C-103 requesting approved temporary abandonment.

F. The division may approve other testing methods the operator proposes if the operator demonstrates that the test satisfies the requirements of Subsection B of 19.15.25.13 NMAC.

[19.15.25.14 NMAC - Rp, 19.15.4.203 NMAC, 12/1/2008]

19.15.25.15 WELLS TO BE USED FOR FRESH WATER:

A. When a well to be plugged may safely be used as a fresh water well and the landowner agrees to take over the well for that purpose, the operator does not need to plug the well above the sealing plug set below the fresh water formation.

B. The operator shall comply with other requirements contained in 19.15.25.9 NMAC through 19.15.25.11 NMAC regarding plugging, including surface restoration and reporting requirements.

C. Upon completion of plugging operations, the operator shall file with the division a written agreement signed by the landowner whereby the landowner agrees to assume responsibility for the well. Upon the filing of this agreement and division approval of well abandonment operations, the operator is no longer responsible for the well, and the division may release bonds on the well.

[19.15.25.15 NMAC - Rp, 19.15.4.204 NMAC, 12/1/2008]

PART 26: INJECTION

19.15.26.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.26.1 NMAC - Rp, 19.15.9.1 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.2 SCOPE:

19.15.26 NMAC applies to persons constructing, operating or closing an injection well under the Oil and Gas Act. 19.15.26 NMAC does not apply to other classes of injection

wells regulated under the Water Quality Act, the Geothermal Resources Development Act or the Surface Mining Act.

[19.15.26.2 NMAC - Rp, 19.15.9.2 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.3 STATUTORY AUTHORITY:

19.15.26 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Paragraphs (13), (14), (15), (21) and (22) of Subsection B of Section 70-2-12 NMSA 1978.

[19.15.26.3 NMAC - Rp, 19.15.9.3 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.4 DURATION:

Permanent.

[19.15.26.4 NMAC - Rp, 19.15.9.4 NMAC, 12/1/08]

19.15.26.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.26.5 NMAC - Rp, 19.15.9.5 NMAC, 12/1/08]

19.15.26.6 OBJECTIVE:

To regulate injection wells under the Oil and Gas Act and to maintain primary enforcement authority for the Safe Drinking Water Act (42 U.S.C. 300f et seq.) Underground Injection Control (UIC) program for UIC Class II wells.

[19.15.26.6 NMAC - Rp, 19.15.9.6 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.7 DEFINITIONS:

"Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas or any other form or state.

19.15.26.7 NMAC - Rp, 19.15.9.701 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.8 INJECTION OF FLUIDS INTO RESERVOIRS:

A. Permit for injection required

(1) A permit is required under 19.15.26 NMAC for any injection wells that inject:

(a) produced water or other fluids that are brought to the surface in connection with natural gas storage operations or conventional oil or natural gas production and may be commingled with waste waters from gas plants that are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

(b) fluids for enhanced recovery of oil or natural gas; and

(c) fluids for storage of hydrocarbons that are liquid at standard temperature and pressure.

(2) The division shall grant a permit for injection under 19.15.26.8 NMAC only to an operator who is in compliance with Subsection A of 19.15.5.9 NMAC. The division may revoke a permit for injection issued under 19.15.26.8 NMAC after notice and hearing if the operator is not in compliance with Subsection A of 19.15.5.9 NMAC.

B. Method of making application.

(1) The operator shall apply for authority to construct and operate an injection well by submitting form C-108 complete with all attachments to the division.

(2) The applicant shall furnish, by certified or registered mail, a copy of the application to each owner of the land surface on which each injection or disposal well is to be located and to each leasehold operator and other affected persons, as defined in Subsection A of 19.15.2.7 NMAC, within any tract wholly or partially contained within one-half mile of the well.

C. Administrative approval.

(1) If the application is for administrative approval rather than for a hearing, it shall be accompanied by a copy of a legal notice the applicant published in a newspaper of general circulation in the county in which the proposed injection well is located. The legal notice shall include:

(a) the applicant's name, address, phone number and contact party;

(b) the injection well's intended purpose, with the exact location of single wells or the section, township and range location of multiple wells;

(c) the formation name and depth with expected maximum injection rates and pressures; and

(d) a notation that interested parties shall file objections or requests for hearing with the division within 15 days.

(2) The division shall not approve an application for administrative approval until 15 days following the division's receipt of form C-108 complete with all attachments including evidence of mailing as required under Paragraph (2) of Subsection B of 19.15.26.8 NMAC and proof of publication as required by Paragraph (1) of Subsection C of 19.15.26.8 NMAC.

(3) If the division does not receive an objection within the 15-day period, and a hearing is not otherwise required, the division may approve the application administratively.

D. Hearings. If a written objection to an application for administrative approval of an injection well is filed within 15 days after receipt of a complete application, if 19.15.26.8 NMAC requires a hearing or if the director deems a hearing advisable, the division shall set the application for hearing and give notice of the hearing.

E. Produced water disposal wells.

(1) The director may grant an application for a produced water disposal well administratively, without hearing, only when the waters to be disposed of are mineralized to such a degree as to be unfit for domestic, stock, irrigation or other general use and when the waters are to be disposed of into a formation older than Triassic (Lea county only) and the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.

(2) The division shall not permit disposal into zones containing waters having total dissolved solids concentrations of 10,000 mg/l or less except after public notice and hearing, provided that the division may, by order issued after public notice and hearing, establish exempted aquifers for such zones where the division may administratively approve the injection.

(3) Notwithstanding the provisions of Paragraph (2) of Subsection E of 19.15.26.8 NMAC, the director may authorize disposal into such zones administratively if the waters to be disposed of are of higher quality than the native water in the disposal zone.

F. Pressure maintenance, secondary recovery and enhanced oil recovery injection projects.

(1) The division shall set applications for establishment of pressure maintenance, secondary recovery and enhanced oil recovery injection projects for hearing. The division shall fix the project area and the allowable formula for an injection project on an individual basis after notice and hearing.

(2) The project area of an injection project shall comprise the spacing or proration units a given operator owns or operates upon which injection wells are located plus spacing or proration units the same operator owns or operates that directly or

diagonally offset the injection tracts and have producing wells completed on them in the same formation; provided however, that the division may include in the project area additional spacing or proration units not directly or diagonally offsetting an injection tract if, after notice and hearing, the operator establishes that the additional units have wells completed on the unit that have experienced a substantial response to water injection.

(3) The allowable the division assigns to wells in an injection project area shall equal the wells' ability to produce and is not subject to the depth bracket allowable for the pool or to the market demand percentage factor.

(4) Nothing in Subsection F of 19.15.26.8 NMAC shall prohibit the division's assignment of special allowables to wells in buffer zones after notice and hearing. The division may assign special allowables in the limited instances where it is established at a hearing that it is imperative for the protection of correlative rights to do so.

(5) The division may authorize the expansion of injection projects and the placement of additional wells on injection after hearing or administratively, subject to the notice requirements of Subsection B of 19.15.26.8 NMAC.

(6) The director may grant an exception to the hearing requirements of Subsection A of 19.15.26.8 NMAC for conversion to injection of additional wells provided that the wells are necessary to develop or maintain thorough and efficient injection operations for an authorized project and provided that the division does not receive an objection pursuant to Subsection C of 19.15.26.8 NMAC.

(7) An established injection project shall have only one designated operator. The division shall set for hearing an application for exception.

G. Storage wells.

(1) The director may grant administratively, without hearing, an application for the underground storage of liquefied petroleum gas or liquid hydrocarbons in secure caverns within massive salt beds, provided the applicant has complied with the notice provisions of Subsection B of 19.15.26.8 NMAC and the division receives no objections pursuant to Subsection C of 19.15.26.8 NMAC.

(2) In addition to the filing requirements of Subsection B of 19.15.26.8 NMAC, the applicant for approval of a storage well under Subsection G of 19.15.26.8 NMAC shall file the following:

(a) with the director, financial assurance in accordance with the provisions of 19.5.8 NMAC; and

(b) with the appropriate division district office:

(i) form C-101;

(ii) form C-102; and

(iii) form C-105.

[19.15.26.8 NMAC - Rp, 19.15.9.701 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.9 CASING AND CEMENTING OF INJECTION WELLS:

The operator of a well used for injection of gas, air, water or other medium into a formation shall case the well with safe and adequate casing or tubing so as to prevent leakage, and set and cement the casing or tubing to prevent the movement of formation or injected fluid from the injection zone into another zone or to the surface around the outside of a casing string.

[19.15.26.9 NMAC - Rp, 19.15.9.702 NMAC, 12/1/08]

19.15.26.10 OPERATION AND MAINTENANCE:

A. The operator of an injection well shall equip, operate, monitor and maintain the well to facilitate periodic testing and to assure continued mechanical integrity that will result in no significant leak in the tubular goods and packing materials used and no significant fluid movement through vertical channels adjacent to the well bore.

B. The operator of an injection project shall operate and maintain at all times the injection project, including injection wells, producing wells and related surface facilities, in such a manner as will confine the injected fluids to the interval or intervals approved and prevent surface damage or pollution resulting from leaks, breaks or spills.

C. The operator shall report the failure of an injection well, producing well or surface facility, which failure may endanger underground sources of drinking water, to the division under the "immediate notification" procedure of 19.15.29.10 NMAC

D. The operator shall report injection well or producing well failures requiring casing repair or cementing to the division prior to commencement of workover operations.

E. The division may restrict the injected volume and pressure for, or shut-in, injection wells or projects that have exhibited failure to confine injected fluids to the authorized injection zone or zones, until the operator has identified and corrected the failure.

[19.15.26.10 NMAC - Rp 19.15.9.703 NMAC, 12/1/08]

19.15.26.11 TESTING, MONITORING, STEP-RATE TESTS, NOTICE TO THE DIVISION, REQUESTS FOR PRESSURE INCREASES:

A. Testing.

(1) Prior to commencement of injection and any time the operator pulls the tubing or reseats the packer, the operator shall test the well to assure the integrity of the casing and the tubing and packer, if used, including pressure testing of the casing-tubing annulus to a minimum of 300 psi for 30 minutes or such other pressure or time as the appropriate district supervisor may approve. The operator shall use a pressure recorder and submit copies of the chart to the appropriate division district office within 30 days following the test date.

(2) At least once every five years thereafter, the operator shall test an injection well to assure its continued mechanical integrity. Tests demonstrating continued mechanical integrity shall include the following:

(a) measurement of annular pressures in a well injecting at positive pressure under a packer or a balanced fluid seal;

(b) pressure testing of the casing-tubing annulus for a well injecting under vacuum conditions; or

(c) other tests that are demonstrably effective and that the division may approve for use.

(3) Notwithstanding the test procedures outlined in Paragraphs (1) and (2) of Subsection A of 19.15.26.11 NMAC, the division may require the operator to conduct more comprehensive testing of the injection well when deemed advisable, including the use of tracer surveys, noise logs, temperature logs or other test procedures or devices.

(4) In addition, the division may order that the operator conduct special tests prior to the expiration of five years if the division believes conditions so warrant. The division shall consider a special test that demonstrates a well's continued mechanical integrity the equivalent of an initial test for test scheduling purposes, and the regular five-year testing schedule shall be applicable thereafter.

(5) The operator shall advise the division of the date and time any initial, five-year or special tests are to be commenced so the division may witness the tests.

B. Monitoring. The operator shall equip an injection well so that the injection pressure and annular pressure may be determined at the wellhead and the injected volume may be determined at least monthly.

C. Step-rate tests, notice to the division, requests for injection pressure limit increases.

(1) Whenever an operator conducts a step-rate test for the purpose of increasing an authorized injection or disposal well pressure limit, the operator shall give notice of the date and time of the test in advance to the appropriate division district office.

(2) The operator shall submit copies of injection or disposal well pressure-limit increase applications and supporting documentation to the division's Santa Fe office and to the appropriate division district office.

[19.15.26.11 NMAC - Rp, 19.15.9.704 NMAC, 12/1/08]

19.15.26.12 COMMENCEMENT, DISCONTINUANCE AND ABANDONMENT OF INJECTION OPERATIONS:

A. The following provisions apply to injection projects, storage projects, produced water disposal wells and special purpose injection wells.

B. Notice of commencement and discontinuance.

(1) Immediately upon the commencement of injection operations in a well, the operator shall notify the division of the date the operations began.

(2) Within 30 days after permanent cessation of gas or liquefied petroleum gas storage operations or within 30 days after discontinuance of injection operations into any other well, the operator shall notify the division of the date of the discontinuance and the reasons for the discontinuance.

(3) Before temporarily abandoning or plugging an injection well, the operator shall obtain approval from the appropriate division district office in the same manner as when temporarily abandoning or plugging oil and gas wells or dry holes.

C. Abandonment of injection operations.

(1) Whenever there is a continuous one-year period of non-injection into all wells in an injection or storage project or into a produced water disposal well or special purpose injection well, the division shall consider the project or well abandoned, and the authority for injection shall automatically terminate ipso facto.

(2) For good cause shown, the director may grant an administrative extension or extensions of injection authority as an exception to Paragraph (1) of Subsection C of 19.15.26.12 NMAC, provided that any such extension may be granted only prior to the end of one year or continuous non-injection, or during the term of a previously granted extension.

[19.15.26.12 NMAC - Rp, 19.15.9.705 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.13 RECORDS AND REPORTS:

A. The operator of an injection well or project for secondary or other enhanced recovery, pressure maintenance, gas storage, produced water disposal or injection of other fluids shall keep accurate records and shall report monthly to the division gas or

fluid volumes injected, stored or produced as required on the appropriate form listed below:

- (1) secondary or other enhanced recovery on form C-115;
- (2) pressure maintenance on form C-115 and as otherwise prescribed by the division;
- (3) produced water disposal not regulated by 19.15.36 NMAC on form C-115;
- (4) produced water disposal at surface waste management facilities regulated by 19.15.36 NMAC on form C-120-A;
- (5) gas storage on form C-131-A; and
- (6) injection of other fluids on a division-prescribed form.

B. The operator of a liquefied petroleum gas storage project shall report to the division annually on form C-131-B.

[19.15.26.13 NMAC - Rp, 19.15.9.706 NMAC, 12/1/2008; A, 12/27/2018]

19.15.26.14 RECLASSIFICATION OF WELLS:

The director may reclassify an injection well from a category defined in Subsection B of 19.15.26.8 NMAC to another category without notice and hearing upon the request and proper showing by the injection well's operator.

[19.15.26.14 NMAC - Rp, 19.15.9.707 NMAC, 12/1/08]

19.15.26.15 TRANSFER OF AUTHORITY TO INJECT:

A. Authority to inject granted under a division order is not transferable except upon division approval. An operator may obtain approval of transfer of authority to inject by filing completed form C-145.

B. The division may require the operator to demonstrate mechanical integrity of each injection well that will be transferred prior to approving transfer of authority to inject.

[19.15.26.15 NMAC - Rp, 19.15.9.708 NMAC, 12/1/08]

PART 27: VENTING AND FLARING OF NATURAL GAS

19.15.27.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.27.1 NMAC – N, 05/25/2021]

19.15.27.2 SCOPE:

19.15.27 NMAC applies to persons engaged in oil and gas exploration and production within New Mexico.

[19.15.27.2 NMAC – N, 05/25/2021]

19.15.27.3 STATUTORY AUTHORITY:

19.15.27 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.27.3 NMAC – N, 05/25/2021]

19.15.27.4 DURATION:

Permanent.

[19.15.27.4 NMAC – N, 05/25/2021]

19.15.27.5 EFFECTIVE DATE:

May 25, 2021, unless a later date is cited at the end of a section.

[19.15.27.5 NMAC – N, 05/25/2021]

19.15.27.6 OBJECTIVE:

To regulate the venting and flaring of natural gas from wells and production equipment and facilities to prevent waste and protect correlative rights, public health, and the environment.

[19.15.27.6 NMAC – N, 05/25/2021]

19.15.27.7 DEFINITIONS:

Terms shall have the meaning specified in 19.15.2 NMAC except as specified below.

A. "ALARM" means advanced leak and repair monitoring technology for detecting natural gas leaks or releases that is not required by applicable state or federal law, rule, or regulation, and which the division has approved as eligible to earn a credit against the reported volume of lost natural gas pursuant to Paragraph (4) of Subsection B of 19.15.27.9 NMAC.

B. "Average daily well production" means the number derived by dividing the total volume of natural gas produced from a single well in the preceding 12 months by the number of days that natural gas was produced from the well during the same period.

C. "Average daily facility production" means, for a facility receiving production from two or more wells, the number derived by dividing the total volume of natural gas produced from all wells at the facility during the preceding 12 months by the number of days, not to exceed 365, that natural gas was produced from one or more wells during the same period.

D. "AVO" means audio, visual and olfactory.

E. "Completion operations" means the period that begins with the initial perforation of the well in the completed interval and concludes at the end of separation flowback.

F. "Drilling operations" means the period that begins when a well is spud and concludes when casing and cementing has been completed and casing slips have been set to install the tubing head.

G. "Exploratory well" means a well located in a spacing unit the closest boundary of which is two miles or more from:

(1) the outer boundary of a defined pool that has produced oil or gas from the formation to which the well is or will be completed; and

(2) an existing gathering pipeline as defined in 19.15.28 NMAC.

H. "Emergency" means a temporary, infrequent, and unavoidable event in which the loss of natural gas is uncontrollable or necessary to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment, but does not include an event arising from or related to:

(1) the operator's failure to install appropriate equipment of sufficient capacity to accommodate the anticipated or actual rate and pressure of production;

(2) except as provided in Subparagraph (4), the operator's failure to limit production when the production rate exceeds the capacity of the related equipment or natural gas gathering system as defined in 19.15.28 NMAC, or exceeds the sales contract volume of natural gas;

(3) scheduled maintenance;

(4) venting or flaring of natural gas for more than eight hours after notification that is caused by an emergency, unscheduled maintenance, or malfunction of a natural gas gathering system;

(5) the operator's negligence;

(6) recurring equipment failure 4 or more times within a single reporting area pursuant to Subsection A of 19.15.27.9 experienced by the operator within the preceding 30 days; or

(7) Four or more emergencies within a single reporting area, pursuant to Subsection A of 19.15.27.9 NMAC, experienced by the operator within the preceding 30 days, unless the division determines the operator could not have reasonably anticipated the current event and it was beyond the operator's control.

I. **"Flare" or "Flaring"** means the controlled combustion of natural gas in a device designed for that purpose.

J. **"Flare stack"** means a device equipped with a burner used to flare natural gas.

K. **"Gas-to-oil ratio (GOR)"** for purposes of 19.15.27 NMAC means the ratio of natural gas to oil in the production stream expressed in standard cubic feet of natural gas per barrel of oil.

L. **"Initial flowback"** means the period during completion operations that begins with the onset of flowback and concludes when it is technically feasible for a separator to function.

M. **"Malfunction"** means a sudden, unavoidable failure or breakdown of equipment beyond the reasonable control of the operator that substantially disrupts operations, but does not include a failure or breakdown that is caused entirely or in part by poor maintenance, careless operation, or other preventable equipment failure or breakdown.

N. **"N₂"** means nitrogen gas.

O. **"Natural gas"** means a gaseous mixture of hydrocarbon compounds, primarily composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

P. **"Production operations"** means the period that begins on the earlier of 31 days following the commencement of initial flowback or following completion of separation flowback and concludes when the well is plugged and abandoned.

Q. **"Producing in paying quantities"** mean the production of a quantity of oil and gas that yields revenue in excess of operating expenses.

R. "Separation flowback" means the period during completion operations that begins when it is technically feasible for a separator to function and concludes no later than 30 days after the commencement of initial flowback.

S. "Vent" or "Venting" means the release of uncombusted natural gas to the atmosphere.

[19.15.27.7 NMAC – N, 05/25/2021]

19.15.27.8 VENTING AND FLARING OF NATURAL GAS:

A. Venting or flaring of natural gas during drilling, completion, or production operations that constitutes waste as defined in 19.15.2 NMAC is prohibited. The operator has a general duty to maximize the recovery of natural gas by minimizing the waste of natural gas through venting and flaring. During drilling, completion and production operations, the operator may vent or flare natural gas only as authorized in Subsections B, C and D of 19.15.27.8 NMAC. In all circumstances, the operator shall flare rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety, and venting is a safer alternative than flaring.

B. Venting and flaring during drilling operations.

(1) The operator shall capture or combust natural gas if technically feasible using best industry practices and control technologies.

(2) A properly-sized flare stack shall be located at a minimum of 100 feet from the nearest surface hole location unless otherwise approved by the division.

(3) In an emergency or malfunction, the operator may vent natural gas to avoid a risk of an immediate and substantial adverse impact on safety, public health, or the environment. The operator shall report natural gas vented or flared during an emergency or malfunction to the division pursuant to Paragraph (1) of Subsection G of 19.15.27.8 NMAC.

C. Venting and flaring during completion or recompletion operations.

(1) During initial flowback, the operator shall route flowback fluids into a completion or storage tank and, if technically feasible under the applicable well conditions, flare rather than vent and commence operation of a separator as soon as it is technically feasible for a separator to function.

(2) During separation flowback, the operator shall capture and route natural gas from the separation equipment:

(a) to a gas flowline or collection system, reinject into the well, or use on-site as a fuel source or other purpose that a purchased fuel or raw material would serve; or

(b) to a flare if routing the natural gas to a gas flowline or collection system, reinjecting it into the well, or using it on-site as a fuel source or other purpose that a purchased fuel or raw material would serve would pose a risk to safe operation or personnel safety.

(3) If natural gas does not meet gathering pipeline quality specifications, the operator may flare the natural gas for 60 days or until the natural gas meets the pipeline quality specifications, whichever is sooner, provided that:

(a) a properly-sized flare stack is equipped with an automatic igniter or continuous pilot;

(b) the operator analyzes natural gas samples twice per week;

(c) the operator routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met; and

(d) the operator provides the pipeline specifications and natural gas analyses to the division upon request.

D. Venting and flaring during production operations. The operator shall not vent or flare natural gas except:

(1) during an emergency or malfunction;

(2) to unload or clean-up liquid holdup in a well to atmospheric pressure, provided

(a) the operator does not vent after the well achieves a stabilized rate and pressure;

(b) for liquids unloading by manual purging, the operator remains present on-site until the end of unloading or posts at the well site the contact information of the personnel conducting the liquids unloading operation and ensures that personnel remains within 30 minutes' drive time of the well being unloaded until the end of unloading, takes all reasonable actions to achieve a stabilized rate and pressure at the earliest practical time and takes reasonable actions to minimize venting to the maximum extent practicable;

(c) for a well equipped with a plunger lift system or an automated control system, the operator optimizes the system to minimize the venting of natural gas; or

(d) during downhole well maintenance, only when the operator uses a workover rig, swabbing rig, coiled tubing unit or similar specialty equipment and minimizes the venting of natural gas to the extent that it does not pose a risk to safe operations and personnel safety and is consistent with best management practices;

(3) during the first 12 months of production from an exploratory well, or as extended by the division for good cause shown, provided:

(a) the operator proposes and the division approves the well as an exploratory well;

(b) the operator is in compliance with its statewide gas capture requirements; and

(c) within 15 days of determining an exploratory well is capable of producing in paying quantities, the operator submits an updated form C-129 to the division, including a natural gas management plan and timeline for connecting the well to a natural gas gathering system or as otherwise approved by the division; or

(4) during the following activities unless prohibited by applicable state or federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:

(a) gauging or sampling a storage tank or other low-pressure production vessel;

(b) loading out liquids from a storage tank or other low-pressure production vessel to a transport vehicle;

(c) repair and maintenance, including blowing down and depressurizing production equipment to perform repair and maintenance;

(d) normal operation of a gas-activated pneumatic controller or pump;

(e) normal operation of a storage tank or other low-pressure production vessel, but not including venting from a thief hatch that is not properly closed or maintained on an established schedule;

(f) normal operation of dehydration units and amine treatment units;

(g) normal operations of compressors, compressor engines, and turbines;

(h) normal operations of valves, flanges and connectors that is not the result of inadequate equipment design or maintenance;

(i) a bradenhead test;

- (j) a packer leakage test;
- (k) a production test lasting less than 24 hours unless the division requires or approves a longer test period;
- (l) when natural gas does not meet the gathering pipeline specifications, provided the operator analyzes natural gas samples twice per week to determine whether the specifications have been achieved, routes the natural gas into a gathering pipeline as soon as the pipeline specifications are met and provides the pipeline specifications and natural gas analyses to the division upon request; or
- (m) Commissioning of pipelines, equipment, or facilities only for as long as necessary to purge introduced impurities from the pipeline or equipment.

E. Performance standards.

- (1) The operator shall design completion and production separation equipment and storage tanks for maximum anticipated throughput and pressure to minimize waste.
- (2) The operator of a permanent storage tank associated with production operations that is routed to a flare or control device installed after May 25, 2021, shall equip the storage tank with an automatic gauging system that reduces the venting of natural gas.
- (3) The operator shall combust natural gas in a flare stack that is properly sized and designed to ensure proper combustion efficiency.
 - (a) A flare stack installed or replaced after May 25, 2021, shall be equipped with an automatic ignitor or continuous pilot.
 - (b) A flare stack installed before May 25, 2021, shall be retrofitted with an automatic ignitor, continuous pilot, or technology that alerts the operator that the flare may have malfunctioned no later than 18 months after May 25, 2021.
 - (c) A flare stack located at a well or facility, with an average daily production of equal to or less than 60,000 cubic feet of natural gas shall be equipped with an automatic ignitor or continuous pilot if the flare stack is replaced after May 25, 2021.
- (4) A flare stack constructed after May 25, 2021, shall be securely anchored and located at least 100 feet from the well and storage tanks unless otherwise approved by the division.
- (5) The operator shall conduct an AVO inspection on the frequency specified below to confirm that all production equipment is operating properly and there are no leaks or releases except as allowed in Subsection D of 19.15.27.8 NMAC.

(a) During an AVO inspection the operator shall inspect all components, including flare stacks, thief hatches, closed vent systems, pumps, compressors, pressure relief devices, valves, lines, flanges, connectors, and associated piping to identify defects, leaks, and releases by:

- (i)** a comprehensive external visual inspection;
- (ii)** listening for pressure and liquid leaks; and
- (iii)** smelling for unusual and strong odors.

(b) The operator shall conduct an AVO inspection weekly:

- (i)** during the first year of production; and
- (ii)** on a well or facility with an average daily production greater than 60,000 cubic feet of natural gas.

(c) The operator shall conduct an AVO inspection weekly if the operator is on site, and in no case less than once per calendar month with at least 20 calendar days between inspections:

- (i)** on a well or facility with an average daily production equal to or less than 60,000 cubic feet of natural gas; and
- (ii)** on shut-in, temporarily abandoned, or inactive wells.

(d) The operator shall make and keep a record of an AVO inspection for not less than five years and make such record available for inspection by the division upon request.

(6) Subject to the division's prior written approval, the operator may use a remote or automated monitoring technology to detect leaks and releases in lieu of an AVO inspection.

(7) for facilities constructed after May 25, 2021, facilities shall be designed to minimize waste;

(8) Operators have an obligation to minimize waste and shall resolve emergencies as quickly and safely as is feasible.

F. Measurement or estimation of vented and flared natural gas.

(1) The operator shall measure or estimate the volume of natural gas that it vents, flares, or beneficially uses during drilling, completion, and production operations regardless of the reason or authorization for such venting or flaring.

(2) The operator shall install equipment to measure the volume of natural gas flared from existing process piping or a flowline piped from equipment such as high pressure separators, heater treaters, or vapor recovery units associated with a well or facility associated with a well authorized by an APD issued after May 25, 2021, that has an average daily production greater than 60,000 cubic feet of natural gas.

(3) Measuring equipment shall conform to an industry standard such as American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) Chapter 14.10 Measurement of Flow to Flares.

(4) Measuring equipment shall not be designed or equipped with a manifold that allows the diversion of natural gas around the metering element except for the sole purpose of inspecting and servicing the measurement equipment.

(5) If metering is not practicable due to circumstances such as low flow rate or low pressure venting and flaring, the operator may estimate the volume of vented or flared natural gas using a methodology that can be independently verified.

(6) For a well that does not require measuring equipment, the operator shall estimate the volume of vented and flared natural gas based on the result of an annual GOR test for that well reported on form C-116 to allow the division to independently verify the volume and rate of the flared natural gas.

(7) The operator shall install measuring equipment whenever the division determines that metering is practicable or the existing measuring equipment or GOR test is not sufficient to measure the volume of vented and flared natural gas.

G. Reporting of vented or flared natural gas.

(1) Venting or flaring caused by an emergency, a malfunction or of long duration.

(a) The operator shall notify the division of venting or flaring that exceeds 50 MCF in volume and either results from an emergency or malfunction, or lasts eight hours or more cumulatively within any 24-hour period from a single event by filing a form C-129 in lieu of a C-141, except as provided by Subparagraph (d) of Paragraph (1) of Subsection G of 19.15.27.8 NMAC, with the division as follows:

(i) for venting or flaring that equals or exceeds 50 MCF but less than 500 MCF from a single event, notify the division in writing by filing a form C-129 no later than 15 days following discovery or commencement of venting or flaring;

(ii) for venting or flaring that equals or exceeds 500 MCF or otherwise qualifies as a major release as defined in 19.15.29.7 NMAC from a single event, notify the division verbally or by e-mail as soon as possible and no later than 24 hours following discovery or commencement of venting or flaring and provide the information

required in form C-129. No later than 15 days following the discovery or commencement of venting or flaring, the operator shall file a form C-129 that verifies, updates, or corrects the verbal or e-mail notification; and

(iii) no later than 15 days following the termination of venting or flaring, notify the division by filing a form C-129.

(b) The operator shall provide and certify the accuracy of the following information in the form C-129:

(i) operator's name;

(ii) name and type of facility;

(iii) equipment involved;

(iv) compositional analysis of vented or flared natural gas that is representative of the well or facility;

(v) date(s) and time(s) that venting or flaring was discovered or commenced and terminated;

(vi) measured or estimated volume of vented or flared natural gas;

(vii) cause and nature of venting or flaring;

(viii) steps taken to limit the duration and magnitude of venting or flaring;
and

(ix) corrective actions taken to eliminate the cause and recurrence of venting or flaring.

(c) At the division's request, the operator shall provide and certify additional information by the specified date.

(d) The operator shall file a form C-141 instead of a form C-129 for a release that includes liquid during venting or flaring that is or may be a major or minor release under 19.15.29.7 NMAC.

(2) Monthly reporting of vented and flared natural gas. For each well or facility at which venting or flaring occurred, the operator shall separately report the volume of vented natural gas and volume of flared natural gas for each month in each category listed below. Beginning October 1, 2021, the operator shall gather data for quarterly reports in a format specified by the division and submit by February 15, 2022 for the fourth quarter and May 15, 2022 for the first quarter. Beginning April 2022, the operator shall submit a form C-115B monthly on or before the 15th day of the second

month following the month in which it vented or flared natural gas. The operator shall specify whether it estimated or measured each reported volume. In filing the initial report, the operator shall provide the methodology (measured or estimated using calculations and industry standard factors) used to report the volumes and shall report changes in the methodology on future forms. The operator shall make and keep records of the measurements and estimates, including records showing how it calculated the estimates, for no less than five years and make such records available for inspection by the division upon request. The categories are:

- (a)** emergency;
- (b)** non-scheduled maintenance or malfunction, including the abnormal operation of equipment;
- (c)** routine repair and maintenance, including blowdown and depressurization;
- (d)** routine downhole maintenance, including operation of workover rigs, swabbing rigs, coiled tubing units and similar specialty equipment;
- (e)** manual liquid unloading;
- (f)** storage tanks;
- (g)** insufficient availability or capacity in a natural gas gathering system during the separation phase of completion operations or production operations;
- (h)** natural gas that is not suitable for transportation or processing because:
 - (i)** N₂, H₂S, or CO₂ concentrations do not meet gathering pipeline quality specifications; or
 - (ii)** O₂ concentrations do not meet gathering pipeline quality specifications except during commissioning of pipelines, equipment, or facilities pursuant to Subparagraph (I) of Paragraph (4) of Subsection D of 19.15.27.8 NMAC, except as otherwise approved by the division;
- (i)** venting as a result of normal operation of pneumatic controllers and pumps, unless the operator vents or flares less than 500,000 cubic feet per year of natural gas;
- (j)** improperly closed or maintained thief hatches;
- (k)** venting or flaring in excess of eight hours that is caused by an emergency, unscheduled maintenance or malfunction of a natural gas gathering system as defined in 19.15.28 NMAC;

(l) venting and flaring from an exploratory well; and

(m) other surface waste as defined in Subparagraph (b) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC that is not described above.

(3) Upon submittal of the C-115B report, the division will compile and publish on the division's website an operator's vented and flared natural gas information for each month on a volumetric and gas capture percentage basis.

(a) To calculate the lost natural gas on a volumetric basis, the operator shall deduct the volume of natural gas sold, used for beneficial use, vented or flared during an emergency, and vented or flared because it was not suitable for transportation or processing due to N₂, H₂S, or CO₂ concentrations, vented as a result of normal operation of pneumatic controllers and pumps if reported pursuant to Subparagraph (i) of Paragraph (2) of Subsection G of 19.15.27.8 NMAC, or vented or flared from an exploratory well with division approval from the natural gas produced.

(b) To calculate the natural gas captured on a percentage basis, the operator shall deduct the volume of lost gas calculated in Subparagraph (a) of Paragraph (3) of Subsection G of 19.15.27.8 NMAC from the total volume of natural gas produced and divide by the total volume of natural gas produced.

(4) Beginning June 2022, the operator shall provide a copy of the C-115B to the New Mexico State Land Office for a well or facility in which the state owns a royalty interest, and the operator shall notify all royalty interest owners of their ability to obtain the information from the division's website at the time the initial C-115B is filed.

(5) Upon the New Mexico environment department's request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.27 NMAC.

[19.15.27.8 NMAC – N, 05/25/2021]

19.15.27.9 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:

A. Statewide natural gas capture requirements. Commencing April 1, 2022, the operator shall reduce the annual volume of vented and flared natural gas in order to capture no less than ninety-eight percent of the natural gas produced from its wells in each of two reporting areas, one north and one south of the Township 10 North line, by December 31, 2026. The division shall calculate and publish on the division's website each operator's baseline natural gas capture rate based on the operator's fourth quarter 2021 and first quarter 2022 quarterly reports as per Paragraph (2) of Subsection G of 19.15.27.8 NMAC. In each calendar year between January 1, 2022 and December 31, 2026, the operator shall increase its annual percentage of natural gas captured in each reporting area in which it operates based on the following formula: (baseline loss rate minus two percent) divided by five, except that for 2022 only, an operator's percentage of natural gas captured shall not be less than seventy-five percent of the annual gas

capture percentage increase (2022 baseline loss rate minus two percent divided by five times 0.75), and the balance shall be captured in 2023.

(1) The following table provides examples of the formula based on a range of baseline natural gas capture rates.

Baseline Natural Gas Capture Rate	Minimum Required Annual Natural Gas Capture Percentage Increase
90-98%	0-1.6%
80-89%	>1.6-3.6%
70-79%	>3.6-5.6%
0-69%	>5.6-19.6%

(2) If the operator's baseline capture rate is less than sixty percent, the operator shall submit by the specified date to the division for approval a plan to meet the minimum required annual capture percentage increase.

(3) An operator's acquisition or sale of one or more wells from another operator shall not affect its annual natural gas capture requirements. No later 60 days following the acquisition or sale, the operator may file a written request to the division requesting to modify its gas capture percentage requirements for good cause based on its acquisition or sale. The division may approve, approve with conditions, or deny the request in its sole discretion.

(4) No later than March 30 following the reporting year, an operator that has not met its annual natural gas capture requirement for the previous year shall submit to the division a compliance plan demonstrating its ability to comply with its annual gas capture requirement for the current year. If the division determines, after a reasonable opportunity to meet with the operator, that the compliance plan does not demonstrate the operator's ability to comply with its annual gas capture requirement for the current year the operator's approved APDs for wells that have not been spud shall be suspended pending a division hearing to be held no later than 30 days after the determination. Nothing in this subparagraph shall prevent the division from taking any other action authorized by law for the operator's failure to comply with its annual gas capture requirement, including shutting in wells and assessing civil penalties.

B. Accounting. No later than February 28 of each year beginning in 2023, the operator shall submit a report certifying compliance with its statewide gas capture requirements. The operator shall determine compliance with its statewide gas capture requirements by deducting any ALARM credits approved pursuant to this subsection from the aggregated volume of lost gas calculated for each month during the preceding year pursuant to Subparagraph (a) of Paragraph (3) of Subsection G of 19.15.27.8 NMAC, deducting that aggregated volume of lost gas from the aggregated volume of natural gas produced for each month during the preceding year, and dividing that

volume by the aggregated volume of natural gas produced for each month during the preceding year.

(1) An operator that used a division-approved ALARM technology to monitor for leaks and releases may obtain a credit against the volume of lost natural gas if it discovered the leak or release using the ALARM technology and the operator:

(a) isolated the leak or release within 48 hours following field verification;

(b) repaired the leak or release within 15 days following field verification or another date approved by the division;

(c) timely notified the division by filing a form C-129 or form C-141; and

(d) used ALARM monitoring technology as a routine and on-going aspect of its waste-reduction practices.

(i) For discrete waste-reduction practices such as aerial methane monitoring, the operator must use the technology at least twice per year; and

(ii) for waste-reduction practices such as automated emissions monitoring systems that operate routinely or continuously, the division will determine the required frequency of use.

(e) The division shall publish a list of division-approved ALARM technologies on the division's website.

(2) An operator may file an application with the division for a credit against its volume of lost natural gas that identifies:

(a) the ALARM technology used to discover the leak or release;

(b) the dates on which the leak or release was discovered, field-verified, isolated and repaired;

(c) the method used to measure or estimate the volume of natural gas leaked or released which method shall be consistent with Subsection F of 19.15.27.8 NMAC;

(d) a description and the date of each action taken to isolate and repair the leak or release;

(e) visual documentation or other verification of discovery, isolation and repair of the leak or release;

(f) a certification that the operator did not know or have reason to know of the leak or release before discovery using ALARM technology; and

(g) a description of how the operator used ALARM technology as a routine and on-going aspect of its waste-reduction practices.

(3) For each leak or release reported by an operator that meets the requirements of Paragraphs (3) and (4) of Subsection B of 29.15.28.10 NMAC, the division, in its sole discretion, may approve a credit that the operator can apply against its reported volume of lost natural gas as follows:

(a) a credit of forty percent of the volume of natural gas discovered and isolated within 48 hours of discovery and timely repaired;

(b) an additional credit of twenty percent if the operator used ALARM technology no less than once per calendar quarter as a routine and on-going aspect of its waste-reduction practices.

(4) A division-approved ALARM credit shall:

(a) be used only by the operator who submitted the application pursuant to Paragraph (4) of Subsection B of 29.15.27.10 NMAC;

(b) not be transferred to or used by another operator, including a parent, subsidiary, related entity, or person acquiring the well;

(c) be used only once; and

(d) expire 24 months after division approval.

(5) The division will publish a list of approved ALARM technology.

C. Third-party verification. The division may request that an operator retain a third party to verify any data or information collected or reported pursuant to this Part, make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division. If the division and the operator cannot reach agreement on the division's request, the operator may file an application for hearing before the division. The operator, at its own expense, shall retain a third party approved by the division to conduct the activities agreed to by the division and the operator or ordered by the division following a hearing.

D. Natural gas management plan.

(1) After May 25, 2021, the operator shall file a natural gas management plan with each APD for a new or recompleted well. The operator may file a single natural gas management plan for multiple wells drilled or recompleted from a single well pad or that will be connected to a central delivery point. The natural gas management plan

shall describe the actions that the operator will take at each proposed well to meet its statewide natural gas capture requirements and to comply with the requirements of Subsections A through F of 19.15.27.8 NMAC, including for each well:

- (a)** the operator's name and OGRID number;
- (b)** the name, API number, location and footage;
- (c)** the anticipated dates of drilling, completion and first production;
- (d)** a description of operational best practices that will be used to minimize venting during active and planned maintenance; and
- (e)** the anticipated volumes of liquids and gas production and a description of how separation equipment will be sized to optimize gas capture.

(2) Beginning April 1, 2022, an operator that, at the time it submits an APD for a new or recompleted well is, cumulatively for the year, not in compliance with its baseline natural gas capture rate for the applicable reporting area if the APD is submitted on or after April 1, 2022 or its natural gas capture requirement for the previous year if the APD is submitted in 2023 or after shall also include the following information in the natural gas management plan:

- (a)** the anticipated volume of produced natural gas in units of MCFD for the first year of production;
- (b)** the existing natural gas gathering system the operator has contracted or anticipates contracting with to gather the natural gas, including:
 - (i)** the name of the natural gas gathering system operator;
 - (ii)** the name and location of the natural gas gathering system;
 - (iii)** a map of the well location and the anticipated pipeline route connecting the production operations to the existing or planned interconnect of the natural gas gathering system.; and
 - (iv)** the maximum daily capacity of the segment or portion of the natural gas gathering system to which the well will be connected; and
- (c)** the operator's plans for connecting the well to the natural gas gathering system, including:
 - (i)** the anticipated date on which the natural gas gathering system will be available to gather the natural gas produced from the well;

(ii) whether the natural gas gathering system has or will have capacity to gather the anticipated natural gas production volume from the well prior to the date of first production; and

(iii) whether the operator anticipates the operator's existing well(s) connected to the same segment or portion of the natural gas gathering system, referenced in Item (iv) of Subparagraph (b) of Paragraph (2) of Subsection D or 19.15.27.9 NMAC will continue to be able to meet anticipated increases in line pressure caused by the well and the operator's plan to manage production in response to the increased line pressure.

(3) The operator may assert confidentiality for information specified in Paragraph (2) of Subsection D of 19.15.27.9 NMAC pursuant to Section 71-2-8 NMSA 1978.

(4) The operator shall certify that it has determined based on the available information at the time of submitting the natural gas management plan either:

(a) it will be able to connect the well to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system; or

(b) it will not be able to connect to a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the volume of natural gas the operator anticipates the well will produce commencing on the date of first production, taking into account the current and anticipated volumes of produced natural gas from other wells connected to the pipeline gathering system.

(5) If the operator determines it will not be able to connect a natural gas gathering system in the general area with sufficient capacity to transport one hundred percent of the anticipated volume of natural gas produced on the date of first production from the well, the operator shall either shut-in the well until the operator submits the certification required by Paragraph (4) of Subsection D of 19.15.27.9 NMAC or submit a venting and flaring plan to the division that evaluates and selects one or more of the potential alternative beneficial uses for the natural gas until a natural gas gathering system is available, including:

(a) power generation on lease;

(b) power generation for grid;

(c) compression on lease;

(d) liquids removal on lease;

- (e) reinjection for underground storage;
- (f) reinjection for temporary storage;
- (g) reinjection for enhanced oil recovery;
- (h) fuel cell production; and
- (i) other alternative beneficial uses approved by the division.

(6) If, at any time after the operator submits the natural gas management plan and before the well is spud:

(a) the operator becomes aware that the natural gas gathering system it planned to connect the well to has become unavailable or will not have capacity to transport one hundred percent of the production from the well, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or revised venting and flaring plan containing the information specified in Paragraph (5) of Subsection D of 19.15.27.9 NMAC; and

(b) the operator becomes aware that it has, cumulatively for the year, become out of compliance with its baseline natural gas capture rate or natural gas capture requirement, no later than 20 days after becoming aware of such information, the operator shall submit for the division's approval a new or revised natural gas management plan for each well it plans to spud during the next 90 days containing the information specified in Paragraph (2) of Subsection D of 19.15.27.9 NMAC, and shall file an update for each plan until the operator is back in compliance with its baseline natural gas capture rate or natural gas capture requirement.

(7) The division may deny the APD or conditionally approve the APD if the operator does not make a certification, fails to submit an adequate venting and flaring plan, which includes alternative beneficial uses for the anticipated volume of natural gas produced, or if the division determines that the operator will not have adequate natural gas takeaway capacity at the time a well will be spud.

[19.15.27.9 NMAC – N, 05/25/2021]

PART 28: NATURAL GAS GATHERING SYSTEMS

19.15.28.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.28.1 NMAC – N, 05/25/2021]

19.15.28.2 SCOPE:

19.15.28 NMAC applies to persons engaged in natural gas gathering and processing within New Mexico.

[19.15.28.2 NMAC – N, 05/25/2021]

19.15.28.3 STATUTORY AUTHORITY:

19.15.28 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-6, Section 70-2-11 and Section 70-2-12 NMSA 1978.

[19.15.27.3 NMAC – N, 05/25/2021]

19.15.28.4 DURATION:

Permanent.

[19.15.27.4 NMAC – N, 05/25/2021]

19.15.28.5 EFFECTIVE DATE:

May 25, 2021, unless a later date is cited at the end of a section.

[19.15.28.5 NMAC – N, 05/25/2021]

19.15.28.6 OBJECTIVE:

To regulate the venting and flaring of natural gas from natural gas gathering systems to prevent waste and protect public health and the environment.

[19.15.28.6 NMAC – N, 05/25/2021]

19.15.28.7 DEFINITIONS:

Terms shall have the meaning specified in 19.15.2 NMAC except as specified below.

A. "ALARM" means advanced leak and repair monitoring technology for detecting natural gas leaks or releases that is not required by applicable state or federal law, rule, or regulation and which the division has approved as eligible to earn a credit against the reported volume of lost natural gas pursuant to Paragraph (3) of Subsection B of 19.15.28.10 NMAC.

B. "AVO" means audio, visual and olfactory.

C. "Custody transfer point" means the transfer of natural gas from upstream separation, processing, treatment, or in-field gathering to a pipeline or any other form of transportation occurring at sales metering equipment.

D. "Emergency" means a temporary, infrequent, and unavoidable event in which the loss of natural gas is uncontrollable or necessary to avoid a risk of an immediate and substantial adverse impact on safety, public health or the environment, but does not include an event arising from or related to:

(1) the operator's failure to install appropriate equipment of sufficient capacity to accommodate the anticipated or actual rate and pressure of the natural gas gathering system;

(2) the operator's failure to limit the gathering of natural gas when the volume of natural gas exceeds the capacity of the natural gas gathering system;

(3) scheduled maintenance;

(4) unscheduled maintenance or a malfunction that results in venting or flaring of natural gas by an upstream operator for which the operator fails to comply with Paragraph (2) of Subsection D of 19.15.28.8 NMAC;

(5) the operator's negligence;

(6) recurring equipment failure; 4 or more times within a single reporting area within the preceding 30 days pursuant to Subsection A of 19.15.28.10 NMAC; or

(7) Four or more emergencies within a single reporting area pursuant to Subsection A of 19.15.28.10 NMAC experienced by the operator within the preceding 30 days, unless the division determines the operator could not have reasonably anticipated the current event and it was beyond the operator's control.

E. "Flare" or "Flaring" means the controlled combustion of natural gas in a device designed for that purpose.

F. "Flare stack" means a device equipped with a burner used to flare natural gas.

G. "Gathering pipeline" means a pipeline that gathers natural gas within a natural gas gathering system.

H. "GIS" means geographic information system.

I. "GPS" means global positioning system.

J. "Malfunction" means a sudden, unavoidable failure or breakdown of equipment beyond the reasonable control of the operator that substantially disrupts operations, but does not include a failure or breakdown that is caused entirely or in part by poor maintenance, careless operation, or other preventable equipment failure or breakdown.

K. "Natural gas" means a gaseous mixture of hydrocarbon compounds, primarily composed of methane, and includes both casinghead gas and gas as those terms are defined in 19.15.2 NMAC.

L. "Natural gas gathering system" means the gathering pipelines and associated facilities that compress, dehydrate or treat natural gas after the custody transfer point and ending at the connection point with a natural gas processing plant or transmission or distribution system.

M. "New gathering pipeline" means a gathering pipeline placed into service after May 25, 2021.

N. "Vent" or "Venting" means the release of uncombusted natural gas to the atmosphere.

[19.15.28.7 NMAC – N, 05/25/2021]

19.15.28.8 VENTING AND FLARING OF NATURAL GAS:

A. Venting or flaring of natural gas from a natural gas gathering system that constitutes waste as defined in 19.15.2 NMAC and is prohibited. The operator has a general duty to maximize the gathering of natural gas by minimizing the waste of natural gas through venting and flaring. The operator may vent or flare natural gas only as authorized in Subsection B of 19.15.28.8 NMAC. In all circumstances, the operator shall flare rather than vent natural gas except when flaring is technically infeasible or would pose a risk to safe operations or personnel safety and venting is a safer alternative than flaring.

B. The operator shall not flare or vent natural gas except:

- (1)** during an emergency or malfunction; or
- (2)** during the following activities unless prohibited by applicable state and federal law, rule, or regulation for the emission of hydrocarbons and volatile organic compounds:
 - (a)** repair and maintenance, including blowing down and depressurizing equipment to perform repair or maintenance;
 - (b)** normal operation of a gas-activated pneumatic controller or pump;
 - (c)** normal operation of dehydration units and amine treatment units;
 - (d)** normal operation of compressors, compressor engines, and turbines;

(e) normal operation of valves, flanges, and connectors that are not the result of inadequate equipment design or maintenance;

(f) normal operation of a storage tank or other low-pressure production vessel, but not including venting from a thief hatch that is not properly closed or maintained on an established schedule;

(g) gauging or sampling a storage tank or other low-pressure vessel;

(h) loading out liquids from a storage tank or other low-pressure vessel to a transport vehicle;

(i) normal operations of valves, flanges or connectors that are not the result of inadequate equipment design or maintenance;

(j) blow down to repair a gathering pipeline;

(k) pigging a gathering pipeline;

(l) purging a gathering pipeline; or

(m) commissioning of pipelines, equipment, or facilities only for as long as necessary to purge introduced impurities from the pipeline or equipment.

C. Performance standards.

(1) The operator shall take all reasonable actions to prevent and minimize leaks and releases of natural gas from a natural gas gathering system and shall implement an operations plan to minimize the waste of natural gas for each non-contiguous natural gas gathering system. The plan should include procedures to reduce leaks and releases, such as a routine maintenance program, cathodic protection, corrosion control, liquids management and integrity management. The operator shall file its operations plan with the division:

(a) for a natural gas gathering system placed into service after May 25, 2021, within 60 days following the date the natural gas gathering system is placed into service;

(b) for a natural gas gathering system in place on or before May 25, 2021, within 90 days following May 25, 2021; and

(c) for a natural gas gathering system to which the operator added a new gathering pipeline during the calendar year or changed the operations plan, an updated operations plan no later than March 31 of the following year.

(2) During scheduled maintenance, replacement, or repair of a new or existing natural gas gathering system, the operator shall not vent natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection, and recordkeeping requirements in Subsection E of 19.15.27.8 NMAC.

(3) During unscheduled maintenance, replacement or repair of a new or existing natural gas gathering system, to the extent that it is technically feasible and would not pose a risk to safe operations or personnel safety, the operator shall not vent natural gas during blowdown and shall route natural gas to a portable flare stack which complies with the flare stack standards, inspection and recordkeeping in Subsection E of 19.15.27.8 NMAC.

(4) The operator shall conduct a weekly AVO inspection of the compressors, dehydrators and treatment facilities associated with a natural gas gathering system to confirm those components are operating properly and there are no leaks or releases except as allowed in Subsection B of 19.15.28.8 NMAC.

(a) During an AVO inspection the operator shall inspect all components, including flare stacks, thief hatches, closed vent systems, pumps, compressors, pressure relief devices, valves, lines, flanges, connectors, and associated piping to identify defects, leaks, and releases by:

- (i)** comprehensive external visual inspection;
- (ii)** listening for pressure and liquid leaks; and
- (iii)** smelling for unusual and strong odors.

(b) The operator shall make and keep a record of an AVO inspection for no less than five years and make such records available for inspection by the division upon request.

(c) Subject to the division's prior written approval, the operator may use a remote or automated monitoring technology to detect leaks and releases in lieu of an AVO inspection.

(5) The operator shall perform an annual monitoring of the entire length of a gathering pipeline using an AVO technique, ALARM technology, aerial visual inspections, or other valid method to detect leaks and releases. The operator shall record and, upon the division's request, report the date and time of the monitoring, the method and technology used. The operator shall retain records of monitoring for at least five years. Personnel conducting inspections shall be knowledgeable on the methods and technology being used.

(6) For facilities constructed after May 25, 2021, facilities shall be designed to minimize waste.

(7) Operators have an obligation to minimize waste and shall resolve emergencies as quickly and safely as is feasible.

D. Reporting to affected upstream operators.

(1) No less than 14 days prior to the date of scheduled maintenance, replacement or repair of a natural gas gathering system, the operator shall provide written notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas.

(2) As soon as possible but no more than 12 hours after discovery of an emergency or malfunction, or the need for unscheduled maintenance of a natural gas gathering system, the operator shall provide verbal notification to each upstream operator whose natural gas is gathered by the system of the date and expected duration that the system will not gather natural gas, and shall provide written confirmation of the verbal notification, including the date, time, person, and telephone number to whom verbal notification was given no later than 24 hours after discovery.

(3) The operator shall make and keep a record of each notification for no less than five years and make such records available for inspection by the division upon request.

E. Measurement or estimation of vented and flared natural gas.

(1) The operator shall measure or estimate the volume of natural gas that it vents, flares or beneficially uses regardless of the reason or authorization for such venting or flaring.

(2) The operator shall install equipment to measure the volume of natural gas flared from a natural gas gathering system.

(3) Measuring equipment shall conform to an industry standard such as American Petroleum Institute (API) Manual of Petroleum Measurement Standards (MPMS) Chapter 14.10 Measurement of Flow to Flares.

(4) Measuring equipment shall not be designed or equipped with a manifold that allows the diversion of natural gas around the metering element except for the sole purpose of inspecting and servicing the measuring equipment.

(5) If metering is not practicable due to circumstances such as low flow rate or low pressure venting and flaring, the operator shall estimate the volume of vented or flared natural gas using a methodology that can be independently verified.

F. Reporting of vented or flared natural gas.

(1) Venting or flaring caused by an emergency, a malfunction, or of long duration.

(a) The operator shall notify the division of venting or flaring that exceeds 50 MCF in volume and either results from an emergency or malfunction or lasts eight hours or more cumulatively within any 24-hour period from a single event by filing a form C-129 in lieu of a C-141, except as provided by Subparagraph (d) of Paragraph (1) of Subsection G of 19.15.27.8 NMAC, with the division as follows:

(i) for venting or flaring that equals or exceeds 50 MCF but is less than 500 MCF from a single event, notify the division in writing by filing a form C-129 no later than 15 days following discovery or commencement of venting or flaring; or

(ii) for venting or flaring that equals or exceeds 500 MCF or otherwise qualifies as a major release as defined in 19.15.29.7 NMAC from a single event, notify the division verbally or by e-mail as soon as possible and no later than 24 hours following discovery or commencement of venting or flaring and provide the information required in form C-129. No later than 15 days following the discovery or commencement of venting or flaring, the operator shall file a form C-129 that verifies, updates, or corrects the verbal or e-mail notification; and

(iii) no later than 15 days following the termination of venting or flaring, notify the division by filing a form C-129.

(b) The operator shall provide and certify the accuracy of the following information in the form C-129:

(i) operator's name;

(ii) name and type of facility;

(iii) equipment involved;

(iv) compositional analysis of vented or flared natural gas that is representative of the natural gas gathering system;

(v) date(s) and time(s) that venting or flaring was discovered or commenced and terminated;

(vi) measured or estimated volume of vented or flared natural gas;

(vii) cause and nature of venting or flaring;

(viii) steps taken to limit the duration and magnitude of venting or flaring;
and

(ix) corrective actions taken to eliminate the cause and recurrence of venting or flaring.

(c) At the division's request, the operator shall provide and certify additional information by the specified date.

(d) The operator shall file a form C-141 instead of a form C-129 for a release which includes liquid during venting or flaring that is or may be a major or minor release under 19.15.29.7 NMAC.

(2) Monthly reporting of vented and flared natural gas. For each natural gas gathering system at which venting or flaring occurred, the operator shall separately report the volume of vented natural gas and the volume of flared natural gas for each month in each category listed below. Beginning October 1, 2021, the operator shall gather data for quarterly reports in a format specified by the division and submit by February 15, 2022 for the fourth quarter of 2021 and May 15, 2022 for the first quarter of 2022. Beginning April 2022, the operator shall submit a form C-115B monthly on or before the 15th day of the second month following the month in which it vented or flared natural gas. The operator shall specify whether it estimated or measured each reported volume. In filing the initial report, the operator shall provide the methodology (measured or estimated using calculations and industry standard factors) used to report the volumes on the form, and shall report changes in the methodology on future forms. The operator shall make and keep records of the measurements and estimates, including records showing how it calculated the estimates, for no less than five years and make such records available for inspection by the division upon request. The categories are:

- (a) emergency;
- (b) non-scheduled maintenance or malfunction, including the abnormal operation of equipment;
- (c) routine repair and maintenance, including blowdown and depressurization;
- (d) beneficial use, including pilot and purge gas, fired equipment and engines;
- (e) gathering pipeline blowdown and purging;
- (f) gathering pipeline pigging;
- (g) storage tanks;
- (h) venting as a result of normal operation of pneumatic controllers and pumps;

(i) improperly closed or maintained thief hatches; and

(j) other surface waste as defined in Subparagraph (b) of Paragraph (1) of Subsection W of 19.15.2.7 NMAC that is not described above.

(3) Upon submittal of the C-115B report, the division will compile and publish on the division's website an operator's vented and flared natural gas information for each month on a volumetric and gas capture percentage basis.

(a) To calculate the lost natural gas on a volumetric basis, the operator shall sum the volume of natural gas reported under Subparagraphs (b), (c), (e), (f), (g), (i) and (j) of Paragraph (2) of Subsection F of 19.15.28.8 NMAC.

(b) To calculate the natural gas captured on a percentage basis, the operator shall deduct the volume of lost gas calculated in Subparagraph (a) of Paragraph (3) of Subsection F of 19.15.28.8 NMAC from the total volume of natural gas gathered and divide by the total volume of natural gas gathered.

(4) Upon the New Mexico environment department's request, the operator shall promptly provide a copy of any form filed pursuant to 19.15.28 NMAC.

[19.15.28.8 NMAC – N, 05/25/2021; A, 02/22/2022]

19.15.28.9 LOCATION REQUIREMENTS:

A. The operator shall file with the division a GIS digitally formatted as-built map:

(1) for a new gathering pipeline or natural gas gathering system, no later than 90 days after placing the gathering pipeline or system into service;

(2) for an existing gathering pipeline or natural gas gathering system no later than 90 days after May 25, 2021; and

(3) for an addition to an existing gathering pipeline or natural gas gathering system, no later than 90 days after placing the addition into service.

B. To ensure proper field identification of a gathering pipeline in an emergency, the as-built map shall include a layer which identifies the pipeline size and construction material type.

C. No later than July 1st of each year, the operator shall file with the division an updated GIS digitally formatted as-built map of its gathering pipeline or natural gas gathering system, which shall include a GIS layer that identifies the date, location and volume of vented or flared natural gas of each emergency, malfunction and release reported to the division since 19.15.28 NMAC became applicable to the pipeline or system.

D. The operator may assert confidentiality for the GIS digitally formatted as-built map and GIS layer pursuant to Section 71-2-8 NMSA 1978.

[19.15.28.9 NMAC – N, 05/25/2021]

19.15.28.10 STATEWIDE NATURAL GAS CAPTURE REQUIREMENTS:

A. Statewide natural gas capture requirements. Commencing April 1, 2022, the operator of a natural gas gathering system shall reduce the annual volume of vented and flared natural gas in order to capture no less than ninety-eight percent of the natural gas gathered in each of two reporting areas, one north and one south of the Township 10 North line, by December 31, 2026. The division shall calculate and publish on the division's website each operator's baseline natural gas capture rate based on the operator's fourth quarter 2021 and first quarter 2022 quarterly reports as per Paragraph (2) of Subsection G of 19.15.28.8 NMAC. In each calendar year between January 1, 2022 and December 31, 2026, the operator shall increase its annual percentage of natural gas captured in each reporting area in which it operates based on the following formula: (baseline loss rate minus two percent) divided by five, except that for 2022 only, an operator's percentage of natural gas captured shall not be less than seventy-five percent of the annual gas capture percentage increase (2022 baseline loss rate minus two percent divided by five times 0.75), and the balance shall be captured in 2023.

(1) The following table provides examples of the formula based on a range of baseline natural gas capture rates.

Baseline Natural Gas Capture Rate	Minimum Required Annual Natural Gas Capture Percentage Increase
90-98%	0-1.6%
80-89%	>1.6-3.6%
70-79%	>3.6-5.6%
0-69%	>5.6-19.6%

(2) If the operator's baseline capture rate is less than sixty percent, the operator shall submit by the specified date to the division for approval, a plan to meet the minimum required annual capture percentage increase.

(3) An operator's acquisition or sale of a natural gas gathering system from another operator shall not affect its annual natural gas capture requirements. No later 60 days following the acquisition or sale, the operator may file a written request to the division requesting to modify its annual gas capture percentage requirements for good cause based on its acquisition or sale. The division may approve, approve with conditions, or deny the request in its sole discretion.

(4) Operators that are affiliated shall consolidate their natural gas capture reporting and compliance obligations.

B. Accounting. No later than February 28 of each year beginning in 2023, the operator shall submit a report certifying compliance with its statewide gas capture requirements. The operator shall determine compliance with its statewide gas capture requirements by deducting any ALARM credits approved pursuant to this subsection from the aggregated volume of lost gas calculated for each month during the preceding year pursuant to Subparagraph (a) of Paragraph (3) of Subsection F of 19.15.28.8 NMAC, deducting that aggregated volume of lost gas from the aggregated volume of natural gas gathered for each month during the preceding year, and dividing that volume by the aggregated volume of natural gas gathered for each month during the preceding year.

(1) An operator that used a division-approved ALARM technology to monitor for leaks and releases may obtain a credit against the volume of lost natural gas if it discovered the leak or release using the ALARM technology, and the operator:

(a) isolated the leak or release within 48 hours following field verification;

(b) repaired the leak or release within 15 days following field verification or another date approved by the division;

(c) timely notified the division by filing a form C-129 or form C-141; and

(d) used ALARM monitoring technology as a routine and on-going aspect of its waste-reduction practices.

(i) For discrete waste-reduction practices such as aerial methane monitoring, the operator must use the technology at least twice per year; and

(ii) for waste-reduction practices such as automated emissions monitoring systems that operate routinely or continuously, the division will determine the required frequency of use.

(e) The division shall publish a list of division-approved ALARM technologies on the division's website.

(2) An operator may file an application with the division for a credit against its volume of lost natural gas that identifies:

(a) the ALARM technology used to discover the leak or release;

(b) the dates on which the leak or release was discovered, field-verified, isolated, and repaired;

(c) the method used to measure or estimate the volume of natural gas leaked or released;

(d) a description and the date of each action taken to isolate and repair the leak or release;

(e) visual documentation or other verification of discovery, isolation, and repair of the leak or release;

(f) a certification that the operator did not know or have reason to know of the leak or release before discovery using ALARM technology; and

(g) a description of how the operator used ALARM technology as a routine and on-going aspect of its waste-reduction practices.

(3) For each leak or release reported by an operator that meets the requirements of Paragraphs (3) and (4) of Subsection B of 29.15.28.10 NMAC, the division, in its sole discretion, may approve a credit that the operator can apply against its reported volume of lost natural gas as follows:

(a) a credit of forty percent of the volume of natural gas discovered and isolated within 48 hours of discovery and timely repaired; and

(b) an additional credit of twenty percent if the operator used ALARM technology no less than once per calendar quarter as a routine and on-going aspect of its waste-reduction practices.

(4) A division-approved ALARM credit shall:

(a) be used only by the operator who submitted the application pursuant to Paragraph (2) of Subsection B of 29.15.28.10 NMAC;

(b) not be transferred to or used by another operator, including a parent, subsidiary, related entity or person acquiring the natural gas gathering system;

(c) be used only once; and

(d) expire 24 months after division approval.

(5) The division will publish a list of approved ALARM technology.

C. Third-party verification. The division may request that an operator verify any data or information collected or reported pursuant to this part, make recommendations to correct or improve the collection and reporting of data and information, submit a report of the verification and recommendations to the division by the specified date, and implement the recommendations in the manner approved by the division. If the division

and the operator cannot reach agreement on the division's request, the operator may file an application for hearing before the division. The operator, at its own expense, shall retain a third party approved by the division to conduct the activities agreed to by the division and the operator or ordered by the division following a hearing.

[19.15.28.10 NMAC – N, 05/25/2021; A, 02/22/2022]

PART 29: RELEASES

19.15.29.1 ISSUING AGENCY:

Oil Conservation Commission.

[19.15.29.1 NMAC - Rp, 19.15.29.1 NMAC, 8/14/2018]

19.15.29.2 SCOPE:

19.15.29 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.29.2 NMAC - Rp, 19.15.29.2 NMAC, 8/14/2018]

19.15.29.3 STATUTORY AUTHORITY:

19.15.29 NMAC is adopted pursuant to the Oil and Gas Act, Section 70-2-11 NMSA 1978 (1977) and Section 70-2-12 NMSA 1978 (2004).

[19.15.29.3 NMAC - Rp, 19.15.29.3 NMAC, 8/14/2018]

19.15.29.4 DURATION:

Permanent.

[19.15.29.4 NMAC - Rp, 19.15.29.4 NMAC, 8/14/2018]

19.15.29.5 EFFECTIVE DATE:

August 14, 2018, unless a later date is cited at the end of a section.

[19.15.29.5 NMAC - Rp, 19.15.29.5 NMAC, 8/14/2018]

19.15.29.6 OBJECTIVE:

To prohibit releases and require persons who operate or control the release or the location of the release to report the unauthorized release of oil, gases, produced water, condensate or oil field waste including regulated NORM or other oil field related

chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing, disposing, injecting, transporting, servicing or processing and to establish procedures for reporting, site assessment, remediation, closure, variance and enforcement.

[19.15.29.6 NMAC - Rp, 19.15.29.6 NMAC, 8/14/2018; A, 8/24/2021]

19.15.29.7 DEFINITIONS:

A. "Major release" means:

- (1) an unauthorized release of a volume, excluding gases, of 25 barrels or more;
- (2) an unauthorized release of a volume that:
 - (a) results in a fire or is the result of a fire;
 - (b) may with reasonable probability reach a watercourse;
 - (c) may with reasonable probability endanger public health; or
 - (d) substantially damages property or the environment;
- (3) an unauthorized release of gases exceeding 500 MCF; or
- (4) a release of a volume that may with reasonable probability be detrimental to fresh water.

B. "Minor release" means an unauthorized release, which is not a major release and is a volume greater than five barrels but less than 25 barrels; or for gases, greater than 50 MCF but less than 500 MCF.

C. "Responsible party" means the operator, as defined in 19.15.2 NMAC. Notwithstanding the foregoing, the division, in its sole discretion, may also consider a person causing the release, or controlling the location of the release as the responsible party.

D. "Wellstream" means the gas, oil, water, suspended constituents, or any combination thereof, which comes from the wellbore.

[19.15.29.7 NMAC - Rp, 19.15.29.7 NMAC, 8/14/2018]

19.15.29.8 RELEASES:

A. Prohibition. Except as provided in 19.15.27 NMAC or 19.15.28 NMAC, major releases and minor releases are prohibited.

B. Requirements. For all releases regardless of volume, the responsible party shall comply with 19.15.29.8 NMAC and shall remediate the release. For major and minor releases, the responsible party shall also comply with 19.15.29.9, 19.15.29.10, 19.15.29.11, 19.15.29.12 and 19.15.29.13 NMAC.

C. Initial response. The responsible party must take the following immediate actions unless the actions could create a safety hazard that would result in injury.

(1) **Source elimination and site security.** The responsible party must take appropriate measures to stop the source of the release and limit access to the site as necessary to protect human health and the environment.

(2) **Containment.** Once the site is secure, the responsible party must contain the materials released by construction of berms or dikes, the use of absorbent pads or other containment actions to limit the area affected by the release and prevent potential fresh water contaminants from migrating to watercourses or areas that could pose a threat to public health and environment. The responsible party must monitor the containment to ensure that it is effectively containing the material and not being degraded by weather or onsite activity.

(3) **Site stabilization.** After containment, the responsible party must recover any free liquids and recoverable materials that can be physically removed from the surface within the containment area. The responsible party must deliver material removed from the site to a division-approved facility.

(4) **Remediation.** The responsible party may commence remediation immediately.

[19.15.29.8 NMAC - Rp, 19.15.29.8 NMAC, 8/14/2018; A, 8/24/2021]

19.15.29.9 RELEASE NOTIFICATION:

A. The responsible party must notify the division on form C-141 of a major or minor release occurring during the drilling, producing, storing, disposing, injecting, transporting, servicing or processing of oil, gases, produced water, condensate or oil field waste including regulated NORM, or other oil field related chemicals, contaminants or mixture of the chemicals or contaminants, in accordance with the requirements of 19.15.29 NMAC.

B. If state, federal or tribal lands are involved, the responsible party must send a copy of the form C-141 to the appropriate land managing agency including the state land office, the BLM or tribal authority, as applicable.

[19.15.29.9 NMAC - Rp, 19.15.29.9 NMAC, 8/14/2018]

19.15.29.10 RELEASE NOTIFICATION REPORTING REQUIREMENTS:

The responsible party must notify the division of releases in 19.15.29.9 NMAC as follows.

A. Reporting a major release.

(1) The responsible party must notify the division's environmental bureau chief and the appropriate division district office verbally or by e-mail within 24 hours of discovery of the release. The notification must provide the information required on form C-141.

(2) The responsible party must also notify the appropriate division district office in writing within 15 days of discovering the release by completing and filing form C-141. The written notification must verify the prior verbal or e-mail notification and include additions or corrections to the information contained in the prior verbal or e-mail notification.

B. Reporting a minor release. The responsible party must notify the appropriate division district office in writing within 15 days of discovery of the release by completing and filing form C-141.

[19.15.29.10 NMAC - Rp, 19.15.29.10 NMAC, 8/14/2018]

19.15.29.11 SITE ASSESSMENT/CHARACTERIZATION:

After the responsible party has removed all free liquids and recoverable materials, the responsible party must assess soils both vertically and horizontally for potential environmental impacts from any major or minor release containing liquids.

A. Characterization requirements. The responsible party must submit information characterizing the release to the appropriate division district office within 90 days of discovery of the release or characterize the release by submitting a final closure report within 90 days of discovery of the release in accordance with Subsection E of 19.15.29.12 NMAC. The responsible party may seek an extension of time to submit characterization information for good cause as determined by the division. The responsible party must submit the following information to the division.

(1) **Site map.** The responsible party must provide a scaled diagram that shows the potentially impacted area, significant surface features including roads and site infrastructure, location of borings, sample points, monitoring wells and subsurface features such as known pipelines to the extent known at the time of submittal including the source of information regarding subsurface features.

(2) Depth to ground water. The responsible party must determine the depth to ground water where the release occurred. If the exact depth to ground water is unknown, the responsible party must provide a reasonable determination of probable ground water depth using data generated by numeric models, cathodic well lithology, water well data, published information or other tools as approved by the appropriate division district office. If the responsible party uses water well data, the responsible party must provide all pertinent well information.

(3) Wellhead protection area. The responsible party must determine the horizontal distance from all known water sources within a half mile of the release including private and domestic water sources. Water sources are wells, springs or other sources of fresh water extraction. Private and domestic water sources are those water sources used by less than five households for domestic or stock purposes.

(4) Distance to nearest significant watercourse. The responsible party must determine the horizontal distance to the nearest significant watercourse as defined in Subsection P of 19.15.17.7 NMAC within a half mile of any horizontal boundary of the release.

(5) Soil/waste characteristics. The responsible party must determine the lateral and vertical extents of soil contamination, as follows.

(a) If the release occurred within a lined containment area, the responsible party must demonstrate liner integrity after affected material is removed and the affected area of the liner is exposed and provide:

(i) certification on form C-141 that the responsible party has visually inspected the liner where the release occurred and the liner remains intact and had the ability to contain the leak in question; and

(ii) at least two business days' notice to the appropriate division district office before conducting the liner inspection.

(b) If the responsible party is unable to demonstrate liner integrity or the release occurred outside of a lined containment area, the responsible party must delineate the release horizontally and vertically using Table I of 19.15.29.12 NMAC constituents or as required by Subparagraph (e) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC based on the type of release. The responsible party shall use one or more of the following soil sampling methods for characterization:

(i) NRCS Field Guide;

(ii) EPA SW-846;

(iii) ASTM Method 4547;

(iv) EPA 600; or

(v) or other division-approved methods.

(c) In addition to Subparagraph (b) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, if the release occurred outside of a lined containment area and is in an area where depth to ground water is greater than 50 feet and less than or equal to 100 feet, the responsible party must delineate the vertical extent of the release to the greater of 600 mg/kg chloride or background chloride level, if:

(i) the release contains produced water that exceeds 10,000 mg/l of chloride (if the responsible party contends the fluid is less than 10,000 mg/l, the responsible party must provide current sample results to the division); and

(ii) the release is of an unknown quantity or results in greater than 200 barrels of unrecovered produced water.

(d) If the conditions are met in Subparagraph (c) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, the responsible party must submit at least two soil samples for laboratory analysis from each borehole or sample point (highest observed contamination and deepest depth investigated). Field screening and assessment techniques are acceptable (headspace, titration, electrical conductivity [include algorithm for validation purposes], electromagnetics, etc.), but the sampling procedures must be clearly defined. The responsible party must submit copies of field notes attributable to field sampling and provide copies of the actual laboratory results including chain of custody documentation.

(e) If a known release of other oil field related chemicals occurs that is not included in Table I of 19.15.29.12 NMAC, and does not include oil, gas, produced water or other fluids from the wellstream, the standards for remediation shall be as follows:

(i) if the constituent appears on Table 1 of 40 C.F.R. 261.24(b), then that constituent shall be remediated according to 40 C.F.R. 261.24;

(ii) if the constituent is not identified in Table 1 of 40 C.F.R. 261.24(b), but is identified in the New Mexico environment department's Risk Assessment Guidance for Site Investigations and Remediation Volumes I and II (assessment), the division will determine the appropriate Assessment Volume and remediation shall occur pursuant to the assessment;

(iii) if the constituent is not identified in Items (i) or (ii) of Subparagraph (e) of Paragraph (5) of Subsection A of 19.15.29.11 NMAC, the division shall consult with the responsible party to determine appropriate remediation of the release.

B. Unless the site characterization report includes completed efforts at remediation, the report must include a proposed remediation plan in accordance with 19.15.29.12

NMAC, which includes the anticipated timelines for beginning and completing the remediation.

C. If the division determines that more information is needed to understand the character of the release and its potential impact on fresh water, public health and the environment, the division may request the responsible party submit additional information. Should the division request additional information, it must do so in writing to the responsible party within 30 days from receipt of the characterization report or remediation plan with what specific information the division is requesting and reasons why the additional information is needed. The responsible party has 14 days to respond to a written request for additional information. If the responsible party disagrees with the request for additional information, it may consult with the division, or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the issuance of the request for additional information.

[19.15.29.11 NMAC - Rp, 19.15.29.11 NMAC, 8/14/2018]

19.15.29.12 REMEDIATION AND CLOSURE:

A. The responsible party must remediate all releases regardless of volume.

B. Remediation requirements.

(1) Unless remediation is completed, and a final closure report submitted, within 90 days of discovery of the release, the responsible party must complete division-approved remediation for releases either pursuant to a remediation plan approved pursuant to 19.15.29.12 NMAC or pursuant to an abatement plan in accordance with 19.15.30 NMAC. If the director determines that the release has caused water pollution in excess of the standards and requirements of 19.15.30 NMAC, the director may notify the responsible party that an abatement plan may be required pursuant to 19.15.30 NMAC.

(2) Any remediation under 19.15.29 NMAC should be completed as soon as practicable. Any remediation that exceeds 90 days must follow the division-approved timeline in the remediation plan. The responsible party may request an extension of time to remediate upon a showing of good cause as determined by the division.

C. Remediation plan requirements. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must submit a detailed description of proposed remediation measures in accordance with the findings of the site assessment/characterization plan that includes:

(a) delineation results, including laboratory analysis;

(b) a scaled sitemap showing release area with horizontal and vertical delineation points;

(c) estimated volume of impacted material to be remediated;

(d) proposed remediation technique; and

(e) proposed timeline for remediation activities.

(2) The responsible party shall restore the impacted surface area of a release occurring on a developed well pad, central tank battery, drilling site, compressor site or other exploration, development, production or storage sites to meet the standards of Table I of 19.15.29.12 NMAC or other applicable remediation standards and restore and reclaim the area pursuant to 19.15.29.13 NMAC. If contamination is located in areas immediately under or around production equipment such as production tanks, wellheads and pipelines where remediation could cause a major facility deconstruction, the remediation, restoration and reclamation may be deferred with division written approval until the equipment is removed during other operations, or when the well or facility is plugged or abandoned, whichever comes first. The deferral may be granted so long as the contamination is fully delineated and does not cause an imminent risk to human health, the environment, or ground water. Final remediation and reclamation shall take place in accordance with 19.15.29.12 and 19.15.29.13 NMAC once the site is no longer being used for oil and gas operations.

(3) The responsible party shall remediate the impacted surface area of a release not occurring on a lined, bermed or otherwise contained exploration, development, production or storage site to meet the standards of Table I of 19.15.29.12 NMAC or other applicable remediation standards and restore and reclaim the area pursuant to 19.15.29.13 NMAC.

(4) If a release occurs within the following areas, the responsible party must treat the release as if it occurred less than 50 feet to ground water in Table I of 19.15.29.12 NMAC:

(a) within

(i) 300 feet of any continuously flowing watercourse or any other significant watercourse, or

(ii) 200 feet of any lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);

(b) within 300 feet from an occupied permanent residence, school, hospital, institution or church;

(c) within

(i) 500 feet of a spring or a private, domestic fresh water well used by less than five households for domestic or stock watering purposes, or

(ii) 1000 feet of any fresh water well or spring;

(d) within incorporated municipal boundaries or within a defined municipal fresh water well field covered under a municipal ordinance adopted pursuant to Section 3-27-3 NMSA 1978 as amended, unless the municipality specifically approves;

(e) within 300 feet of a wetland;

(f) within the area overlying a subsurface mine;

(g) within an unstable area; or

(h) within a 100-year floodplain.

(5) The division has 60 days from receipt of the proposed remediation plan to review and approve, approve with conditions or deny the remediation plan. If 60 days have lapsed without response from the division, then the plan is deemed denied. If the plan is approved with conditions or affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible party disagrees with any conditions of approval or denial of the plan, it shall consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial or issuance of the conditions.

D. Closure requirements. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must test the remediated areas for contamination with representative five-point composite samples from the walls and base, and individual grab samples from any wet or discolored areas. The samples must be analyzed for the constituents listed in Table I of 19.15.29.12 NMAC or constituents from other applicable remediation standards.

(a) The responsible party must verbally notify the appropriate division district office two business days prior to conducting final sampling. If the division district office does not respond to the notice within the two business days, the responsible party may proceed with final sampling. The responsible party may request a variance from this requirement upon a showing of good cause as determined by the division.

(b) The responsible party may submit a composite and grab sample plan for the division's review and approval separately or with the remediation plan.

(c) Alternately, without division approval, the responsible party may elect to perform a composite and grab sample plan of the remediated area where each composite sample is not representative of more than 200 square feet.

(2) If all composite and grab sample concentrations are less than or equal to the parameters listed in Table I of 19.15.29.12 NMAC or any conditions of approval, then the responsible party may proceed to backfill any excavated areas.

E. Closure reporting. The responsible party must take the following action for any major or minor release containing liquids.

(1) The responsible party must submit to the division a closure report on form C-141, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The responsible party must certify that all information in the closure report and attachments is correct and that the responsible party has complied with all applicable closure requirements and conditions specified in division rules or directives. The responsible party must submit closure report along with form C-141 to the division within 90 days of the remediation plan approval. The responsible party may apply for additional time to submit the final closure report upon a showing of good cause as determined by the division. The final report must include:

- (a) a scaled site and sampling diagram;
- (b) photographs of the remediated site prior to backfill;
- (c) laboratory analyses of final sampling; and
- (d) a description of all remedial activities.

(2) The division district office has 60 days to review and approve or deny the closure report. If 60 days have lapsed without response from the division, then the report is deemed denied. If the report is affirmatively denied, the division shall provide a written summary of deficiencies on which the decision is based. If the responsible party disagrees with denial of the closure report, it may consult with the division or file an application for hearing pursuant to 19.15.4 NMAC within 30 days of the denial.

Table I			
Closure Criteria for Soils Impacted by a Release			
Minimum depth below any point within the horizontal boundary of the release to ground	Constituent	Method*	Limit**

water less than 10,000 mg/l TDS			
≤ 50 feet	Chloride***	EPA 300.0 or SM4500 Cl B	600 mg/kg
	TPH	EPA SW-846	100 mg/kg
	(GRO+DRO+MRO)	Method 8015M	
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
51 feet-100 feet	Chloride***	EPA 300.0 or SM4500 Cl B	10,000 mg/kg
	TPH	EPA SW-846 Method 8015M	2,500 mg/kg
	(GRO+DRO+MRO)		
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
>100 feet	Chloride***	EPA 300.0 or SM4500 Cl B	20,000 mg/kg
	TPH	EPA SW-846 Method 8015M	2,500 mg/kg
	(GRO+DRO+MRO)		
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg

*Or other test methods approved by the division.

**Numerical limits or natural background level, whichever is greater.

***This applies to releases of produced water or other fluids, which may contain chloride.

19.15.29.13 RESTORATION, RECLAMATION AND RE-VEGETATION:

A. The responsible party must substantially restore the impacted surface areas to the condition that existed prior to the release or their final land use. Restoration of the site must include the replacement of removed material and must be replaced to the near original relative positions and contoured to achieve erosion control, long-term stability and preservation of surface water flow patterns.

B. Areas reasonably needed for production operations or for subsequent drilling operations must be compacted, covered, paved or otherwise stabilized and maintained in such a way as to minimize dust and erosion to the extent practical.

C. The responsible party must construct the soil cover to the site's existing grade and prevent ponding of water and erosion of the cover material.

D. Reclamation of areas no longer in use. The responsible party shall reclaim all areas disturbed by the remediation and closure, except areas reasonably needed for production operations or for subsequent drilling operations, as early and as nearly as practical to their original condition or their final land use and maintain those areas to control dust and minimize erosion to the extent practical.

(1) The reclamation must contain a minimum of four feet of non-waste containing, uncontaminated, earthen material with chloride concentrations less than 600 mg/kg as analyzed by EPA Method 300.0, or other test methods approved by the division. The soil cover must include a top layer, which is either the background thickness of topsoil or one foot of suitable material to establish vegetation at the site, whichever is greater.

(2) The responsible party must reseed disturbed area in the first favorable growing season following closure of the site.

(3) The division will consider reclamation of all disturbed areas complete when uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent of pre-disturbance levels and a total percent plant cover of at least seventy percent of pre-disturbance levels, excluding noxious weeds.

(4) For any major or minor release containing liquids, the responsible party must notify the division when reclamation and re-vegetation are complete.

E. The surface restoration, reclamation and re-vegetation obligations imposed by federal or state agencies or tribes on lands managed or owned by those agencies supersede these provisions and govern the obligations of any responsible party subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.

[19.15.29.13 NMAC - N, 8/14/2018]

19.15.29.14 VARIANCES:

A. A responsible party may file a written request for a variance from any requirement of 19.15.29 NMAC with the appropriate division district office. The variance request must include:

- (1)** a detailed statement explaining the need for a variance; and
- (2)** a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.

B. The division district office must approve or deny the variance in writing within 60 days of receipt. If the division district office denies the variance, it must provide the responsible party with the reasons for denial.

C. If the division district office does not approve or deny a request for variance from the requirements of 19.15.29 NMAC within 60 days of the date the request for variance is received by the division district office, then the request for variance is deemed denied and the responsible party may file an application for a hearing pursuant to 19.15.4 NMAC within 30 days of the denial.

D. If the responsible party requests a hearing pursuant to 19.15.4 NMAC within 30 days after receipt of notice, the division must set the matter for hearing with notice to the responsible party and appropriate division district office.

E. In addition to the notice provisions in 19.15.4 NMAC, the responsible party must provide notice of the hearing on the request for variance to the surface owner of the site by certified mail, return receipt requested, at least 20 days prior to the date of the hearing.

F. Variances must receive division approval prior to implementation.

[19.15.29.14 NMAC - N, 8/14/2018]

19.15.29.15 ENFORCEMENT:

A. The responsible party must comply with all the requirements of 19.15.29 NMAC. The division may take enforcement action pursuant to 19.15.5.10 NMAC against any responsible party who does not comply with 19.15.29 NMAC.

B. A responsible party may enter a stipulated final order with the division for any violation of 19.15.29 NMAC, except for 19.15.29.9 NMAC. An agreed compliance order may be entered prior to or after the filing of an application by the division or any other party for an administrative compliance proceeding. Any administrative compliance

order will have the same force and effect as a compliance order issued after an adjudicatory hearing.

C. The director or the director's designee may deny any application or permit, including but not limited to, a permit to drill, deepen or plug back a well if the responsible party is not in compliance with a court order or final order arising from 19.15.29 NMAC.

[19.15.29.15 NMAC - N, 8/14/2018; A, 8/24/2021]

19.15.29.16 TRANSITIONAL PROVISIONS:

A. Responsible parties with current ongoing corrective actions/remediation with approved plans and timelines as of August 14, 2018 do not have to submit revised plans.

B. Responsible parties with ongoing corrective actions/remediation without approved timelines or plans as of August 14, 2018 must submit a characterization plan or corrective action/remediation plan with proposed timeframes within 90 days of August 14, 2018.

[19.15.29.16 NMAC - N, 8/14/2018]

PART 30: REMEDIATION

19.15.30.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.30.1 NMAC - N, 12/1/08]

19.15.30.2 SCOPE:

19.15.30 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.30.2 NMAC - N, 12/1/08]

19.15.30.3 STATUTORY AUTHORITY:

19.15.30 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-6, 70-2-11 and 70-2-12.

[19.15.30.3 NMAC - N, 12/1/08]

19.15.30.4 DURATION:

Permanent.

[19.15.30.4 NMAC - N, 12/1/08]

19.15.30.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.30.5 NMAC - N, 12/1/08]

19.15.30.6 OBJECTIVE:

To abate pollution of subsurface water so that ground water of the state that has a background concentration of 10,000 mg/l or less TDS is either remediated or protected for use as domestic, industrial and agricultural water supply, and to remediate or protect those segments of surface waters that are gaining because of subsurface-water inflow for uses designated in the water quality standards for interstate and intrastate surface waters in New Mexico, 20.6.4 NMAC; and abate surface-water pollution so that surface waters of the state are remediated or protected for designated or attainable uses as defined in the water quality standards for interstate and intrastate surface waters in New Mexico, 20.6.4 NMAC.

[19.15.30.6 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

19.15.30.8 PREVENTION AND ABATEMENT OF WATER POLLUTION:

A. If the background concentration of a water contaminant exceeds the standard or requirement of Subsections A, B or C of 19.15.30.9 NMAC, the responsible person shall abate the pollution to the background concentration.

B. The standards and requirements set forth in of Subsections A, B or C of 19.15.30.9 NMAC are not intended as maximum ranges and concentrations for use, and nothing contained in 19.15.30.9 NMAC limits the use of waters containing higher ranges and concentrations.

[19.15.30.8 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.9 ABATEMENT STANDARDS AND REQUIREMENTS:

A. The responsible person shall abate the vadose zone so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water, in excess of the standards in Subsections B and C of 19.15.30.9 NMAC, through leaching, percolation or other transport mechanisms, or as the water table elevation fluctuates.

B. The responsible person shall abate ground-water pollution at a place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/l or less, to conform to the following standards:

- (1)** toxic pollutants as defined in 20.6.2.7 NMAC shall not be present; and
- (2)** the standards of 20.6.2.3103 NMAC shall be met.

C. The responsible person shall abate surface-water pollution to conform to the water quality standards for interstate and intrastate surface waters in New Mexico, 20.6.4 NMAC.

D. The division shall not consider subsurface-water and surface-water abatement complete until eight consecutive quarterly samples, or an alternate lesser number of samples the director approves, from the compliance sampling stations the director approved meet the abatement standards in Subsections A, B and C of 19.15.30.9 NMAC. The division shall consider abatement of water contaminants measured in solid-matrix samples of the vadose zone complete after one-time sampling from compliance stations the director approves.

E. Technical infeasibility.

(1) If a responsible person is unable to meet the abatement standards set forth in Subsections A and B of 19.15.30.9 NMAC using commercially accepted abatement technology pursuant to an approved abatement plan, the responsible person may propose that abatement standards compliance is technically infeasible.

(a) The director may consider technical infeasibility proposals involving the use of experimental abatement technology.

(b) The responsible person may demonstrate technical infeasibility by a statistically valid extrapolation of the decrease in concentrations of a water contaminant over the remainder of a 20 year period, such that projected future reductions during that time would be less than 20 percent of the concentration at the time the responsible person proposes technical infeasibility. A statistically valid decrease cannot be demonstrated by fewer than eight consecutive quarters.

(c) The technical infeasibility proposal shall include a substitute abatement standard for those contaminants that is technically feasible. The responsible person

shall meet abatement standards for other water contaminants not demonstrated to be technically infeasible.

(2) The director shall not approve a proposed technical infeasibility demonstration for a water contaminant if its concentration is greater than 200 percent of the abatement standard for the contaminant.

(3) If the director cannot approve any or all portions of a proposed technical infeasibility demonstration because the water contaminant concentration is greater than 300 percent of the abatement standard for each contaminant, the responsible person may further pursue the issue of technical infeasibility by filing a petition with the division seeking approval of alternate abatement standards pursuant to Subsection F of 19.15.30.9 NMAC.

F. Alternative abatement standards.

(1) At any time during or after the stage 2 abatement plan's submission, the responsible person may file a petition seeking approval of alternative abatement standards for the standards set forth in Subsections A and B of 19.15.30.9 NMAC. The division may approve alternative abatement standards if the petitioner demonstrates that:

(a) either compliance with the abatement standards is not feasible, by the maximum use of technology within the responsible person's economic capability; or there is no reasonable relationship between the economic and social costs and benefits, including attainment of the standards set forth in 19.15.30.9 NMAC to be obtained;

(b) the proposed alternative abatement standards are technically achievable and cost-benefit justifiable; and

(c) compliance with the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

(2) The responsible person shall file a written petition with the division's environmental bureau chief. The petition may include a transport, fate and risk assessment in accordance with accepted methods, and other information as the petitioner deems necessary to support the petition. The petition shall:

(a) state the petitioner's name and address;

(b) state the date of the petition;

(c) describe the facility or activity for which the petitioner seeks the alternate abatement standards;

(d) state the address or description of the property upon which the facility is located;

(e) describe the water body or watercourse the release affected;

(f) identify the abatement standard from which petitioner wishes to vary;

(g) state why the petitioner believes that compliance with 19.15.30 NMAC will impose an unreasonable burden upon the petitioner's activity;

(h) identify the water contaminant for which the petitioner proposes the alternative standard;

(i) state the alternative standard the petitioner proposes;

(j) identify the three-dimensional body of water pollution for which the petitioner seeks approval; and

(k) state the extent to which the abatement standards set forth in 19.15.30.9 NMAC are now, and will in the future be, violated.

(3) The division's environmental bureau chief shall review the petition and, within 60 days after receiving the petition, submit a written recommendation to the director to approve, approve subject to conditions or disapprove any or all of the proposed alternative abatement standards. The recommendation shall include the reasons for the division's environmental bureau chief's recommendation. The division's environmental bureau chief shall submit a copy of the recommendation to the petitioner by certified mail.

(4) If the division's environmental bureau chief recommends approval, or approval subject to conditions, of any or all of the proposed alternative abatement standards, the division shall hold a public hearing on those standards. If the division's environmental bureau chief recommends disapproval of any or all of the proposed alternative abatement standards, the petitioner may submit a request to the director, within 15 days after the recommendation's receipt, for a public hearing on those standards. If the petitioner does not submit a timely request for hearing, the recommended disapproval shall become a final decision of the director and shall not be subject to review.

(5) If the director grants a public hearing, the division shall conduct the hearing in accordance with division hearing procedures.

(6) Based on the record of the public hearing, the division shall approve, approve subject to condition or disapprove any or all of the proposed alternative abatement standards. The division shall notify the petitioner by certified mail of its decision and the reasons for the decision.

[19.15.30.9 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.10 MODIFICATION OF ABATEMENT STANDARDS:

If applicable abatement standards are modified after the division approves the abatement measures, the abatement standards that are in effect at the time that the division approved the abatement measures shall be the abatement standards for the duration of the abatement action, unless the director determines that compliance with those standards may with reasonable probability create a present or future hazard to public health or the environment. In an appeal of the director's determination that additional actions are necessary, the director shall have the burden of proof.

[19.15.30.10 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.11 ABATEMENT PLAN REQUIRED:

A. Unless otherwise provided by 19.15.30 NMAC responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in 19.15.30.9 NMAC shall do so pursuant to an abatement plan the director approves. When the director has approved an abatement plan, the responsible person's actions leading to and including abatement shall be consistent with the abatement plan's terms and conditions.

B. In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the abatement plan's duration, and may jointly share the responsibility to conduct the actions 19.15.30 NMAC requires with other responsible persons.

(1) The transferor shall notify the transferee in writing at least 30 days prior to the transfer that the division has required or approved an abatement plan for the facility, and shall deliver or send by certified mail to the director a copy of the notification together with a certificate or other proof that the transferee has received the notification.

(2) The transferor and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions 19.15.30 NMAC requires. The responsible persons shall notify the director in writing if a designated responsible person is agreed upon.

(3) If the director determines that the designated responsible person has failed to conduct the actions 19.15.30 NMAC requires, the director shall notify all responsible persons of this failure in writing and allow them 30 days, or longer for good cause shown, to conduct the required actions before setting a show cause hearing requiring those responsible persons to appear and show cause why they should not be ordered to comply, a penalty should not be assessed, a civil action should not be commenced in district court or the division should not take other appropriate action.

C. If the source of the water pollution to be abated is a facility that operated under a discharge plan, the director may require the responsible person to submit a financial assurance plan that covers the estimated costs to conduct the actions the abatement plan requires. Such a financial assurance plan shall be consistent with financial assurance requirements the division adopts.

[19.15.30.11 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.12 EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENT:

A. Except as provided in Subsection B of 19.15.30.12 NMAC, 19.15.30.11 NMAC and 19.15.30.13 NMAC do not apply to a person who is abating water pollution:

(1) from an underground storage tank, under the authority of the New Mexico environmental improvement board's underground storage tank rules, 20.5 NMAC, or in accordance with the Ground Water Protection Act, NMSA 1978, Section 74-6B-1 *et seq.*;

(2) under the EPA's authority pursuant to either the Federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or RCRA;

(3) pursuant to the New Mexico environmental improvement board's hazardous waste management rule, 20.4.1 NMAC;

(4) under the authority of the United States nuclear regulatory commission or the United States department of energy pursuant to the Atomic Energy Act;

(5) under the authority of a ground-water discharge plan the director approved, provided that such abatement is consistent with the requirements and provisions of 19.15.30.8 NMAC, 19.15.30.9 NMAC, Subsections C and D of 19.15.30.13 NMAC, 19.15.30.14 NMAC and 19.15.30.19 NMAC;

(6) under the authority of a letter of understanding, settlement agreement or administrative order on consent or other agreement signed by the director or director's designee prior to March 15, 1997, provided that abatement is being performed in compliance with the terms of the letter of understanding, settlement agreement or administrative order or other agreement on consent; and

(7) on an emergency basis, or while abatement plan approval is pending, or in a manner that will likely result in compliance with the standards and requirements set forth in 19.15.30.9 NMAC within one year after notice is required to be given pursuant to 19.15.29.9 NMAC provided that the division does not object to the abatement action.

B. If the director determines that abatement of water pollution subject to Subsection A of 19.15.30.12 NMAC will not meet the standards of Subsections B and C of 19.15.30.9 NMAC, or that additional action is necessary to protect health, welfare,

environment or property, the director may notify a responsible person, by certified mail, to submit an abatement plan pursuant to 19.15.30.11 NMAC and Subsection A of 19.15.30.14 NMAC. The notification shall state the reasons for the director's determination. In an appeal of the director's determination under Subsection B of 19.15.30.12 NMAC, the director shall have the burden of proof.

[19.15.30.12 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.13 ABATEMENT PLAN PROPOSAL:

A. Except as provided for in 19.15.30.12 NMAC a responsible person shall, within 60 days of receipt of the director's written notice that the division requires an abatement plan, submit an abatement plan proposal to the director for approval. The responsible person may submit stage 1 and stage 2 abatement plan proposals together. For good cause shown, the director may allow for a total of 120 days to prepare and submit the abatement plan proposal.

B. Voluntary abatement.

(1) A person wishing to abate water pollution in excess of the standards and requirements set forth in 19.15.30.9 NMAC may submit a stage 1 abatement plan proposal to the director for approval. Following the director's approval of a final site investigation report prepared pursuant to stage 1 of an abatement plan, a person may submit a stage 2 abatement plan proposal to the director for approval.

(2) Following approval of a stage 1 or stage 2 abatement plan proposal under Paragraph (1) of Subsection B of 19.15.30.13 NMAC the person submitting the approved plan shall be a responsible person under 19.15.30 NMAC for the purpose of performing the approved stage 1 or stage 2 abatement plan. Nothing in 19.15.30 NMAC precludes the director from applying 19.15.29.11 NMAC to a responsible person if applicable.

C. Stage 1 abatement plan. The stage 1 of the abatement plan's purpose is to design and conduct a site investigation that adequately defines site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include the following information depending on the media affected, and as needed to select and implement an expeditious abatement option:

(1) descriptions of the site, including a site map, and of site history including the nature of the release that caused the water pollution, and a summary of previous investigations;

(2) site investigation work plan that defines:

(a) site geology and hydrogeology; the vertical and horizontal extent and magnitude of vadose-zone and ground-water contamination; subsurface hydraulic

conductivity; transmissivity, storativity and rate and direction of contaminant migration; inventory of water wells inside and within one mile from the perimeter of the three-dimensional body where the standards set forth in Subsection C of 19.15.30.9 NMAC are exceeded; and location and number of wells the pollution actually or potentially affects; and

(b) surface water hydrology, seasonal stream flow characteristics, ground water/surface water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments; the magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macro invertebrates and other wildlife populations; seasonal variations should be accounted for when conducting these assessments;

(3) monitoring program, including sampling stations and frequencies, for the abatement plan's duration that may be modified, after the director's approval, as the responsible person creates additional sampling stations;

(4) quality assurance plan, consistent with the sampling and analytical techniques listed in Subsection B of 20.6.2.3107 NMAC and with 20.6.4.14 NMAC of the water quality standards for interstate and intrastate surface waters in New Mexico, for all work to be conducted pursuant to the abatement plan;

(5) a schedule for stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for the director's approval, of a detailed final site investigation report; and

(6) additional information that may be required to design and perform an adequate site investigation.

D. Stage 2 abatement plan.

(1) A responsible person shall submit a stage 2 abatement plan proposal to the director for approval within 60 days, or up to 120 days for good cause shown, after the director's approval of the final site investigation report prepared pursuant to stage 1 of the abatement plan. The responsible person may submit a stage 1 and 2 abatement plan proposal together. Stage 2 of the abatement plan's purpose is to select and design, if necessary, an abatement option that, when implemented, results in attainment of the abatement standards and requirements set forth in 19.15.30.9 NMAC, including post-closure maintenance activities.

(2) Stage 2 of the abatement plan should include, at a minimum, the following information:

(a) a brief description of the current situation at the site;

(b) development and assessment of abatement options;

(c) a description, justification and design, if necessary, of the preferred abatement option;

(d) modification, if necessary, of the monitoring program the director approved pursuant to stage 1 of the abatement plan, including the designation of pre- and post-abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in 19.15.30.9 NMAC;

(e) site maintenance activities, if needed, the responsible person proposes to perform after abatement activities terminate;

(f) a schedule for the duration of abatement activities, including the submission of summary quarterly progress reports;

(g) a public notification proposal designed to satisfy the requirements of Subsections B and C of 19.15.30.15 NMAC; and

(h) additional information that may be reasonably required to select, describe, justify and design an effective abatement option.

[19.15.30.13 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.14 OTHER REQUIREMENTS:

A. A responsible person shall allow the director's authorized representative upon presentation of proper credentials and with reasonable prior notice to:

(1) enter the facility at reasonable times;

(2) inspect and copy records an abatement plan requires;

(3) inspect treatment works, monitoring and analytical equipment;

(4) sample wastes, ground water, surface water, stream sediment, plants, animals or vadose-zone material including vadose-zone vapor;

(5) use monitoring systems and wells under the responsible person's control in order to collect samples of media listed in Paragraph (4) of Subsection A of 19.15.30.14 NMAC; and

(6) gain access to off-site property the responsible person does not own or control, but is accessible to the responsible person through a third-party access agreement, provided that the agreement allows it.

B. A responsible person shall provide the director, or director's representative, with at least four working days advance notice of sampling to be performed pursuant to an abatement plan, or a well plugging, abandonment or destruction at a facility where the division has required an abatement plan.

C. A responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the three-dimensional body where the standards set forth in Subsection B of 19.15.30.9 NMAC are exceeded, at a facility where the division has required an abatement plan, shall propose such action by certified mail to the director for approval, unless the state engineer's approval is required. The responsible person shall design the proposed action to prevent water pollution that could result from water contaminants migrating through the well or bore hole. The proposed action shall not take place without the director's written approval, unless the responsible person does not receive written approval or disapproval within 30 days after the date the director receives the proposal.

[19.15.30.14 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.15 PUBLIC NOTICE AND PARTICIPATION:

A. Prior to public notice, the applicant shall give written notice, as approved by the division, of stage 1 and stage 2 abatement plans to the following persons:

(1) surface owners of record within one mile of the perimeter of the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded;

(2) the county commission where the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded is located;

(3) the appropriate city officials if the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded is located or is partially located within city limits or within one mile of the city limits;

(4) those persons, the director identifies, who have requested notification, who shall be notified by mail;

(5) the New Mexico trustee for natural resources, and other local, state or federal governmental agencies affected, as the director identifies, which shall be notified by certified mail;

(6) the governor or president of a tribe, pueblo or nation if the geographic area where the standards and requirements set forth in 19.15.30.9 NMAC are exceeded is located or is partially located within tribal boundaries or within one mile of the tribal boundaries, who shall be notified by certified mail;

(7) the director may extend the distance requirements for notice if the director determines the proposed abatement plan has the potential to adversely impact public health or the environment at a distance greater than one mile. The director may require additional notice as needed. The applicant shall furnish a copy and proof of the notice to the division.

B. Within 15 days after the division determines that a stage 1 abatement plan or a stage 2 abatement plan is administratively complete, the responsible person shall issue public notice in a division-approved form in a newspaper of general circulation in the county in which the release occurred, and in a newspaper of general circulation in the state. For the purposes of Subsection B of 19.15.30.15 NMAC, an administratively complete stage 1 abatement plan is a document that satisfies the requirements of Subsection C of 19.15.30.13 NMAC and an administratively complete stage 2 abatement plan is a document that satisfies the requirements of Paragraph (2) of Subsection D of 19.15.30.13 NMAC. The public notice shall include, as approved in advance by the director:

- (1)** the responsible person's name and address;
- (2)** the location of the proposed abatement;
- (3)** a brief description of the source, extent and estimated volume of release; whether the release occurred into the vadose zone, ground water or surface water; and a description of the proposed stage 1 or stage 2 abatement plan;
- (4)** a brief description of the procedures the director followed in making a final determination;
- (5)** a statement that the public may view a copy of the abatement plan at the division's Santa Fe office or at the division's district office for the area in which the release occurred, and a statement describing how the public can access the abatement plan electronically from a division-maintained site if such access is available;
- (6)** a statement that the division will accept the following comments and requests for consideration if the director receives them within 30 days after the date of publication of the public notice:
 - (a)** written comments on the abatement plan; and
 - (b)** for a stage 2 abatement plan, written requests for a public hearing that include reasons why a hearing should be held; and
- (7)** an address and phone number at which interested persons may obtain further information.

C. A person seeking to comment on a stage 1 abatement plan, or to comment or request a public hearing on a stage 2 abatement plan, shall file written comments or hearing requests with the division within 30 days after the date of public notice, or within 30 days after the director receives a proposed significant modification of a stage 2 abatement plan. Requests for a public hearing shall set forth the reasons why a hearing should be held. The division shall hold a public hearing if the director determines that there is significant public interest or that the request has technical merit.

D. The division shall distribute notice of an abatement plan's filing with the next division and commission hearing docket following the plan's receipt.

[19.15.30.15 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.16 DIRECTOR APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS:

A. The director shall, within 60 days after receiving an administratively complete stage 1 abatement plan, a site investigation report, a technical infeasibility demonstration or an abatement completion report approve the document, or notify the responsible person of the document's deficiency, based upon the information available.

B. If the division does not hold a public hearing pursuant to Subsection C of 19.15.30.15 NMAC then the director shall, within 90 days after receiving a stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available.

C. If the division holds a public hearing pursuant to Subsection C of 19.15.30.15 NMAC then the director shall, within 60 days after receiving the required information, approve stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and the information submitted at the hearing.

D. If the director notifies a responsible person of a deficiency in a site investigation report, or in a stage 1 or stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies the director specifies within 30 days after receiving the notice of deficiency. The responsible person is in violation of 19.15.30 NMAC if the responsible person fails to submit a modified document within the required time, or if the responsible person does not in the modified document make a good faith effort to cure the deficiencies the director specified.

E. Provided that the responsible person meets the other requirements of 19.15.30 NMAC and provided further that stage 2 of the abatement plan, if implemented, shall result in the standards and requirements set forth in 19.15.30.9 NMAC being met within a schedule that is reasonable given the site's particular circumstances, the director shall approve the plan.

[19.15.30.16 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.17 INVESTIGATION AND ABATEMENT:

A responsible person who receives the division's approval for stage 1 or stage 2 of an abatement plan shall conduct investigation, abatement, monitoring and reporting activities in compliance with 19.15.30 NMAC and according to the terms and schedules contained in the approved abatement plans.

[19.15.30.17 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.18 ABATEMENT PLAN MODIFICATION:

A. The division may modify an approved abatement plan at the responsible person's written request in accordance with 19.15.30 NMAC with the director's written approval.

B. If data the responsible person submitted pursuant to monitoring requirements specified in the approved abatement plan or other information available to the director indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the director may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution that exceeds the standards and requirements set forth in 19.15.30.9 NMAC, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property.

[19.15.30.18 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.19 COMPLETION AND TERMINATION:

A. The division shall consider abatement complete when the responsible person meets the standards and requirements set forth in 19.15.30.9 NMAC. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in 19.15.30.9 NMAC, to the director for approval. The abatement completion report also shall propose changes to long-term monitoring and site maintenance activities, if needed, to be performed after the abatement plan's termination.

B. Provided that the responsible person meets the other requirements of 19.15.30 NMAC and provided further that the responsible person has met the standards and requirements set forth in 19.15.30.9 NMAC, the director shall approve the abatement completion report. When the director approves the abatement completion report, the director shall also notify the responsible person in writing that the abatement plan is terminated.

[19.15.30.19 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.20 DISPUTE RESOLUTION:

In the event of a technical dispute regarding the requirements of 19.15.29 NMAC, 19.15.30.9 NMAC, 19.15.30.12 NMAC, 19.15.30.13 NMAC, 19.15.30.18 NMAC or 19.15.30.19 NMAC, including notices of deficiency, the responsible person may notify the director by certified mail that a dispute has arisen, and the responsible person desires to invoke the dispute resolution provisions of 19.15.30.20 NMAC provided that the responsible person shall send the notification within 30 days after the responsible person receives the director's decision that causes the dispute. Upon the notification, the deadlines affected by the technical dispute shall be extended for a 30 day negotiation period, or for a maximum of 60 days if approved by the director for good cause shown. During this negotiation period, the director or the director's designee and the responsible person shall meet at least once. A mutually agreed upon third party may facilitate the meeting, but the third party shall assume no power or authority granted or delegated to the director by the Oil and Gas Act or by the division or commission. If the dispute remains unresolved after the negotiation period, the director's decision shall be final.

[19.15.30.20 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

19.15.30.21 APPEALS FROM DIRECTOR'S AND DIVISION'S DECISIONS:

A. If the director

- (1)** determines that an abatement plan is required pursuant to 19.15.29.11 NMAC;
- (2)** approves or provides notice of deficiency of a proposed abatement plan, technical infeasibility demonstration or abatement completion report; or
- (3)** modifies or terminates an approved abatement plan

the director shall provide written notice of the action by certified mail to the responsible person and other persons who participated in the action.

B. A person who participated in the action before the director and that the action listed in Subsection A of 19.15.30.21 NMAC adversely affects may file a petition requesting a hearing before a division examiner.

C. The person shall make the petition in writing and file it with the division within 30 days after receiving notice of the director's action. The petition shall specify the portions of the action to which the petitioner objects, certify that the person has mailed or hand-delivered a copy of the petition to the director and to the applicant or permittee if the petitioner is not the applicant or permittee and have attached a copy of the action for which the person seeks review. Unless a person makes a timely petition for hearing, the director's action is final.

D. The hearing before the division shall be conducted in the same manner as other division hearings.

E. The petitioner shall pay the cost of the court reporter for the hearing.

F. A party adversely affected by a division order pursuant to a hearing held by a division examiner, shall have a right to have the matter heard de novo before the commission.

G. The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with federal or state laws including regulations or rules.

[19.15.30.21 NMAC - Rp, 19.15.1.19 NMAC, 12/1/08]

PART 31-33: [RESERVED]

PART 34: PRODUCED WATER, DRILLING FLUIDS AND LIQUID OIL FIELD WASTE

19.15.34.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Commission.

[19.15.34.1 NMAC - Rp, 19.15.34.1 NMAC, 3/31/15]

19.15.34.2 SCOPE:

19.15.34 NMAC applies to the transportation, disposal, recycling, re-use or the direct surface or subsurface disposition of produced water in connection with the development or production of oil or gas or both. 19.15.34 NMAC also applies to the transportation of drilling fluids and liquid oil field waste. 19.15.34 NMAC does not authorize any transportation, disposal, recycling, re-use or disposition of produced water that is not directly within the jurisdiction of the division.

[19.15.34.2 NMAC - Rp, 19.15.34.2 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.3 STATUTORY AUTHORITY:

19.15.34 NMAC is adopted pursuant to the Oil and Gas Act, Paragraph (15) of Subsection B of Section 70-2-12 NMSA 1978, which authorizes the division to regulate the disposition, handling, transport, storage, recycling, treatment and disposal of produced water during, or for re-use in, the exploration, drilling, production, treatment or refinement of oil or gas in a manner that protects public health, the environment and fresh water resources and Paragraph (21) of Subsection B of Section 70-2-12 NMSA 1978 which authorizes the regulation of the disposition of nondomestic wastes from the exploration, development, production or storage of crude oil or natural gas.

[19.15.34.3 NMAC - Rp, 19.15.34.3 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.4 DURATION:

Permanent.

[19.15.34.4 NMAC - Rp, 19.15.34.4 NMAC, 3/31/15]

19.15.34.5 EFFECTIVE DATE:

March 31, 2015, unless a later date is cited at the end of a section.

[19.15.34.5 NMAC - Rp, 19.15.34.5 NMAC, 3/31/15]

19.15.34.6 OBJECTIVE:

To encourage the recycling or re-use of produced water in a manner that protects public health, the environment and fresh water resources and establish procedures by which persons may transport, recycle, reuse and dispose produced water, drilling fluids and other liquid oil field waste in activities within the jurisdiction of the division.

[19.15.34.6 NMAC - Rp, 19.15.34.6 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.7 DEFINITIONS:

These definitions apply to 19.15.34.2 NMAC through 19.15.34.21 NMAC. See 19.15.2.7 NMAC for additional definitions.

A. "Recycling facility" is a stationary or portable facility used exclusively for the treatment, re-use or recycling of produced water. A recycling facility does not include oilfield equipment such as separators, heater treaters and scrubbers in which produced water may be used.

B. "Recycling containment" is a storage containment which incorporates a synthetic liner as the primary and secondary containment device and is used solely in conjunction with a recycling facility for the storage, treatment or recycling of produced water only for the purpose of drilling, completion, production or plugging of wells used in connection with the development of oil or gas or both.

C. "Treatment" refers to the reconditioning of produced water to a reusable form and may include mechanical and chemical processes.

[19.15.34.7 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.8 REQUIREMENTS FOR DISPOSITION BY USE, RECYCLING FACILITIES OR DISPOSAL OF PRODUCED WATER:

A. Recycling or re-use of produced water.

(1) No permit or registration is required from the division for the re-use of produced water for drilling, completion, production, pressure maintenance, secondary recovery or enhanced recovery of oil or natural gas or plugging of wells pursuant to 19.15.34 NMAC.

(2) Any other re-use of produced water within the jurisdiction of the division requires prior approval by the division on form C-147. Approval requirements will be determined by the division based upon the proposed use.

(3) Research using produced water is to be encouraged through pilot projects approved by the division.

(4) All produced water for recycling or re-use shall be handled and stored in a manner that protects public health, the environment and fresh water resources.

(5) All operations in which produced water is used shall be conducted in a manner consistent with hydrogen sulfide gas provisions in 19.15.11 NMAC or NORM provisions in 19.15.35 NMAC, as applicable.

(6) All releases from the recycling and re-use of produced water within the jurisdiction of the division shall be handled in accordance with 19.15.29 NMAC. If the release is detrimental to ground or surface waters, the responsible party must send a copy of the form C-141 to the New Mexico environment department, as applicable, in accordance with 19.15.29 NMAC.

(7) Any release, discharge, handling, transport, storage, recycling or treatment for the disposition of treated produced water, including disposition in road construction maintenance, roadway ice or dust control or other construction, or in the application of treated produced water to land, for activities unrelated to the exploration, drilling, production, treatment or refinement of oil or gas is subject to rules adopted by the water quality control commission.

(8) Surface application of produced water or recycled produced water is prohibited on any facility within the jurisdiction of the division.

B. Disposal of produced water. Persons disposing of produced water shall use one of the following disposition methods:

(1) delivery to a produced water disposal well permitted pursuant to 19.15.26 NMAC, a surface waste management facility permitted pursuant to 19.15.36 NMAC or a permanent pit permitted pursuant to 19.15.17 NMAC;

(2) recycling or re-use in accordance with 19.15.34 NMAC; or

(3) for uses regulated by the water quality control commission pursuant to the Water Quality Act, a person shall obtain a permit from the New Mexico environment department before using the produced water, recycled or treated water or treated product or any byproduct of the produced water.

[19.15.34.8 NMAC - Rp, 19.15.34.12 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.9 RECYCLING FACILITIES:

A. Except where recycling facilities are part of a permitted operation for the drilling, completing, producing or plugging of oil and gas wells, all recycling facilities shall be permitted or registered with the division district office. Division form C-147 shall be used for registration, financial assurance, or for a permit if not associated with the drilling, completing, producing and plugging of oil and gas wells. All operators or owners of the facility shall be named in the form C-147.

B. In addition to the other applicable rule requirements, registration of a recycling facility is required in the following circumstances:

(1) when the recycling facility is an addition to a surface waste management facility permitted under 19.15.36 NMAC;

(2) when the recycling facility is an addition to the secondary recovery of oil and gas, enhanced oil recovery of oil and gas, or pressure maintenance projects permitted under 19.15.26 NMAC;

(3) when the recycling facility is an addition to a produced water disposal well permitted under 19.15.26 NMAC;

(4) when the recycling facility is an addition to pits permitted or below-grade tanks registered in accordance with 19.15.17 NMAC;

(5) when the recycling facility is used with a closed loop system that only delivers fluid for drilling or completion purposes;

(6) when the recycling facility is used with dedicated above ground, unlined, hard-sided tanks used in accordance with the manufacturer's standards that are externally visually inspected weekly when holding fluids and a log is kept of the inspections made available to the division upon request; or

(7) when the recycling facility is used with a recycling containment registered in accordance with 19.15.34 NMAC.

C. Recycling facilities not identified in Subsection B of 19.15.34.9 NMAC are required to be permitted. The appropriate division district office will determine approval requirements based upon the proposed use.

D. Recycling facilities may be located either onsite or offsite of a well drilling location and may serve a number of wells.

E. The operator of a recycling facility shall keep accurate records and shall report monthly to the division the total volume of water received for recycling, with the amount of fresh water received listed separately, and the total volume of water leaving the facility for disposition by use on form C-148.

F. The operator of a recycling facility shall maintain accurate records that identify the sources and disposition of all recycled water that shall be made available for review by the division upon request.

G. Recycling facilities may not be used for the disposal of produced water.

H. The operator shall remove all fluids within 60 days from the date the operator ceases operations. The division district office may grant an extension for the removal of all fluids not to exceed two months.

[19.15.34.9 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.10 RECYCLING CONTAINMENTS:

A. All recycling containments shall be registered on form C-147. All operators or owners shall be named in the form C-147. The C-147 form shall require documentation that the containment will meet the requirements of 19.15.34.11 through 19.15.34.15 NMAC. At the time the C-147 is submitted to the division, a copy shall be provided to the surface owner.

B. Recycling containments may hold produced water for use in connection with drilling, completion, producing or processing oil or gas or both. Such fluids may include fresh water, brackish water, recycled and treated water, fluids added to water to facilitate well drilling or completion, water produced with oil and gas, flowback from operations, water generated by an oil or gas processing facility or other waters that are gathered for well drilling or completion but may not include any hazardous waste.

C. Registered recycling containments may be operated for five years from the date on which the registration is filed with the division. The operator may extend the allowed time on an annual basis thereafter with division approval if, 30 days prior to the registration expiration, the operator files a form C-147 with an attached summary showing all monthly inspections at the containment, including the monitoring of the leak detection system, showing the containment's integrity has not been compromised.

D. Recycling containments may not be used for the disposal of produced water or other oilfield wastes.

[19.15.34.10 NMAC - N, 3/31/15]

19.15.34.11 SITING REQUIREMENTS FOR RECYCLING CONTAINMENTS:

A. An operator shall not locate a recycling containment:

- (1)** where ground water is less than 50 feet below the bottom of the containment;
- (2)** within 300 feet of a continuously flowing watercourse, or 200 feet of any other significant watercourse or lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);
- (3)** within 1000 feet of a permanent residence, school, hospital, institution or church in existence at the time of the initial registration;
- (4)** within 500 feet of a spring or fresh water well used for domestic or stock watering purposes in existence at the time of the initial registration;
- (5)** within incorporated municipal boundaries or within a defined municipal fresh water well field covered by a municipal ordinance adopted pursuant to Section 3-27-3 NMSA 1978, as amended, unless the municipality specifically approves the recycling containment in writing;
- (6)** within 500 feet of a wetland;
- (7)** within an area overlying a subsurface mine;
- (8)** within an unstable area unless the operator demonstrates that it has incorporated engineering measures into the design to ensure that the containment's integrity is not compromised; or
- (9)** within a 100-year floodplain.

B. In the absence of site-specific ground water data, the operator may use data generated by models, cathodic well lithology, published information or other tools as approved by the division district office.

C. An operator shall not locate material excavated during construction:

- (1)** within 100 feet of a continuously flowing watercourse or significant watercourse;
- (2)** within 200 feet from a lakebed, sinkhole or playa lake (measured from the ordinary high-water mark);
- (3)** within 100 feet of a wetland; or

- (4) within a 100-year floodplain.

[19.15.34.11 NMAC - N, 3/31/15]

19.15.34.12 DESIGN AND CONSTRUCTION SPECIFICATIONS FOR A RECYCLING CONTAINMENT:

A. An operator shall design and construct a recycling containment in accordance with the following specifications.

(1) The operator shall design and construct a recycling containment to ensure the confinement of produced water, to prevent releases and to prevent overtopping due to wave action or rainfall.

(2) A recycling containment shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent the liner's rupture or tear. Geotextile is required under the liner when needed to reduce localized stress-strain or protuberances that otherwise may compromise the liner's integrity. The operator shall construct the containment in a levee with an inside grade no steeper than two horizontal feet to one vertical foot (2H:1V). The levee shall have an outside grade no steeper than three horizontal feet to one vertical foot (3H:1V). The top of the levee shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance.

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

(4) All primary (upper) liners in a recycling containment shall be geomembrane liners composed of an impervious, synthetic material that is resistant to ultraviolet light, petroleum hydrocarbons, salts and acidic and alkaline solutions. All primary liners shall be 30-mil flexible PVC, 45-mil LLDPE string reinforced or 60-mil HDPE liners. Secondary liners shall be 30-mil LLDPE string reinforced or equivalent with a hydraulic conductivity no greater than 1×10^{-9} cm/sec. Liner compatibility shall meet or exceed the EPA SW-846 method 9090A or subsequent relevant publications.

(5) The operator of a recycling containment shall minimize liner seams and orient them up and down, not across, a slope of the levee. Factory welded seams shall be used where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams and corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field welding and testing.

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

(7) The operator of a recycling containment shall place a leak detection system between the upper and lower geomembrane liners that shall consist of 200-mil geonet or two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped to facilitate the earliest possible leak detection.

(8) The operator of a recycling containment shall design the containment to prevent run-on of surface water. The containment shall be surrounded by a berm, ditch or other diversion to prevent run-on of surface water.

B. Stockpiling of topsoil. Prior to constructing containment, the operator shall strip and stockpile the topsoil for use as the final cover or fill at the time of closure.

C. Signs. The operator shall post an upright sign no less than 12 inches by 24 inches with lettering not less than two inches in height in a conspicuous place on the fence surrounding the containment. The operator shall post the sign in a manner and location such that a person can easily read the legend. The sign shall provide the following information: the operator's name, the location of the site by quarter-quarter or unit letter, section, township and range, and emergency telephone numbers.

D. Fencing.

(1) The operator shall fence or enclose a recycling containment in a manner that deters unauthorized wildlife and human access and shall maintain the fences in good repair. The operator shall ensure that all gates associated with the fence are closed and locked when responsible personnel are not onsite.

(2) Recycling containments shall be fenced with a four foot fence that has at least four strands of barbed wire evenly spaced in the interval between one foot and four feet above ground level.

E. Netting. The operator shall ensure that a recycling containment is screened, netted or otherwise protective of wildlife, including migratory birds. The operator shall on a monthly basis inspect for and, within 30 days of discovery, report the discovery of dead migratory birds or other wildlife to the appropriate wildlife agency and to the division district office in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring.

19.15.34.13 OPERATIONAL REQUIREMENTS FOR RECYCLING CONTAINMENTS:

A. The operator shall inspect the recycling containment and associated leak detection systems weekly while it contains fluids. The operator shall maintain a current log of such inspections and make the log available for review by the division upon request.

B. The operator shall maintain and operate a recycling containment in accordance with the following requirements.

(1) The operator shall remove any visible layer of oil from the surface of the recycling containment.

(2) The operator shall maintain at least three feet of freeboard at each containment.

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

(4) If the containment's primary liner is compromised above the fluid's surface, the operator shall repair the damage or initiate replacement of the primary liner within 48 hours of discovery or seek an extension of time from the division district office.

(5) If the primary liner is compromised below the fluid's surface, the operator shall remove all fluid above the damage or leak within 48 hours of discovery, notify the division district office and repair the damage or replace the primary liner.

(6) The containment shall be operated to prevent the collection of surface water run-on.

(7) The operator shall install, or maintain on site, an oil absorbent boom or other device to contain an unanticipated release.

C. A recycling containment shall be deemed to have ceased operations if less than twenty percent of the total fluid capacity is used every six months following the first withdrawal of produced water for use. The operator must report cessation of operations to the division. The division may grant an extension to this determination of cessation of operations not to exceed six months.

[19.15.34.13 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.14 CLOSURE AND SITE RECLAMATION REQUIREMENTS FOR RECYCLING CONTAINMENTS:

A. Once the operator has ceased operations, the operator shall remove all fluids within 60 days and close the containment within six months from the date the operator ceases operations from the containment for use. The division district office may grant an extension for the removal of all fluids not to exceed two months. The division district office may grant an extension to close the containment not to exceed six months. If the operator wants to use the containment for a purpose other than recycling then the operator must have that use approved or permitted by the division in accordance with the appropriate rules.

B. The operator shall close a recycling containment by first removing all fluids, contents and synthetic liners and transferring these materials to a division approved facility.

C. The operator shall test the soils beneath the containment for contamination with a five-point composite sample which includes stained or wet soils, if any, and that sample shall be analyzed for the constituents listed in Table I below.

(1) If any contaminant concentration is higher than the parameters listed in Table I, the division may require additional delineation upon review of the results and the operator must receive approval before proceeding with closure.

(2) If all contaminant concentrations are less than or equal to the parameters listed in Table I, then the operator can proceed to backfill with non-waste containing, uncontaminated, earthen material.

D. Within 60 days of closure completion, the operator shall submit a closure report on form C-147, including required attachments, to document all closure activities including sampling results and the details on any backfilling, capping or covering, where applicable. The closure report shall certify that all information in the report and attachments is correct and that the operator has complied with all applicable closure requirements and conditions specified in division rules or directives.

E. Once the operator has closed the recycling containment, the operator shall reclaim the containment's location to a safe and stable condition that blends with the surrounding undisturbed area. Topsoils and subsoils shall be replaced to their original relative positions and contoured so as to achieve erosion control, long-term stability and preservation of surface water flow patterns. The disturbed area shall then be reseeded in the first favorable growing season following closure of a recycling containment. The operator shall substantially restore the impacted surface area to the condition that existed prior to the construction of the recycling containment.

F. Reclamation of all disturbed areas no longer in use shall be considered complete when all ground surface disturbing activities at the site have been completed, and a uniform vegetative cover has been established that reflects a life-form ratio of plus or minus fifty percent of pre-disturbance levels and a total percent plant cover of at least seventy percent of pre-disturbance levels, excluding noxious weeds.

G. The re-vegetation and reclamation obligations imposed by federal, state trust land or tribal agencies on lands managed by those agencies shall supersede these provisions and govern the obligations of any operator subject to those provisions, provided that the other requirements provide equal or better protection of fresh water, human health and the environment.

H. The operator shall notify the division when reclamation and re-vegetation are complete.

Table I			
Closure Criteria for Recycling Containments			
Depth below bottom of containment to groundwater less than 10,000 mg/l TDS	Constituent	Method*	Limit**
51 feet - 100 feet	Chloride	EPA 300.0	10,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg
> 100 feet	Chloride	EPA 300.0	20,000 mg/kg
	TPH (GRO+DRO+MRO)	EPA SW-846 Method 8015M	2,500 mg/kg
	GRO+DRO	EPA SW-846 Method 8015M	1,000 mg/kg
	BTEX	EPA SW-846 Method 8021B or 8260B	50 mg/kg
	Benzene	EPA SW-846 Method 8021B or 8260B	10 mg/kg

*Or other test methods approved by the division.

**Numerical limits or natural background level, whichever is greater.

[19.15.34.14 NMAC - N, 3/31/2015; A, 10/13/2020]

19.15.34.15 FINANCIAL ASSURANCE REQUIREMENTS FOR RECYCLING CONTAINMENTS:

A. Financial assurance.

(1) Containment operators without existing financial assurance pursuant to 19.15.8 NMAC shall furnish financial assurance acceptable to the division in the amount of the recycling containment's estimated closure cost or \$25,000, whichever is greater.

(2) Containment operators providing the division with an existing financial assurance pursuant to 19.15.8 NMAC do not require additional financial assurance. These containments are limited to only the wells owned or operated by the owners of the containment. Containments delivering fluids to wells not owned or operated by the owners or operators of the containment must provide financial assurance pursuant to Paragraph (1) of Subsection A of 19.15.34.15 NMAC.

B. Terms of financial assurance. The financial assurance shall be on division-prescribed forms, payable to the state of New Mexico and conditioned upon the proper operation and site closure of the recycling containment as required by New Mexico statutes and division rules. The operator shall notify the division of any material change affecting the financial assurance within 30 days of discovery or notice of such change.

C. Forfeiture of financial assurance. The division shall give the operator 20 days written notice and an opportunity for a hearing prior to forfeiting any financial assurance.

D. Forms of financial assurance. The division may accept the following forms of financial assurance.

(1) Surety bonds. A surety bond shall be executed by the applicant and a corporate surety licensed to do business in the state, and shall not be subject to cancellation.

(2) Letters of credit. A letter of credit shall be issued by a bank organized or authorized to do commercial banking business in the United States, shall be irrevocable for a term of not less than five years unless the applicant shows good cause for a shorter time period and shall provide for automatic renewal for successive, like terms upon expiration unless the issuer has notified the division in writing of non-renewal at least 90 days before its expiration date. The letter of credit shall be payable to the state of New Mexico in part or in full upon receipt from the director or the director's authorized representative of demand for payment accompanied by a notice of forfeiture. Demand may be issued 30 days prior to expiration of the letter of credit if the operator has not provided replacement financial assurance by that time.

(3) Cash accounts. An applicant shall provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts in a financial institution, provided that the operator and the financial institution shall execute as to

each such account a collateral assignment of the account to the division, which shall provide that only the division may authorize withdrawals from the account. In the event of forfeiture, the division may direct payment of all or part of the balance of such cash account (excluding interest accrued on the account) to itself or its designee for the recycling facility's closure.

E. Replacement of financial assurance.

(1) The division may allow an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equal coverage prior to the expiration of the existing financial assurance.

(2) The division shall not release existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement.

F. Review of adequacy of financial assurance. The division may at any time not less than five years after initial acceptance of financial assurance for a recycling containment, initiate a review of such financial assurance's adequacy. Additionally, whenever the division determines that a recycling containment has not achieved the closure standards specified in 19.15.34.14 NMAC, the division may review the adequacy of the recycling containment's financial assurance, without regard to the date of its last review. Upon determination, after notice to the operator and an opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of a recycling containment's closure and post closure monitoring, the division may require the operator to furnish additional financial assurance.

G. The division shall release a financial assurance upon the operator's or surety's written request if the recycling containment has been closed and the location remediated in accordance with 19.15.34 NMAC or has been covered by another financial assurance approved by the division. The division shall not approve a request for change of operator of a recycling containment until the new operator has the required division approved financial assurance.

H. The division may use funds in the oil and gas reclamation fund to remediate the impacts of a recycling containment if deemed necessary by the division director in the event of an emergency or insufficient financial assurance. In either case, the costs expended by the division may be recovered from the operator pursuant to Section 70-2-38 NMSA 1978. The operator is responsible for all costs of remediation of the recycling containment even if the costs exceed the financial assurance.

[19.15.34.15 NMAC - N, 3/31/15]

19.15.34.16 VARIANCES:

A. An operator may file a written request for a variance from any requirement of these rules with the division district office. The request for variance shall include:

- (1) a detailed statement explaining the need for a variance; and
 - (2) a detailed written demonstration that the variance will provide equal or better protection of fresh water, public health and the environment.
- B.** The division district office shall approve or deny the variance within 60 days of receipt. If the division district office denies the variance, it shall provide the operator with the reasons for denial by certified mail, return receipt requested.
- C.** If a request for variance from the requirements of this rule is not approved or denied within 60 days of the date the request for variance is received by the district office, the operator may seek a hearing pursuant to 19.15.4 NMAC.
- D.** If the operator requests a hearing pursuant to 19.15.4 NMAC within 60 days after receipt of notice, the division shall set the matter for hearing, with notice to the operator and the appropriate division district office.
- E.** The operator shall provide notice of the hearing on the request for variance to the surface owner of the site by certified mail, return receipt requested, at least 20 days prior to the date of hearing.
- F.** Variances must receive division approval prior to implementation.

[19.15.34.16 NMAC - N, 3/31/15]

19.15.34.17 TRANSPORTATION OF PRODUCED WATER, DRILLING FLUIDS AND LIQUID OIL FIELD WASTE:

- A.** A person shall not transport produced water, drilling fluids or liquid oil field waste, including drilling fluids and residual liquids in liquid oil field equipment, except for small samples removed for analysis, by motor vehicle from a lease, central tank battery of other facility without an approved form C-133. The transporter shall maintain a copy of the approved form C-133 in the transporting vehicle.
- B.** A person may apply for authorization to move produced water, drilling fluids or liquid oil field waste by motor vehicle by filing a complete form C-133 with the division's Santa Fe office. Authorization is granted upon the division's approval of form C-133.
- C.** An owner or operator shall not permit produced water, drilling fluids or liquid oil field waste to be removed from its leases or field facilities, except for small samples removed for analysis, by motor vehicle except by a person possessing an approved form C-133. The division shall post a list of currently approved form C-133s, authorization to move liquid waste, on its website. The list of form C-133s posted on the division's website on the first business day of each month shall be deemed notice of valid form C-133s for the remainder of the month.

[19.15.34.17 NMAC - Rp, 19.15.34.8 NMAC, 3/31/15]

19.15.34.18 DENIAL OF FORM C-133:

The division may deny approval of a form C-133 if:

A. the applicant is a corporation or limited liability company, and is not registered with the secretary of state to do business in New Mexico;

B. the applicant is a limited partnership, and is not registered with the New Mexico secretary of state to do business in New Mexico;

C. the applicant does not possess a warrant for transportation under the state registration system the public regulation commission administers, if it is required to have such a permit under the applicable statutes or rules; or

D. the applicant or officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent, is or was within the past five years an officer, director or partner in the applicant, or a person with an interest in the applicant exceeding twenty-five percent in another entity that possesses or has possessed an approved form C-133 that has been cancelled or suspended, has a history of violating division or other state or federal environmental laws; is subject to a commission or division order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or orders that is unpaid more than 70 days after issuance of the order assessing the penalty.

[19.15.34.18 NMAC - Rp, 19.15.34.9 NMAC, 3/31/2015; A, 10/13/2020]

19.15.34.19 CANCELLATION OR SUSPENSION OF AUTHORIZATION TO MOVE LIQUID WASTES:

A transporter's vehicular movement or disposition of produced water, drilling fluids or liquid oil field waste in a manner contrary to division rules is ground for denial of approval of form C-133 in addition to those specified in Subsection D of 19.15.34.18 NMAC. It is also cause, after notice and an opportunity for hearing, for the division to cancel or suspend a transporter's authorization to move liquid wastes.

[19.15.34.19 NMAC - Rp, 19.15.34.10 NMAC, 3/31/15]

19.15.34.20 DISPOSITION OF PRODUCED WATER AND OTHER OIL FIELD WASTE:

Except as authorized by 19.15.17 NMAC, 19.15.26.8 NMAC, 19.15.30 NMAC, 19.15.34 NMAC or 19.15.36 NMAC, persons, including transporters, shall not dispose of produced water or other oil field waste:

A. on or below the surface of the ground, in a pit or in a pond, lake, depression or watercourse;

B. in another place or in a manner that may constitute a hazard to fresh water, public health, or the environment; or

C. in a permitted pit or registered or permitted surface waste management facility without permission of the owner or operator of the pit or facility.

[19.15.34.20 NMAC - Rp, 19.15.34.11 NMAC, 3/31/15]

19.15.34.21 ENFORCEMENT:

A. The operator of a recycling facility or recycling containment shall comply with all the requirements of 19.15.34 NMAC.

B. If the division determines that the registration of a recycling facility or recycling containment or that operations at a recycling facility or recycling containment violate the requirements of 19.15.34 NMAC, the division district office shall notify the operator in writing. If the violation threatens contamination of fresh water, public health, or the environment, the notice of violation shall be signed by the director, the operator shall immediately cease all operations at the recycling facility or containment and the director may require the operator to remove all fluids, if any, in the recycling facility or containment by a date determined by the director.

C. The operator shall have 60 days from the date it is notified of a violation to remove the recycling facility or recycling containment in accordance with 19.15.34 NMAC unless the violation is corrected or an agreed compliance order providing for corrective action is entered with the division. The operator may request an immediate stay of the division's order as part of an application for review of the notice of violation filed by the operator.

D. The provisions of 19.15.4 NMAC applicable to adjudicatory proceedings shall apply to these enforcement proceedings unless altered or amended by 19.15.5.10 NMAC or 19.15.34 NMAC.

E. The division may enter into an agreed compliance order prior to or after the filing of an application for an administrative compliance proceeding. An agreed compliance order shall have the same force and effect as a compliance order issued after an adjudicatory hearing.

F. After a notice of violation that threatens contamination of fresh water, public health, or the environment is issued, until the operator obtains an agreed compliance order, performs appropriate corrective action or is granted a stay, the division may not approve any permits for the operator.

[19.15.34.21 NMAC - N, 3/31/15]

PART 35: WASTE DISPOSAL

19.15.35.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.35.1 NMAC - Rp, 19.15.9.1 NMAC, 12/1/08]

19.15.35.2 SCOPE:

19.15.35 NMAC applies to persons engaged in oil and gas exploration, development, production, storage, transportation, treatment and refinement and the oil field service industry within New Mexico.

[19.15.35.2 NMAC - Rp, 19.15.9.2 NMAC, 12/1/08; A, 6/30/16]

19.15.35.3 STATUTORY AUTHORITY:

19.15.35 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which authorizes the division to regulate the disposition of non-domestic waste resulting from the exploration, development, production or storage of oil or gas; from the oil field service industry; the transportation of oil or gas; the treatment of gas; or the refinement of oil.

[19.15.35.3 NMAC - Rp, 19.15.9.3 NMAC, 12/1/08]

19.15.35.4 DURATION:

Permanent.

[19.15.35.4 NMAC - Rp, 19.15.9.4 NMAC, 12/1/08]

19.15.35.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.35.5 NMAC - Rp, 19.15.9.5 NMAC, 12/1/08]

19.15.35.6 OBJECTIVE:

To establish procedures for the disposal of certain oil field waste at solid waste facilities permitted by the New Mexico environment department and for the disposal of regulated NORM associated with the oil and gas industry.

[19.15.35.6 NMAC - Rp, 19.15.9.6 NMAC, 12/1/08; A, 6/30/16]

19.15.35.7 DEFINITIONS:

A. "Discharge plan" means a plan the operator submits and the division approves pursuant to NMSA 1978, Section 70-2-12(B)(22) and WQCC rules.

B. "EPA clean" means the cleanliness standards established by the EPA in 40 C.F.R. section 261.7(b).

C. "NESHAP" means the National Emission Standards for Hazardous Air Pollutants of the EPA, 40 C.F.R. Part 61.

D. "Solid waste facility" means a facility permitted or authorized as a solid waste facility by the New Mexico environment department pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1 *et seq.* and New Mexico environmental improvement board rules to accept industrial solid waste or other special waste.

E. "TCLP" means the testing protocol established by the EPA in 40 C.F.R. Part 261, entitled "Toxicity Characteristic Leaching Procedure" or an alternative hazardous constituent analysis the division has approved.

[19.15.35.7 NMAC - Rp, 19.15.9.712 NMAC, 12/1/08; A, 6/30/16]

19.15.35.8 DISPOSAL OF CERTAIN OIL FIELD WASTE AT SOLID WASTE FACILITIES:

A. A person may dispose of certain oil field waste at a solid waste facility in accordance with 19.15.35.8 NMAC.

B. Procedure.

(1) A person may dispose of oil field waste listed in Paragraph (1) of Subsection C of 19.15.35.8 NMAC at a solid waste facility without the division's prior written authorization.

(2) A person may dispose of oil field waste listed in Paragraph (2) of Subsection C of 19.15.35.8 NMAC at a solid waste facility after testing and the division's prior written authorization. Before the division grants authorization, the applicant for the authorization shall provide copies of test results to the division and to the solid waste facility where the applicant will dispose of the oil field waste. In appropriate cases and so long as a representative sample is tested, the division may authorize disposal of a waste stream listed in Paragraph (2) of Subsection C of 19.15.35.8 NMAC without individual testing of each delivery.

(3) A person may dispose of oil field waste listed in Paragraph (3) of Subsection C of 19.15.35.8 NMAC at a solid waste facility on a case-by-case basis after testing the division may require and the division's prior written authorization. Before the division grants authorization, the applicant for the authorization shall provide copies of test results to the division and to the solid waste facility where it will dispose of the oil field waste.

(4) Simplified procedure for holders of discharge plans. Holders of an approved discharge plan may amend the discharge plan to provide for disposal of oil field waste listed in Paragraph (2) of Subsection C of 19.15.35.8 NMAC and, as applicable, Paragraph (3) of Subsection C of 19.15.35.8 NMAC. If the division approves the amendment to the discharge plan, the holder may dispose of oil field wastes listed in Paragraphs (2) and (3) of Subsection C of 19.15.35.8 NMAC at a solid waste facility without obtaining the division's prior written authorization.

C. The following provisions apply to the types of oil field waste described below as specified.

(1) The person disposing of the oil field waste does not have to test the following oil field waste before disposal:

(a) barrels, drums, five-gallon buckets or one-gallon containers so long as they are empty and EPA-clean;

(b) uncontaminated brush and vegetation arising from clearing operations;

(c) uncontaminated concrete;

(d) uncontaminated construction debris;

(e) non-friable asbestos and asbestos contaminated waste material, so long as the disposal complies with applicable federal regulations and state rules for non-friable asbestos materials and so long as the facility operator removes the asbestos from steel pipes and boilers and, if applicable, recycles the steel;

(f) detergent buckets, so long as the buckets are completely empty;

(g) fiberglass tanks so long as the tank is empty, cut up or shredded and EPA clean;

(h) grease buckets, so long as empty and EPA clean;

(i) uncontaminated ferrous sulfate or elemental sulfur so long as recovery and sale as a raw material is not possible;

(j) metal plate and metal cable;

- (k)** office trash;
- (l)** paper and paper bags, so long as the paper bags are empty;
- (m)** plastic pit liners, so long as the person cleans them well;
- (n)** soiled rags or gloves, which if wet pass the paint filter test prior to disposal; or
- (o)** uncontaminated wood pallets.

(2) The person disposing of the oil field waste shall test the following oil field wastes for the substances indicated prior to disposal:

- (a)** activated alumina for TPH and BTEX;
- (b)** activated carbon for TPH and BTEX;
- (c)** amine filters, which the facility operator air-dries for at least 48 hours before testing, for BTEX;
- (d)** friable asbestos and asbestos-contaminated waste material, which the facility operator removes asbestos from steel pipes and boilers and, if applicable, recycles the steel before disposal, where the disposal otherwise complies with applicable federal regulations and state rules for friable asbestos materials pursuant to NESHAP;
- (e)** cooling tower filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for TCLP/chromium;
- (f)** dehydration filter media, which the facility operator drains and then air-dries for at least 48 hours before testing, for TPH and BTEX;
- (g)** gas condensate filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for BTEX;
- (h)** glycol filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for BTEX;
- (i)** iron sponge, which the facility operator oxidizes completely, for ignitability testing;
- (j)** junked pipes, valves and metal pipe for NORM;

(k) molecular sieves, which the facility operator cools in a non-hydrocarbon inert atmosphere and hydrates in ambient air for at least 24 hours before testing, for TPH and BTEX;

(l) pipe scale and other deposits removed from pipeline and equipment for TPH, TCLP/metals and NORM;

(m) produced water filters, which the facility operator drains and then air-dries for at least 48 hours before testing, for corrosivity;

(n) sandblasting sand for TCLP/metals or, if the division requires, TCLP/total metals; or

(o) waste oil filters, which the facility operator drains thoroughly of oil at least 24 hours before testing and recycles the oil and metal parts, for TCLP/metals.

(3) A person may dispose of the following oil field wastes on a case-by-case basis with the division's approval:

(a) sulfur contaminated soil;

(b) catalysts;

(c) contaminated soil other than petroleum contaminated soil;

(d) petroleum contaminated soil in the event of a director-declared emergency;

(e) contaminated concrete;

(f) demolition debris not otherwise specified in 19.15.35.8 NMAC;

(g) unused dry chemicals; in addition to testing the division requires, the person applying for division approval shall forward a copy of the material safety data sheet to the division and the solid waste facility on each chemical proposed for disposal;

(h) contaminated ferrous sulfate or elemental sulfur;

(i) unused pipe dope;

(j) support balls;

(k) tower packing materials;

(l) contaminated wood pallets;

(m) partial sacks of unused drilling mud; in addition to testing the division requires, the person applying for division approval shall forward a copy of the material safety data sheet to division and the solid waste facility at which the it will dispose of the partial sacks; or

(n) other oil field wastes as applicable.

D. Testing.

(1) The person applying for division approval to dispose of oil field waste in a solid waste facility shall conduct testing required by 19.15.35.8 NMAC according to the Test Methods for Evaluating Solid Waste, EPA No. SW-846 and shall direct questions concerning the standards or a particular testing facility to the division.

(2) The testing facility shall conduct testing according to the test method listed:

(a) TPH: EPA method 418.1 or 8015 (DRO and GRO only) or an alternative, division-approved hydrocarbon analysis;

(b) TCLP: EPA Method 1311 or an alternative hazardous constituent analysis approved by the division;

(c) paint filter test: EPA Method 9095A;

(d) ignitability test: EPA Method 1030;

(e) corrosivity: EPA Method 1110;

(f) reactivity: test procedures and standards the division establishes on a case-by-case basis; and

(g) NORM. 20.3.14 NMAC.

(3) To be eligible for disposal pursuant to 19.15.35.8 NMAC, the concentration of substances the testing facility identifies during testing shall not exceed the following limits:

(a) benzene: 9.99 mg/kg;

(b) BTEX: 499.99 mg/kg (sum of all);

(c) TPH: 1000 mg/kg;

(d) hazardous air pollutants: the standards set forth in NESHAP; and

(e) TCLP:

- (i)** arsenic: 5 mg/l,
- (ii)** barium: 100 mg/l,
- (iii)** cadmium: 1 mg/l,
- (iv)** chromium: 5 mg/l,
- (v)** lead: 5 mg/l,
- (vi)** mercury: 0.2 mg/l,
- (vii)** selenium: 1 mg/l, and
- (viii)** silver: 5 mg/l.

[19.15.35.8 NMAC - Rp, 19.15.9.712 NMAC, 12/1/08; A, 6/30/16]

19.15.35.9 DISPOSAL OF REGULATED NORM:

A person disposing of regulated NORM, as defined at 19.15.2.7 NMAC, is subject to 19.15.35.9 NMAC through 19.15.35.14 NMAC and to New Mexico environmental improvement board rule, 20.3.14 NMAC.

[19.15.35.9 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.10 NON-RETRIEVED FLOWLINES AND PIPELINES:

A. The division shall consider a proposal from an operator for leaving flowlines and pipelines (hereinafter "pipeline") that contain regulated NORM in the ground provided the operator performs the abandonment procedures in a manner to protect the environment, public health and fresh waters. Division approval is contingent on the applicant meeting the following requirements as a minimum.

B. An application the applicant submits to the division shall contain the following as a minimum:

(1) the pipeline layout over its entire length on a form C-102 including the legal description of the location of both ends and surface ownership along the pipeline;

(2) results of a radiation survey the applicant conducts at all accessible points and a surface radiation survey along the complete pipeline route in a division-approved form; surveys conducted consistent with division-approved procedures;

(3) the type of material for which the applicant or any predecessor operator used the pipeline;

(4) the procedure the applicant will use for flushing hydrocarbons or produced water from the pipeline;

(5) an explanation as to why it is more beneficial to leave the pipeline in the ground than to retrieve it; and

(6) proof the applicant has sent notice of the proposed abandonment to all surface owners where the pipeline is located; the director may require the applicant to send additional notification as described in 19.15.35.14 NMAC.

C. Upon division approval of the application, the operator shall notify the appropriate division district office at least 24 hours prior to beginning work on the pipeline abandonment.

D. As a condition of completion of the pipeline abandonment, the operator shall permanently cap all accessible points.

E. An operator shall not place additional regulated NORM in a pipeline to be abandoned under 19.15.35.10 NMAC other than that which accumulated in the pipeline under the pipeline's normal operation.

F. An operator may abandon a pipeline that does not exhibit regulated NORM pursuant to required surveys without an application pursuant to 19.15.35.10 NMAC in accordance with the operator's applicable lease agreements.

G. If a pipeline's appurtenance contains regulated NORM, but upon the appurtenance's removal, no accessible point or surface above the pipeline exhibits the presence of regulated NORM, then the applicant shall submit to the division the information regarding the regulated NORM in the appurtenance and a statement concerning that regulated NORM's management. With respect to the pipeline left in the ground, the applicant is subject to the requirements of 19.15.35.10 NMAC with the exception of Paragraph (6) of Subsection B of 19.15.35.10 NMAC.

[19.15.35.10 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.11 COMMERCIAL OR CENTRALIZED SURFACE WASTE MANAGEMENT FACILITIES:

A. The division shall consider proposals for the disposal of regulated NORM in commercial or centralized surface waste management facilities, provided the applicant performs the disposal in a manner that protects the environment, public health and fresh waters. Division approval is contingent on the applicant obtaining a permit in accordance with 19.15.36 NMAC for the facility and complying with additional

requirements specifically related to regulated NORM disposal as described in Subsections B through D of 19.15.35.11 NMAC.

B. The division shall set requests for permission to receive and dispose of regulated NORM in commercial or centralized surface waste management facilities for hearing in order for the facility's operator to obtain or modify a permit in accordance with 19.15.36 NMAC. The division shall consider a request to dispose of regulated NORM at a facility previously permitted under 19.15.36 NMAC a major modification to that facility. The facility's operator shall submit a hearing request to the division that contains the following at a minimum:

(1) complete plans for the facility, including the sources of regulated NORM, radiation survey readings, quantities of regulated NORM to be disposed and monitoring proposals;

(2) a copy of this permit for the facility, if the division has issued one;

(3) proof of public notice of the application as required by 19.15.36 NMAC;
and

(4) evidence of issuance of a specific license pursuant to 20.3.14 NMAC, a license pursuant to 20.3.13 NMAC and other authorizations required by law.

C. The division shall establish operating procedures that are protective of the environment, public health and fresh waters in its order.

D. A person desiring to dispose of regulated NORM in an approved commercial or centralized surface waste management facility shall furnish regulated NORM information to the facility's operator sufficient for the operator to submit form C-138 for division approval. The facility operator shall receive division approval prior to receiving the regulated NORM at the disposal facility.

[19.15.35.11 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.12 DOWNHOLE DISPOSAL IN WELLS TO BE PLUGGED AND ABANDONED:

A. The division shall consider proposals from an operator for downhole disposal of regulated NORM in wells that are to be plugged and abandoned, provided the operator performs the plugging and abandonment procedures in a manner that protects the environment, public health and fresh waters and in accordance with division rules pertaining to well plugging and abandonment.

B. The applicant shall complete form C-103 and submit it to the division for approval.

(1) In addition to all other information required for C-103 submittal, the form shall specifically state that the applicant will place regulated NORM in the well bore. The abandonment procedure contained in the application shall identify depths at which the operator will place regulated NORM, radiation survey results conducted on the regulated NORM to be disposed, the procedure the operator will use to place the regulated NORM in the well bore and the specific form of regulated NORM the operator will place in the well bore (e.g. scale, pipe, dirt, etc.).

(2) The applicant shall address abnormally pressured zones in the well bore that might result in migration of the regulated NORM after it has been placed in the plugged and abandoned well in the application.

(3) The applicant shall send notice of the submittal of an application to dispose of regulated NORM in a plugged and abandoned well to the surface owner and the mineral lessor. The director may require additional notification as described in 19.15.35.14 NMAC.

C. The operator shall not commence work until the division has approved the application for regulated NORM disposal in a plugged and abandoned well.

D. The operator shall comply with the following requirements when disposing of the regulated NORM in a plugged and abandoned well.

(1) The operator shall follow plugging and abandonment procedures the division routinely requires unless the procedures are specifically superseded at the division's instruction to facilitate the regulated NORM disposal.

(2) The operator shall color-dye the cement plug located directly above the regulated NORM and the surface plug with red iron oxide.

(3) The operator shall dispose of regulated NORM at a depth of at least 100 feet below the lower most known underground source of drinking water zone. There must be evidence that there is cement across the known underground source of drinking water zones.

[19.15.35.12 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.13 INJECTION:

A. The division shall consider an operator's proposal for injecting regulated NORM into injection wells provided the operator will perform the injection in a manner that protects the environment, public health and fresh waters and complies with division rules pertaining to injection. Division approval is contingent on the applicant meeting the requirements in Subsection B of 19.15.35.13 NMAC at a minimum.

B. An applicant wishing to dispose of regulated NORM in a disposal well shall comply with the following requirements.

(1) An application submitted to the division for permission to dispose of a regulated NORM in an existing or newly permitted disposal well shall contain the following information at a minimum:

(a) a completed form C-108 with proof of required notification and a statement that regulated NORM will be injected;

(b) a description of regulated NORM to be disposed including its source, radiation levels and quantity; and

(c) a description of the process used on the material to improve injectivity.

(2) An operator shall comply with the following requirements when disposing of regulated NORM in a disposal well.

(a) The operator may only inject regulated NORM from the operator's operations.

(b) Each time the operator injects regulated NORM into the disposal well, the operator shall submit a form C-103 to the division and the appropriate division district office. The operator shall submit the completed form C-103 five working days following the injection, which contains the following information: source of regulated NORM, NORM radiation level, quantity of material injected, description of any process the operator used on the material to improve injectivity, the injection pressure while injecting and dates of injection.

(c) The operator shall report mechanical failures to the appropriate division district office within 24 hours of the failure. The operator shall submit a description of the failure and immediate measures the operator took in response to the failure no later than 15 days following the failure. The operator shall notify the appropriate division district office of proposed repair plans. The operator shall receive division approval of repair plans prior to commencing work and provide notice of commencement to the appropriate division district office so that the division may witness or inspect repairs. The operator shall monitor well repairs to ensure regulated NORM does not escape the well bore or is completely contained in the repair operations.

(d) At the time of the disposal well's abandonment, the operator shall squeeze the injection interval that the operator used for regulated NORM injection with cement or locate a cement plug directly above the injection interval. Cement in either case shall contain red iron oxide.

(e) The injection zone shall be at a depth of at least 100 feet below the lower most known underground drinking water zone.

C. Injection in EOR injection wells. The division shall consider issuing a permit for the disposal of regulated NORM into injection wells within an approved EOR project only after notice and hearing and upon the applicant's minimum demonstration that:

(1) the injection will not reduce the project's efficiency or otherwise cause a reduction in the ultimate recovery of hydrocarbons from the project;

(2) the injection will not cause an increase in the radiation level of regulated NORM produced from the EOR interval in an producing well located either within or offsetting the project area; and

(3) the operations will conform to provisions of Subsection B of 19.15.35.13 NMAC.

D. Injection above fracture pressure.

(1) The division shall consider issuing a permit for the disposal of regulated NORM in a disposal well above fracture pressure only after notice and hearing and upon receiving the following minimum information from the applicant:

(a) a completed form C-108 clearly stating that disposal of regulated NORM at or above fracture pressure is proposed;

(b) information required under Subsection B of 19.15.35.13 NMAC above;

(c) model results predicting the fracture propagation including the expected height, extension, direction and any other evidence sufficient to demonstrate that the fracture will not extend beyond the injection interval or into the confining zones; the application shall include the procedure, the anticipated pressures and the type and pressure rating of equipment that the operator will use; the division may consider the current or potential utilization of zones immediately above and below the zone of interest in the acceptance or rejection of model predictions; and

(d) a contingency plan of the procedures, including containment plans that the operator will employ if a mechanical failure occurs.

(2) The operator shall comply with the following requirements when disposing of regulated NORM in a disposal well above fracture pressure.

(a) The operator shall notify the appropriate division district office 24 hours prior to commencing injection.

(b) Upon completion of the injection, the operator shall squeeze the disposal interval with cement or locate a cement plug directly above the injection interval. In either case the cement in either case shall contain red iron oxide. The operator shall submit a completed form C-103 to the division and the appropriate division district office

within five working days of the injection. If the operator desires to return the well to injection below fracture pressure, the operator shall include those plans in the application.

E. Injection in commercial disposal facilities. The division shall consider issuing a permit for the commercial disposal of regulated NORM by injection only after notice and hearing, and provided the applicant has obtained a specific license pursuant to 20.3.14 NMAC and pursuant to 20.3.13 NMAC. In addition to obtaining these licenses the operator shall also comply with Subparagraph (a) of Paragraph 2 of Subsection B of 19.15.35.13 NMAC.

[19.15.35.13 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

19.15.35.14 ADDITIONAL NOTIFICATION:

A. The director may require additional notice for an application under 19.15.35.9 NMAC to 19.15.35.13 NMAC.

B. A notified party seeking to comment or request a public hearing on an application shall file comments or a written hearing request with the division within 20 days after receiving notice. A request for a hearing shall set forth the reasons why the division should hold a hearing.

C. The division shall hold a public hearing as required in 19.15.35.9 NMAC through 19.15.35.13 NMAC or if the director determines there is sufficient cause to hold a public hearing.

[19.15.35.14 NMAC - Rp, 19.15.9.714 NMAC, 12/1/08]

PART 36: SURFACE WASTE MANAGEMENT FACILITIES

19.15.36.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.36.1 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.2 SCOPE:

19.15.36 NMAC applies to persons or entities that operate surface waste management facilities as defined in Subsection S of 19.15.2.7 NMAC.

[19.15.36.2 NMAC - N, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.3 STATUTORY AUTHORITY:

19.15.36 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12, which grants the division jurisdiction and authority over the disposition of wastes resulting from oil and gas operations.

[19.15.36.3 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.4 DURATION:

Permanent.

[19.15.36.4 NMAC - N, 2/14/2007]

19.15.36.5 EFFECTIVE DATE:

February 14, 2007, unless a later date is cited at the end of a section.

[19.15.36.5 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.6 OBJECTIVE:

To regulate the disposal of oil field waste and the construction, operation, closure and post closure of surface waste management facilities.

[19.15.36.6 NMAC - N, 2/14/2007; A, 6/30/16]

19.15.36.7 DEFINITIONS:

A. Definitions relating to types of surface waste management facilities.

(1) "Centralized facility" means a surface waste management facility:

(a) that is used exclusively by one generator subject to New Mexico's Oil and Gas Conservation Tax Act, NMSA 1978, Section 7-30-1, as amended;

(b) where the generator or operator does not receive compensation for oil field waste management at that facility; and

(c) receives exclusively oil field wastes that are generated from production units or leases the generator, or an affiliate of the generator, operates (for this provision's purposes, an affiliate of a generator is a person who controls, is controlled by or is under common control with the generator).

(2) "Commercial facility" means a surface waste management facility that is not a centralized facility.

(3) "Landfarm" means a discrete area of land designated and used for the remediation of petroleum hydrocarbon-contaminated soils and drill cuttings.

(4) "Landfill" means a discrete area of land or an excavation designed for permanent disposal of exempt or non-hazardous waste.

(5) "Small landfarm" means a centralized landfarm of two acres or less that has a total capacity of 2000 cubic yards or less in a single lift of eight inches or less, remains active for a maximum of three years from the date of its registration and that receives only petroleum hydrocarbon-contaminated soils (excluding drill cuttings) that are exempt or non-hazardous waste.

B. Other definitions.

(1) "Active portion" means that part of a surface waste management facility that has received or is receiving oil field waste and has not been closed.

(2) "Cell" means a confined area engineered for the disposal or treatment of oil field waste.

(3) "Composite liner" means a liner that may consist of multiple layers of geosynthetics and low-permeability soils. The different layers of a composite liner may have different material properties and may be applied at different stages of landfill liner installation.

(4) "Geosynthetic" means the general classification of synthetic materials used in geotechnical applications, including the following classifications:

(a) "geocomposite" means a manufactured material using geotextiles, geogrids or geomembranes, or combinations thereof, in a laminated or composite form;

(b) "geogrid" means a deformed or non-deformed, netlike polymeric material used to provide reinforcement to soil slopes;

(c) "geomembrane" means an impermeable polymeric sheet material that is impervious to liquid and gas as long as it maintains its integrity, and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system;

(d) "geonet" means a type of geogrid that allows planar flow of liquids and serves as a drainage system;

(e) "geosynthetic clay liner (GCL)" means a relatively thin layer of processed clay (typically bentonite) that is either bonded to a geomembrane or fixed between two sheets of geotextile; and

(f) "geotextile" means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes or to provide structural support.

(5) "Leachate" means the liquid that has passed through or emerged from oil field waste and contains soluble, suspended or miscible materials.

(6) "Landfarm cell" means a bermed area of 10 acres or less within a landfarm.

(7) "Landfarm lift" means an accumulation of soil or drill cuttings predominately contaminated by petroleum hydrocarbons that is placed into a landfarm cell for treatment.

(8) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 77 degrees fahrenheit and atmospheric pressure.

(9) "Major modification" means a modification of a surface waste management facility that involves an increase in the land area that the permitted surface waste management facility occupies; a change in the design capacity or nature of the permitted oil field waste stream; addition of a new treatment process; an exception to, waiver of or change to a numerical standard provided in 19.15.36 NMAC; or other modification that the division determines is sufficiently substantial that public notice and public participation in the application process are appropriate.

(10) "Minor modification" means a modification of a surface waste management facility that is not a major modification.

(11) "Operator" means the person who owns the surface waste management facility.

(12) "Poor foundation conditions" are features that indicate that a natural or human-induced event may result in inadequate foundational support for a surface waste management facility's structural components.

(13) "Run-off" means rainwater, leachate or other liquid that drains over land from any part of a surface waste management facility.

(14) "Structural components of a landfill" are liners, leachate collection and removal systems, final covers, run-on/run-off systems and other components used in a landfill's construction or operation that are necessary for protection of fresh water, public health or the environment.

[19.15.36.7 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.8 SURFACE WASTE MANAGEMENT FACILITY PERMITS AND APPLICATION REQUIREMENTS:

A. Permit required. No person shall operate a surface waste management facility (other than a small landfarm registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC) except pursuant to and in accordance with the terms and conditions of a division-issued surface waste management facility permit. The applicant for a permit or permit modification, renewal or transfer shall be the operator of the surface waste management facility. The operator is responsible for the actions of the operator's officers, employees, consultants, contractors and subcontractors as they relate to the operation of the surface waste management facility. Any person who is involved in a surface waste management facility's operation shall comply with 19.15.36 NMAC and the permit.

B. Permitting requirements. Except for small landfarms registered pursuant to Paragraph (1) of Subsection A of 19.15.36.16 NMAC, new commercial or centralized facilities prior to commencement of construction, and existing commercial or centralized facilities prior to modification or permit renewal, shall be permitted by the division in accordance with the applicable requirements of Subsection C of 19.15.36.8 NMAC and 19.15.36.11 NMAC.

C. Application requirements for new facilities, major modifications and permit renewals. An applicant or operator shall file an application, form C-137, for a permit for a new surface waste management facility, to modify an existing surface waste management facility or for permit renewal with the environmental bureau in the division's Santa Fe office. The application shall include:

(1) the names and addresses of the applicant and principal officers and owners of twenty-five percent or more of the applicant;

(2) a plat and topographic map showing the surface waste management facility's location in relation to governmental surveys (quarter-quarter section, township and range); highways or roads giving access to the surface waste management facility site; watercourses; fresh water sources, including wells and springs; and inhabited buildings within one-half mile of the site's perimeter based upon the records of the applicable county clerk or clerk's office;

(3) the names and addresses of the surface owners of the real property on which the surface waste management facility is sited and surface owners of the real property within one mile of the site's perimeter;

(4) a description of the surface waste management facility with a diagram indicating the location of fences and cattle guards, and detailed construction/installation diagrams of pits, liners, dikes, piping, sprayers, tanks, roads, fences, gates, berms,

pipelines crossing the surface waste management facility, buildings and chemical storage areas;

(5) engineering designs, certified by a registered professional engineer, including technical data on the design elements of each applicable treatment, remediation and disposal method and detailed designs of surface impoundments;

(6) a plan for management of approved oil field wastes that complies with the applicable requirements contained in 19.15.36.13 NMAC, 19.15.36.14 NMAC, 19.15.36.15 NMAC and 19.15.36.17 NMAC;

(7) an inspection and maintenance plan that complies with the requirements contained in Subsection L of 19.15.36.13 NMAC;

(8) a hydrogen sulfide prevention and contingency plan that complies with those provisions of 19.15.11 NMAC that apply to surface waste management facilities;

(9) a closure and post closure plan, including a responsible third party contractor's cost estimate, sufficient to close the surface waste management facility in a manner that will protect fresh water, public health and the environment, and to comply with the closure and post closure requirements contained in Subsections A through F of 19.15.36.18 NMAC;

(10) a contingency plan that complies with the requirements of Subsection N of 19.15.36.13 NMAC and with NMSA 1978, Sections 12-12-1 through 12-12-30, as amended;

(11) a plan to control run-on water onto the site and run-off water from the site that complies with the requirements of Subsection M of 19.15.36.13 NMAC;

(12) in the case of an application to permit a new or expanded landfill, a leachate management plan that describes the anticipated amount of leachate that will be generated and the leachate's handling, storage, treatment and disposal, including final post closure options;

(13) in the case of an application to permit a new or expanded landfill, a gas safety management plan that complies with the requirements of Subsection O of 19.15.36.13 NMAC;

(14) a best management practice plan to ensure protection of fresh water, public health and the environment;

(15) geological/hydrological data including:

(a) a map showing names and location of streams, springs or other watercourses, and water wells within one mile of the site;

(b) laboratory analyses, performed by an independent commercial laboratory, for major cations and anions; BTEX; RCRA metals; and TDS of ground water samples of the shallowest fresh water aquifer beneath the proposed site;

(c) depth to, formation name, type and thickness of the shallowest fresh water aquifer;

(d) soil types beneath the proposed surface waste management facility, including a lithologic description of soil and rock members from ground surface down to the top of the shallowest fresh water aquifer;

(e) geologic cross-sections;

(f) potentiometric maps for the shallowest fresh water aquifer; and

(g) porosity, permeability, conductivity, compaction ratios and swelling characteristics for the sediments on which the contaminated soils will be placed;

(16) certification by the applicant that information submitted in the application is true, accurate and complete to the best of the applicant's knowledge, after reasonable inquiry; and

(17) other information that the division may require to demonstrate that the surface waste management facility's operation will not adversely impact fresh water, public health or the environment and that the surface waste management facility will comply with division rules and orders.

D. Application requirements for minor modifications. Before making a minor modification, the operator of an existing surface waste management facility shall file a form C-137A with the environmental bureau in the division's Santa Fe office describing the proposed change. Minor modifications are not subject to Subsection C of 19.15.36.8 NMAC. If the division denies the application for a minor modification, the operator may request a hearing pursuant to Subsection B of 19.15.36.10 NMAC.

[19.15.36.8 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.9 APPLICATION PROCESS AND NOTICE REQUIREMENTS FOR NEW SURFACE WASTE MANAGEMENT FACILITIES, MAJOR MODIFICATIONS OR RENEWALS AND ISSUANCE OF A FINAL DECISION:

A. Submittal of application. The applicant shall submit three copies (two paper copies and one electronic copy) of the application to the division's Santa Fe office for consideration of approval. Upon receipt of an application for a new surface waste management facility, or a renewal or major modification of an existing permit, the division shall post a notice on the division's website that lists the type of facility, type of application, county or municipality where the facility is located and name of the

applicant, and provides information on where the application can be viewed and whom to contact to be placed on a mailing list for notice regarding a proposed decision.

B. Division review: Within 90 days after the receipt of an application, the division shall review the application and determine if the application is approvable, approval with conditions or not approvable.

(1) Upon completion of the division's review, if the division determines the application is approvable, the division shall, within 30 days following such determination, prepare a proposed decision, which may include conditions, and mail notice of the proposed approval, together with a copy of the proposed decision, by certified mail, return receipt requested, to the applicant. The division shall post the proposed decision on the division's website.

(2) Upon completion of the division's review, if the division determines the application is not approvable, the division shall, within 60 days of such determination, mail a deficiency letter by certified mail, return receipt requested, to the applicant. The deficiency letter shall identify and address all of the division's concerns regarding the application in specific detail allowing the applicant the opportunity to correct the deficiencies by submitting a revised application.

(3) If the division issues a deficiency letter, the applicant shall have 60 days from the division's issuance of the deficiency letter to submit a revised application. The applicant may request, in writing, additional time to submit a revised application. The division shall grant additional time for good cause. The applicant may notify the division that it will not submit a revised application. Within 10 days of receipt of the notification the division shall deny the application without prejudice. If the applicant fails to timely submit a revised application or notify the division that it will not submit a revised application, the division shall deny the application without prejudice within 10 days after the 60 day time limit for the applicant to respond to the deficiency letter has expired.

(4) If the applicant timely submits a revised application, within 90 days of the receipt of the revised application the division shall review the revised application and determine if the revised application is approvable, approvable with conditions or not approvable. The division shall mail notice of denial or the proposed approval with or without conditions, together with a copy of the decision to deny or the proposed decision to approve with or without conditions, by certified mail, return receipt requested, to the applicant. A denial letter shall identify and address all of the division's reasons for denial of the revised application. The division shall post the decision to deny the application or the proposed decision to approve the application with or without conditions on the division's website.

(5) The process provided in Subsection B of 19.15.36.9 NMAC is not intended to limit informal informational exchanges during the application review period or prior to submission of an application. The process also does not prohibit an applicant from

withdrawing an application and submitting a new application under Subsection A of 19.15.36.9 NMAC.

C. Upon receipt of a proposed decision to approve an application with or without conditions, the applicant shall provide a division-approved notice of the proposed approval by:

(1) giving written notice, by certified mail, return receipt requested, of the division's proposed decision to approve the application with or without conditions to the surface owners within one-half mile of the surface waste facility;

(2) publishing in a newspaper of general circulation in the county or counties where the surface waste management facility is or will be located;

(3) mailing notice by first class mail or e-mail to persons, as identified to the applicant by the division, who have requested notification of applications generally, or of the particular application, and who have provided a legible return address or e-mail address; and

(4) mailing notice by first class or e-mail to affected local, state, federal or tribal governmental agencies, as determined and identified to the applicant by the division.

D. This notice issued pursuant to Subsection C of 19.15.36.9 NMAC shall include:

(1) the applicant's name and address;

(2) the surface waste management facility's location, including a street address if available, and sufficient information to locate the surface waste management facility with reference to surrounding roads and landmarks;

(3) a brief description including the type of facility (*i.e.* landfarm, landfill, treating plant, etc.) of the proposed surface waste management facility;

(4) the depth to, and TDS concentration of, the ground water in the shallowest aquifer beneath the surface waste management facility site;

(5) a statement that the division's proposed decision to approve the application with or without conditions is available on the division's website, or, upon request, from the division clerk, including the division clerk's name, address and telephone number;

(6) a division-approved description of alternatives, exceptions or waivers that may be under consideration in accordance with Subsection F of 19.15.36.18 NMAC or 19.15.36.19 NMAC; and

(7) a statement of the procedures for requesting a hearing on the application pursuant to 19.15.4 NMAC.

E. The applicant shall mail notice that is required to be mailed on or before publication of the notice that is published in a newspaper of general circulation in the county or counties where the surface waste management facility is or will be located.

F. The applicant shall provide the division with proof that the public notice requirements of Subsections C and D of 19.15.36.9 NMAC have been met prior to the division scheduling a hearing pursuant to 19.15.36.10 NMAC or issuing the permit.

G. If after the applicant provides notice as required herein, no requests for hearing are timely filed with the division as provided by 19.15.36.10 NMAC, or any such requests for hearing are filed by persons the division determines lack standing, and the division does not otherwise schedule a hearing pursuant to 19.15.36.10 NMAC, the division's proposed decision to approve the application with or without conditions shall become final and the division shall issue the permit upon the applicant providing financial assurance as provided in 19.15.36.10 NMAC.

[19.15.36.9 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; Repealed, 6/30/16; 19.15.36.9 NMAC - N, 6/30/16]

19.15.36.10 COMMENTS AND HEARING ON APPLICATION:

A. A person who wishes to comment or request a hearing shall file comments or request a hearing on the proposed approval of an application with the division clerk within 90 days after the date of the newspaper publication provided in Subsection C of 19.15.36.9 NMAC. A request for a hearing shall be in writing and shall state specifically the reasons why a hearing should be held. The director may deny a request for hearing if the director determines the person requesting the hearing lacks standing.

B. If the division denies an application pursuant to Paragraphs (3) or (4) of Subsection B of 19.15.39.9 NMAC, the applicant may request a hearing within 30 days of the receipt of the notice of denial and the division shall schedule a hearing.

C. In addition to the requests for hearing provided in Subsections A and B of 19.15.36.10 NMAC, the division shall schedule a hearing on the application if:

(1) the division's proposed decision to approve the application includes conditions not expressly required by rule, and the applicant requests a hearing within 90 days of receipt of the notice of proposed approval;

(2) the director determines that there is significant public interest in the application;

(3) the director determines that comments have raised objections that have probable technical merit; or

(4) approval of the application requires that the division make a finding, pursuant to Paragraph (3) of Subsection F of 19.15.2.7 NMAC, whether a water source has a present or reasonably foreseeable beneficial use that contamination would impair.

D. If the division schedules a hearing on an application, the hearing shall be conducted according to 19.15.4 NMAC.

[19.15.36.10 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.11 FINANCIAL ASSURANCE REQUIREMENTS:

A. Centralized facilities. Upon notification by the division that it has approved a permit but prior to the division issuing the permit, an applicant for a new centralized facility permit shall submit acceptable financial assurance in the amount of \$25,000 per centralized facility, or a statewide "blanket" financial assurance in the amount of \$50,000 to cover all of that applicant's centralized facilities, unless such applicant has previously posted a blanket financial assurance for centralized facilities.

B. New commercial facilities or major modifications of existing commercial facilities. Upon notification by the division that it has approved a permit for a new commercial facility or a major modification of an existing commercial facility but prior to the division issuing the permit, the applicant shall submit acceptable financial assurance in the amount of the commercial facility's estimated closure and post closure cost, or \$25,000, whichever is greater. The commercial facility's estimated closure and post closure cost shall be the amount provided in the closure and post closure plan the applicant submitted pursuant to Paragraph (9) of Subsection C of 19.15.36.8 NMAC unless the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost to implement the closure and post closure plan, in which event, the division shall determine the estimated closure and post closure cost and shall include such determination in its proposed decision. If the applicant disagrees with the division's determination of estimated closure and post closure cost, the applicant may request a hearing as provided in 19.15.36.10 NMAC. If the applicant so requests, and no other person files a request for a hearing regarding the proposed decision, the hearing shall be limited to determination of estimated closure and post closure cost.

C. Terms of financial assurance. The financial assurance shall be on division-prescribed forms, or forms otherwise acceptable to the division, payable to the energy, minerals and natural resources department, oil conservation division and conditioned upon the surface waste management facility's proper operation, site closure and post closure operations in compliance with state of New Mexico statutes, division rules, applicable division orders and the surface waste management facility permit terms. The division may require proof that the individual signing for an entity on a financial assurance document or any amendment thereto has the authority to obligate that entity.

D. Forfeiture of financial assurance. The division shall give the operator 20 days' notice and an opportunity for a hearing prior to forfeiting financial assurance. All forfeitures the division demands pursuant to 19.15.36 NMAC shall be made payable to the energy, minerals and natural resources department, oil conservation division upon demand by the division.

E. Forms of financial assurance. The division may accept the following forms of financial assurance.

(1) Surety bonds. A surety bond shall be executed and notarized by the applicant and by a corporate surety licensed by the superintendent of insurance to do business in the state. All surety bonds shall be non-cancelable and payable to the energy, minerals and natural resources department, oil conservation division within 45 days after demand is made by the division. All surety bonds shall be governed by the laws of the state of New Mexico.

(2) Letters of credit. A letter of credit shall be issued by a national or state-chartered banking association, shall be irrevocable for a term of not less than five years and shall provide for automatic renewal for successive, like terms upon expiration, unless the issuer has notified the division in writing of non-renewal at least 120 days before its expiration date. All letters of credit shall be governed by the laws of the state of New Mexico. If a letter of credit is not replaced by an approved financial assurance within 30 days of notice of non-renewal provided to the division, the division may demand and collect a letter of credit.

(3) Cash accounts. An operator may provide financial assurance in the form of a federally insured or equivalently protected cash account or accounts in a financial institution, provided that the operator and the financial institution shall execute as to each such account a collateral assignment of the account to the division, which shall provide that only the division may authorize withdrawals from the account. In the event of forfeiture pursuant to 19.15.36 NMAC, the division may, at any time and from time to time, direct payment of all or part of the balance of such account (excluding interest accrued on the account) to itself or its designee for the surface waste management facility's closure and post closure. Any assignment of cash collateral shall be governed by the laws of the state of New Mexico and shall be on division-prescribed forms.

F. Replacement of financial assurance.

(1) The division may allow an operator to replace existing forms of financial assurance with other forms of financial assurance that provide equivalent coverage.

(2) The division shall not release existing financial assurance until the operator has submitted, and the division has approved, an acceptable replacement.

(3) Any time an operator changes the corporate surety, financial institution or amount of financial assurance, the operator shall file updated financial assurance

documents on division-prescribed forms within 30 days. Notwithstanding the foregoing, if an operator makes other changes to its financial assurance documents, the division may require the operator to file updated financial assurance documents on division-prescribed forms within 45 days after notice to the operator from the division.

G. Review of adequacy of financial assurance. The division may at any time not less than five years after initial acceptance of financial assurance for a commercial facility, or whenever the operator applies for a major modification of the commercial facility's permit, and at least once during every successive five-year period, initiate a review of such financial assurance's adequacy. Additionally, whenever the division determines that a landfarm operator has not achieved the closure standards specified in Paragraph (3) of Subsection G of 19.15.36.15 NMAC, the division may review the adequacy of the landfarm operator's financial assurance, without regard to the date of its last review. Upon determination, after notice to the operator and an opportunity for a hearing, that the financial assurance is not adequate to cover the reasonable and probable cost of a commercial facility's closure and post closure operations, the division may require the operator to furnish additional financial assurance sufficient to cover such reasonable and probable cost.

H. Duty to report. Any operator who files for bankruptcy shall provide notice to the division, through the process provided for under the rules of the United States bankruptcy court, and the New Mexico attorney general.

[19.15.36.11 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 6/30/16]

19.15.36.12 PERMIT APPROVAL, DENIAL, REVOCATION, SUSPENSION, MODIFICATION OR TRANSFER:

A. Granting of permit.

(1) The division may issue a permit for an new surface waste management facility or major modification upon finding that an acceptable application has been filed, that the conditions of 19.15.36.9 NMAC and 19.15.36.11 NMAC have been met and that the surface waste management facility or modification can be constructed and operated in compliance with applicable statutes and rules and without endangering fresh water, public health or the environment.

(2) Each permit the division issues for a new surface waste management facility shall remain in effect for 10 years from the date of its issuance. If the division grants a permit for a major modification of a surface waste management facility, the permit for that surface waste management facility shall remain in effect for 10 years from the date the division approves the major modification.

(a) A surface waste management facility permit may be renewed for successive 10-year terms. If the holder of a surface waste management facility permit submits an application for permit renewal at least 120 days before the surface waste

management facility permit expires, and the operator is not in violation of the surface waste management facility permit on the date of its expiration, then the existing surface waste management facility permit for the same activity shall not expire until the division has approved or denied an application for renewal. If the division has not notified the operator of a violation, if the operator is diligently pursuing procedures to contest a violation or if the operator and the division have signed an agreed compliance order providing for remedying the violation, then the surface waste management facility permit shall continue in effect as above provided notwithstanding the surface waste management facility permit violation's existence. A surface waste management facility permit continued under this provision remains fully effective and enforceable.

(b) An application for permit renewal shall include and adequately address the information necessary for evaluation of a new surface waste management facility permit as provided in Subsection C of 19.15.36.8 NMAC. Previously submitted materials may be included by reference provided they are current, readily available to the division and sufficiently identified so that the division may retrieve them.

(c) Upon receipt of a proposed decision to approve a renewal application, the operator shall give public notice in the manner prescribed by 19.15.36.9 NMAC. The division shall grant an application for renewal if the division finds that an acceptable application has been filed, that the conditions of 19.15.36.9 NMAC and 19.15.36.11 NMAC have been met and that the surface waste management facility can be operated in compliance with applicable statutes and rules and without endangering fresh water, public health or the environment.

(3) The division shall review each surface waste management facility permit at least once during the 10-year term, and shall review surface waste management facility permits to which Paragraph (2) of Subsection A of 19.15.36.12 NMAC does not apply at least every five years. The review shall address the operation, compliance history, financial assurance and technical requirements for the surface waste management facility. The division, after notice to the operator and an opportunity for a hearing, may require appropriate modifications of the surface waste management facility permit, including modifications necessary to make the surface waste management facility permit terms and conditions consistent with statutes, rules or judicial decisions.

B. Denial of permit. The division may deny an application for a surface waste management facility permit or modification of a surface waste management facility permit if it finds that the proposed surface waste management facility or modification may be detrimental to fresh water, public health or the environment. The division may also deny an application for a surface waste management facility permit if the applicant, an owner of twenty-five percent or greater interest in the applicant or an affiliate of the applicant has a history of failure to comply with division rules and orders or state or federal environmental laws; is subject to a division or commission order, issued after notice and hearing, finding such entity to be in violation of an order requiring corrective action; or has a penalty assessment for violation of division or commission rules or

orders that is unpaid more than 70 days after issuance of the order assessing the penalty. An affiliate of an applicant, for purposes of Subsection B of 19.15.36.12 NMAC, shall be a person who controls, is controlled by or under is common control with the applicant or a twenty-five percent or greater owner of the applicant.

C. Additional requirements. The division may impose conditions or requirements, in addition to the operational requirements set forth in 19.15.36 NMAC, that it determines are necessary and proper for the protection of fresh water, public health or the environment. The division shall incorporate such additional conditions or requirements into the surface waste management facility permit.

D. Revocation, suspension or modification of a permit. The division may revoke, suspend or impose additional operating conditions or limitations on a surface waste management facility permit at any time, for good cause, after notice to the operator and an opportunity for a hearing. The division may suspend a surface waste management facility permit or impose additional conditions or limitations in an emergency to forestall an imminent threat to fresh water, public health or the environment, subject to the provisions of NMSA 1978, Section 70-2-23, as amended. If the division initiates a major modification it shall provide notice in accordance with 19.15.36.9 NMAC. Suspension of a surface waste management facility permit may be for a fixed period of time or until the operator remedies the violation or potential violation. If the division suspends a surface waste management facility's permit, the surface waste management facility shall not accept oil field waste during the suspension period.

E. Transfer of a permit. The operator shall not transfer a permit without the division's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of twenty-five percent or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the division denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the division approves the transfer and the required financial assurance is in place, the division shall not release the transferor's financial assurance.

[19.15.36.12 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.13 SITING AND OPERATIONAL REQUIREMENTS APPLICABLE TO ALL PERMITTED SURFACE WASTE MANAGEMENT FACILITIES:

Except as otherwise provided in 19.15.36 NMAC.

A. Depth to ground water.

(1) No landfill shall be located where ground water is less than 100 feet below the lowest elevation of the design depth at which the operator will place oil field waste.

(2) No landfarm that accepts soil or drill cuttings with a chloride concentration that exceeds 500 mg/kg shall be located where ground water is less than 100 feet below the lowest elevation at which the operator will place oil field waste. See Subsection A of 19.15.36.15 NMAC for oil field waste acceptance criteria.

(3) No landfarm that accepts soil or drill cuttings with a chloride concentration that is 500 mg/kg or less shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

(4) No small landfarm shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

(5) No other surface waste management facility shall be located where ground water is less than 50 feet below the lowest elevation at which the operator will place oil field waste.

B. No surface waste management facility shall be located:

- (1)** within 200 feet of a watercourse, lakebed, sinkhole or playa lake;
- (2)** within an existing wellhead protection area or 100-year floodplain;
- (3)** within, or within 500 feet of, a wetland;
- (4)** within the area overlying a subsurface mine;
- (5)** within 500 feet from the nearest permanent residence, school, hospital, institution or church in existence at the time of initial application; or
- (6)** within an unstable area, unless the operator demonstrates that engineering measures have been incorporated into the surface waste management facility design to ensure that the surface waste management facility's integrity will not be compromised.

C. No surface waste management facility shall exceed 500 acres.

D. The operator shall not accept oil field wastes transported by motor vehicle at the surface waste management facility unless the transporter has a form C-133, authorization to move liquid waste, approved by the division.

E. The operator shall not place oil field waste containing free liquids in a landfill or landfarm cell. The operator shall use the paint filter test, as prescribed by the EPA (EPA SW-846, method 9095) to determine conformance of the oil field waste to this criterion.

F. Surface waste management facilities shall accept only exempt or non-hazardous waste, except as provided in Paragraph (3) of Subsection F of 19.15.36.13 NMAC. The

operator shall not accept hazardous waste at a surface waste management facility. The operator shall not accept wastes containing NORM at a surface waste management facility except as provided in 19.15.35 NMAC. The operator shall require the following documentation for accepting oil field wastes, and both the operator and the generator shall maintain and make the documentation available for division inspection.

(1) Exempt oil field wastes. The operator shall require a certification on form C-138, signed by the generator or the generator's authorized agent, that represents and warrants that the oil field wastes are generated from oil and gas exploration and production operations, are exempt waste and are not mixed with non-exempt waste. The operator shall have the option to accept such certifications on a monthly, weekly or per load basis. The operator shall maintain and shall make the certificates available for the division's inspection.

(2) Non-exempt, non-hazardous, oil field wastes. The operator shall require a form C-138, oil field waste document, signed by the generator or its authorized agent. This form shall be accompanied by acceptable documentation to determine that the oil field waste is non-hazardous.

(3) Emergency non-oil field wastes. The operator may accept non-hazardous, non-oil field wastes in an emergency if ordered by the department of public safety. The operator shall complete a form C-138, oil field waste document, describing the waste, and maintain the same, accompanied by the department of public safety order, subject to division inspection.

G. The operator of a commercial facility shall maintain records reflecting the generator, the location of origin, the location of disposal within the commercial facility, the volume and type of oil field waste, the date of disposal and the hauling company for each load or category of oil field waste accepted at the commercial facility. The operator shall maintain such records for a period of not less than five years after the commercial facility's closure, subject to division inspection.

H. Disposal at a commercial facility shall occur only when an attendant is on duty unless loads can be monitored or otherwise isolated for inspection before disposal. The surface waste management facility shall be secured to prevent unauthorized disposal.

I. To protect migratory birds, tanks exceeding eight feet in diameter, and exposed pits and ponds shall be screened, netted or covered. Upon the operator's written application, the division may grant an exception to screening, netting or covering upon the operator's showing that an alternative method will protect migratory birds or that the surface waste management facility is not hazardous to migratory birds. Surface waste management facilities shall be fenced in a manner approved by the division.

J. Surface waste management facilities shall have a sign, readable from a distance of 50 feet and containing the operator's name; surface waste management facility

permit or order number; surface waste management facility location by unit letter, section, township and range; and emergency telephone numbers.

K. The operators shall comply with the spill reporting and corrective action provisions of 19.15.30 NMAC or 19.15.29 NMAC.

L. Each operator shall have an inspection and maintenance plan that includes the following:

(1) monthly inspection of leak detection sumps including sampling if fluids are present with analyses of fluid samples furnished to the division; and maintenance of records of inspection dates, the inspector and the leak detection system's status;

(2) semi-annual inspection and sampling of monitoring wells as required, with analyses of ground water furnished to the division; and maintenance of records of inspection dates, the inspector and ground water monitoring wells' status; and

(3) inspections of the berms and the outside walls of pond levees quarterly and after a major rainfall or windstorm, and maintenance of berms in such a manner as to prevent erosion.

M. Each operator shall have a plan to control run-on water onto the site and run-off water from the site, such that:

(1) the run-on and run-off control system shall prevent flow onto the surface waste management facility's active portion during the peak discharge from a 25-year storm; and

(2) run-off from the surface waste management facility's active portion shall not be allowed to discharge a pollutant to the waters of the state or United States that violates state water quality standards.

N. Contingency plan. Each operator shall have a contingency plan. The operator shall provide the division's environmental bureau with a copy of an amendment to the contingency plan, including amendments required by Paragraph (8) of Subsection N of 19.15.36.13 NMAC; and promptly notify the division's environmental bureau of changes in the emergency coordinator or in the emergency coordinator's contact information. The contingency plan shall be designed to minimize hazards to fresh water, public health or the environment from fires, explosions or an unplanned sudden or non-sudden release of contaminants or oil field waste to air, soil, surface water or ground water. The operator shall carry out the plan's provisions immediately whenever there is a fire, explosion or release of contaminants or oil field waste constituents that could threaten fresh water, public health or the environment; provided that the emergency coordinator may deviate from the plan as necessary in an emergency situation. The contingency plan for emergencies shall:

(1) describe the actions surface waste management facility personnel shall take in response to fires, explosions or releases to air, soil, surface water or ground water of contaminants or oil field waste containing constituents that could threaten fresh water, public health or the environment;

(2) describe arrangements with local police departments, fire departments, hospitals, contractors and state and local emergency response teams to coordinate emergency services;

(3) list the emergency coordinator's name; address; and office, home and mobile phone numbers (where more than one person is listed, one shall be named as the primary emergency coordinator);

(4) include a list, which shall be kept current, of emergency equipment at the surface waste management facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment, containing a physical description of each item on the list and a brief outline of its capabilities;

(5) include an evacuation plan for surface waste management facility personnel that describes signals to be used to begin evacuation, evacuation routes and alternate evacuation routes in cases where fire or releases of wastes could block the primary routes;

(6) include an evaluation of expected contaminants, expected media contaminated and procedures for investigation, containment and correction or remediation;

(7) list where copies of the contingency plan will be kept, which shall include the surface waste management facility; local police departments, fire departments and hospitals; and state and local emergency response teams;

(8) indicate when the contingency plan will be amended, which shall be within five working days whenever:

(a) the surface waste management facility permit is revised or modified;

(b) the plan fails in an emergency;

(c) the surface waste management facility changes design, construction, operation, maintenance or other circumstances in a way that increases the potential for fires, explosions or releases of oil field waste constituents that could threaten fresh water, public health or the environment or change the response necessary in an emergency;

(d) the list of emergency coordinators or their contact information changes; or

(e) the list of emergency equipment changes;

(9) describe how the emergency coordinator or the coordinator's designee, whenever there is an imminent or actual emergency situation, will immediately;

(a) activate internal surface waste management facility alarms or communication systems, where applicable, to notify surface waste management facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(10) describe how the emergency coordinator, whenever there is a release, fire or explosion, will immediately identify the character, exact source, amount and extent of released materials (the emergency coordinator may do this by observation or review of surface waste management facility records or manifests, and, if necessary, by chemical analysis) and describe how the emergency coordinator will concurrently assess possible hazards to fresh water, public health or the environment that may result from the release, fire or explosion (this assessment shall consider both the direct and indirect hazard of the release, fire or explosion);

(11) describe how, if the surface waste management facility stops operations in response to fire, explosion or release, the emergency coordinator will monitor for leaks, pressure buildup, gas generation or rupture in valves, pipes or the equipment, wherever this is appropriate;

(12) describe how the emergency coordinator, immediately after an emergency, will provide for treating, storing or disposing of recovered oil field waste, or other material that results from a release, fire or explosion at a surface waste management facility;

(13) describe how the emergency coordinator will ensure that no oil field waste, which may be incompatible with the released material, is treated, stored or disposed of until cleanup procedures are complete; and

(14) provide that the emergency coordinator may amend the plan during an emergency as necessary to protect fresh water, public health or the environment.

O. Gas safety management plan. Each operator of a surface waste management facility that includes a landfill shall have a gas safety management plan that describes in detail procedures and methods that will be used to prevent landfill-generated gases from interfering or conflicting with the landfill's operation and protect fresh water, public health and the environment. The plan shall address anticipated amounts and types of gases that may be generated, an air monitoring plan that includes the vadose zone and measuring, sampling, analyzing, handling, control and processing methods. The plan shall also include final post closure monitoring and control options.

P. Training program. Each operator shall conduct an annual training program for key personnel that includes general operations, permit conditions, emergencies proper sampling methods and identification of exempt and non-exempt waste and hazardous waste. The operator shall maintain records of such training, subject to division inspection, for five years.

[19.15.36.13 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.14 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFILLS:

A. General operating requirements.

(1) The operator shall confine the landfill's working face to the smallest practical area and compact the oil field waste to the smallest practical volume. The operator shall not use equipment that may damage the integrity of the liner system in direct contact with a geosynthetic liner.

(2) The operator shall prevent unauthorized access by the public and entry by large animals to the landfill's active portion through the use of fences, gates, locks or other means that attain equivalent protection.

(3) The operator shall prevent and extinguish fires.

(4) The operator shall control litter and odors.

(5) The operator shall not excavate a closed cell or allow others to excavate a closed cell except as approved by the division.

(6) The operator shall provide adequate cover for the landfill's active face as needed to control dust, debris, odors or other nuisances, or as otherwise required by the division.

(7) For areas of the landfill that will not receive additional oil field waste for one month or more, but have not reached the final waste elevation, the operator shall provide intermediate cover that shall be:

(a) approved by the division;

(b) stabilized with vegetation; and

(c) inspected and maintained to prevent erosion and manage infiltration or leachate during the oil field waste deposition process.

(8) When the operator has filled a landfill cell, the operator shall close it pursuant to the conditions contained in the surface waste management facility permit and the requirements of Paragraph (2) of Subsection C of 19.15.36.18 NMAC. The

operator shall notify the division's environmental bureau at least three working days prior to a landfill cell's closure.

B. Ground water monitoring program. If fresh ground water exists at a site, the operator shall, unless otherwise approved by the division, establish a ground water monitoring program, approved by the division's environmental bureau, which shall include a ground water monitoring work plan, a sampling and analysis plan, a ground water monitoring system and a plan for reporting ground water monitoring results. The ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) represent the quality of background ground water that leakage from a landfill has not affected; and

(2) represent the quality of ground water passing beneath and down gradient of the surface waste management facility.

C. Landfill design specification. New landfill design systems shall include a base layer and a lower geomembrane liner (e.g., composite liner), a leak detection system, an upper geomembrane liner, a leachate collection and removal system, a leachate collection and removal system protective layer, an oil field waste zone and a top landfill cover.

(1) The base layer shall, at a minimum, consist of two feet of clay soil compacted to a minimum ninety percent standard proctor density (ASTM D-698)(Copyright ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428. This document is available for public viewing at the New Mexico state records center and archives and may not be reproduced, in full or in part. A copy of this publication may be obtained from ASTM International, www.astm.org.) with a hydraulic conductivity of 1×10^{-7} cm/sec or less. In areas where no ground water is present, the operator may propose an alternative base layer design, subject to division approval.

(2) The lower geomembrane liner shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division.

(3) The operator shall place the leak detection system, which shall consist of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater, between the lower and upper geomembrane liners. The leak detection system shall consist of a drainage and collection system placed no more than six inches above the lower geomembrane liner in depressions and sloped so as to facilitate the earliest possible leak detection at designated collection points. Drainage piping shall be designed to withstand chemical attack from oil field waste and leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction, and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently

permeable to allow the transport of fluids to the drainage pipe. The slope of the landfill sub-grade and drainage pipes and laterals shall be at least two percent grade; *i.e.*, two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected liquids to a corrosion-proof sump or sumps located outside the landfill's perimeter for observation, storage, treatment or disposal. The operator may install alternative designs as approved by the division.

(4) The operator shall place the upper geomembrane liner, which shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division, over the leak detection system.

(5) The operator shall place the leachate collection and removal system, which shall consist of at least two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-2} cm/sec or greater, over the upper geomembrane liner to facilitate drainage. The leachate collection and removal system shall consist of a drainage and collection and removal system placed no more than six inches above the upper geomembrane liner in depressions and sloped so as to facilitate the maximum leachate collection. Piping shall be designed to withstand chemical attack from oil field waste or leachate and structural loading and other stresses and disturbances from overlying oil field waste, cover materials, equipment operation, expansion or contraction and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the upper geomembrane liner and drainage lines and laterals shall be at least two percent grade; *i.e.*, two feet of vertical drop per 100 horizontal feet. The piping collection network shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid drainage pipe to convey collected fluids outside the landfill's perimeter for storage, treatment and disposal. The operator may install alternative designs as approved by the division.

(6) The operator shall place the leachate collection and removal system protection layer, which shall consist of a soil layer at least one foot thick with a saturated hydraulic conductivity of 1×10^{-2} cm/sec or greater, over the leachate collection and removal system.

(7) The operator shall place oil field waste over the leachate collection and removal system protective layer.

(8) The top landfill cover design shall consist of the following layers (top to bottom): a soil erosion layer composed of at least 12 inches of fertile topsoil re-vegetated in accordance with the post closure provisions of Subparagraph (b) of Paragraph (2) of Subsection C of 19.15.36.18 NMAC; a protection or frost protection layer composed of 12 to 30 inches of native soil; a drainage layer composed of at least 12 inches of sand or gravel with a saturated hydraulic conductivity of 1×10^{-2} cm/sec or

greater and a minimum bottom slope of four percent, a hydraulic barrier-layer-geomembrane (minimum of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division); and a gas vent or foundation layer composed of at least 12 inches of sand or gravel above oil field waste with soils compacted to the minimum eighty percent Standard Proctor Density. The operator shall install the top landfill cover within one year of achieving the final landfill cell waste elevation. The operator shall ensure that the final landfill design elevation of the working face of the oil field waste is achieved in a timely manner with the date recorded in a field construction log. The operator shall also record the date of top landfill cover installation to document the timely installation of top landfill covers. The operator shall provide a minimum of three working days' notice to the division in advance of the top landfill cover's installation to allow the division to witness the top landfill cover's installation.

(9) Alternatively, the operator may propose a performance-based landfill design system using geosynthetics or geocomposites, including geogrids, geonets, geosynthetic clay liners, composite liner systems, etc., when supported by EPA's "hydrologic evaluation of landfill performance" (HELP) model or other division-approved model. The operator shall design the landfill to prevent the "bathtub effect". The bathtub effect occurs when a more permeable cover is placed over a less permeable bottom liner or natural subsoil.

(10) External piping, e.g., leachate collection, leak detection and sump removal systems shall be designed for installation of a sidewall riser pipe. Pipes shall not penetrate the liner with the exception of gas vent or collection wells where the operator shall install a flexible clamped pipe riser through the top landfill cover liner that will accommodate oil field waste settling and will prevent tears.

D. Liner specifications and requirements.

(1) General requirements.

(a) Geomembrane liner specifications. Geomembrane liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. Geomembrane liners shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. Geomembrane liners shall be composed of impervious, geosynthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liners shall also be resistant to ultraviolet light, or the operator shall make provisions to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 method 9090A.

(b) Liners shall be able to withstand projected loading stresses, settling and disturbances from overlying oil field waste, cover materials and equipment operations.

(c) The operator shall construct liners with a minimum of two percent slope to promote positive drainage and to facilitate leachate collection and leak detection.

(2) Additional requirements for geomembranes.

(a) Geomembranes shall be compatible with the oil field waste to be disposed. Geomembranes shall be resistant to chemical attack from the oil field waste or leachate. The operator shall demonstrate this by means of the manufacturer's test reports, laboratory analyses or other division-approved method.

(b) Geosynthetic material the operator installs on a slope greater than twenty-five percent shall be designed to withstand the calculated tensile forces acting upon the material. The design shall consider the maximum friction angle of the geosynthetic with regard to a soil-geosynthetic or geosynthetic-geosynthetic interface and shall ensure that overall slope stability is maintained.

(c) The operator shall thermally seal (hot wedge) field seams in geosynthetic material with a double track weld to create an air pocket for non-destructive air channel testing. In areas where double-track welding cannot be achieved, the operator may propose alternative thermal seaming methods. A stabilized air pressure of 35psi, plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and shall orient seams parallel to the line of maximum slope; *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. The operator shall use factory seams whenever possible. The operator shall not install horizontal seams within five feet of the slope's toe. Qualified personnel shall perform all field seaming.

E. Requirements for the soil component of composite liners.

(1) The operator shall place and compact the base layer to ninety percent standard proctor density on a prepared sub-grade.

(2) The soil surface upon which the operator installs a geosynthetic shall be free of stones greater than one half inch in any dimension, organic matter, local irregularities, protrusions, loose soil and abrupt changes in grade that could damage the geosynthetic.

(3) The operator shall compact a clay soil component of a composite liner to a minimum of ninety percent standard proctor density, which shall have, unless otherwise approved by the division, a plasticity index greater than ten percent, a liquid limit between twenty-five and fifty percent, a portion of material passing the no. 200 sieve (0.074 mm and less fraction) greater than forty percent by weight; and a clay content greater than eighteen percent by weight.

F. The leachate collection and removal system protective layer and the soil component of the leak detection system shall consist of soil materials that shall be free of organic matter, shall have a portion of material passing the no. 200 sieve no greater than five percent by weight and shall have a uniformity coefficient (Cu) less than 6,

where Cu is defined as D60/D10. Geosynthetic materials or geocomposites including geonets and geotextiles, if used as components of the leachate collection and removal or leak detection system, shall have a hydraulic conductivity, transmissivity and chemical and physical qualities that oil field waste placement, equipment operation or leachate generation will not adversely affect. These geosynthetics or geocomposites, if used in conjunction with the soil protective cover for liners, shall have a hydraulic conductivity designed to ensure that the liner's hydraulic head never exceeds one foot.

G. Landfill gas control systems. If the gas safety management plan or requirements of other federal, state or local agencies require the installation of a gas control system at a landfill, the operator shall submit a plan for division approval, which shall include the following:

(1) the system's design, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that the operator will install (gas vent or collection wells shall incorporate a clamped and seamed pipe riser design through the top cover liner);

(2) if gas recovery is proposed, the design of the proposed gas recovery system and the system's major on-site components, including storage, transportation, processing, treatment or disposal measures required in the management of generated gases, condensates or other residues;

(3) if gas processing is proposed, a processing plan designed in a manner that does not interfere or conflict with the activities on the site or required control measures or create or cause danger to persons or property;

(4) if gas disposal is proposed, a disposal plan designed:

(a) in a manner that does not interfere or conflict with the activities on the site or with required control measures;

(b) so as not to create or cause danger to persons or property; and

(c) with active forced ventilation, using vents located at least one foot above the landfill surface at each gas vent's location;

(5) physical and chemical characterization of condensates or residues that are generated and a plan for their disposal;

(6) means that the operator will implement to prevent gas' generation and lateral migration such that:

(a) the concentration of the gases the landfill generates does not exceed twenty-five percent of the lower explosive limit for gases in surface waste management facility structures (excluding gas control or recovery system components); and

(b) the concentration of gases does not exceed the lower explosive limit for gases at the surface waste management facility boundary; and

(7) a routine gas monitoring program providing for monitoring at least quarterly; the specific type and frequency of monitoring to be determined based on the following:

(a) soil conditions;

(b) the hydrogeologic and hydraulic conditions surrounding the surface waste management facility; and

(c) the location of surface waste management facility structures and property lines.

H. Landfill gas response. If gas levels exceed the limits specified in Paragraph (6) of Subsection G of 19.15.36.14 NMAC, the operator shall:

(1) immediately take all necessary steps to ensure protection of fresh water, public health and the environment and notify the division;

(2) within seven days of detection, record gas levels detected and a description of the steps taken to protect fresh water, public health and the environment;

(3) within 30 days of detection, submit a remediation plan for gas releases that describes the problem's nature and extent and the proposed remedy; and

(4) within 60 days after division approval, implement the remediation plan and notify the division that the plan has been implemented.

[19.15.36.14 NMAC - N, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.15 SPECIFIC REQUIREMENTS APPLICABLE TO LANDFARMS:

A. Oil field waste acceptance criteria. Only soils and drill cuttings predominantly contaminated by petroleum hydrocarbons shall be placed in a landfarm. The division may approve placement of tank bottoms in a landfarm if the operator demonstrates that the tank bottoms do not contain economically recoverable petroleum hydrocarbons. Soils and drill cuttings placed in a landfarm shall be sufficiently free of liquid content to pass the paint filter test, and shall not have a chloride concentration exceeding 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or exceeding 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The person tendering oil field waste for treatment at a landfarm shall certify, on form C-138, that representative samples of the oil field waste have been subjected to the paint filter test

and tested for chloride content, and that the samples have been found to conform to these requirements. The landfarm's operator shall not accept oil field waste for landfarm treatment unless accompanied by this certification.

B. Background testing. Prior to beginning operation of a new landfarm or to opening a new cell at an existing landfarm at which the operator has not already established background, the operator shall take, at a minimum, 12 composite background soil samples, with each consisting of 16 discrete samples from areas that previous operations have not impacted at least six inches below the original ground surface, to establish background soil concentrations for the entire surface waste management facility. The operator shall analyze the background soil samples for TPH, as determined by EPA method 418.1 or other EPA method approved by the division; BTEX, as determined by EPA SW-846 method 8021B or 8260B; chlorides; and other constituents listed in Subsections A and B of 20.6.2.3103 NMAC, using approved EPA methods.

C. Operation and oil field waste treatment.

(1) The operator shall berm each landfarm cell to prevent rainwater run-on and run-off.

(2) The operator shall not place contaminated soils received after the effective date of 19.15.36 NMAC within 100 feet of the surface waste management facility's boundary.

(3) The operator shall not place contaminated soils received at a landfarm after the effective date of 19.15.36 NMAC within 20 feet of a pipeline crossing the landfarm.

(4) With 72 hours after receipt, the operator shall spread and disk contaminated soils in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift or biopile.

(5) The operator shall ensure that soils are disked biweekly and biopiles are turned at least monthly.

(6) The operator shall add moisture, as necessary, to enhance bioremediation and to control blowing dust.

(7) The application of microbes for the purposes of enhancing bioremediation requires prior division approval.

(8) Pooling of liquids in the landfarm is prohibited. The operator shall remove freestanding water within 24 hours.

(9) The operator shall maintain records of the landfarm's remediation activities in a form readily accessible for division inspection.

(10) The division's environmental bureau may approve other treatment procedures if the operator demonstrates that they provide equivalent protection for fresh water, public health and the environment.

D. Treatment zone monitoring. The operator shall spread contaminated soils on the surface in eight-inch or less lifts or approximately 1000 cubic yards per acre per eight-inch lift. The operator shall conduct treatment zone monitoring to ensure that prior to adding an additional lift the TPH concentration of each lift, as determined by EPA SW-846 method 8015M or EPA method 418.1 or other EPA method approved by the division, does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste. The operator shall collect and analyze at least one composite soil sample, consisting of four discrete samples, from the treatment zone at least semi-annually using the methods specified below for TPH and chlorides. The maximum thickness of treated soils in a landfarm cell shall not exceed two feet or approximately 3000 cubic yards per acre. When that thickness is reached, the operator shall not place additional oil field waste in the landfarm cell until it has demonstrated by monitoring the treatment zone at least semi-annually that the contaminated soil has been treated to the standards specified in Subsection F of 19.15.36.15 NMAC or the contaminated soils have been removed to a division-approved surface waste management facility.

E. Vadose zone monitoring.

(1) Sampling. The operator shall monitor the vadose zone beneath the treatment zone in each landfarm cell. The operator shall take the vadose zone samples from soils between three and four feet below the cell's original ground surface.

(2) Semi-annual monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone at least semi-annually using the methods specified below for TPH, BTEX and chlorides and shall compare each result to the higher of the PQL or the background soil concentrations to determine whether a release has occurred.

(3) Five year monitoring program. The operator shall collect and analyze a minimum of four randomly selected, independent samples from the vadose zone, using the methods specified below for the constituents listed in Subsections A and B of 20.6.2.3103 NMAC at least every five years and shall compare each result to the higher of the PQL or the background soil concentrations to determine whether a release has occurred.

(4) Record keeping. The operator shall maintain a copy of the monitoring reports in a form readily accessible for division inspection.

(5) Release response. If vadose zone sampling results show that the concentrations of TPH, BTEX or chlorides exceed the higher of the PQL or the background soil concentrations, then the operator shall notify the division's environmental bureau of the exceedance, and shall immediately collect and analyze a minimum of four randomly selected, independent samples for TPH, BTEX, chlorides and the constituents listed in Subsections A and B of 20.6.2.3103 NMAC. The operator shall submit the results of the re-sampling event and a response action plan for the division's approval within 45 days of the initial notification. The response action plan shall address changes in the landfarm's operation to prevent further contamination and, if necessary, a plan for remediating existing contamination.

F. Treatment zone closure performance standards. After the operator has filled a landfarm cell to the maximum thickness of two feet or approximately 3000 cubic yards per acre, the operator shall continue treatment until the contaminated soil has been remediated to the higher of the background concentrations or the following closure performance standards. The operator shall demonstrate compliance with the closure performance standards by collecting and analyzing a minimum of one composite soil sample, consisting of four discrete samples.

(1) Benzene, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 0.2 mg/kg.

(2) Total BTEX, as determined by EPA SW-846 method 8021B or 8260B, shall not exceed 50 mg/kg.

(3) The GRO and DRO combined fractions, as determined by EPA SW-846 method 8015M, shall not exceed 500 mg/kg. TPH, as determined by EPA method 418.1 or other EPA method approved by the division, shall not exceed 2500 mg/kg.

(4) Chlorides, as determined by EPA method 300.1, shall not exceed 500 mg/kg if the landfarm is located where ground water is less than 100 feet but at least 50 feet below the lowest elevation at which the operator will place oil field waste or 1000 mg/kg if the landfarm is located where ground water is 100 feet or more below the lowest elevation at which the operator will place oil field waste.

(5) The concentration of constituents listed in Subsections A and B of 20.6.2.3103 NMAC shall be determined by EPA SW-846 methods 6010B or 6020 or other methods approved by the division. If the concentration of those constituents exceed the PQL or background concentration, the operator shall either perform a site specific risk assessment using EPA approved methods and shall propose closure standards based upon individual site conditions that protect fresh water, public health and the environment, which shall be subject to division approval or remove pursuant to Paragraph (2) of Subsection G of 19.15.36.15 NMAC.

G. Disposition of treated soils.

(1) If the operator achieves the closure performance standards specified in Subsection F of 19.15.36.15 NMAC, then the operator may either leave the treated soils in place, or, with prior division approval, dispose or reuse of the treated soils in an alternative manner.

(2) If the operator cannot achieve the closure performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the operator shall remove contaminated soils from the landfarm cell and properly dispose of it at a division-permitted landfill, or reuse or recycle it in a manner approved by the division.

(3) If the operator cannot achieve the closure performance standards specified in Subsection F of 19.15.36.15 NMAC within five years or as extended by the division, then the division may review the adequacy of the operator's financial assurance, as provided in Subsection G of 19.15.36.11 NMAC. In that event, the division may require the operator to modify its financial assurance to provide for the appropriate disposition of contaminated soil in a manner acceptable to the division.

(4) The operator may request approval of an alternative soil closure standard from the division, provided that the operator shall give division-approved public notice of an application for alternative soil closure standards in the manner provided in 19.15.36.9 NMAC. The division may grant the request administratively if no person files an objection thereto within 30 days after publication of notice; otherwise the division shall set the matter for hearing.

H. Environmentally acceptable bioremediation endpoint approach.

(1) A landfarm operator may use an environmentally acceptable bioremediation endpoint approach to landfarm management in lieu of compliance with the requirements of Paragraph (3) of Subsection F of 19.15.36.15 NMAC. The bioremediation endpoint occurs when TPH, as determined by EPA method 418.1 or other EPA method approved by the division, is reduced to a minimal concentration as a result of bioremediation and is dependent upon the bioavailability of residual hydrocarbons. An environmentally acceptable bioremediation endpoint occurs when the TPH concentration has been reduced by at least eighty percent by a combination of physical, biological and chemical processes and the rate of change in the reduction in the TPH concentration is negligible. The environmentally acceptable bioremediation endpoint in soil is determined statistically by the operator's demonstration that the rate of change in the reduction of TPH concentration is negligible.

(2) In addition to the requirements specified in Subsection C of 19.15.36.8 NMAC, an operator who plans to use an environmentally acceptable bioremediation endpoint approach shall submit for the division's review and approval a detailed landfarm operation plan for those landfarm cells exclusively dedicated to the use of the environmentally acceptable bioremediation endpoint approach. At a minimum, the operations plan shall include detailed information on the native soils, procedures to

characterize each lift of contaminated soil, operating procedures and management procedures that the operator shall follow.

(3) In addition to other operational requirements specified in 19.15.36.15 NMAC, the operator using an environmentally acceptable bioremediation endpoint approach shall comply with the following.

(a) Native soil information required. The operator shall submit detailed information on the soil conditions present for each of its landfarm cells immediately prior to the application of the petroleum hydrocarbon-contaminated soils, including: treatment cell size, soil porosity, soil bulk density, soil pH, moisture content, field capacity, organic matter concentration, soil structure, SAR, EC, soil composition, soil temperature, soil nutrient (C:N:P) (calcium, nitrogen and phosphate) concentrations and oxygen content.

(b) Characterization of contaminated soil. The operator shall submit a description of the procedures that it will follow to characterize each lift of contaminated soil or drill cuttings, prior to treating each lift of contaminated soil or drill cuttings, for petroleum hydrocarbon loading factor, TPH, BTEX, chlorides, constituents listed in Subsections A and B of 20.6.2.3103 NMAC, contaminated soil moisture, contaminated soil pH and API gravity of the petroleum hydrocarbons.

(c) Operating procedures. The operator shall submit a description of the procedures, including a schedule, that it shall follow to properly monitor and amend each lift of contaminated soil in order to maximize bioremediation, including tilling procedures and schedule; procedures to limit petroleum hydrocarbon loading to less than five percent; procedures to maintain pH between six and eight; procedures to monitor and apply proper nutrients; procedures to monitor, apply and maintain moisture to sixty to eighty percent of field capacity; and procedures to monitor TPH concentrations.

(d) Management procedures. The operator shall submit a description of the management procedures that it shall follow to properly schedule landfarming operations, including modifications during cold weather, record keeping, sampling and analysis, statistical procedures, routine reporting, determination and reporting of achievement of the environmentally acceptable bioremediation endpoint and closure and post-closure plans.

[19.15.36.15 NMAC - N, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.16 SMALL LANDFARMS:

Small landfarms as defined in Paragraph (5) of Subsection A of 19.15.36.7 NMAC are exempt from 19.15.36 NMAC except for the requirements specified in 19.15.36.16 NMAC.

A. General requirements.

(1) Registration. Prior to establishment of a new small landfarm, the operator shall file a form C-137 EZ, small landfarm registration, with the environmental bureau in the division's Santa Fe office. If the operator is not the surface estate owner at the proposed site, the operator shall furnish with its form C-137 EZ its certification it has a written agreement with the surface estate owner authorizing the site's use for the proposed small landfarm. The division shall issue the operator a registration number no more than 30 days from receipt of the properly completed form.

(2) Limitation. The operator shall operate only one active small landfarm per governmental section at any time. No small landfarm shall be located more than one mile from the operator's nearest oil or gas well or other production facility.

B. General operating procedures. The operator shall:

(1) comply with the siting requirements of Subsections A and B of 19.15.36.13 NMAC;

(2) accept only exempt or non-hazardous wastes consisting of soils (excluding drill cuttings) generated as a result of accidental releases from production operations, that are predominantly contaminated by petroleum hydrocarbons, do not contain free liquids, would pass the paint filter test and where testing shows chloride concentrations are 500 mg/kg or below;

(3) berm the landfarm to prevent rainwater run-on and run-off; and

(4) post a sign at the site readable from a distance of 50 feet and listing the operator's name; small landfarm registration number; location by unit letter, section, township and range; expiration date; and an emergency contact telephone number.

C. Oil field waste management standards. The operator shall spread and disk contaminated soils in a single eight inch or less lift within 72 hours of receipt. The operator shall conduct treatment zone monitoring to ensure that the TPH concentration, as determined by EPA SW-846 method 8015M or EPA method 418.1 or other EPA method approved by the division, does not exceed 2500 mg/kg and that the chloride concentration, as determined by EPA method 300.1, does not exceed 500 mg/kg. The operator shall treat soils by disking at least once a month and by watering and adding bioremediation enhancing materials when needed.

D. Record-keeping requirements. The operator shall maintain records reflecting the generator, the location of origin, the volume and type of oil field waste, the date of acceptance and the hauling company for each load of oil field waste received. The division shall post on its website each small landfarm's location, operator and registration date. In addition, the operator shall maintain records of the small landfarm's remediation activities in a form readily accessible for division inspection. The operator shall maintain all records for five years following the small landfarm's closure.

E. Small landfarm closure.

(1) Closure performance standards and disposition of soils. If the operator achieves the closure performance standards specified below, then the operator may return the soil to the original generation site, leave the treated soil in place at the small landfarm or, with prior division approval, dispose or reuse the treated soil in an alternative manner. If the operator cannot achieve the closure performance standards within three years from the registration date, then the operator shall remove contaminated soil from the landfarm and properly dispose of it at a permitted landfill, unless the division authorizes a specific alternative disposition. The following standards shall apply:

(a) benzene, as determined by EPA SW-846 method 8021 B or 8260B, shall not exceed 0.2 mg/kg;

(b) Total BTEX, as determined by EPA SW-846 method 8021 B or 8260B, shall not exceed 50 mg/kg;

(c) TPH, as determined by EPA SW-846 method 418.1 or other EPA method approved by the division, shall not exceed 2500 mg/kg; the GRO and DRO combined fraction, as determined by EPA SW-846 method 8015M, shall not exceed 500 mg/kg; and

(d) chlorides, as determined by EPA method 300.1, shall not exceed 500 mg/kg.

(2) Closure requirements. The operator shall:

(a) re-vegetate soils remediated to the closure performance standards if left in place in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(b) remove landfarmed soils that have not or cannot be remediated to the closure performance standards within three years to a division-approved surface waste management facility, and re-vegetate the cell filled in with native soil to the standards in Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(c) if the operator returns remediated soils to the original site, or with division permission, recycles them, re-vegetate the cell filled in with native soil to the standards in Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(d) remove berms on the small landfarm and buildings, fences, roads and equipment; and

(e) clean up the site and collect one vadose zone soil sample from three to five feet below the middle of the treatment zone, or in an area where liquids may have

collected due to rainfall events; the vadose zone soil sample shall be collected and analyzed using the methods specified above for TPH, BTEX and chlorides.

F. Final report. The operator shall submit a final closure report on a form C-137 EZ, together with photographs of the closed site, to the environmental bureau in the division's Santa Fe office. The division, after notice to the operator and an opportunity for a hearing if requested, may require additional information, investigation or clean up activities.

[19.15.36.16 NMAC - N, 2/14/2007; A, 12/1/08]

19.15.36.17 SPECIFIC REQUIREMENTS APPLICABLE TO EVAPORATION, STORAGE, TREATMENT AND SKIMMER PONDS:

A. Engineering design plan. An applicant for a surface waste management facility permit or modification requesting inclusion of a skimmer pit; an evaporation, storage or treatment pond; or a below-grade tank shall submit with the surface waste management facility permit application a detailed engineering design plan, certified by a registered profession engineer, including operating and maintenance procedures; a closure plan; and a hydrologic report that provides sufficient information and detail on the site's topography, soils, geology, surface hydrology and ground water hydrology to enable the division to evaluate the actual and potential effects on soils, surface water and ground water. The plan shall include detailed information on dike protection and structural integrity; leak detection, including an adequate fluid collection and removal system; liner specifications and compatibility; freeboard and overtopping prevention; prevention of nuisance and hazardous odors such as H₂S; an emergency response plan, unless the pit is part of a surface waste management facility that has an integrated contingency plan; type of oil field waste stream, including chemical analysis; climatological factors, including freeze-thaw cycles; a monitoring and inspection plan; erosion control; and other pertinent information the division requests.

B. Construction, standards.

(1) In general. The operator shall ensure each pit, pond and below-grade tank is designed, constructed and operated so as to contain liquids and solids in a manner that will protect fresh water, public health and the environment.

(2) Liners required. Each pit or pond shall contain, at a minimum, a primary (upper) liner and a secondary (lower) liner with a leak detection system appropriate to the site's conditions.

(3) Liner specifications. Liners shall consist of a 30-mil flexible PVC or 60-mil HDPE liner, or an equivalent liner approved by the division. Synthetic (geomembrane) liners shall have a hydraulic conductivity no greater than 1×10^{-9} cm/sec. Geomembrane liners shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. Liner

materials shall be resistant to ultraviolet light, or the operator shall make provisions to protect the material from sunlight. Liner compatibility shall comply with EPA SW-846 method 9090A.

(4) Alternative liner media. The division may approve other liner media if the operator demonstrates to the division's satisfaction that the alternative liner protects fresh water, public health and the environment as effectively as the specified media.

(5) Each pit or pond shall have a properly constructed foundation or firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities, in order to prevent rupture or tear of the liner and an adequate anchor trench; and shall be constructed so that the inside grade of the levee is no steeper than 2H:1V. Levees shall have an outside grade no steeper than 3H:1V. The levees' tops shall be wide enough to install an anchor trench and provide adequate room for inspection and maintenance. The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory seams where possible. The operator shall ensure field seams in geosynthetic material are thermally seamed (hot wedge) with a double track weld to create an air pocket for non-destructive air channel testing. A stabilized air pressure of 35 psi, plus or minus one percent, shall be maintained for at least five minutes. The operator shall overlap liners four to six inches before seaming, and orient seams parallel to the line of maximum slope, i.e., oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. There shall be no horizontal seams within five feet of the slope's toe. Qualified personnel shall perform field seaming.

(6) At a point of discharge into or suction from the lined pit, the liner shall be protected from excessive hydrostatic force or mechanical damage, and external discharge lines shall not penetrate the liner.

(7) Primary liners shall be constructed of a synthetic material.

(8) A secondary liner may be a synthetic liner or an alternative liner approved by the division. Secondary liners constructed with compacted soil membranes, i.e., natural or processed clay and other soils, shall be at least three feet thick, placed in six-inch lifts and compacted to ninety-five percent of the material's standard proctor density, or equivalent. Compacted soil membranes used in a liner shall undergo permeability testing in conformity with ASTM standards and methods approved by the division before and after construction. Compacted soil membranes shall have a hydraulic conductivity of no greater than 1×10^{-8} cm/sec. The operator shall submit results of pre-construction testing to the division for approval prior to construction.

(9) The operator shall place a leak detection system between the lower and upper geomembrane liners that consists of two feet of compacted soil with a saturated hydraulic conductivity of 1×10^{-5} cm/sec or greater to facilitate drainage. The leak detection system shall consist of a properly designed drainage and collection and removal system placed above the lower geomembrane liner in depressions and sloped

so as to facilitate the earliest possible leak detection. Piping used shall be designed to withstand chemical attack from oil field waste or leachate; structural loading from stresses and disturbances from overlying oil field waste, cover materials, equipment operation or expansion or contraction; and to facilitate clean-out maintenance. The material placed between the pipes and laterals shall be sufficiently permeable to allow the transport of fluids to the drainage pipe. The slope of the interior sub-grade and of drainage lines and laterals shall be at least a two percent grade, i.e., two feet vertical drop per 100 horizontal feet. The piping collection system shall be comprised of solid and perforated pipe having a minimum diameter of four inches and a minimum wall thickness of schedule 80. The operator shall seal a solid sidewall riser pipe to convey collected fluids to a collection, observation and disposal system located outside the perimeter of the pit or pond. The operator may install alternative methods as approved by the division.

(10) The operator shall notify the division at least 72 hours prior to the primary liner's installation so that a division representative may inspect the leak detection system before it is covered.

(11) The operator shall construct pits and ponds in a manner that prevents overtopping due to wave action or rainfall, and maintain a three foot freeboard at all times.

(12) The maximum size of an evaporation or storage pond shall not exceed 10 acre-feet.

C. Operating standards.

(1) The operator shall ensure that only produced fluids or non-hazardous waste are discharged into or stored in a pit or pond; and that no measurable or visible oil layer is allowed to accumulate or remain anywhere on a pit's surface except an approved skimmer pit.

(2) The operator shall monitor leak detection systems pursuant to the approved surface waste management facility permit conditions, maintain monitoring records in a form readily accessible for division inspection and report discovery of liquids in the leak detection system to the division within 24 hours.

(3) Fencing and netting. The operator shall fence or enclose pits or ponds to prevent unauthorized access and maintain fences in good repair. Fences are not required if there is an adequate perimeter fence surrounding the surface waste management facility. The operator shall screen, net, cover or otherwise render non-hazardous to migratory birds tanks exceeding eight feet in diameter and exposed pits and ponds. Upon written application, the division may grant an exception to screening, netting or covering requirements upon the operator's showing that an alternative method will adequately protect migratory birds or that the tank or pit is not hazardous to migratory birds.

(4) The division may approve spray systems to enhance natural evaporation. The operator shall submit engineering designs for spray systems to the division's environmental bureau for approval prior to installation. The operator shall ensure that spray evaporation systems are operated so that spray-borne suspended or dissolved solids remain within the perimeter of the pond's lined portion.

(5) The operator shall use skimmer pits or tanks to separate oil from produced water prior to water discharge into a pond. The operator shall install a trap device in connected ponds to prevent solids and oils from transferring from one pond to another unless approved in the surface waste management facility permit.

D. Below-grade tanks and sumps.

(1) The operator shall construct below-grade tanks with secondary containment and leak detection. The operator shall not allow below-grade tanks to overflow. The operator shall install only below-grade tanks of materials resistant to the tank's particular contents and to damage from sunlight.

(2) The operator shall test sumps' integrity annually, and shall promptly repair or replace a sump that does not demonstrate integrity. The operator may test sumps that can be removed from their emplacements by visual inspection. The operator shall test other sumps by appropriate mechanical means. The operator shall maintain records of sump inspection and testing and make such records available for division inspection.

E. Closure required. The operator shall properly close pits, ponds and below-grade tanks within six months after cessation of use.

[19.15.36.17 NMAC - N, 2/14/2007; A, 6/30/16]

19.15.36.18 CLOSURE AND POST CLOSURE:

A. Surface waste management facility closure by operator.

(1) The operator shall notify the division's environmental bureau at least 60 days prior to cessation of operations at the surface waste management facility and provide a proposed schedule for closure. Upon receipt of such notice and proposed schedule, the division shall review the current closure and post closure plan (post closure is not required for oil treating plants) for adequacy and inspect the surface waste management facility.

(2) The division shall notify the operator within 60 days after the date of cessation of operations specified in the operator's closure notice of modifications of the closure and post closure plan and proposed schedule or additional requirements that it determines are necessary for the protection of fresh water, public health or the environment.

(3) If the division does not notify the operator of additional closure or post closure requirements within 60 days as provided, the operator may proceed with closure in accordance with the approved closure and post closure plan; provided that the director may, for good cause, extend the time for the division's response for an additional period not to exceed 60 days by written notice to the operator.

(4) The operator shall be entitled to a hearing concerning a modification or additional requirement the division seeks to impose if it files an application for a hearing within 10 days after receipt of written notice of the proposed modifications or additional requirements.

(5) Closure shall proceed in accordance with the approved closure and post closure plan and schedule and modifications or additional requirements the division imposes. During closure operations the operator shall maintain the surface waste management facility to protect fresh water, public health and the environment.

(6) Upon completion of closure, the operator shall re-vegetate the site unless the division has approved an alternative site use plan as provided in Subsection F of 19.15.36.18 NMAC. Re-vegetation, except for landfill cells, shall consist of establishment of a vegetative cover equal to seventy percent of the native perennial vegetative cover (un-impacted by overgrazing, fire or other intrusion damaging to native vegetation) or scientifically documented ecological description consisting of at least three native plant species, including at least one grass, but not including noxious weeds, and maintenance of that cover through two successive growing seasons.

B. Release of financial assurance.

(1) When the division determines that closure is complete it shall release the financial assurance, except for the amount needed to maintain monitoring wells for the applicable post closure care period, to perform semi-annual analyses of such monitoring wells and to re-vegetate the site. Prior to the partial release of the financial assurance covering the surface waste management facility, the division shall inspect the site to determine that closure is complete.

(2) After the applicable post closure care period has expired, the division shall release the remainder of the financial assurance if the monitoring wells show no contamination and the re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful. If monitoring wells or other monitoring or leak detection systems reveal contamination during the surface waste management facility's operation or in the applicable post closure care period following the surface waste management facility's closure the division shall not release the financial assurance until the contamination is remediated in accordance with 19.15.30 NMAC and 19.15.29 NMAC, as applicable.

(3) In any event, the division shall not finally release the financial assurance until it determines that the operator has successfully re-vegetated the site in accordance

with Paragraph (6) of Subsection A of 19.15.36.18 NMAC, or, if the division has approved an alternative site use plan, until the landowner has obtained the necessary regulatory approvals and begun implementation of the use.

C. Surface waste management facility and cell closure and post closure standards. The following minimum standards shall apply to closure and post closure of the installations indicated, whether the entire surface waste management facility is being closed or only a part of the surface waste management facility.

(1) Oil treating plant closure. The operator shall ensure that:

(a) tanks and equipment used for oil treatment are cleaned and oil field waste is disposed of at a division-approved surface waste management facility (the operator shall reuse, recycle or remove tanks and equipment from the site within 90 days of closure);

(b) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods, for TPH, BTEX, major cations and anions and RCRA metals, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(c) sample results are submitted to the environmental bureau in the division's Santa Fe office.

(2) Landfill cell closure.

(a) The operator shall properly close landfill cells, covering the cell with a top cover pursuant to Paragraph (8) of Subsection C of 19.15.36.14 NMAC, with soil contoured to promote drainage of precipitation; side slopes shall not exceed a twenty-five percent grade (four feet horizontal to one foot vertical), such that the final cover of the landfill's top portion has a gradient of two percent to five percent, and the slopes are sufficient to prevent the ponding of water and erosion of the cover material.

(b) The operator shall re-vegetate the area overlying the cell with native grass covering at least seventy percent of the landfill cover and surrounding areas, consisting of at least two grasses and not including noxious weeds or deep rooted shrubs or trees, and maintain that cover through the post closure period.

(3) Landfill post closure. Following landfill closure, the post closure care period for a landfill shall be 30 years.

(a) A post closure care and monitoring plan shall include maintenance of cover integrity, maintenance and operation of a leak detection system and leachate collection and removal system and operation of gas and ground water monitoring systems.

(b) The operator or other responsible entity shall sample existing ground water monitoring wells annually and submit reports of monitoring performance and data collected within 45 days after the end of each calendar year. The operator shall report any exceedance of a ground water standard that it discovers during monitoring pursuant to 19.15.29 NMAC.

(4) Landfarm closure. The operator shall ensure that:

(a) disking and addition of bioremediation enhancing materials continues until soils within the cells are remediated to the standards provided in Subsection F of 19.15.36.15 NMAC, or as otherwise approved by the division;

(b) soils remediated to the foregoing standards and left in place are re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(c) landfarmed soils that have not been or cannot be remediated to the standards in Subsection F of 19.15.36.15 NMAC are removed to a division-approved surface waste management facility and the landfarm remediation area is filled in with native soil and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(d) if treated soils are removed, the cell is filled in with native soils and re-vegetated in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC;

(e) berms are removed;

(f) buildings, fences, roads and equipment are removed, the site cleaned-up and tests conducted on the soils for contamination;

(g) annual reports of vadose zone and treatment zone sampling are submitted to the division's environmental bureau until the division has approved the surface waste management facility's final closure; and

(h) for an operator who chooses to use the landfarm methods specified in Subsection H of 19.15.36.15 NMAC, that the soil has an ECs of less than or equal to 4.0 mmhos/cm (dS/m) and a SAR of less than or equal to 13.0.

D. Pond and pit closure. The operator shall ensure that:

(1) liquids in the ponds or pits are removed and disposed of in a division-approved surface waste management facility;

(2) liners are disposed of in a division-approved surface waste management facility;

(3) equipment associated with the surface waste management facility is removed;

(4) the site is sampled, in accordance with the procedures specified in chapter nine of EPA publication SW-846, test methods for evaluating solid waste, physical/chemical methods for TPH, BTEX, metals and other inorganics listed in Subsections A and B of 20.6.2.3103 NMAC, in accordance with a gridded plat of the site containing at least four equal sections that the division has approved; and

(5) sample results are submitted to the environmental bureau in the division's Santa Fe office.

E. Landfarm and pond and pit post closure. The post-closure care period for a landfarm or pond or pit shall be three years if the operator has achieved clean closure. During that period the operator or other responsible entity shall regularly inspect and maintain required re-vegetation. If there has been a release to the vadose zone or to ground water, then the operator shall comply with the applicable requirements of 19.15.30 NMAC and 19.15.29 NMAC.

F. Alternatives to re-vegetation. If the landowner contemplates use of the land where a cell or surface waste management facility is located for purposes inconsistent with re-vegetation, the landowner may, with division approval, implement an alternative surface treatment appropriate for the contemplated use, provided that the alternative treatment will effectively prevent erosion. If the division approves an alternative to re-vegetation, it shall not release the portion of the operator's financial assurance reserved for post-closure until the landowner has obtained necessary regulatory approvals and begun implementation of such alternative use.

G. Surface waste management facility closure initiated by the division. Forfeiture of financial assurance.

(1) For good cause, the division may, after notice to the operator and an opportunity for a hearing, order immediate cessation of a surface waste management facility's operation when it appears that cessation is necessary to protect fresh water, public health or the environment, or to assure compliance with statutes or division rules and orders. The division may order closure without first having a hearing in the event of an emergency, subject to Section 70-2-23 NMSA 1978, as amended.

(2) If the operator refuses or is unable to conduct operations at a surface waste management facility in a manner that protects fresh water, public health and the environment; refuses or is unable to conduct or complete an approved closure and post closure plan; is in material breach of the terms and conditions of its surface waste management facility permit; or the operator defaults on the conditions under which the division accepted the surface waste management facility's financial assurance; or if disposal operations have ceased and there has been no significant activity at the

surface waste management facility for six months the division may take the following actions to forfeit all or part of the financial assurance:

(a) send written notice by certified mail, return receipt requested, to the operator and the surety, if any, informing them of the decision to close the surface waste management facility and to forfeit the financial assurance, including the reasons for the forfeiture and the amount to be forfeited, and notifying the operator and surety that a hearing request or other response shall be made within 20 days of receipt of the notice; and

(b) advise the operator and surety of the conditions under which they may avoid the forfeiture; such conditions may include but are not limited to an agreement by the operator or another party to perform closure and post closure operations in accordance with the surface waste management facility permit conditions, the closure and post closure plan (including modifications or additional requirements imposed by the division) and division rules, and satisfactory demonstration that the operator or other party has the ability to perform such agreement.

(3) The division may allow a surety to perform closure and post closure if the surety can demonstrate an ability to timely complete the closure and post closure in accordance with the approved plan.

(4) If the operator and the surety do not respond to a notice of proposed forfeiture within the time provided, or fail to satisfy the specified conditions for non-forfeiture, the division shall proceed, after hearing if the operator or surety has timely requested a hearing, to declare the financial assurance's forfeiture. The division may then proceed to collect the forfeited amount and use the funds to complete the closure and post closure, or, at the division's election, to close the surface waste management facility and collect the forfeited amount as reimbursement.

(a) The division shall deposit amounts collected as a result of forfeiture of financial assurance in the oil and gas reclamation fund.

(b) In the event the amount forfeited and collected is insufficient for closure and post closure, the operator shall be liable for the deficiency. The division may complete or authorize completion of closure and post closure and may recover from the operator reasonably incurred costs of closure and post closure and forfeiture in excess of the amount collected pursuant to the forfeiture.

(c) In the event the amount collected pursuant to the forfeiture was more than the amount necessary to complete closure and post closure, including remediation costs, and forfeiture costs, the division shall return the excess to the operator or surety, as applicable, reserving such amount as may be reasonably necessary for post closure operations and re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC. The division shall return excess of the amount retained over the actual cost of post closure operations and re-vegetation to the operator or surety at the

later of the conclusion of the applicable post closure period or when the site re-vegetation in accordance with Paragraph (6) of Subsection A of 19.15.36.18 NMAC is successful.

(5) If the operator abandons the surface waste management facility or cannot fulfill the conditions and obligations of the surface waste management facility permit or division rules, after notice and an opportunity for hearing, the state of New Mexico, its agencies, officers, employees, agents, contractors and other entities designated by the state shall have all rights of entry into, over and upon the surface waste management facility property, including all necessary and convenient rights of ingress and egress with all materials and equipment to conduct operation, termination and closure of the surface waste management facility, including but not limited to the temporary storage of equipment and materials, the right to borrow or dispose of materials and all other rights necessary for the surface waste management facility's operation, termination and closure in accordance with the surface waste management facility permit and to conduct post closure operations.

[19.15.36.18 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 12/1/08; A, 6/30/16]

19.15.36.19 EXCEPTIONS AND WAIVERS:

A. In a surface waste management facility permit application, the applicant may propose alternatives to requirements of 19.15.36 NMAC, and the division may approve such alternatives if it determines that the proposed alternatives will provide equivalent protection of fresh water, public health and the environment.

B. The division may grant exceptions to, or waivers of, or approve alternatives to requirements of 19.15.36 NMAC in an emergency without notice or hearing. The operator requesting an exception or waiver, except in an emergency, shall apply for a surface waste management facility permit modification in accordance with Subsection C of 19.15.36.8 NMAC. If the requested modification is a major modification, the operator shall provide notice of the request in accordance with 19.15.36.9 NMAC.

[19.15.36.19 NMAC - N, 2/14/2007; A, 6/30/16]

19.15.36.20 TRANSITIONAL PROVISIONS:

Existing permitted facilities. Surface waste management facilities in operation prior to the effective date of 19.15.36 NMAC pursuant to division permits or orders may continue to operate in accordance with such permits or orders, subject to the following provisions.

A. Existing surface waste management facilities shall comply with the financial assurance, operational, monitoring, waste acceptance and closure and post closure requirements provided in 19.15.36 NMAC, except as otherwise specifically provided in

the applicable permit or order, or in a specific waiver, exception or agreement that the division has granted in writing to the particular surface waste management facility.

B. The division shall not require financial assurance for a commercial facility permitted prior to the effective date of 19.15.36 NMAC that exceeds \$250,000 until such time as:

(1) the division reviews the commercial facility's permit pursuant to Paragraph (3) of Subsection A of 19.15.36.12 NMAC, at which time the division may require the operator to submit a closure and post closure plan; which shall include a responsible third party contractor's cost estimate to complete closure and post closure of the surface waste management facility pursuant to the requirements of Subsections A through F of 19.15.36.18 NMAC:

(a) if the division determines that such estimate does not reflect a reasonable and probable closure and post closure cost, the division shall determine the estimated closure and post closure cost and shall provide its determination of estimated closure and post closure cost to the operator;

(b) if the operator disagrees with the division's determination of estimated closure and post closure cost, the operator may request a hearing, which shall be conducted according to 19.15.4 NMAC; or

(2) the commercial facility applies for a major modification.

C. Major modification of an existing surface waste management facility and a new landfarm cells constructed at an existing surface waste management facility shall comply with the requirements provided in 19.15.36 NMAC.

[19.15.36.20 NMAC - Rp, 19.15.9.711 NMAC, 2/14/2007; A, 6/30/16]

PART 37: REFINING

19.15.37.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.37.1 NMAC - Rp, 19.15.12.1 NMAC, 12/1/08]

19.15.37.2 SCOPE:

19.15.37 NMAC applies to persons engaged in refining oil; operating gasoline, cycling or other plants where gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from gas; or processing carbon dioxide gas into liquid or solid form within New Mexico.

[19.15.37.2 NMAC - Rp, 19.15.12.2 NMAC, 12/1/08]

19.15.37.3 STATUTORY AUTHORITY:

19.15.37 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.37.3 NMAC - Rp, 19.15.12.3 NMAC, 12/1/08]

19.15.37.4 DURATION:

Permanent.

[19.15.37.4 NMAC - Rp, 19.15.12.4 NMAC, 12/1/08]

19.15.37.5 EFFECTIVE DATE:

December 1, 2008, unless a later dated is cited at the end of a section.

[19.15.37.5 NMAC - Rp, 19.15.12.5 NMAC, 12/1/08]

19.15.37.6 OBJECTIVE:

To regulate the refining of oil; the operation of gasoline, cycling or other plants where gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from gas; or the processing of carbon dioxide gas.

[19.15.37.6 NMAC - Rp, 19.15.12.6 NMAC, 12/1/08]

19.15.37.7 DEFINITIONS:

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

[19.15.37.7 NMAC - N, 12/1/08]

19.15.37.8 REFINERY REPORTS:

Each oil refiner shall furnish to the division for each calendar month a completed form C-113 containing the information and data the form requires, respecting oil and products involved in the refiner's operations during each month. The oil refiner shall complete and file the form C-113 with the division for each month according to instructions on the form, on or before the 15th day of the next succeeding month.

[19.15.37.8 NMAC - Rp, 19.15.12.1001 NMAC, 12/1/08]

19.15.37.9 GASOLINE PLANT REPORTS:

An operator of a gasoline plant, cycling plant or other plant at which gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from gas shall maintain for the division's inspection for each calendar month a completed form C-111 containing the information indicated on the form respecting gas and products involved in each plant's operation during each month. 19.15.37.9 NMAC also applies to plants processing carbon dioxide gas into liquid or solid form.

[19.15.37.9 NMAC - Rp, 19.15.12.1002 NMAC, 12/1/08]

PART 38: [RESERVED]

PART 39: SPECIAL RULES

19.15.39.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Oil Conservation Division.

[19.15.39.1 NMAC - N, 12/1/2008]

19.15.39.2 SCOPE:

19.15.39 NMAC applies to persons engaged in oil and gas development and production within New Mexico.

[19.15.39.2 NMAC - N, 12/1/2008]

19.15.39.3 STATUTORY AUTHORITY:

19.15.39 NMAC is adopted pursuant to the Oil and Gas Act, NMSA 1978, Section 70-2-6, Section 70-2-11 and Section 70-2-12.

[19.15.39.3 NMAC - N, 12/1/2008]

19.15.39.4 DURATION:

Permanent.

[19.15.39.4 NMAC - N, 12/1/2008]

19.15.39.5 EFFECTIVE DATE:

December 1, 2008, unless a later date is cited at the end of a section.

[19.15.39.5 NMAC - N, 12/1/2008]

19.15.39.6 OBJECTIVE:

To regulate oil and gas operations in areas of particular environmental sensitivity in order to provide appropriate protection for fresh water, public health and the environment in those areas.

[19.15.39.6 NMAC - N, 12/1/2008]

19.15.39.7 DEFINITIONS

[RESERVED]

[See 19.15.2.7 NMAC for definitions.]

[19.15.39.7 NMAC - N, 12/1/2008]

19.15.39.8 SPECIAL PROVISIONS FOR SELECTED AREAS OF SIERRA AND OTERO COUNTIES:

A. The selected areas comprise:

(1) all of Sierra county except the area west of range 8 west NMPM and north of township 18 south, NMPM; and

(2) all of Otero county except the area included in the following townships and ranges:

(a) township 11 south, range 9 1/2 east and range 10 east NMPM;

(b) township 12 south, range 10 east and ranges 13 east through 16 east, NMPM;

(c) township 13 south, ranges 11 east through 16 east, NMPM;

(d) township 14 south, ranges 11 east through 16 east, NMPM;

(e) township 15 south, ranges 11 east through 16 east, NMPM;

(f) township 16 south, ranges 11 east through 15 east, NMPM;

(g) township 17 south, range 11 east (surveyed) and ranges 12 east through 15 east, NMPM;

(h) township 18 south, ranges 11 east through 15 east, NMPM;

(i) township 20 1/2 south, range 20 east, NMPM;

(j) township 21 south, range 19 east and range 20 east, NMPM; and

(k) township 22 south, range 20 east, NMPM; and also excepting also the unsurveyed area bounded as follows:

(i) beginning at the most northerly northeast corner of Otero county, said point lying in the west line of range 13 east (surveyed);

(ii) thence west along the north boundary line of Otero county to the point of intersection of such line with the east line of range 10 east NMPM (surveyed);

(iii) thence south along the east line of range 10 east NMPM (surveyed) to the southeast corner of township 11 south, range 10 east NMPM (surveyed);

(iv) thence west along the south line of township 11 south, range 10 east NMPM (surveyed) to the more southerly northeast corner of township 12 south, range 10 east NMPM (surveyed);

(v) thence south along the east line of range 10 east NMPM (surveyed) to the inward corner of township 13 south, range 10 east NMPM (surveyed) (said inward corner formed by the east line running south from the more northerly northeast corner and the north line running west from the more southerly northeast corner of said township and range);

(vi) thence east along the north line of township 13 south NMPM (surveyed) to the southwest corner of township 12 south, range 13 east, NMPM (surveyed);

(vii) thence north along the west line of range 13 east, NMPM (surveyed) to the point of beginning.

B. The division shall not issue permits under 19.15.17 NMAC for pits located in the selected areas.

C. Produced water injection wells located in the selected areas are subject to the following requirements in addition to those set out in 19.15.25 NMAC and 19.15.34 NMAC.

(1) The division shall issue permits under 19.15.26.8 NMAC only after notice and hearing.

(2) The radius of the area of review shall be the greater of:

(a) one-half mile; or

(b) one and one-third times the radius of the zone of endangering influence, as calculated under EPA regulation 40 C.F.R. section 146.6(a) or by other method acceptable to the division; but in no case shall the radius of the area of review exceed one and one-third miles.

(3) The operator shall demonstrate fresh water aquifers' vertical extent prior to using a new or existing well for injection.

(4) The operator shall isolate fresh water aquifers throughout their vertical extent with at least two cemented casing strings. In addition,

(a) existing wells converted to injection shall have continuous, adequate cement from casing shoe to surface on the smallest diameter casing, and

(b) wells drilled for the purpose of injection shall have cement circulated continuously to surface on all casing strings, except the smallest diameter casing shall have cement to at least 100 feet above the casing shoe of the next larger diameter casing.

(5) The operator shall run cement bond logs acceptable to the division after each casing string is cemented, and file the logs with the appropriate division district office. For existing wells the casing and cementing program shall comply with 19.15.26.9 NMAC.

(6) The operator shall construct produced water transportation lines of corrosion-resistant materials acceptable to the division, and pressure test the water transportation lines to one and one-half times the maximum operating pressure prior to operation, and annually thereafter.

(7) The operator shall place tanks on impermeable pads and surround the tanks with lined berms or other impermeable secondary containment device having a capacity at least equal to one and one-third times the capacity of the largest tank, or, if the tanks are interconnected, of all interconnected tanks.

(8) The operator shall record injection pressures and volumes daily or in a manner acceptable to the division, and make the record available to the division upon request.

(9) The operator shall perform mechanical integrity tests as described in Paragraph (2) of Subsection A of 19.15.26.11 NMAC annually, shall advise the appropriate division district office of the date and time the operator is commencing a mechanical integrity test so that the division may witness the test and shall file the pressure chart with the appropriate division district office.

[19.15.39.8 NMAC - Rp, 19.15.1.21 NMAC, 12/1/2008]

19.15.39.9 SPECIAL PROVISIONS FOR SANTA FE COUNTY AND THE GALISTEO BASIN:

A. Applicability. The operator shall obtain division approval for an exploration and development plan prior to drilling, re-entering or deepening a well located in the Galisteo basin, and shall operate the wells covered by the exploration and development plan in accordance with the exploration and development plan's requirements until the exploration and development plan is specifically replaced by a special pool order. Approval of an exploration and development plan does not relieve an operator from its responsibility to obtain any permit required pursuant to the Oil and Gas Act for its activities conducted under the exploration and development plan. The operator shall renew an approved exploration and development plan every five years. The Galisteo basin includes:

- (1)** the surveyed portions of the following sections in Sandoval county:
 - (a)** township 15 north, range 5 east, sections 13 and 25;
 - (b)** township 15 north, range 6 east, sections 10 through 30 and 32 through 36;
 - (c)** township 14 north, range 6 east, sections 1 through 4, 9 through 15, 22 through 26 and 35 and 36;
 - (d)** township 13 north, range 6 east, sections 1 and 2;
- (2)** the surveyed portions of the following sections in San Miguel county:
 - (a)** township 15 north, range 12 east, sections 19 and 29 through 32;
 - (b)** township 14 north, range 12 east, sections 4 through 10, 13 through 24, and 27 through 33;
 - (c)** township 13 north, range 12 east, sections 4 through 9 and 16 through 21;
- (3)** the surveyed portions of the following sections in Santa Fe county:
 - (a)** township 17 north, range 10 east, sections 35 and 36;
 - (b)** township 17 north, range 11 east, sections 30 through 32;
 - (c)** township 16 north, range 9 east, sections 26, 34 and 35;
 - (d)** township 16 north, range 10 east, sections 1, 2, 10 through 17, 20 through 28 and 33 through 36;

(e) township 16 north, range 11 east, sections 5 through 8, 16 through 21 and 28 through 33;

(f) township 15 north, range 7 east, sections 7 through 9 and 14 through 36;

(g) township 15 north, range 8 east, sections 19 and 22 through 26;

(h) township 15 north, range 9 east, sections 2 through 4, 7 through 10, 14 through 23 and 25 through 36;

(i) township 15 north, range 10 east, sections 1 through 3, 11 through 13, 24, 25, 30 through 32 and 36;

(j) township 15 north, range 11 east, sections 3 through 36;

(k) township 14 north, range 7 east, sections 1 through 19, 21 through 24, 30 and 31;

(l) township 14 north, range 8 east, sections 1 through 10, 12 through 30 and 36;

(m) township 14 north, range 9 east, all sections;

(n) township 14 north, range 10 east, sections 1, 2 5 through 24, 29 and 30;

(o) township 14 north, range 11 east, sections 1 through 28 and 33 through 36;

(p) township 13 north, range 7 east, sections 6 and 7;

(q) township 13 north, range 8 east, sections 1, 12 through 14, 23 through 26, 35 and 36;

(r) township 13 north, range 9 east, all sections;

(s) township 13 north, range 11 east, sections 1 through 4, 9 through 16, 21 through 24, 27, 28, 33 and 34;

(t) township 12 north, range 8 east, sections 1, 2, 11 through 16, 21 and 22;

(u) township 12 north, range 9 east, sections 2 through 11, 13 through 15, 18, 23 and 24;

(v) township 12 north, range 10 east, sections 18 through 20, 29, 30 and 32 through 36;

(w) township 12 north, range 11 east, sections 3, 4, 9, 10, 15, 16, 21, 22, 28, 29 and 31 through 33;

(x) township 11 north, range 10 east, sections 1 through 4;

(4) the un-surveyed area in Santa Fe county bounded by the surveyed portions of township 14 north, range 8 east, sections 1 through 3, 10 and 12 through 15;

(5) the un-surveyed area in Santa Fe county bounded by:

(a) the surveyed portions of:

(i) township 16 north, range 10 east, sections 17, 20, 21, 28, 33 and 34;

(ii) township 15 north, range 10 east, sections 3, 2, 11 through 13, 24, 25 and 36;

(iii) township 14 north, range 10 east, sections 1, 2, 11, 10, 15, 22, 21, 16, 9, 8 and 5;

(iv) township 15 north, range 10 east, sections 32 through 30;

(v) township 15 north, range 9 east, sections 25, 26, 35, 26, 23, 14, 15, 10, 3 and 2;

(vi) township 16, north, range 9 east, sections 35 and 26;

(b) and then from the northeastern corner of the surveyed portion of township 16 north, range 9 east, section 26 to the northwestern corner of the surveyed portion of township 16 north, range 10 east, section 17;

(6) the un-surveyed area in Santa Fe county bounded by the surveyed portions of:

(a) township 14 north, range 11 east, sections 19 through 21, 28 and 33;

(b) township 13 north, range 11 east, sections 4, 9, 16, 21, 28 and 33;

(c) township 12 north, range 11 east, sections 4, 9, 16, 21, 28, 33, 32, 29 and 31;

(d) township 12 north, range 10 east, sections 36 through 32, 29 and 20 through 18;

(e) township 12 north, range 9 east, sections 24, 13, 14, 11 and 2;

- (f) township 13 north, range 9 east, sections 36, 25, 24, 13, 12, 1 and 2;
- (g) township 14 north, range 9 east, sections 35, 36, 25, 30, 29 and 20 through 24;
- (7) the un-surveyed area in Santa Fe county bounded by:
 - (a) the surveyed portions of:
 - (i) township 13 north, range 7 east, sections 7 and 6;
 - (ii) township 14 north, range 7 east, sections 31, 30, 19 through 16 and 21 through 24;
 - (iii) township 14 north, range 8 east, sections 30 through 25 and 36;
 - (iv) township 13 north, range 8 east, sections 1, 12 through 14, 23, 26 and 35;
 - (v) township 12 north, range 8 east, sections 2, 11 and 14 through 16;
 - (vi) township 12 north, range 8 east, sections 21 and 22; and
 - (b) and then from the northwest corner of the surveyed portion of township 12 north, range 8 east, section 16 to the northeast corner of the surveyed portion of township 12 north, range 7 east, and then to the southeast corner of the surveyed portion of township 13 north, range 7 east, section 7.

B. Application for exploration and development plan. An operator applying for approval of an exploration and development plan shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall include:

- (1) the operator's name, address and telephone number, with an e-mail address and facsimile number if available;
- (2) a legal description of the area to be covered by the exploration and development plan including at a minimum the area subject to surface disturbance by the wells or related facilities the operator proposes to install and the operator's good-faith estimate of the productive area, which in no case may be smaller than the applicable spacing unit or units for the proposed wells;
- (3) identification of the target zone or zones;
- (4) a topographic map of the area to be covered by the proposed exploration and development plan and one half mile beyond the boundary of that area;

(5) a map or maps of the area to be covered by the proposed exploration and development plan and one half mile beyond the boundary of that area plotting the following, with global positioning system coordinates to the sixth decimal point for unsurveyed areas:

(a) state, federal, private or tribal surface ownership;

(b) municipal and county boundaries;

(c) farms;

(d) all buildings and infrastructure including but not limited to highways and roads, railroads, pipelines, power lines, antennas, wind turbines, solar farms and mines (surface and subsurface);

(e) watercourses, sinkholes, playas and unstable areas;

(f) municipal fresh water well fields covered under a municipal ordinance adopted pursuant to NMSA 1978, Section 3-27-3, as amended;

(g) water wells and wellhead protection areas;

(h) all existing oil and gas wells regardless of status, including inactive wells, wells that have been plugged and wells that have been plugged and released; and

(i) the location of proposed exploratory wells and related facilities, including but not limited to tank batteries, gathering lines, waste disposal facilities, compressor stations and access roads;

(6) a hydrogeologic and site report that provides sufficient information and detail on the area's topography, soils, geology, surface hydrology and ground water hydrology to enable the division to evaluate the actual and potential effects on soils, surface water and ground water;

(7) proposed plans for:

(a) installing monitor wells to determine depth to water and saturated thickness, obtain baseline water samples and detect releases;

(b) a drilling program describing the air drilling program or mud program to be used;

(c) a mud-logging program, including submission of a copy of the mud log sheet and a description of the mud-logger's daily report, which shall include at a minimum information on the total depth reached, the footage drilled in the preceding 24

hours, oil and gas intervals, fresh water zones and mud parameters including mud weight, chlorides, funnel viscosity and filtrate properties;

(d) addressing wastes generated during the drilling and production processes;

(e) minimizing pad size and consolidating facilities; and

(f) developing the area if the exploratory wells are productive, including the operator's estimate of the number and location of development wells and related facilities;

(8) a written contingency plan for all releases, with no exclusion for de minimus amounts, which shall include:

(a) best management practices for the prevention and detection of releases and procedures for early detection of releases;

(b) instructions for notifying appropriate responders, with a contact list including current names, telephone numbers, e-mail addresses, facsimile numbers and addresses;

(c) identification of applicable equipment, materials and supplies available locally or regionally to respond to releases, with advance arrangements for acquiring the equipment, materials and supplies; and

(d) response plans based on the severity and nature of the release;

(9) if cultural resources listed in either the national register of historic places or the state register of cultural properties, known cemeteries or unmarked human burials are located in the area included in the proposed exploration and development plan or within one half mile of the area included in the exploration and development plan, the information in 4.10.7.9 NMAC including a description of the effects the proposed operations may have on these sites and proposed mitigation measures;

(10) any proposed exceptions to the requirements set out in Subsection B of 19.15.39.10 NMAC and evidence that operating in accordance with the proposed exceptions will prevent waste, protect correlative rights, protect fresh water and protect human health and the environment;

(11) a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC;

(12) other information that the division may require to demonstrate that the exploration and development plan will prevent waste, protect correlative rights, protect fresh water, protect human health and the environment, and will assure the division that operation of the exploration and development plan will comply with division rules and division or commission orders; and

(13) certification by the operator that the information submitted in the application is true, accurate and complete to the best of the operator's knowledge, after reasonable inquiry.

C. Amendments to exploration and development plans. An operator shall obtain an approved amendment to its exploration and development plan prior to expanding the area covered by the plan, increasing the number or changing the locations of proposed wells or related facilities or changing the terms of the proposed exploration and development plan. An operator applying for an amendment to an exploration and development plan shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall:

- (1) describe the proposed amendment or amendments;
- (2) update the information provided in the original application pursuant to Subsection B of 19.15.39.9 NMAC; and
- (3) provide a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC.

D. Renewals of exploration and development plans.

(1) An operator applying for renewal of its exploration and development plan shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall:

- (a) update the information provided pursuant to Subsection B of 19.15.39.9 NMAC; and
- (b) provide a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC.

(2) The operator may combine an application to renew its exploration and development plan with an application to amend the exploration and development plan.

E. Replacement of an exploration and development plan with a special pool order.

(1) An operator who has operated wells under an approved exploration and development plan may apply for approval to replace the exploration and development plan with a special pool order. The operator shall demonstrate to the division's satisfaction that the hydrology, geology and reservoir characteristics within the area that the exploration and development plan covers have been sufficiently defined to protect fresh water, human health and the environment.

(2) A special pool order replacing an approved exploration and development plan shall designate a pool applying to a specific producing formation or formations within the area included in the approved exploration and development plan it replaces.

(3) An operator may drill wells within the horizontal and vertical limits of the pool designated by the special pool order and conduct oil and gas operations within the horizontal limits of that pool without obtaining an approved exploration and development plan that would otherwise be required by 19.15.39.9 NMAC. The operator shall comply with the terms of the special pool order and obtain any permits required for its operations required by law.

(4) A well drilled outside the horizontal limits of the pool designated by the special pool order shall not be classified as a development well for the pool designated by the special pool order pursuant to 19.15.15.8 NMAC and is subject to the requirements of 19.15.39.9 NMAC.

(5) An operator applying for approval to replace the exploration and development plan with a special pool order shall file two copies of the application with the division's Santa Fe office and file a copy of the application with the appropriate division district office or offices. The application shall:

(a) describe provisions to be included in the special pool order to protect fresh water and to protect human health and the environment;

(b) update the information provided pursuant to Subsection B of 19.15.39.9 NMAC; and

(c) provide a proposed legal notice complying with Subsection F of 19.15.39.9 NMAC.

F. Legal notice. Legal notice of an application for a proposed exploration and development plan or an application to amend, renew or replace an existing exploration and development plan shall be written in English and Spanish and shall include:

(1) the operator's name, address and telephone number, and an e-mail address and facsimile number if available;

(2) a legal and a common description of the area that the exploration and development plan covers;

(3) in the case of an application for an exploration or development plan, a summary of the proposed plan including the number and location of proposed exploratory and development wells and related facilities;

(4) in the case of an application to amend an existing exploration and development plan, a summary of the existing exploration and development plan and a summary of the proposed amendment;

(5) in the case of an application to renew an existing exploration and development plan, a summary of the existing exploration and development plan;

(6) in the case of an application to replace an existing exploration and development plan, a summary of the provisions to be included in the special pool order to protect fresh water and protect human health and the environment;

(7) instructions for viewing the application on the division's website or at the appropriate division district office or offices;

(8) instructions for filing written public comments on the application with the division clerk in the division's Santa Fe office;

(9) if the application has been set for hearing, the date, time and location of the public hearing; and

(10) instructions for being placed on a division contact list to receive notice of future applications and legal notices related to the exploration and development plan.

G. Application completeness.

(1) Within 60 days of receiving an application for an exploration and development plan or an application to amend, renew or replace an existing exploration and development plan, the division shall notify the operator in writing of its determination on whether the application is complete. An application is complete if it contains all the information required by 19.15.39.9 NMAC.

(2) If the division determines that the application is complete, the division shall:

(a) notify the operator in writing that the application is complete;

(b) provide the operator with an approved legal notice;

(c) provide the operator with a copy of the current contact list of individuals and entities requesting notice of actions related to the exploration and development plan;

(d) distribute notice of the application with its next division or commission docket;

(e) post the approved legal notice and the application on the division's website, with information that is confidential under NMSA 1978, Section 18-6-11.1 redacted from the application; and

(f) provide a copy of the complete application to the state historic preservation officer with a request for review and comment.

(3) If the division determines that the application is not complete, the division's written notification to the operator shall identify the deficiencies.

(4) The operator may re-submit an application to correct deficiencies, correct errors or add information. The division's receipt of a re-submittal triggers a new 30 day period for the division to notify the operator of the division's determination on completeness.

H. Public notice. Within 20 days of receiving an approved legal notice and the division's determination that an application is complete, the operator shall:

(1) publish the approved legal notice in English and Spanish in a display advertisement in a newspaper of general circulation in the affected county or counties;

(2) mail the approved notice by certified mail, return receipt requested, to:

(a) holders of mineral interests in the area covered by the exploration and development plan and the area within one half mile of the boundary of the exploration and development plan if they have not already agreed to participate in the exploration and development plan;

(b) surface interest owners in the area covered by the exploration and development plan and the area within one half mile of the boundary of the exploration and development plan;

(c) the governor, chairperson or president of each tribe, pueblo and nation located in or partially located in New Mexico;

(d) the governments of counties and municipalities located within or partially located within the area covered by the exploration and development plan or the area within one half mile of the boundary of the exploration and development plan;

(e) the state historic preservation officer; and

(f) the department of game and fish; and

(3) mail the approved notice of hearing by first class mail or transmit the notice of hearing by electronic mail to those individuals and entities on the division's contact list for the exploration and development plan.

I. Public hearings.

(1) The division shall set all applications for approval of exploration and development plans for public hearing, with the public hearing to be set no sooner than 60 days after the operator serves public notice.

(2) The division may hold a public hearing on an application to amend, renew or replace an existing exploration and development plan. The division may approve the amendment, renewal or replacement administratively unless the director determines that the amendment, renewal or replacement is sufficiently substantial that public notice and public participation are appropriate.

(3) If the division acts administratively to deny an application to amend, renew or replace an existing exploration and development plan, or acts administratively to approve an amendment, renewal or replacement of an existing exploration and development plan with conditions or terms, the operator may, within 30 days of receipt of the administrative order, file an application for hearing on the application. The division shall set the application for public hearing.

(4) If the division sets for public hearing an application to amend, renew or replace an existing exploration or development plan, the operator shall submit to the division's Santa Fe office for approval a notice of hearing containing the information required by Subsection F of 19.15.39.9 NMAC and, at least 30 days prior to the hearing date:

(a) publish the approved notice of hearing in a newspaper of general circulation in the county or counties in the area that the exploration and development plan covers and within one half mile of the boundary of the area that the exploration and development plan covers;

(b) mail the approved notice of hearing by to those persons and entities entitled to public notice under Paragraph (2) of Subsection H of 19.15.39.9 NMAC; and

(c) mail the approved notice of hearing by first class mail or transmit the notice of hearing by electronic mail to those individuals and entities on the division's contact list for the exploration and development plan.

J. Plan approvals, conditions, denials, amendments, revocations, renewals, transfers and replacements.

(1) The division may approve an exploration and development plan for a period not to exceed five years. The division may renew an exploration and development plan for additional periods not to exceed five years.

(2) The division may approve an application for an exploration and development plan or an application to amend, renew or replace an existing exploration and development plan if the operator proves that:

(a) the operator is in compliance with Subsection A of 19.15.5.9 NMAC;

(b) the application provides the information required by 19.15.39.9 NMAC;

(c) the operator has provided the notice required by 19.15.39.9 NMAC; and

(d) approval of the application will prevent waste, protect correlative rights, protect fresh water and protect human health and the environment.

(3) The division may impose conditions on its approval of an application for an exploration and development plan or an amendment or renewal of an exploration and development plan if the division determines that the conditions are necessary to prevent waste, protect correlative rights, protect fresh water and protect human health or the environment.

(4) The division may include provisions in a special pool order that replaces an exploration and development plan if the division determines that the provisions are necessary to prevent waste, protect correlative rights, protect fresh water or protect human health and the environment.

(5) After notice to the operator and hearing, the division may revoke approval of an exploration and development plan and require wells that the exploration and development plan covers to be shut-in if the operator is out of compliance with the exploration and development plan or is out of compliance with Subsection A of 19.15.5.9 NMAC.

(6) If an exploration and development plan expires and the operator has not filed an application to renew the exploration and development plan, the operator shall shut-in the wells that the exploration and development plan covers. If the operator has filed an application to renew the exploration and development plan prior to its expiration, the operator may continue to operate wells that the exploration and development plan covers until a final order is issued on the application for renewal.

(7) The exploration and development plan shall remain in effect until revoked, amended or replaced pursuant to 19.15.39.9 NMAC.

(8) In the event another operator becomes operator of record of wells subject to the exploration and development plan, the new operator shall be bound by the terms of the applicable approved exploration and development plan or special pool order.

(9) Approval of an exploration and development plan or an application to amend, renew or replace an exploration and development plan does not relieve an

operator of responsibility for complying with any other applicable federal, state or local statutes, rules or regulations or ordinances.

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

19.15.39.10 ADDITIONAL REQUIREMENTS FOR APPLICATIONS TO DRILL, RE-ENTER OR DEEPEN WELLS SUBJECT TO AN EXPLORATION AND DEVELOPMENT PLAN:

A. An application for permit to drill, re-enter or deepen a well that requires an exploration and development plan pursuant to 19.15.39.9 NMAC shall include the following in addition to meeting the requirements set out in 19.15.14 NMAC:

- (1) a permit application pursuant to 19.15.17 NMAC;
- (2) global positioning system coordinates to the sixth decimal point to identify the location of a well to be drilled in an un-surveyed area; and
- (3) any additional information required by the operator's approved exploration and development plan.

B. Unless otherwise specified in an approved exploration and development plan, a permit to drill, re-enter or deepen a well that requires an exploration and development plan shall be subject to the following conditions:

- (1) the operator shall drill the well using a closed loop system that uses above ground steel tanks for the management of drilling or workover fluids without using below-grade tanks or pits;
- (2) the operator shall not use the on-site closure methods identified in Subsection F of 19.15.17.13 NMAC;
- (3) the operator shall run logs from total depth to surface that will determine porosity and water saturation;
- (4) a mud-logger shall be on site during drilling from surface to total depth and shall submit the logs and a written report daily to the supervisor of the appropriate district office;
- (5) the operator shall isolate all fresh water zones and aquifers throughout their vertical extent with at least two cemented casing strings;
- (6) the operator shall circulate cement to surface on all casing strings, except that the smallest diameter casing shall have cement to at least 100 feet above the casing shoe of the next larger diameter casing;

(7) the operator shall run cement bond logs acceptable to the division after each casing string is cemented and file the logs with the appropriate district office; and

(8) the operator of a well awaiting gas pipeline connection shall place that well on approved temporary abandonment status, setting a drillable bridge plug above any open perforations.

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

19.15.39.11 SPECIAL PROVISIONS FOR A SELECTED AREA OF THE ROSWELL ARTESIAN BASIN:

A. Designated area. The designated area shall comprise:

- (1) the area within the following townships and ranges in Chaves county:
- (a) township 5 south, ranges 22 and 23 east;
 - (b) township 6 south, ranges 22 east through 24 east;
 - (c) township 7 south, ranges 22 east through 24 east;
 - (d) township 8 south, ranges 21 east through 25 east;
 - (e) township 9 south, ranges 21 east through 25 east;
 - (f) township 9½ south, range 24 east;
 - (g) township 10 south, ranges 21 east through 25 east;
 - (h) township 11 south, ranges 21 east through 26 east;
 - (i) township 12 south, ranges 21 east, 21½ east, and 22 east through 26 east;
 - (j) township 13 south, ranges 21 east through 27 east;
 - (k) township 14 south, ranges 21 east through 27 east;
 - (l) township 15 south, ranges, 21 east through 27 east;
 - (m) township 18 south, range 20 east;
 - (n) township 19 south, range 20 east; and
- (2) the area within the following townships and ranges in Eddy county:

- (a) township 16 south, ranges 21 east and 23 east through 27 east;
- (b) township 17 south, ranges 21 east and 23 east through 27 east;
- (c) township 18 south, ranges 21 east and 23 east through 27 east;
- (d) township 19 south, ranges 21 east and 23 east through 27 east;
- (e) township 20 south, ranges 21 east and 23 east through 27 east;
- (f) township 20½ south, ranges 21 east through 23 east;
- (g) township 21 south, ranges 22 east through 25 east;
- (h) township 22 south, ranges 22 east through 24 east; and
- (i) township 23 south, ranges 22 east and 23 east.

B. Applicability. All well drilling commenced after August 29, 2017 from surface locations within the designated area, or which will penetrate the designated area above the base of the San Andres formation, shall be permitted, drilled and operated in accordance with 19.15.39.11 NMAC.

C. Wells that penetrate the designated area. For wells that will penetrate the designated area defined in Subsection A of 19.15.39.11 NMAC, the operator shall include in the casing program at least the following.

(1) If a conductor pipe is used, it shall be adequately cemented in place to prevent drainage of fluids from the surface to shallow formations.

(2) The operator shall set a surface casing string, at a minimum, 50 feet below the base of the artesian aquifer, provided:

(a) in areas where the artesian aquifer is not present at depth, or if the well will not be drilled through the artesian aquifer, the hole shall be drilled to the first show of hydrocarbons on a mud log, and the surface casing set no more than 50 feet above the first show;

(b) in areas where the artesian aquifer is present, and the well will be drilled through the artesian aquifer, the operator shall determine the depth for setting of the surface casing string with the concurrence of the district supervisor of the division's Artesia district office; the operator, in its proposed casing program, shall identify the criteria utilized to locate the base of the artesian aquifer and the information supporting the criteria;

(c) the operator shall circulate to surface the cement for surface casing covering all aquifers;

(d) if the cement is not circulated to the surface, the operator shall furnish a cement bond log to the division's Artesia district office, and shall not proceed with drilling until the division approves the cementing;

(e) if the operator encounters significant loss of circulation during drilling within an aquifer, the operator shall immediately notify the division's Artesia district office;

(f) if the operator observes significant inflow of fresh water into the mud pit, the operator shall immediately notify the division's Artesia district office.

(3) If the well is equipped with an intermediate casing string, the operator shall circulate cement on the intermediate casing string to the surface. If the well is not equipped with an intermediate casing string, the operator shall circulate cement on the production casing string to the surface. If cement is not circulated to surface on the intermediate casing string or the production casing string, as applicable, the operator shall determine the cement top and report it to the division's Artesia district office.

D. District supervisor discretion. Notwithstanding Subsection C of 19.15.39.11 NMAC, the district supervisor of the division's Artesia district office may:

(1) require a modification of a casing program that provides for an additional water-protection casing string, if the district supervisor finds that the proposed casing program is not reasonably sufficient to prevent fluid movement into or out of the well bore from or to aquifers in the designated area; or

(2) approve a casing program that allows for the setting of the shoe for the water-protection casing string at a different depth than required in Paragraph (2) of Subsection C of 19.15.39.11 NMAC if the district supervisor finds, based on the information and data provided by the operator, that the proposed casing program will adequately protect all fresh water formations the well can reasonably be expected to encounter; and

(3) in either case, attach such conditions of approval as, in the district supervisor's judgment, are reasonably necessary to prevent such fluid movement.

E. Compliance with statewide rules. 19.15.39.11 NMAC shall not be construed to relieve the operator of any well from the obligation to comply with any applicable statewide rules, including, but not limited to 19.15.16.9, 19.15.16.10 and 19.15.16.11 NMAC.

F. Transitional provisions. Any APD for a proposed well within the designated area that was previously approved and suspended by emergency order of the division

shall be reinstated if it meets the requirements of 19.15.39.11 NMAC. Any operator may amend any such APD within one year after the effective date of 19.15.39.11 NMAC to comply with 19.15.39.11 NMAC. If the division reinstates or approves as amended a previously suspended APD, the APD shall continue in force for two years from the date of original approval, plus the number of days that such APD was suspended.

[19.15.35.11 NMAC - N, 8/29/2017]

PART 40: NEW MEXICO LIQUIFIED PETROLEUM GAS STANDARD

19.15.40.1 ISSUING AGENCY:

The Construction Industries Division of the Regulation and Licensing Department.

[19.15.40.1 NMAC - Rp, 19.15.40.1 NMAC, 2/1/2006]

19.15.40.2 SCOPE:

A. All individuals or persons performing work that will involve the use of storage or providing service, for LP Gas and all facilities, equipment, appliances, structures or installations in the state of New Mexico.

B. The provisions of these rules and regulations shall apply to the use and enforcement of the LP and CNG Gas Act, construction industries division rules and regulations, national publications that are law in New Mexico (such as NFPA 58), and codes adopted by the construction industries commission.

C. It also serves to establish administrative procedures for the LP gas bureau, including, but not limited to, licensing and permitting procedures.

[19.15.40.2 NMAC - Rp, 19.15.40.2 NMAC, 2/1/2006]

19.15.40.3 STATUTORY AUTHORITY:

These rules and regulations are adopted pursuant to Section 70, Article 5 NMSA 1978 and Subsection F of Section 60-13-9 NMSA 1978.

[19.15.40.3 NMAC - Rp, 19.15.40.3 NMAC, 2/1/2006]

19.15.40.4 DURATION:

Permanent; until later amended, repealed or replaced.

[19.15.40.4 NMAC - Rp, 19.15.40.4 NMAC, 2/1/2006]

19.15.40.5 EFFECTIVE DATE:

February 1, 2006, unless a later date is cited at the end of a section.

[19.15.40.5 NMAC - Rp, 19.15.40.5 NMAC, 2/1/2006]

19.15.40.6 OBJECTIVE:

The objective of 19.15.40 NMAC is to promote the general welfare of the people of New Mexico by providing for the protection of life and property through standards that, when complied with, will result in safer installations, equipment, facilities, appliances, structures, and service.

[19.15.40.6 NMAC - Rp, 19.15.40.6 NMAC, 2/1/2006]

19.15.40.7 DEFINITIONS:

A. "Accessible" means having access to; may require the removal of a panel, door or similar covering of the item described.

B. "Approved" means acceptable to the authority having jurisdiction.

C. "Authority having jurisdiction" means the New Mexico LP gas bureau.

D. "Bulk plant" means storage facilities for liquid LP gas awaiting transfer.

E. "Bureau" means the liquefied petroleum and compressed gas bureau of the division.

F. "Certified" means "listed" or "labeled".

G. "Certificate of competence" means a written certificate issued by the LP gas bureau to an LP gas installer based on evidence of competence.

H. "Clearance" means the distance between the appliance, chimney, vent chimney or vent connector, or plenum and the nearest surface.

I. "Code" means NFPA 52, NFPA 54, NFPA 57, NFPA 58 and NFPA 1192 and other codebooks adopted as amended by the commission.

J. "Commission" means the construction industries commission.

K. "Compressed natural gases" and "CNG" means mixtures of hydrocarbon gases and vapors consisting principally of methane in gaseous form, which has been compressed for vehicular fuel.

L. "Concealed LP gas piping" means all LP gas piping and fittings which, when in place in the finished building, would require removal of permanent construction to gain access to the piping.

M. "Connector, gas appliance" means a connector, used to convey fuel gas three feet or less in length (six feet or less for gas ranges), between a gas shut off valve and gas appliance in the same room.

N. "Consumer's LP gas system" means any arrangement of LP gas piping, extending from the point of delivery to and including all outlets, appliances and appurtenances, installed under the provisions of the code, which the consumer is responsible to maintain in a serviceable condition, exclusive of piping, tanks, regulators, valves, fittings, etc. owned by the gas company.

O. "Distributing plant" means a facility with the primary purpose of distribution of LP gas, which receives LP gas in tank car, truck transport or truck lots, and distributes such LP gas to end-users by delivery tank truck or through gas piping; such plants have bulk storage of 2,000 gallons water capacity or more, and usually have container-filling and truck-loading facilities on the premises.

P. "Distributing point" means a facility other than a distributing plant which normally receives gas by tank truck and which fills small containers or the engine fuel tank of motor vehicles on the premises. (An LP gas service station is one type of distributing point).

Q. "Division" means the construction industries division of the regulation and licensing department.

R. "Energy efficient water heater" means any LP gas automatic storage water heater that meets or exceeds ASHREA 90-75 standards for energy efficiency.

S. "Fuel gas piping system" means the arrangement of piping, tubing, fittings, connectors, valves and devices designed and intended to supply or control the flow of fuel gas to the appliances.

T. "Gas company" means any LP gas company or LP gas distributor.

U. "Gas supply connection" means the terminal end or connection to which a gas supply connector is attached.

V. "Gas supply connector" means tubing or piping connecting the mobile home to the gas supply source.

W. "Gas vents" means factory-built vent piping and vent fittings listed by an approved testing agency, that are assembled and used in accordance with the terms of their listings, for conveying flue gases to the outside atmosphere.

X. "Heat producing appliance" means all heating and cooking appliances and all fuel burning appliances.

Y. "Heating appliance" means an appliance for comfort heating or for water heating of a manufactured home.

Z. "House piping" means the LP gas piping from the point where it enters the building or foundation, up to and including the outlets.

AA. "Input rating" means the LP gas-burning capacity of an appliance in BTU's per hour as specified by the manufacturer.

BB. "Inspector" means a person hired by the bureau to enforce under administrative direction the laws and safety rules and regulations of the LP gas industry and the enforcement of the codes used in CNG, LNG and LCNG in motor vehicles.

CC. "Labeled" means equipment or materials to which has been attached a label, symbol or other identifying mark of an organization acceptable to the "authority having jurisdiction" and concerned with product evaluation that maintains periodic inspection of production of labeled equipment or materials and by whose labeling the manufacturer indicate compliance with appropriate standards or performance in specified manner.

DD. "Liquefied natural gases", "liquefied compressed natural gases", "LNG" and "LCNG" means a fluid in the liquid state composed predominantly of methane and that can contain minor quantities of ethane, propane, nitrogen, or other components normally found in natural gas.

EE. "Liquefied petroleum gases", "LPG" and "LP gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butane (normal butane or ISO-butane) and butylenes.

FF. "Liquid transfer" means the transfer of LP gas in a liquid form from an approved container into another approved container.

GG. "Liquid withdrawal" means an approved LP gas container designed for the withdrawal of LP gas for utilization in an approved means.

HH. "Listed" means equipment or materials included in a list published by an organization acceptable to the authority having jurisdiction and concerned with product evaluation that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

II. "LP gas installation" means the installation of materials, fixtures, appliances or equipment that utilize LP gas, which is installed by a licensee of the LP gas bureau.

JJ. "Manufactured homes" means a movable or portable housing structure over 32 feet in length or over eight feet in width constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy as a residence and which may include one or more components that can be retracted for towing purposes and subsequently expanded for additional capacity or may be two or more units separately towable but designed to be joined into one integral unit, as well as a single unit. Manufactured homes do not include recreational vehicles or modular or pre-manufactured homes, built to building code standards, designed to be permanently affixed to real property.

KK. "Manufactured home site" means a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants.

LL. "Manufactured home park" means a parcel (or contiguous parcels) of land which has been so designated and improved so that it contains two or more manufactured home sites available to the general public for the placement thereon of manufactured homes for occupancy.

MM. "Outlet" means a threaded connection or bolted flange in a pipe system to which an LP gas-burning appliance is or may be attached; such outlet must be located in the room or space where the appliance is or may be installed.

NN. "Point of delivery" means the initial junction of the consumer's gas piping with the gas company's piping, at the outlet side of the first regulator, regardless of whether it is a single-stage regulator system or the first stage regulator of a two-stage regulator system.

OO. "Product" or "products" of liquefied petroleum gases, compressed natural gases or liquefied natural gas are considered to be liquefied petroleum gases or compressed natural gases or liquefied natural gases respectively.

PP. "Qualified instructor" means an employee who has passed the required examination and performed for at least one year the work being taught.

QQ. "Readily accessible" means having direct access without the necessity of removing any panel, door or similar obstruction.

RR. "Regulator" means a device for controlling and maintaining a uniform pressure to the manifold of gas equipment.

SS. "Riser" means that portion of the yardline, which protrudes through the grade level of the ground.

TT. "Roof jack" that portion of venting system, including the cap, insulating means, flashing and ceiling plate, located in and above the roof.

UU. "Sealed combustion/direct vent system appliance", "direct vent system appliance" means an appliance which by its inherent design is constructed so that all air supplied for combustion to the combustion system of the appliance, and all products of combustion are completely isolated from the atmosphere of the space in which it is installed, and all flue gases are discharged to the outside.

VV. "Yardline" means a buried line servicing utilities from the on-site utility terminal to the manufactured home.

[19.15.40.7 NMAC - Rp, 19.15.40.7 NMAC, 2/1/2006]

19.15.40.8 RETROACTIVITY:

The provisions of the codes are not intended to prevent the use of any material, method of construction, or installation procedure not specifically prescribed by the codes, provided any such use is preapproved, in writing, by the LP gas bureau. The provisions of the codes are considered necessary to provide a reasonable level of protection from loss of life and property. Unless otherwise stated, the provisions of the codes shall not be applied retroactively to existing facilities, equipment, appliances, structures, or systems that were in compliance with the provisions of the codes in effect at the time of installation, or approved for construction or installation prior to the effective date of the document, except in those cases where it is determined, in writing, by the LP gas bureau that the existing situation involves a distinct hazard to life or adjacent property. Equipment and appliances include stocks in manufacturers' storage, distribution warehouses, and dealers' storage and showrooms in compliance with the provisions of the codes in effect at the time of manufacture.

[19.15.40.8 NMAC - Rp, 19.15.40.8 NMAC, 2/1/2006]

19.15.40.9 EXAMINATION:

No licensee or employee of a licensee shall install or modify any appliance or piping system until he has proved his knowledge of acceptable minimum standards by passing an examination required by the bureau.

A. All personnel whose duties require that they transport or dispense LP gas shall prove by passing an examination, as required by the bureau, that they are familiar with minimum safety standards and practices with regard to handling of LP gas. LP gas may not be dispensed by any person who has not passed the examination by the bureau.

B. An identification card shall be issued to each person who passes the examination required by the LP gas bureau. The identification card shall contain pertinent

information such as examinee's name, address and classification(s) for which examinee is certified, and may also provide space for listing violations of the LP gas Act.

C. No licensee or employee shall perform the work he has examined for until he has received an identification card for that classification from the bureau.

D. An identification card shall only be valid while employed by a licensee. The identification card shall be renewed annually with payment of a reasonable fee to the bureau on the anniversary date of the employer's license. The renewal fee shall be paid with the licensee's renewal for all listed qualifying parties.

E. An identification card holder not employed by a licensee for a period of two years shall retest before being qualified.

[19.15.40.9 NMAC - Rp, 19.15.40.9 NMAC, 2/1/2006]

19.15.40.10 ANNUAL INSPECTIONS:

A. There shall be an annual safety inspection, made by an inspector of the bureau, of each bulk storage plant facility, dispensing station, vehicle fuel dispenser, and cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities. Each bulk plant, dispenser, and vehicular unit shall display a current decal showing it has passed the required inspection.

B. Own use non-resale dispensers shall not require annual inspection. These facilities shall be inspected at the time of installation or modification.

[19.15.40.10 NMAC - Rp, 19.15.40.10 NMAC, 2/1/2006]

19.15.40.11 LP GAS PLANS AND SPECIFICATIONS:

A. Before equipment for the transfer of liquid LP gas may be installed, plans and specifications of the proposed installation must be submitted in TRIPLICATE to the bureau for approval. Written approval must be received before the equipment is installed.

B. Plans for proposed location of retail cylinder exchange shall be submitted to the LP gas bureau. Written approval must be received before the equipment is installed.

[19.15.40.11 NMAC - Rp, 19.15.40.11 NMAC, 2/1/2006]

19.15.40.12 INSURANCE:

A. Licensees holding LP gas classifications LP-1, LP-3S, LP-4, LP-5, LP-6, LP-10, CNG-1 and LNG-1 with only vehicles of 3,500 gallons water capacity or less shall have

combined single-limit public liability insurance or a corporate surety bond in at least the minimum of \$500,000.

B. Licensees holding LP gas classification LP-7, LP-8 or LP-9 shall have combined single-limit public liability insurance or a corporate surety bond in at least the minimum amount of \$100,000.

[19.15.40.12 NMAC - Rp, 19.15.40.12 NMAC, 2/1/2006; A, 04/01/2013]

19.15.40.13 LP GAS MISCELLANEOUS:

A. Any accident/incident where LP gas in any form or any application may have been a factor or could become a contributing factor shall be reported immediately to the LP gas bureau. Likewise, any accident/incident where any CNG or LNG- powered vehicle may have been a factor or could become a contributing factor shall be reported immediately to the LP gas bureau.

B. In all cases where a disconnection is made, a notice shall be given to the consumer by the inspector. Such notice shall state that the same has been disconnected by, or on order of, the inspector, together with the reasons therefor. It shall be unlawful for any person other than a licensed installer to reconnect or use any segment of the installation without authorization of an inspector.

C. No delivery of LP gas shall be made into any transportation unit or bulk plant after notice that either the current decal or the license has been suspended or revoked, or the license has expired.

D. The bureau will make available to the industry a compliant form to be used to report any violation of the LP Gas Act, rules and regulations or code. This form shall be submitted to the bureau, at which time the bureau will investigate and furnish a written report back to the complainant with 20 working days, with violations found and action taken.

[19.15.40.13 NMAC - Rp, 19.15.40.13 NMAC, 2/1/2006]

19.15.40.14 PRINTED FORMS, AND FEES:

A. Printed forms as prescribed by the division shall be used for application for license, licenses, receipts, approvals, disapproval's, installation records, inspection reports and any other purposes for which the bureau may consider standardized forms necessary for expediency.

B. An administrative penalty may be assessed to anyone found to be making intentional false reports or for failure to file any written report or form as required by law.

C. Printed forms listed below by number or name are hereby adopted and their use for the purpose stated.

(1) FORM 1. Records of Installation, Test or Modification. \$20.00. To be used to record the following.

(a) Installation of LP gas containers. Containers of 239#WC or less shall be exempt from this requirement.

(b) Installation of piping and appliances. Form 1 shall be prepared at time work is performed and shall be submitted to the LP gas bureau by close of business the following business day.

(2) Retail Cylinder Exchange Installation Registration Form. \$20.00. Fee shall be submitted with required plans for proposed location of retail cylinder exchange installation. Reinspection of cylinder exchange installations \$20.00

(3) LP Gas Installations at Special Events Registration Form. \$15.00. To be used for installations at special events with containers of 239#WC or less.

(4) LP Gas Visual Cargo Tank and Equipment Inspection Form. \$45.00.

(a) (Shall not be assessed more than one time in each 12 month period).

(b) Re-inspection of cargo tank and equipment and additional charge for re-inspection. \$45.00.

(c) Licensee must obtain form prior to inspection of vehicle or placing a new vehicle in service. Bureau inspector will complete form upon inspection. Corrections after inspection will require a correction form and may require re-inspection. To expedite inspections, vehicle licensee will be notified by the LP gas bureau that vehicle annual inspection is due during the first month of the inspection quarter.

(5) Plant/Dispenser Inspection Form. \$45.00.

(a) (Shall not be assessed more than one time in each 12 month period).

(b) Re-inspection of bulk storage and additional charge for re-inspection. \$45.00.

(c) Licensee must obtain form prior to inspection of plant or placing a new dispenser in service. LP gas bureau inspector will complete form upon inspection. Corrections after inspection will require a correction form and may require re-inspection. To expedite inspections, dispenser licensee will be notified by the bureau that dispenser annual inspection is due during the first month of the inspection quarter.

(6) Correction Inspection Form. LP gas bureau inspector will issue form when correction is needed and note the code, statute or rule and regulation section number that was in violation. bureau inspector may lock and seal filler valve until correction is completed. After correction, licensee will sign correction form, attach appropriate new inspection form (listed above), and return forms, seal and filler valve lock to inspector for re-inspection.

(7) Certificate of Insurance. To be submitted by all licensees to the LP gas bureau.

(8) Form 1 first re-inspection fee shall be \$20.00.

(9) Form 1 second re-inspection fee shall be \$75.00.

[19.15.40.14 NMAC - Rp, 19.15.40.14 NMAC, 2/1/2006; A, 7/1/2018]

19.15.40.15 LICENSE CLASSIFICATIONS, SCOPES AND FEES:

License classifications are defined and annual license fees are set as follows.

A. LP-1 wholesale sale or delivery of LP gas \$125.00. A licensee under this classification is authorized to wholesale, transport and/or deliver LP gas in vehicular units into or out of any location except that of an ultimate consumer. This classification will allow delivery to the ultimate consumer whose facilities require a bulkhead.

B. LP-3S retail sale of LP gas \$65.00. A licensee under this classification is authorized to deliver, transfer and transport LP gas in a liquid state to the ultimate consumer, both intrastate and interstate. The company employing the LP-3S licensee must also hold an LP-5 license in order to hold a LP-3S license. A person holding this classification is authorized to perform all work as described in classifications LP-1 and LP-9; and may perform an out of gas leak test for an existing customer of his employer so long as the employer is responsible for delivery of the propane.

C. LP-4 limited installation, service and repair \$125.00. A licensee under this classification is authorized to install, service and repair appliances, equipment, and piping for use with LP gas in residences and commercial buildings except mobile homes (as defined by the Manufactured Housing Act) recreational vehicles and similar units. The scope of the work for the LP piping is from (point of delivery) to the final connection of the appliances. In order to qualify for this classification, a licensee must hold mechanical license classification MM2 or MM98.

D. LP-5 installation, service and repair \$125.00. A licensee under this classification is authorized to install or erect liquid transfer facilities; install or repair piping and equipment attached to cargo containers; and to install, service and repair appliances, equipment and piping for use with LP gas in residences and commercial buildings including mobile homes (as defined by the Manufactured Housing Act), recreational

vehicles and similar units. The scope of the work for the LP gas appliances in this classification does not include the HVAC ductwork or hydronic piping systems connected to any appliance. Those specialties fall under the mechanical license classifications.

E. LP-6 installation, service and repair of mobile units only \$75.00. A licensee under this classification is authorized to install, service and repair LP gas appliances, equipment and piping in manufactured housing, travel trailers, recreational vehicles, campers and similar units.

F. LP-7 wholesale or manufacture of appliances, equipment or containers \$50.00. A licensee under this classification is authorized to wholesale or manufacture appliances, equipment or containers for use with LP gas.

G. LP-8 installation, service and repair of cylinder exchange cabinets \$35.00. A licensee under this classification is authorized to install, service and repair LP gas cylinder exchange cabinets and to deliver portable containers (maximum water capacity 239#).

H. LP-9 station for dispensing LP gas \$35.00. A licensee under this classification is authorized to dispense LP gas into fuel containers on vehicles or to fill and/or deliver portable containers (maximum water capacity 239#).

I. LP-10 LP gas carburetion sales, service and installation, including repair \$35.00. A licensee under this classification is authorized for LP gas carburetion sale, service and installation, including repair.

J. CNG-1 CNG carburetion sale, service and installation \$35.00. A licensee under this classification is authorized for CNG gas carburetion sale, service and installation, including repair.

K. LNG-1 LNG carburetion sale, service and installation \$35.00.

L. Qualifying party identification card \$15.00.

M. Annual renewal fee per qualifying party identification card \$10.00.

N. Licensing examination fee \$25.00.

O. Licensing re-examination fee \$25.00.

P. The total license fee charged any one licensee for a combination of LP gas activities at any one operating location is set at: \$300.00.

[19.15.40.15 NMAC - Rp, 19.15.40.15 NMAC, 2/1/2006; A, 04/01/2013; A, 01/01/2015; A, 7/1/2018]

19.15.40.16 MOTOR FUEL AND PERMANENT MOUNTED TANK REFUELING:

- A.** Stop all internal combustion engines on vehicles to be serviced.
- B.** No smoking or open fires.
- C.** Shut off all pilot lights.
- D.** Remove all passengers from vehicle.
- E.** Do not fill past maximum filling capacities.
- F.** Do not start vehicle until fill connections have separated.
- G.** Do not relight pilots while in dispensing area.

[19.15.40.16 NMAC - Rp, 19.15.40.16 NMAC, 2/1/2006]

19.15.40.17 SELF SERVICE LP GAS DISPENSERS:

A. Self-service dispensers shall be used to dispense LP gas for motor/mobile fuel only. Only ASME constructed motor/mobile fuel type containers that are permanently secured to a vehicle, that incorporate an eighty percent stop fill device and ASME constructed stack type containers permanently secured to a vehicle shall be filled. The filling of farm carts, moveable fuel storage tenders and DOT cylinders is prohibited. The filling of hot air balloon fuel cells approved by the federal aviation administration will be allowed.

B. All self-service LP Gas dispensers shall comply with the currently adopted version of NFPA 58, sections: **Vehicle fuel dispenser and dispensing stations and installation of vehicle fuel dispensers.**

C. The main liquid valve(s) opening and closing devices shall be installed so that the valve(s) are in the closed position when the transfer operation is not in use.

D. Self-service LP Gas dispensers shall be equipped with a device(s) for emergency shutdown of LP gas and power, from a location remote from the dispensing and storage areas. The device(s) shall operate to activate the valve(s) installed so as to shut off the power and gas supply to the dispenser(s). The emergency shutdown device(s) shall be distinctly marked for easy recognition.

E. In the event the self service dispenser is located in an area remote from the storage container, an excess flow, or approved shearing device, shall be installed in the piping where it emerges from the ground under the cabinet and be installed so as to ensure that shearing of the piping will occur on the downstream side of the excess flow or shearing device.

F. All hoses used for transfer operation on self service dispensers shall incorporate an approved breakaway (pull -away) device and shall be installed in accordance with the manufacturer's instructions.

G. Appropriate step by step operating instructions shall be posted at or on each dispenser, and shall be readily visible to the operator during transfer operations. The instructions shall describe each action necessary to operate the dispenser.

[19.15.40.17 NMAC - Rp, 19.15.40.17 NMAC, 2/1/2006]

19.15.40.18 PIPING AND APPLIANCES WITHIN BUILDINGS:

A. All piping and LP appliances must meet current NFPA 54 and NFPA 58 requirements, with the exception that anodeless flexible risers may be used at the tank and at the house.

B. LP Gas piping or appliances in attics, under floor area, or below grade must be adequately ventilated. Ventilation openings shall be a minimum of 36 square inches.

C. Gas utilization equipment located in confined spaces shall be provided with two permanent openings, one commencing within 12 inches of the top, and one commencing within 12 inches of the bottom of the enclosure.

[19.15.40.18 NMAC - Rp, 19.15.40.18 NMAC, 2/1/2006]

19.15.40.19 MOVEMENT OF LP GAS CONTAINERS AT COMMERCIAL INDUSTRIAL SITES OR SCHOOLS:

A. At commercial sites, industrial sites or schools no person shall move an LP gas container(s) without written permission from the owner, unless such movement is required on an emergency basis to prevent loss of life or property or the spread of fire or as required to eliminate a safety hazard.

B. This regulation shall not govern situations where it is ordered by any police or fire officials in their performance of their official duties.

C. If an emergency move is made, the LP gas bureau shall be notified by telephone within 12 hours of said move and a written explanation shall be mailed to the LP gas bureau within 24 hours of said move as evidenced by the postmark.

D. Movement of LP gas containers may be made by persons other than the owner ten days after giving written request to the owner, as evidenced by return receipt at his last known address.

E. Containers moved shall be set securely on a stable base as to prevent danger or damage to the container and/or appurtenances by slipping, falling or rollover. All openings shall be secured so as to prevent release of gas in either liquid or vapor form.

[19.15.40.19 NMAC - Rp, 19.15.40.21 NMAC, 2/1/2006]

19.15.40.20 CONTAINERS AND INSTALLATIONS:

A. Safe installation. No LP gas container shall be filled or LP gas system used that does not meet the requirements of NFPA 58, NFPA 54 or this document.

B. Filling of Containers. Transfer of LP Gas to or from any LP Gas container shall be only by the owner or upon the owners authorization.

C. Chart 1 (all services except cargo tanks). ASME 1949 and earlier and U-68 and U-69 Codes are approved for all LP gas service, except cargo tank, regardless of installation date, with the following working pressures and relief valve settings, when using propane grade 5 or higher.

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	Yes	Yes	Yes	Yes
Relief Valve Setting (%)	100	137	165	192	220	247	275	110%
	to	to	to	to	to	to	to	to
	125	156	187	218	250	281	317	125%

D. Chart 2 (bulk service). API-ASME Code, ASME U-201, 1950 and 1952 or later ASME Codes are approved for bulk plant use*, and for all other container use if manufactured after June 30, 1959, in accordance with ASME Code, at the time of manufacture with the following working pressures and relief settings, when using propane of grade 5 or higher. ***Cargo containers shall have a minimum working pressure of 250 PSI.**

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	No	No	Yes	Yes
Relief Valve Setting (%)	100	220	88%					
	to	to	to					
	125	250	100%					

E. Chart 3 (domestic tank service). API-ASME Code, ASME U-200, U-201, 1950 and 1952 or later ASME Codes, if installed in New Mexico before June 30, 1959, may be moved from one place to another within the state, but not brought into the state, are

approved for domestic tank service with the following working pressures and relief settings, when using propane of grade 5 or higher.

Working Pressure	100	125	150	175	200	225	250	251+
Approved	No	No	No	No	No	No	Yes	Yes
Relief Valve Setting (%)	110	132	154	176	198	220	88%	
	to	to	to	to	to	to	to	
	125	150	175	200	225	250	100%	

F. Container protection. Where physical damage to LP gas containers, or systems of which they are a part, from vehicles is a possibility, precautions shall be taken against such damage.

(1) Container protection shall be crash post or other protection acceptable to the LP gas bureau.

(2) When crash post are used they shall be a minimum of two and seven-eighths inch outside diameter, with three feet above ground, two feet below ground, embedded in concrete, filled with concrete, and spaced four feet apart. The spacing may be extended to eight feet between post if a minimum two-inch welded top rail is installed; excepting all dispensing system installations which shall comply with all requirements described in the currently adopted NFPA 58.

G. Container markings. All LP gas tanks owned by LP gas dealers must be marked with the name and phone number of the LP gas dealer. This regulation does not apply to customer owned tanks.

H. Container screening. Screens for all LP gas above ground containers shall be installed in the following manner.

(1) Screening material shall be non-combustible if container is screened on three sides. If solid screening is used, each wall up to 20 feet in length shall be provided with at least one opening, with an additional opening for each 20 feet of length or fraction thereof. Each opening shall have a minimum size of 50 square inches, the bottom of which shall not be more than six inches above the ground.

(2) If the screen encloses two sides or no more than fifty percent a wood fence may be used.

(3) The screen shall enclose no more than three sides of the container.

(4) There shall be a minimum clearance of three feet from the container to the screen.

(5) The screen shall not exceed the height of the container by more than one foot.

(6) Covers or tops shall not be installed over containers.

(7) All tanks on school grounds, church grounds, playgrounds, etc. shall be fenced. Any request for exemption to, or deviation from, the fencing requirement shall be made in writing to the bureau. If, upon investigation of a particular proposed tank installation, the inspector and bureau chief determine it is not necessary, a fence shall not be required.

[19.15.40.20 NMAC - Rp, 19.15.40.22 NMAC, 2/1/2006; A, 7/1/2018]

19.15.40.21 LP GAS CYLINDER EXCHANGE INSTALLATIONS:

A. A cylinder exchange installation registration form and approved plans shall be required prior to installation.

B. Installation shall meet the requirements of NFPA 58.

C. Cylinder exchange cabinets shall be approved, and meet the requirements of NFPA 58; excepting cylinder exchange cabinet installations shall comply with Subsection D if installed greater than five feet from a building or approved in writing by the LP gas bureau chief.

D. Protection against vehicle impact shall be crash post or other protection acceptable to the LP gas bureau.

(1) Crash post shall be installed as required elsewhere in this document.

(2) A minimum six inch high concrete raised sidewalks or six inch high wheel stops can be used.

(a) The minimum distance from the raised sidewalks or wheel stops to the cabinet shall be 48 inches.

(b) The wheel stops shall be anchored and secured with at least five-eighths inch by 18 inch steel rods.

E. Cylinder exchange installations in excess of 720 lb propane stored shall be provided with at least one approved portable fire extinguisher having a minimum capacity of 18 lb dry chemical with B:C rating.

[19.15.40.21 NMAC - N, 2/1/2006; A, 7/1/2018]

19.15.40.22 LP GAS INSTALLATIONS AT SPECIAL EVENTS:

A. Containers: All containers must be located outside the booth, the building, or the enclosure. All containers must be secured in a position (usually in an upright position) so that vapor only will be present at the vapor service valve. The secured container's device, such as a chain, must be able to support the weight of the container plus the container's contents. All containers must be approved LP gas container. Any DOT cylinder for LP gas must be marked with the re-qualification date(s) if the container is more than 12 years old. All containers must be leak-free. Any LP gas container showing excessive rust, corrosion, pitting, or denting shall not be used. The bottom of each container shall be checked for these conditions. All portable DOT cylinders must have a fixed "warning" label that includes information on the potential hazards of LP gas. Outlets for all unused containers shall be capped or plugged. The vapor service valve must be sealed when the container is not in use. (Example: A p.o.l. plug installed in the open vapor outlet.) A quick-closing coupling approved for use on LP gas containers may be used in lieu of the sealing cap or plug. When a container's water capacity is greater than 239 pounds (nominal 100 lb.) An LP gas permit must be obtained before using such container.

B. Hoses: The only hoses that shall be used are those approved for use with LP gas. The hose end couplings must be installed as recommended by the hose manufacturer. (Unacceptable: an automotive screw-type clamp installed on the end of the hose.) All hoses must be leak-free. All hoses must be kept out of the way of foot and vehicular traffic.

C. Appliances: All appliances used in food booths must have an accessible shut-off valve near the appliance that can be easily closed in case of an emergency. Only appliances that are leak-free and approved for the use of LP gas shall be used.

D. Filling of containers: The filling of LP gas containers on site shall be done in a designated area separated from the general public or at times when the visitation of the general public is minimal. Nylon jackets, cigarette lighters, strikers, and/or matches are not allowed in the filling area.

E. Leak test: A leak test shall be performed each day before the food booth is opened for business, any time a cylinder is exchanged, and any time the LP gas system is modified. Soap (without ammonia) mixed with water or a combustion gas hand-held electronic leak detector can be used for detection of leaks. The entire system must be free of leaks.

[19.15.40.22 NMAC - Rp, 19.15.40.23 NMAC, 2/1/2006]

19.15.40.23 MANUFACTURED HOMES:

A. Exterior gas piping.

(1) Location of containers, containers and underground piping.

(a) Containers, appurtenances and underground piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58.

(b) Underground gas piping shall not be installed under any manufactured home or any attachments to the manufactured home. This is an exception to NFPA 54.

(2) All gas piping beneath a manufactured home shall be adequately supported by galvanized, or equivalently protective metal straps or hangers at least every four feet, except, where adequate support and protection is provided by structural members.

(3) Gas shut-off valves shall not be placed beneath a manufactured home.

(4) Any extensions or alterations made to the gas piping system for the purpose of establishing the supply inlet for connection to the riser may not reduce or restrict the gas piping size from that of the original inlet.

(5) There shall be only one point of crossover between the section of a multi wide manufactured home, which must be readily accessible from the outside.

(6) Unless otherwise approved by the bureau the connector used for the cross-over on multi- wide manufactured homes when gas is supplied to more than one section, must be made by a listed "quick disconnect" device which shall be designed to provide a positive seal of the supply side of the gas system when such device is separated. Refer to Exhibit #1.

(7) The crossover connection shall be of the same size as the piping with which it directly connects.

(8) The gas inlet on the manufactured home shall protrude no more than six inches from the manufactured home. The inlet shall be rigidly anchored or strapped to a structural member within six inches of the point where it enters beneath the manufactured home.

(9) Bond of gas piping.

(a) Gas piping shall not be used as an electrical ground.

(b) Gas piping shall be bonded. Metallic gas piping shall be considered bonded if it is connected to the terminal on the chassis of the manufactured home by clamps, solderless connectors or by suitable ground-type straps.

(10) Location of riser: The gas riser shall be located within 12 inches of the manufactured home.

(11) Site connector. Each manufactured home utilizing gas shall be connected to the manufactured home site outlet by an approved mobile home connector not more than 36 inches in length. If encased flexible polyethylene pipe is used, a flexible connector shall not be required. The above ground portion of the polyethylene flexible riser shall not exceed 36 inches in length and be installed so as to maintain flexibility and compensate for expansion and contraction.

(12) Mechanical protection. All gas outlet risers, regulators, meters, valves or other exposed equipment shall be protected from mechanical damage by vehicles or other causes. Meters shall not be supported by gas service piping. Regulators may be supported by the rigid extended piping of the manufactured home.

(13) Maximum pressure permitted. Gas supplied into the manufactured home shall not exceed 1/2 pounds per square inch gauge or 14 inches water column.

(14) Gas pipe sizing. Gas piping systems shall be sized so that the pressure drop to any appliance inlet connection from any gas supply connections, when all appliances are in operation at maximum capacity, is no more than 0.5 inch water column. Conformance may be determined on the basis of test, or the gas piping system may be sized in accordance with the current National Fuel Gas Code, NFPA 54.

B. Interior gas piping.

(1) Interior gas piping shall be installed in accordance with the currently adopted edition of NFPA 54 and NFPA 58.

(2) Gas -fired appliances. Each gas-fired appliance must have a listed shut-off valve located within three feet of the appliance and located in the same room as the gas appliance.

(3) Appliance connectors. Appliance connectors shall not exceed three feet in length, except for range connectors, which shall not exceed six feet in length.

(4) Inspection testing and purging. Inspection testing and purging shall comply with the currently adopted edition of NFPA 54.

C. Heat producing appliances. Every heat-producing appliance used in manufactured homes shall be listed or certified by an approved nationally recognized testing agency for this application.

(1) Fuel conversion. Fuel burning appliances shall not be converted from one fuel to another unless converted in accordance with the terms of its listing.

(2) Venting. Fuel burning, heating and refrigeration appliances shall be of the vented type and vented to the outside. In no case shall the vent of a gas-burning appliance terminate underneath the manufactured home.

(a) Fuel burning heat-producing appliances, except ranges, gas dryers and ovens, shall have complete separation of the combustion system from the atmosphere of the manufactured home. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance.

(b) Vents, roof jacks and special fittings supplied as component parts of an appliance shall be installed in conformity with the terms of their listing. A single wall metal vent shall not be used unless it is a component part of a listed appliance.

(c) Vent terminations shall not be less than three feet from any motor driven air intake that opens into habitable areas.

(d) Every joint of any vent or vent connector shall be secure, rigid, and tight, in alignment and have approved design and workmanship. Vent connectors shall be firmly attached to draft hood outlets or flue collars by sheet metal screws or other approved means, or the vent connectors using listed TYPE B or TYPE L gas vent materials shall be securely assembled using the method shown in the manufacturer's instructions.

(3) Gas clothes dryers.

(a) Clothes dryers shall not be installed in a room intended to be used for sleeping purposes.

(b) Clothes dryers shall be exhausted to the outside air by a moisture lint exhaust duct and terminating fitting listed or certified as components of the appliance.

(c) A clothes dryer moisture lint exhaust duct shall not be connected to any furnace duct, gas vent or chimney.

(d) The moisture lint exhaust duct shall not terminate beneath the manufactured home.

(e) Moisture lint exhaust ducts shall not be connected with sheet metal screws or other fastening devices, which extend into the duct.

(4) Installation. The installation of each heat producing appliance shall conform to the terms of its listing as specified on the appliance and in the manufacturer's instructions. The installer shall leave the manufacturer's instructions attached to the appliance. Every appliance shall be secured in place to avoid displacement and movement from vibration and road shock.

(a) Instructions. Instruction operating instructions shall be provided with the appliance.

(b) Marking. Information on clearances, input ratings, lighting and shutdown shall be attached to the appliances with the same permanence as the nameplate, and so located that it is easily readable when the appliance is properly installed. Each fuel-burning appliance shall bear a permanent marking designating the type(s) of fuel for which it is listed.

(c) Accessibility. Every appliance shall be accessible for inspection, service, repair and replacement without removing permanent construction. Sufficient room shall be available to enable the operator to observe the burner, control and ignition means while starting the appliance.

(5) Location. Heat producing appliances shall be so located that no doors, drapes or other such material can be placed or swung closer to the front of the appliance than the clearances specified on the labeled appliances.

(6) Clearances. Clearances between heat producing appliances and adjacent surfaces shall not be less than specified in the terms of their listing. Clearance spaces shall be framed in or guarded to prevent creation of storage space within the clearance specified.

D. Cross ventilation.

(1) All manufactured homes shall have one square foot of unrestricted venting area for every 150 square feet of enclosed floor space. Vents shall be uniformly distributed on the two

(2) opposite long-walls. At least one vent shall be located within four feet of each end wall.

Vents shall be constructed and installed to exclude entry of vermin and water.

(3) This section shall not apply retroactive to existing installations that were in compliance with the codes in effect at the time of installation or approved prior to the effective date of this document.

E. Manufactured home parks.

(1) Fuel gas equipment and installation. Fuel gas equipment and installations installed within a building in a manufactured home park shall comply with the current standard for the Installation of Gas Appliances and Gas Piping (NFPA 54), or the current standard for the Storage and Handling of Liquefied Petroleum Gases (NFPA 58).

(2) Manufactured home park gas systems. Gas equipment and installations within a manufactured home park shall be designed and constructed in accordance with the applicable codes adopted by the authority having jurisdiction.

(a) Required gas supply. The minimum hourly volume of gas required at each manufactured home lot outlet or any section of the mobile home park has piping system shall be calculated as shown on Chart IV.

CHART IV-Demand Factors for use in Calculating Gas Piping Systems in Manufactured Home Parks.

No Of Manufactured Home Sites	BTU Per Hour Per Mfg. Home Site
1	125,000
2	117,000
3	104,000
4	96,000
5	92,000
6	87,000
7	83,000
8	81,000
9	79,000
10	77,000
11 to 20	66,000
21 to 30	62,000
31 to 40	58,000
41 to 60	55,000
Over 60	50,000

(b) Lot shut-off valve. On systems supplied from a central container, each manufactured home lot shall have an approved gas shut-off valve installed upstream of the mobile home lot gas outlet and located on the outlet riser at a height of not less than four inches above grade. Such valve shall not be located under any manufactured home. Whenever the manufactured home lot outlet is not in use, the outlet shall be equipped with an approved cap or plug to prevent accidental discharge of gas.

[19.15.40.23 NMAC - Rp, 19.15.40.24 NMAC, 2/1/2006]

19.15.40.24 STANDARDS:

This rule adopts by reference the following standards, as amended herein:

- A.** 2021 national fuel gas code, referred to as NFPA 54;
- B.** 2020 liquefied petroleum gas code, referred to as NFPA 58;
- C.** 2021 standard on recreational vehicles, referred to as NFPA 1192;

D. 2010 vehicle gaseous fuel systems code, referred to as NFPA 52.

[19.15.40.24 NMAC - N, 11/25/2008; A, 7/1/2009; A, 1/1/2012; A, 1/1/2015; A, 7/1/2018; A, 12/19/2023]

PART 41-102: [RESERVED]

PART 103: SPECIFICATIONS, TOLERANCES, AND OTHER TECHNICAL REQUIREMENTS FOR COMMERCIAL WEIGHING AND MEASURING DEVICES

19.15.103.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

[7/1/97; 19.15.103.1 NMAC - Rn & A, 19 NMAC 15.103.1, 05/29/09]

19.15.103.2 SCOPE:

All parties involved in the servicing or use of commercial weighing and measuring devices.

[7/1/97; 19.15.103.2 NMAC - Rn, 19 NMAC 15.103.2, 05/29/09]

19.15.103.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.

[7/1/97; A, 3/1/98; 19.15.103.3 NMAC - Rn, 19 NMAC 15.103.3, 05/29/09]

19.15.103.4 DURATION:

Permanent.

[7/1/97; 19.15.103.4 NMAC - Rn, 19 NMAC 15.103.4, 05/29/09]

19.15.103.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 19.15.103.5 NMAC - Rn, 19 NMAC 15.103.5, 05/29/09]

19.15.103.6 OBJECTIVE:

This part establishes the specifications, tolerances and other technical requirements for commercial weighing and measuring devices.

[7/1/97; 19.15.103.6 NMAC - Rn, 19 NMAC 15.103.6, 05/29/09]

19.15.103.7 DEFINITIONS:

[RESERVED]

19.15.103.8 [RESERVED]

19.15.103.9 SPECIFICATIONS, TOLERANCES AND OTHER TECHNICAL REQUIREMENTS:

The specifications, tolerances and other technical requirements for commercial weighing and measuring devices for the state of New Mexico shall be the same as adopted by the national conference on weights and measures as set forth in *national institute of standards and technology (NIST) handbook 44*, as revised.

[7/1/97; 19.15.103.9 NMAC - Rn, 19 NMAC 15.103.9, 05/29/09]

19.15.103.10 [RESERVED]

PART 104: STANDARD SPECIFICATIONS/MODIFICATIONS FOR PETROLEUM PRODUCTS

19.15.104.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

[7/1/97; 19.15.104.1 NMAC - Rn & A, 19 NMAC 15.104.1, 05/29/09]

19.15.104.2 SCOPE:

All parties involved in the manufacture or sale of petroleum products as defined in the Petroleum Products Standards Act.

[7/1/97; 19.15.104.2 NMAC - Rn, 19 NMAC 15.104.2, 05/29/09]

19.15.104.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.

[7/1/97; A, 3/1/98; 19.15.104.3 NMAC - Rn, 19 NMAC 15.104.3, 05/29/09]

19.15.104.4 DURATION:

Permanent.

[7/1/97; 19.15.104.4 NMAC - Rn, 19 NMAC 15.104.4, 05/29/09]

19.15.104.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 19.15.104.5 NMAC - Rn, 19 NMAC 15.104.5, 05/29/09]

19.15.104.6 OBJECTIVE:

This part establishes the specifications and test methods for petroleum products sold or offered for sale in New Mexico that are not addressed by the American society for testing and materials (ASTM) or society of automotive engineers (SAE). Establishes modifications and exceptions to ASTM and SAE standard specifications and test methods for petroleum products.

[7/1/97; 19.15.104.6 NMAC - Rn, 19 NMAC 15.104.6, 05/29/09]

19.15.104.7 DEFINITIONS:

A. "Director" means the director of the New Mexico department of agriculture.

B. "Lead substitute" means any substance blended with unleaded gasoline and proportioned to provide the valve seat protection provided by at least 0.05 gram lead per U.S. gallon.

[7/1/97; 19.15.104.7 NMAC - Rn, 19 NMAC 15.104.7, 05/29/09]

19.15.104.8 [RESERVED]**19.15.104.9 MODIFICATIONS TO ASTM STANDARD SPECIFICATION FOR AUTOMOTIVE SPARK-IGNITION ENGINE FUEL:**

A. Applications for temporary exceptions to vapor pressure and vapor liquid ratio specifications may be made to the director. The director may grant exemptions at his sole discretion, when said applications contain evidence satisfactory to the director that outlets marketing gasoline in New Mexico cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available.

B. Minimum levels of lead substitutes shall be as follows:

- (1) Phosphorus - 0.005 grams per U.S. gallon.
- (2) Sodium - 0.012 grams per U.S. gallon.
- (3) Manganese - 0.032 grams per U.S. gallon.

C. Test methods for the determination of the above quantities which do not have ASTM or SAE methods shall be as follows: Sodium - NMDA Method 93-1 (atomic absorption).

D. The director may determine a minimum variance between posted octane and octane determined by near infra-red spectrophotometry at which enforcement actions will be taken. Enforcement actions may be taken when it is determined by the petroleum standards laboratory that the variance between the (R+M)/2 octane as determined by near infra-red spectrophotometry and the posted octane number exceeds two (2) octane units.

E. A vapor pressure increase not exceeding one pound per square inch shall be allowed for gasoline-alcohol blends in excess of one (1) volume percent alcohol.

F. Vapor pressure and vapor liquid ratio seasonal specification may be extended for a maximum period of fifteen (15) days, if the director determines an extension is needed, to allow for the disbursement of old stocks.

G. Brake fluid: The specifications, test methods and apparatus for brake fluid shall be those established in the federal *motor vehicle safety standard DOT MVSS-116*.

[7/1/97; 19.15.104.9 NMAC - Rn, 19 NMAC 15.104.9, 05/29/09; A, 08/16/10]

19.15.104.10 [RESERVED]

PART 105: LABELING REQUIREMENTS FOR PETROLEUM PRODUCTS

19.15.105.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007.

[7/1/97; 19.15.105.1 NMAC - Rn & A, 19 NMAC 15.105.1, 05/29/09]

19.15.105.2 SCOPE:

All retailers of petroleum products as defined by the Petroleum Products Standards Act.

[7/1/97; 19.15.105.2 NMAC - Rn, 19 NMAC 15.105.2, 05/29/09]

19.15.105.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.

[7/1/97; A, 3/1/98; 19.15.105.3 NMAC - Rn, 19 NMAC 15.105.3, 05/29/09]

19.15.105.4 DURATION:

Permanent.

[7/1/97; 19.15.105.4 NMAC - Rn, 19 NMAC 15.105.4, 05/29/09]

19.15.105.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 19.15.105.5 NMAC - Rn, 19 NMAC 15.105.5, 05/29/09]

19.15.105.6 OBJECTIVE:

This part addresses the labeling of petroleum products sold or offered for sale in New Mexico as defined by the Petroleum Products Standards Act, and is in addition to other legal labeling requirements.

[7/1/97; 19.15.105.6 NMAC - Rn, 19 NMAC 15.105.6, 05/29/09]

19.15.105.7 DEFINITIONS:

A. "Director" means the director of the New Mexico department of agriculture.

B. "Lead substitute" means any substance blended with unleaded gasoline and proportioned to provide the valve seat protection provided by at least 0.05 gram lead per U.S. gallon.

[7/1/97; 19.15.105.7 NMAC - Rn, 19 NMAC 15.105.7, 05/29/09]

19.15.105.8 [RESERVED]

19.15.105.9 DISPENSER LABELING:

When any petroleum product is sold from a retail dispenser, the dispenser shall bear on all faces and located as near the customer readout as possible, the following:

A. A label stating the grade or type of the product in letters not less than one (1) inch in height in appropriate stroke, and in contrasting color to its associated background.

B. On gasoline-alcohol blends in excess of one (1) volume percent alcohol, a label with letters not less than one-half (1/2) inch in height in appropriate stroke, and in contrasting color to its associated background, stating the type of alcohol used for blending.

C. On gasoline blended with lead substitute additives, a label with letters not less than one-half (1/2) inch in height and in appropriate stroke, in contrasting color to its associated background, stating the fuel contains a lead substitute. The active ingredient of the lead substitute must either be a part of the label or be available at the location of the dispenser.

D. An octane posting label on any gasoline dispenser. In no case shall the posted value be greater than the actual $(R+M)/2$ octane.

[7/1/97; 19.15.105.9 NMAC - Rn, 19 NMAC 15.105.9, 05/29/09]

19.15.105.10-19.15.105.14 [RESERVED]

PART 106: OCTANE POSTING REQUIREMENTS

19.15.106.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007.

[7/1/97; 19.15.106.1 NMAC - Rn & A, 19 NMAC 15.106.1, 05/29/09]

19.15.106.2 SCOPE:

All parties involved in the manufacture, distribution and sale of gasoline.

[7/1/97; 19.15.106.2 NMAC - Rn, 19 NMAC 15.106.2, 05/29/09]

19.15.106.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.

[7/1/97; A, 3/1/98; 19.15.106.3 NMAC - Rn, 19 NMAC 15.106.3, 05/29/09]

19.15.106.4 DURATION:

Permanent.

[7/1/97; 19.15.106.4 NMAC - Rn, 19 NMAC 15.106.4, 05/29/09]

19.15.106.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 19.15.106.5 NMAC - Rn, 19 NMAC 15.106.5, 05/29/09]

19.15.106.6 OBJECTIVE:

This part establishes the requirements for octane rating, certification and posting for automotive spark ignition engine fuel, hereafter called gasoline.

[7/1/97; 19.15.106.6 NMAC - Rn, 19 NMAC 15.106.6, 05/29/09]

19.15.106.7 DEFINITIONS:

[RESERVED]

19.15.106.8 [RESERVED]**19.15.106.9 REQUIREMENTS:**

All gasoline sold in New Mexico shall have its octane rating determined, certified and properly posted. The requirements can only be met by complying with the regulations found in 16 CFR, Part 306 Automotive Fuel Ratings, Certification and Posting.

[7/1/97; 19.15.106.9 NMAC - Rn, 19 NMAC 15.106.9, 05/29/09]

19.15.106.10 [RESERVED]**PART 107: APPLYING ADMINISTRATIVE PENALTIES****19.15.107.1 ISSUING AGENCY:**

New Mexico State University, New Mexico Department of Agriculture.

MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007.

[7/1/97; 19.15.107.1 NMAC - Rn & A, 19 NMAC 15.107.1, 05/29/09]

19.15.107.2 SCOPE:

All parties involved in the manufacture, distribution and sale of petroleum products as defined by the Petroleum Products Standards Act.

[7/1/97; 19.15.107.2 NMAC - Rn, 19 NMAC 15.107.2, 05/29/09]

19.15.107.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.

[7/1/97; A, 3/1/98; 19.15.107.3 NMAC - Rn, 19 NMAC 15.107.3, 05/29/09]

19.15.107.4 DURATION:

Permanent.

[7/1/97; 19.15.107.4 NMAC - Rn, 19 NMAC 15.107.4, 05/29/09]

19.15.107.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 19.15.107.5 NMAC - Rn, 19 NMAC 15.107.5, 05/29/09]

19.15.107.6 OBJECTIVE:

This part provides for the assessment of administrative penalties for violations of the Petroleum Products Standards Act or rules adopted under the act and specifies the appeal process.

[7/1/97; 19.15.107.6 NMAC - Rn, 19 NMAC 15.107.6, 05/29/09]

19.15.107.7 DEFINITIONS:

- A. "Department" means the New Mexico department of agriculture.
- B. "Director" means the director of the New Mexico department of agriculture.
- C. "Division director" means the director of the division of standards and consumer services within the New Mexico department of agriculture.
- D. "Inspector" means an individual employed by the New Mexico department of agriculture who, under the direction of the director, is granted the same authority as the

director for administration of the Petroleum Products Standards Act (PPSA) and associated rules.

[7/1/97; 19.15.107.7 NMAC - Rn, 19 NMAC 15.107.7, 05/29/09]

19.15.107.8 [RESERVED]

19.15.107.9 ASSESSING PENALTIES:

The assessment of administrative penalties will be used as an intermediate step between stop sale/stop use orders and court action, or when stop sale/stop use orders are not appropriate or have proven to be ineffective in resolving a problem, and not as a daily punitive enforcement tool. When a duly authorized agent of the director finds, in his judgment, that a person has violated a provision of law or rules adopted pursuant to law, he shall notify the person in writing that the department intends to assess a penalty in accordance with the provisions of this rule. Such penalty may be in addition to or in lieu of administrative actions, such as stop sale orders or stop use orders. The department also reserves the right to file criminal charges according to the provisions of the laws administered by the department.

A. The inspector shall notify his division director, through his immediate supervisor, of the proposed penalty. The division director shall review the facts in the case, and may request additional information. If the division director determines there should be no penalty assessed, the alleged violator shall be notified in writing.

B. If the division director, after careful review and consideration, determines there should be a penalty assessed, he shall make recommendation to the director as to the amount and nature of the penalty. The director shall review the facts in the case, and may request additional information. If the director determines there should be no penalty, the alleged violator shall be notified in writing by the division director. If the director determines a penalty is warranted by the facts in the case, he shall notify the alleged violator of the amount and nature of the penalty. In making his determination as to the nature and amount of penalty, the director shall be guided by Sections 10, 11, 12, 13, and 16 of this part.

[7/1/97; 19.15.107.9 NMAC - Rn, 19 NMAC 15.107.9, 05/29/09]

19.15.107.10 CAUSE OF VIOLATION:

A. LINE 1, APPLICABLE TABLE (Classes of Violations, Section 13): Lack of Knowledge - When the person who has committed the violation was not aware of the statutory requirements, the penalty shall be determined from Line 1, Section 16.

B. LINE 2, APPLICABLE TABLE (Classes of Violations, Section 13): Negligence - When the violation is due to negligence, the penalty shall be determined from Line 2, Section 16.

C. LINE 3, APPLICABLE TABLE (Classes of Violations, Section 13): Willful - When a person has willfully committed a violation, or has committed the same violation three or more times within a twelve (12) month period of time, all violations after the second violation will be construed to be willful and the penalty shall be determined from Line 3, Section 16.

[7/1/97; 19.15.107.10 NMAC - Rn, 19 NMAC 15.107.10, 05/29/09]

19.15.107.11 GRAVITY OF VIOLATION:

A. Factors: Any one of the following factors may be considered in determining the gravity of a violation.

- (1) Potential monetary consequences.
- (2) Potential for personal injury.
- (3) Potential for property damage.
- (4) Degree of inconvenience or deception to a buyer or prospective buyer.
- (5) Degree of disregard for the law.

B. COLUMN A, APPLICABLE TABLE (Classes of Violations, Section 13): Minimal Gravity - When the violation has a minimal gravity, the penalty shall be determined from Column A, Section 16.

C. COLUMN B, APPLICABLE TABLE (Classes of Violations, Section 13): Moderate Gravity - When the violation has a moderate gravity, the penalty shall be determined from Column B, Section 16.

D. COLUMN C, APPLICABLE TABLE (Classes of Violations, Section 13): Great Gravity - When the violation has a great gravity, the penalty shall be determined from Column C, Section 16.

[7/1/97; 19.15.107.11 NMAC - Rn, 19 NMAC 15.107.11, 05/29/09]

19.15.107.12 FREQUENCY OF VIOLATION:

The more frequently a person commits the same violation, the greater the penalty shall be, as provided by the tables in Section 16.

A. When a person commits the same violation more than three (3) times in twelve (12) months, double the penalty for the third violation shall be assessed.

B. The period of time in determining frequency of violations shall be twelve (12) months. If a person has not committed the same offense in twelve (12) months, the next offense shall be considered as a first offense.

C. A person who has committed the same offense three (3) times in five (5) years shall not be protected by the twelve (12) month limitation and shall be subject to the penalty for the third offense.

[7/1/97; 19.15.107.12 NMAC - Rn, 19 NMAC 15.107.12, 05/29/09]

19.15.107.13 CLASSES OF VIOLATIONS:

A. Table I will apply to the following violations: PPSA Section(s) 57-19-29, (57-19-30 A, B), (57-19-31 B), (57-19-32 A, B, C) 57-19-33.

B. Table II will apply to the following violations: PPSA Section(s) 57-19-29, (57-19-30 A, B), (57-19-32 A, B, C) 57-19-33.

C. Table III will apply to the following violations: PPSA Section(s) 57-19-29, (57-19-30 A), 57-19-33.

[7/1/97; A, 8/1/00; 19.15.107.13 NMAC - Rn, 19 NMAC 15.107.13, 05/29/09]

19.15.107.14 APPEALS:

A. Any person accused of a violation for which a penalty has been assessed may request a hearing before the director to contest the amount of the penalty or whether the violation occurred or both.

B. A request for a hearing before the director must be in writing and must be submitted within fifteen (15) days of notification of penalty.

C. In the event the alleged violator does not feel the department followed the correct procedures in arriving at a decision in his/her case, the individual may ask the district court to review the administrative proceedings and penalty in the manner and to the extent provided by the laws of New Mexico. If the penalty is not set aside or abated, the original penalty is due and payable as provided in Section 16.

[7/1/97; 19.15.107.14 NMAC - Rn, 19 NMAC 15.107.14, 05/29/09]

19.15.107.15 PAYMENT OF PENALTY:

If no hearing is requested, the penalty is due and payable within thirty (30) days of the issuance of notice of the violation. Failure to pay will be considered an additional offense and the penalty originally applied will be doubled.

[7/1/97; 19.15.107.15 NMAC - Rn, 19 NMAC 15.107.15, 05/29/09]

19.15.107.16 PENALTY TABLES:

A. TABLE I

OFFENSE		FIRST OFFENSE			SECOND OFFENSE			THIRD		
		Gravity	A	B	C	A	B	C	A	B
<u>C</u>										
C	1	\$ 0	25.	50.						
A										
U	2	\$25.	50.	75.	50.	75.	100.			
S										
E	3	\$50.	75.	100.	75.	100.	125.	100.	200.	300.

B. TABLE II

OFFENSE		FIRST OFFENSE			SECOND OFFENSE			THIRD		
		Gravity	A	B	C	A	B	C	A	B
<u>C</u>										
C	1	\$ 25.	50.	75.						
A										
U	2	\$ 50.	75.	100.	75.	100.	125.			
S										
E	3	\$100.	150.	200.	200.	250.	300.	300.	400.	500.

C. TABLE III

OFFENSE		FIRST OFFENSE			SECOND OFFENSE			THIRD		
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		Gravity	A	B	C	A	B	C	A	B
		C								
C	1	\$100.	150.	200.						
A										
U	2	\$150.	250.	400.	250.	400.	600.			
S										
E	3	\$200.	400.	600.	400.	600.	800.	600.	800.	1,000.

[7/1/97; 19.15.107.16 NMAC - Rn, 19 NMAC 15.107.16, 05/29/09]

19.15.107.17 [RESERVED]

PART 108: BONDING AND REGISTRATION OF SERVICE TECHNICIANS AND SERVICE ESTABLISHMENTS FOR COMMERCIAL WEIGHING OR MEASURING DEVICES

19.15.108.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005 Telephone, (575) 646-3007.

[7/1/1997; 19.15.108.1 NMAC - Rn, 19 NMAC 15.108.1, A 1/31/2007; A, 5/29/2009]

19.15.108.2 SCOPE:

All parties involved in the servicing or use of commercial weighing or measuring devices.

[7/1/1997; 19.15.108.2 NMAC - Rn, 19 NMAC 15.108.2, 01/31/2007]

19.15.108.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 38, New Mexico Statutes Annotated 1978.

[7/1/1997; 3/1/1998; 19.15.108.3 NMAC - Rn, 19 NMAC 15.108.3, 01/31/2007; A, 11/01/2018]

19.15.108.4 DURATION:

Permanent

[7/1/1997; 19.15.108.4 NMAC - Rn, 19 NMAC 15.108.4, 01/31/2007]

19.15.108.5 EFFECTIVE DATE:

July 1, 1997

[7/1/1997; 19.15.108.5 NMAC - Rn, 19 NMAC 15.108.5, 01/31/2007]

19.15.108.6 OBJECTIVE:

This part provides for the bonding and registration of service technicians and service establishments for commercial weighing or measuring devices.

[7/1/1997; 19.15.108.6 NMAC - Rn, 19 NMAC 15.108.6, 01/31/2007]

19.15.108.7 DEFINITIONS:

A. "Commercial weighing or measuring device" means any device used or employed in establishing the quantity, weight, count, or size of products involving a monetary transaction or in computing any basic charge or payment for services rendered on the basis of weight or measure.

B. "Department" means the New Mexico department of agriculture.

C. "Director" means the director of the New Mexico department of agriculture.

D. "Full service establishment" means any person, firm, or company which for the purpose of direct or indirect benefit installs, services, repairs, or reconditions commercial weighing or measuring devices. (bond required)

E. "Limited service establishment" means any person, firm, or company which installs, services, repairs, or reconditions commercial weighing or measuring devices solely under its ownership. (no bond required)

F. "Service technician" means any individual employed by a full or limited service establishment who installs, services, repairs, or reconditions commercial weighing or measuring devices.

[7/1/1997; 19.15.108.7 NMAC - Rn, 19 NMAC 15.108.7, 01/31/2007; A, 11/01/2018]

19.15.108.8 [RESERVED]

19.15.108.9 REGISTRATION:

A. Prior to installing, servicing, repairing or reconditioning any commercial weighing or measuring device in the state of New Mexico, a service establishment and each service technician employed by, or who is a part of, the service establishment shall be registered with the department. Application for registration shall be on a form supplied by the department with said form duly signed and witnessed. By applying for registration, the principal officer of the service establishment certifies that each service technician employed by the service establishment is fully competent to install, service, repair or recondition the class of devices for which registration is applied; has in their possession or available for use the required certified test standards and all necessary testing equipment, and required reference materials; and has full knowledge of all applicable laws, rules, and regulations. At the request of the department, an applicant shall submit appropriate evidence of qualifications.

B. This part shall not preclude or limit the right and privilege of any individual to install, service, repair, or recondition a commercial device owned by him or his employer. However, without registration, such individual is not permitted to remove an official out-of-order tag or place a device into commercial service.

[7/1/97; 19.15.108.9 NMAC - Rn & A, 19 NMAC 15.108.9, 01/31/2007; A, 11/01/2018]

19.15.108.10 ANNUAL REGISTRATION FEES:

A complete registration will include payment of applicable fees for the registrant and all service technicians as established by an external policy memorandum.

[7/1/1997; 19.15.108.10 NMAC - Rn & A, 19 NMAC 15.108.10, 01/31/2007]

19.15.108.11 BOND REQUIRED:

With the application for full service registration, each service establishment shall furnish a one thousand dollar (\$1,000) surety bond payable to the state of New Mexico, or other proof of financial responsibility as may be prescribed by the director, for faithful performance of duty. A bond or other proof of financial responsibility shall apply to each registered service technician employed by the registered service establishment. The bond or other proof of financial responsibility shall be in a form prescribed by the director.

[7/1/1997; 19.15.108.11 NMAC - Rn, 19 NMAC 15.108.11, 01/31/2007]

19.15.108.12 REGISTRATION CERTIFICATE:

Upon receipt and acceptance of a properly executed application, the required bond (full service only) and calibration certificate, a "registration certificate" shall be issued for a period not to exceed one year. Registration certificates are non-transferable.

[7/1/1997; 19.15.108.12 NMAC - Rn, 19 NMAC 15.108.12, 01/31/2007; A, 11/01/2018]

19.15.108.13 AUTHORITY AND RESPONSIBILITIES OF A REGISTRANT:

A. A registered service technician or registered service establishment shall have the authority to:

- (1)** remove official tested and approved, out-of-order, and not sealed - not legal for trade stickers or tags;
- (2)** break seals on adjustment mechanisms;
- (3)** place into commercial service a device that has been officially rejected;
- (4)** place into commercial service a new or used device.

B. Prior to placing a device into commercial service, it shall be the responsibility of the registered service technician to:

- (1)** install, service, repair or recondition a commercial device in such a manner that the device will comply with applicable requirements set forth in *National Institute of Standards and Technology (NIST) handbook 44*, as revised, and the Petroleum Products Standards Act and associated rules;
- (2)** remove from a commercial device being installed, serviced, repaired, or reconditioned all existing tested and approved, out-of-order or not sealed - not legal for trade stickers or tags;
- (3)** seal all adjustment mechanisms with an appropriate seal;
- (4)** affix to a commercial device installed, serviced, repaired, or reconditioned, a clearly visible tag or sticker containing the registered service establishment name or registration number and date on which installation, service, repair or recondition was performed.

[7/1/1997; 19.15.108.13 NMAC - Rn & A, 19 NMAC 15.108.13, 01/31/2007; A, 11/01/2018]

19.15.108.14 PLACE-IN-SERVICE REPORT:

A. Within five calendar days after a new or used device is installed, or a device that has been officially rejected has been repaired, the original of the properly executed place-in-service report shall be sent to the department. The duplicate copy of the report shall be retained by the registered service establishment and the triplicate copy of the report shall be given to the owner or operator of the device.

B. A place-in-service report for the types of devices specified below shall be accompanied by the registered service establishment's test report which shows that the device was tested and performing within applicable tolerances at the time the device was placed into service:

(1) For meters (liquid measuring devices) with a capacity of more than 20 gallons or 75 liters per minute, a test report shall be required which shows that a volumetric prover of sufficient capacity was used to receive a test draft as specified in *NIST handbook 44* for the device under test.

(2) For devices other than those described above, test reports may be required by the director if it is determined at his discretion that reports are in the best interest of all concerned.

[7/1/1997; 19.15.108.14 NMAC - Rn & A, 19 NMAC 15.108.14, 01/31/2007; A, 11/01/2018]

19.15.108.15 STANDARDS AND TESTING EQUIPMENT:

A. A service technician or service establishment must possess or have available sufficient certified test standards to test in accordance with *NIST handbook 44* requirements the class of devices for which registration is applied. Prior to registration, and at least annually thereafter, all standards and testing equipment used by the registered service technician or registered service establishment shall be examined by the department or another approved laboratory and a calibration certificate issued for all standards and testing equipment found to be acceptable. A copy of the calibration certificate for all standards and testing equipment used by the registered service technician or registered service establishment shall accompany the registration application.

B. A registered service technician or registered service establishment shall not use in installing, servicing, repairing, or reconditioning a commercial device any standards or testing equipment that has not been certified.

[7/1/1997; 19.15.108.15 NMAC - Rn & A, 19 NMAC 15.108.15, 01/31/2007; A, 11/01/2018]

19.15.108.16 REVOCATION OF REGISTRATION CERTIFICATE:

The director may suspend or revoke a registration certificate in accordance with the procedures set forth in New Mexico department of agriculture administrative procedures and remedies for enforcement actions internal policy.

[7/1/1997; 19.15.108.16 NMAC - Rn, 19 NMAC 15.108.16, 01/31/2007]

19.15.108.17 LIST OF REGISTERED SERVICE ESTABLISHMENTS:

The department shall maintain and supply upon request a list of the registered service establishments.

[7/1/1997; 19.15.108.17 NMAC - Rn, 19 NMAC 15.108.17, 01/31/2007]

PART 109: NOT SEALED NOT LEGAL FOR TRADE

19.15.109.1 ISSUING AGENCY:

New Mexico State University, New Mexico Department of Agriculture.

MSC 3189, P. O. Box 30005, Las Cruces, New Mexico 88003-8005, Telephone: (575) 646-3007.

[7/1/97; 19.15.109.1 NMAC - Rn & A, 19 NMAC 15.109.1, 05/29/09]

19.15.109.2 SCOPE:

All parties involved in the servicing or use of commercial weighing or measuring devices.

[7/1/97; 19.15.109.2 NMAC - Rn, 19 NMAC 15.109.2, 05/29/09]

19.15.109.3 STATUTORY AUTHORITY:

Granted to the board of regents of New Mexico state university under the Petroleum Products Standards Act, Chapter 57, Article 19, Sections 25 through 37, New Mexico Statutes Annotated 1978.

[7/1/97; A, 3/1/98; 19.15.109.3 NMAC - Rn, 19 NMAC 15.109.3, 05/29/09]

19.15.109.4 DURATION:

Permanent.

[7/1/97; 19.15.109.4 NMAC - Rn, 19 NMAC 15.109.4, 05/29/09]

19.15.109.5 EFFECTIVE DATE:

July 1, 1997

[7/1/97; 19.15.109.5 NMAC - Rn, 19 NMAC 15.109.5, 05/29/09]

19.15.109.6 OBJECTIVE:

This part establishes the conditions and circumstances under which a weighing or measuring device may be marked "NOT SEALED - NOT LEGAL FOR TRADE."

[7/1/97; 19.15.109.6 NMAC - Rn, 19 NMAC 15.109.6, 05/29/09]

19.15.109.7 DEFINITIONS:

- A. "Department" means the New Mexico department of agriculture.
- B. "Director" means the director of the New Mexico department of agriculture.
- C. "Registered service establishment" means any person, firm, or company registered with the department for the purpose of installing, servicing, repairing or reconditioning commercial weighing or measuring devices.

[7/1/97; 19.15.109.7 NMAC - Rn, 19 NMAC 15.109.7, 05/29/09]

19.15.109.8 [RESERVED]

19.15.109.9 CONDITIONS:

Any weighing or measuring device not used for commercial purposes in the state of New Mexico, may be marked "NOT SEALED - NOT LEGAL FOR TRADE" if:

- A. the owner of the device declares in writing that the device is not used for commercial purpose;
- B. the director determines that a device is not being used for commercial purpose through abandonment, location or condition; or
- C. the director determines that a device cannot be used commercially because of its construction or design.

[7/1/97; 19.15.109.9 NMAC - Rn, 19 NMAC 15.109.9, 05/29/09]

19.15.109.10 PROHIBITED USE:

- A. Any device marked or tagged as "NOT SEALED - NOT LEGAL FOR TRADE" pursuant to this part, shall not be used for commercial purpose nor shall the tag or mark be removed until it has been properly placed in service by the department or a registered service establishment.
- B. Such inspection by the department will be at the request of the device owner and may require the payment of a fee based on current fee schedules.

[7/1/97; 19.15.109.10 NMAC - Rn, 19 NMAC 15.109.10, 05/29/09]

19.15.109.11 [RESERVED]

PART 110: BIODIESEL FUEL SPECIFICATION, DISPENSERS, AND DISPENSER LABELING REQUIREMENTS [REPEALED]

[This part was repealed on November 1, 2018]

PART 111: E85 FUEL SPECIFICATION, DISPENSERS, AND DISPENSER LABELING REQUIREMENTS [REPEALED]

[This part was repealed on November 1, 2018]

PART 112: RETAIL NATURAL GAS (CNG / LNG) REGULATIONS [REPEALED]

[This part was repealed on November 1, 2018]

19.15.112 NMAC - Retail Natural Gas (CNG/LNG) Regulations, filed 5/14/2015

Repealed effective 11/1/2018.

CHAPTER 16: SOLAR ENERGY [RESERVED]

CHAPTER 17: WEATHER MODIFICATION

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: WEATHER CONTROL AND PRECIPITATION ENHANCEMENT

19.17.2.1 ISSUING AGENCY:

New Mexico Interstate Stream Commission.

[19.17.2.1 NMAC - N, 01-15-2005]

19.17.2.2 SCOPE:

This rule governs the licensing and application process for weather control operations, research, and development pursuant to the New Mexico Weather Control Act.

[19.17.2.2 NMAC - N, 01-15-2005]

19.17.2.3 STATUTORY AUTHORITY:

Section 75-3-1 et seq., NMSA 1978, as amended by House Bill 78, 2003 Legislative Session.

[19.17.2.3 NMAC - N, 01-15-2005]

19.17.2.4 DURATION:

Permanent.

[19.17.2.4 NMAC - N, 01-15-2005]

19.17.2.5 EFFECTIVE DATE:

January 15, 2005, unless a later date is cited at the end of a section.

[19.17.2.5 NMAC - N, 01-15-2005]

19.17.2.6 OBJECTIVE:

The objective of this rule is to provide a consistent licensing and application process for weather control activities, establish additional rules and procedures that govern proceedings before the commission, and to insure the expeditious and orderly handling of all administrative matters consistent with all requirements of state, tribal and federal law.

[19.17.2.6 NMAC - N, 01-15-2005]

19.17.2.7 DEFINITIONS:

Unless defined below or in a specific section, all other words used in these regulations shall be given their customary and accepted meanings.

A. "Applicant" means any individual, firm, partnership, association, company, corporation, business or public trust, federal agency, state agency, the state or any political subdivision thereof, municipalities and any other duly constituted legal entity that applies for a license.

B. "Application" means an application for a license submitted by an applicant to the commission.

C. "Apparatus" means any device used with the intention of producing artificial changes in the composition, motions and resulting behavior of the atmosphere.

D. "Commission" means the New Mexico interstate stream commission.

E. "Hearing participant" means an applicant, any person or entity filing a protest of an application or the commission's staff.

F. "License" means a specific written authorization issued by the commission to an operator that has met specified qualifications authorizing such operator to engage in operations pursuant to a specified project scope in the state of New Mexico.

G. "Operation" means the performance of any weather control activity undertaken for the purpose of producing or attempting to produce any form or modifying effect upon the weather in the state. An operation does not include:

(1) research, development and experimental weather control activities by state or federal agencies or institutions of higher learning, expected to last no longer than six (6) months;

(2) laboratory research and experiments;

(3) activities engaged in for purposes other than producing or attempting to produce any form of modifying effect upon the weather;

(4) emergency activities conducted by public entities for the purposes of fire control; and

(5) religious or cultural ceremonies, rites or acts that do not utilize artificial methods to alter weather phenomena.

H. "Operations area" means the area in which an operation is conducted to produce or attempt to produce the desired effects within the target area.

I. "Operations director" means the person, identified in a valid license, who has the knowledge, experience and qualifications necessary to design, manage, evaluate and take overall responsibility for an operation.

J. "Operator" means any individual, firm, partnership, association, company, corporation, business or public trust, federal agency, state agency, the state or any political subdivision thereof, municipalities and any other duly constituted legal entity, as identified in a license.

K. "Research and development" means the exploration, field experimentation and extension of investigative findings and theories of a scientific or technical nature for purposes that may lead to practical application for experimental or demonstration purpose, including the experimental production and testing of models, agents, apparatus and processes.

L. "Sponsor" means any person who enters into an agreement with an operator to support weather control activities.

M. "Suspension criteria" means criteria developed for a specific operation to avoid weather control during undesirable periods. Examples include excess snow pack accumulation, excess rainfall forecasts and national weather service forecasts of severe weather.

N. "Target area" means the surface area within which the effects of an operation are expected.

O. "Weather control" means changing or attempting to change by artificial methods, the composition, motions and resulting behavior of the atmosphere.

P. "Weather control committee" means a three-member panel comprised of commission members or commission staff as designated by the commission.

Q. "Weather control hypothesis" means a statement of expectations, which systematically describes certain assumptions and predicts an outcome in terms of operation effects, given specifics such as seeding mode and a project location and duration.

[19.17.2.7 NMAC - N, 01-15-2005]

19.17.2.8 VIOLATIONS AND PENALTIES:

As provided by Sections 75-3-15, NMSA 1978, any person violating any of the provisions of the Weather Control Act or this rule shall be guilty of a misdemeanor and a continuing violation shall be punishable as a separate offense for each day during which a violation occurs.

[19.17.2.8 NMAC - N, 01-15-2005]

19.17.2.9 CERTAIN LIABILITIES NOT IMPOSED OR RIGHTS AFFECTED:

Nothing in the Weather Control Act or this rule shall be construed to impose or accept any liability or responsibility on the part of New Mexico or any state officials, agents or employees for any weather control activities of any private person or group, or to affect in any way any contractual, tortuous or other legal or equitable rights, duties or liabilities between any private persons or groups.

[19.17.2.9 NMAC - N, 01-15-2005]

19.17.2.10 COMMISSION AS OPERATOR:

The commission may administer or carry on operations, subject to this rule, by its own officials, agents or employees.

[19.17.2.10 NMAC - N, 01-15-2005]

19.17.2.11 WEATHER CONTROL COMMITTEE:

In the performance of the functions authorized in the Weather Control Act, the commission may establish a weather control committee to advise and make recommendations to the commission concerning licenses and other matters as provided in this rule. Members of the commission or its staff may serve on this committee. The commission shall appoint one member of the committee chairman or chairwoman (chair). In the event that the commission does not establish a weather control committee, all duties of the weather control committee specified in this rule shall be borne by the commission.

[19.17.2.11 NMAC - N, 01-15-2005]

19.17.2.12 OTHER JURISDICTIONS:

Operations conducted in the state which are intended to affect the weather in a target area in another state are prohibited except upon full compliance with the laws of that state as well as the provisions of the Weather Control Act and this rule.

[19.17.2.12 NMAC - N, 01-15-2005]

19.17.2.13 LICENSE REQUIRED:

Any person desiring to engage in operations in the state of New Mexico shall be required to make application for and receive a license prior to commencing operations.

[19.17.2.13 NMAC - N, 01-15-2005]

19.17.2.14 LICENSE APPLICATION PROCEDURES AND REQUIREMENTS:

In order to apply for a license an applicant must complete the part A application demonstrating professional qualifications for conducting operations and must complete part B of the application presenting a detailed project scope of the operation to be conducted.

A. Part A of the application includes the following requirements:

(1) an application fee of one hundred dollars (\$100.00) with the completed application form;

(2) designation of an operations director having the minimum professional and education requirements of two (2) years of supervisory experience with weather control projects and one of the following four (4) additional requirements:

(a) a masters of science degree in meteorology or related field; or

(b) a bachelor's degree in meteorology, plus two (2) additional years of recent experience in weather control field operations within the last five (5) years; or

(c) a bachelor's degree in engineering, mathematics or applicable physical or natural sciences including at least twenty-five (25) semester hours of meteorological course work plus two (2) additional years of experience in weather control field operations within the last five (5) years; or

(d) a bachelor's degree in meteorology and a manager certification by the weather modification association;

(3) a resume of the operations director and a resume from each individual who will significantly participate in the operation; each resume shall demonstrate sufficient knowledge and competence in the field of meteorology and cloud physics; if the operator is an organization, any individual and individuals who significantly participate in the operation shall meet the requirements of this subparagraph;

(4) proof of financial responsibility (see 19.17.2.15 NMAC).

B. Part B of the application shall include identification of the following:

(1) the name and address of the applicant;

(2) name and address of the operations director;

(3) the sponsor(s) on whose behalf(s) the operation is to be conducted;

(4) the operations area and the target area;

(5) the weather control hypothesis, and a detailed operational plan for implementing the hypothesis;

(6) the intended effect of the operation;

(7) the materials and apparatus to be used in conducting the operation;

(8) suspension criteria;

(9) the period of operation, including starting and ending date (the operation need not be continuous);

(10) a plan, acceptable to the commission, for quantitatively and critically assessing the effects of the proposed operation;

(11) a completed notice of intention for license; a completed notice of intention shall accompany each application and shall be filed on a form furnished by the commission; and

(12) any additional information as the commission or the weather control committee may deem appropriate.

C. Part A and Part B of the application shall be submitted at least one hundred twenty (120) days prior to the proposed commencement date of the operation for which the license is being sought, to allow time to publish the notice of intention, hold a hearing in the event the application is protested or if the applicant requests a hearing after the commission's staff recommends license denial, review the operation information presented, and allow action by the commission prior to the proposed commencement date of the operation. The commission may waive the one hundred twenty (120) day period in part or whole for good cause and at the sole discretion of the commission.

D. A license is neither assignable nor transferable.

E. Any operation for which a license is granted shall be conducted under the personal direction of the operations director listed on the license.

F. The applicant shall notify the commission's staff in writing within fifteen (15) days of any substantive changes to any of the information submitted in the application.

[19.17.2.14 NMAC - N, 01-15-2005]

19.17.2.15 FINANCIAL RESPONSIBILITY REQUIREMENT UNDER LICENSE:

All applicants shall have on file, prior to license issuance, proof of ability to respond to damages for liability that might reasonably be attached to or result from any operations. This proof shall be in the form of a surety bond in the amount of one million dollars (\$1,000,000) minimum for each license to be issued or such other proof of financial responsibility as the commission or the weather control committee may require.

[19.17.2.15 NMAC - N, 01-15-2005]

19.17.2.16 PRELIMINARY RECOMMENDATION BY COMMISSION STAFF:

Within thirty (30) days of receipt of a completed application, commission staff shall evaluate the application for the purpose of making a recommendation to the weather control committee. The applicant shall be notified in writing of the commission staff's recommendation.

A. Recommendation of approval:

(1) Commission staff may recommend approval of the application only if the operation meets all requirements of this rule, is in conformity with all applicable provisions of New Mexico law and promotes the public welfare.

(2) If the commission staff recommends approval, it shall publish a notice of intention pursuant to 19.17.2.17 NMAC.

B. Recommendation of denial:

(1) The commission's staff shall recommend a denial of the application if the application does not meet the criteria for approval set forth in the Weather Control Act and this rule.

(2) If the commission's staff determines that it will recommend denial of the application to the commission, the staff shall notify the applicant within ten (10) days of such determination by mail. The applicant has fifteen (15) days from the date of mailing to request further consideration by the weather control committee pursuant to 19.17.2.18 NMAC. An applicant's failure to request further consideration under this paragraph shall be deemed as intention to abandon the application.

[19.17.2.16 NMAC - N, 01-15-2005]

19.17.2.17 PUBLICATION OF NOTICE OF INTENTION FOR LICENSE:

The commission staff shall publish the notice of intention once a week for two (2) consecutive weeks in a newspaper or newspapers having general circulation in each county or counties of the proposed operations area and target area. The applicant may either pay publication costs directly to the publisher or may pay such costs to the commission in advance of publication.

[19.17.2.17 NMAC - N, 01-15-2005]

19.17.2.18 FURTHER CONSIDERATION BY THE WEATHER CONTROL COMMITTEE:

A. The weather control committee shall consider the merits of an application and otherwise determine if the requirements of the Weather Control Act and this rule have been met and may hold a hearing on such application at its discretion or in the event of either:

(1) written protest of the application by at least five (5) interested parties received in the offices of the commission (address in Paragraph (2) of Subsection A of 19.17.2.18 NMAC herein) within ten (10) days after last publication of the notice of intention; or

(2) written request by the applicant in accordance with Paragraph (2) of Subsection B of 19.17.2.16 NMAC; commission address for mailing of written protests of any application: Attn: Weather Control Committee, New Mexico Interstate Stream Commission, Post Office Box 25102 Santa Fe, New Mexico 87504-5102.

B. All hearings may be held before the weather control committee, at the commission's sole discretion.

C. Notice of hearing. At least twenty (20) days prior to a hearing by the weather control committee or the commission on an application, the commission's staff shall notify in writing all hearing participants of the hearing date and location. If an applicant requests a hearing after a recommendation of denial by commission staff, the applicant shall first publish the notice of intention in accordance with 19.17.2.17 NMAC of this rule.

D. Hearing is optional. At the discretion of the weather control committee, it may elect to provide a weather control committee recommendation in accordance with Subsection H of 19.17.2.19 NMAC of this rule without a hearing.

[19.17.2.18 NMAC - N, 01-15-2005]

19.17.2.19 HEARING PROCEDURES:

A. Weather control committee chair. The chair of the weather control committee shall preside over hearings on any contested application. The chair, with advice and consent from the other weather control committee members, shall have the power to regulate the hearing; to perform all acts and take all measures necessary to conduct such hearing, including the authority to administer oaths and affirmations; to explain the events and requirements of the hearing process to all hearing participants; to hear all relevant issues during the hearing; to request and receive a proper administrative record and to otherwise regulate the conduct and course of the hearing. The chair may limit testimony to those matters reasonably noticed by the application or by any letter of protest filed pursuant to Paragraph (1) of Subsection A of 19.17.2.18 NMAC of this rule.

B. Pre-hearing discovery. No pre-hearing discovery shall be required by or from any hearing participant. At least ten (10) days prior to the hearing, the weather control committee shall make available to any hearing participant any application to be considered at the hearing, and any protest thereof, previously filed with the commission.

C. Location of hearings. The weather control committee shall hold all hearings in Santa Fe, unless the weather control committee decides in its sole discretion that a hearing should be held elsewhere to facilitate participation.

D. Testimony and evidence. During a hearing, evidence shall be presented only by (1) the applicant, (2) any person filing a letter of protest filed pursuant to Paragraph (1) of Subsection A of 19.17.2.18 NMAC of this rule, and (3) the commission's staff. No

other person or entity may give evidence or argument. Any person or entity giving evidence or argument must provide the commission and all other hearing participants with a copy of any document or exhibit submitted as evidence. The New Mexico rules of evidence are not binding on presentation of evidence. The hearing shall be taped or transcribed.

E. Administrative notice. The weather control committee may take administrative notice of all judicially cognizable facts (i.e., all facts that may be noticed by a judge), and of generally recognized technical or scientific facts, published reports of governmental and state agencies and studies and conclusions within the commission's specialized knowledge.

F. Continuance/postponement. At the discretion of the chair, a scheduled hearing may be continued with notice, prior the hearing or may be recessed during the hearing and reconvened at a later date. Any statement of continuance or recess shall be made a part of the record. A hearing participant may request postponement or continuance of a hearing for good cause shown subject to approval by the chair. Grounds for postponement or continuance may include, but are not limited to, the unavailability of witnesses, unfair hardship by a hearing participant or economic use of commission resources.

G. Weather control committee recommendations. Within thirty (30) days after the weather control committee either completes its hearing deliberations or elects not to hold a hearing pursuant to Subsection D of 19.17.2.18 NMAC, it shall deliver to the commission a recommended decision including findings of fact and conclusions of law. The commission's staff shall serve a copy on each hearing participant by U.S. first-class mail, postage prepaid within ten (10) days of issuance thereof.

H. Final decision. At the next regularly scheduled commission meeting occurring at least fifteen (15) days after the weather control committee serves its recommended decision on the hearing participants, the commission shall consider the recommended decision on the hearing participants, the commission shall consider the recommended decision and issue a final decision or remand to the weather control committee for further administrative proceedings.

I. Administrative record. The administrative record shall include or otherwise reflect, at a minimum, all filings with the commission, all staff recommendations, all evidence received or considered, offers of proof and objections and rulings thereon, any recommended decision including findings of fact and conclusions of law submitted by the weather control committee, the transcript or tape of the oral proceedings as well as any decision, opinion or report by the commission.

[19.17.2.19 NMAC - N, 01-15-2005]

19.17.2.20 EXPIRATION AND RENEWAL OF LICENSE:

Each license shall expire twelve (12) months after the issuance date thereof. Such license may, upon application, be renewed if the operator fulfills all the necessary qualifications and requirements stated in this rule. The application for renewal shall be accompanied by the application fee and by any appropriate modifications to the application. A license shall not be renewed if the applicant no longer qualifies for such license, if the license is no longer in compliance with applicable state, tribal or federal law, if renewal of the license does not promote the public welfare or if the applicant has violated any provisions of the Weather Control Act or this rule. Thirty (30) days after the applicant requests a renewal and submits any changes to the application, the weather control committee shall recommend to the commission whether to renew a license. If there are any significant changes to the application, the weather control committee shall first give notice and opportunity for hearing as provided in Paragraph (2) of Subsection A of 19.17.2.16 NMAC of this rule before renewing any license.

[19.17.2.20 NMAC - N, 01-15-2005]

19.17.2.21 LICENSE SUSPENSION, MODIFICATION OR REVOCATION:

A. The commission may suspend or revoke or refuse to renew a license for any one or any combination of the following causes:

- (1) incompetence;
- (2) dishonest practice;
- (3) false or fraudulent representation in obtaining a license under this rule;
- (4) failure to comply with any of the provisions of the Weather Control Act, this rule or applicable state, tribal or federal law; or
- (5) aiding other persons who fail to comply with any of the provisions of the Weather Control Act, this rule or applicable state, tribal or federal law.

B. When it appears to the weather control committee that a threat to life or property exists or is imminent, or the commission or its staff has been notified of a probable impending emergency or the operation fails to maintain compliance with this rule, the weather control committee may summarily order the operator to immediately suspend, terminate or modify all operations within the area affected by such operations.

(1) Notification of suspension, modification or termination of an operation shall be given in the most expeditious manner under the circumstances.

(2) Regardless of the manner of initial notification, it is to be followed within two (2) business days by facsimile or a certified letter of particulars addressed to the licensed holder stating the time and place for holding a hearing on the question of taking permanent action to modify or cancel the license.

(3) In the event that the weather control committee summarily suspends or modifies a license, it shall issue a report to the commission for its consideration at its next regularly scheduled meeting. The commission may hold an informal hearing on the matter to allow any person who would qualify as a hearing participant a reasonable opportunity to be heard on this issue.

(4) Whether or not the commission reinstates operations, and when such reinstatement may take place, will depend, among other things, upon the conditions that develop within the operations area and target area and if the requirements of the Weather Control Act, this rule, applicable state, trial and federal law and the commission are met.

(5) The commission or the weather control committee may initiate any necessary actions in a court of competent jurisdiction in the event that the operator fails to adhere to any order under this section.

C. Each license issued will include suspension criteria regarding operations that shall be applied to protect life and property.

D. Failure of the operator to notify the commission's staff of an existing or impending or reasonably foreseeable emergency threat to life or property is grounds for cancellation of the license and immediate termination of the operation.

[19.17.2.21 NMAC - N, 01-15-2005]

19.17.2.22 OPERATION RECORDS:

The operator shall maintain the following records during an operation and provide them to the commission pursuant to 19.17.2.23 NMAC of this rule:

A. Daily log: Each operator must maintain a daily log of weather control activities for each unit of equipment and apparatus used during an operation. The log shall include at a minimum:

- (1) date of weather control activity;
- (2) each aircraft flight track and location of each item or apparatus used during each mission; use of maps is required;
- (3) local time when weather control activity began and ended; for non-continuous activities, the start and end of a total sequence of activity is acceptable;
- (4) amount of time each apparatus is in operational use;
- (5) type of weather control agent/material used in each apparatus;

(6) rate of dispersal and dispersal location of each seeding agent/material during actual use of each apparatus; the information is to be provided both in the form of maps and in computer-readable form for possible subsequent analysis;

(7) total amount of seeding agent/material used; if more than one agent/material is used, list totals for each type of agent separately;

(8) local time when any type of monitoring (e.g., radar) was operational and computer readable archives of monitoring date;

(9) type(s), estimated moisture content and size of cloud(s) modified (i.e., stratiform, isolated cumuliform, organized cumuliform, etc.);

(10) narrative indicating such operational problems as equipment failure, personnel problems, weather conditions, etc.; and

(11) monthly totals from the daily logs listing the following:

(a) days during the month in which operation(s) were conducted;

(b) time of operation(s);

(c) amount of each kind of seeding agent/material used;

(d) average rate of dispersal of each kind of seeding agent/material used;

(e) time of operation of any monitoring equipment; and

(f) days of each type of cloud treated.

B. Weather records. Each operator must obtain and retain copies of all daily precipitation total records available from the national weather service stations in the operations area and target area and from any other reliable sources.

C. Participants. Each operator must keep a current listing of names and addresses of all participants in any operation for which the commission issues the operator a license.

[19.17.2.22 NMAC - N, 01-15-2005]

19.17.2.23 OPERATOR REPORTS:

At a minimum, the operator shall maintain and provide the following reports to the commission's staff:

A. Tri-monthly report. Every ninety (90) days after the commencement of an operation, the operator shall submit a report to the commission that shall consist of:

- (1) a summary of the records prepared under 19.2.7.22 NMAC of this rule;
- (2) a copy of the roster of all participants associated with the operation which was prepared according to Section 22 of this rule; and
- (3) a narrative account of the manner and extent in which the operation did or did not conform to the intended effect as described in Subsection B of 19.17.2.14 NMAC of this rule.

B. Summary report. A summary report on observed results of each operation must be submitted ninety (90) days after conclusion of the operation. These summary reports shall consist of all information required in Subsection A of 19.17.2.23 NMAC, plus a narrative evaluation and quantitative analysis of the operation and its effects on the operations area in form and content acceptable to the commission staff.

C. Reports to sponsors. The operator shall file with the commission a copy of all reports made by the operator to sponsors.

D. Federal reporting. The operator is responsible for complying with all applicable federal reporting requirements as set forth in Public Law 92-205, 15 U.S.C. 330b, as amended, including reporting to the national oceanic and atmospheric administration. The commission's staff maintains a copy of the reporting form required by federal law.

[19.17.2.23 NMAC - N, 01-15-2005]

19.17.2.24 RELEASE OF INFORMATION TO PUBLIC:

All operational information for an operation shall be filed with the commission before such information is released to the public. Scientific and other information concerning an operation shall also be filed with the commission as it becomes available and before being released to the public.

[19.17.2.24 NMAC - N, 01-15-2005]

19.17.2.25 MONITORING:

When an operator conducts an operation in an area where the United States government or its agent is conducting weather control research, then said operator shall submit to monitoring by the United States government or its agent.

[19.17.2.25 NMAC - N, 01-15-2005]

19.17.2.26 LIABILITY:

Except as provided in 19.17.2.8 NMAC and 19.17.2.9 NMAC of this rule, nothing in this rule shall present any person adversely affected by an operation or any research and development activity from recovery damages otherwise available under applicable law.

[19.17.2.26 NMAC - N, 01-15-2005]

19.17.2.27 SUITS TO RECOVER FEES:

The commission shall have power to commence suit for the recovery of any fees due under the provisions of this rule. All fees collected under the provisions of this rule shall inure to the commission.

[19.17.2.27 NMAC - N, 01-15-2005]

19.17.2.28 LIBERAL CONSTRUCTION:

This rule shall be liberally construed to carry out its purpose.

[19.17.2.28 NMAC - N, 01-15-2005]

CHAPTER 18-19: [RESERVED]

CHAPTER 20: FOREST MANAGEMENT

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: TREE HARVESTING AND FOREST REGENERATION [REPEALED]

[This part was repealed on April 10, 2018]

PART 3: RESTRICTIONS FOR FIRE PREVENTION

19.20.3.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Forestry Division.

[12/31/96; Recompiled 12/31/01]

19.20.3.2 SCOPE:

This Part applies to all persons, associations, corporations, units of government and other legal entities, on non-federal and non-municipal lands within the state.

[11/14/79, 12/19/89, 12/31/96; Recompiled 12/31/01]

19.20.3.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the authority granted to the energy, minerals and natural resources department (department) in Section 9-1-5 NMSA 1978 and the forestry division (division) pursuant to Section 68-2-16 and other Sections of the Forest Conservation Act, Section 68-2-1 to 68-2-25 NMSA 1978.

[11/14/79, 12/19/89, 12/31/96; Recompiled 12/31/01]

19.20.3.4 DURATION:

Permanent unless a later date is cited at the end of a section or paragraph.

[12/31/96; Recompiled 12/31/01]

19.20.3.5 EFFECTIVE DATE:

December 31, 1996 [unless a later date is cited at the end of a section.]

[12/31/96; Recompiled 12/31/01]

19.20.3.6 OBJECTIVE:

Whenever warranted by climatic conditions, drought, fire danger, fire frequency, fire behavior or other factors affecting danger of forest fire, the division will initiate actions to prevent forest fires by notifying the public of the fire danger and imposing restrictions governing the use of fire, equipment or personal access to lands when the danger level poses a threat to public safety, life, property and the natural resources of the state. The state forester is the designated representative of the department secretary for the purposes of issuing orders imposing restrictions in order to prevent forest fires and rescinding orders as conditions warrant.

[11/14/79, 12/19/89, 12/31/96; Recompiled 12/31/01]

19.20.3.7 DEFINITIONS:

A. "Areas" means geographic locations in New Mexico where similarities in weather, topography and vegetation exist.

B. "Campfire" means a fire started for cooking, warmth or light outside of a structure.

C. "Closure" means a limitation to access to a given area as well as limiting the use of fire.

D. "Fire danger" means a classification of fire danger as determined by the National Wildfire Danger Rating System. The classes are low, moderate, high, very high and extreme.

E. "Forest fire" means a fire burning uncontrolled on lands covered wholly or in part in timber, brush, grass, grain or other inflammable vegetation.

F. "Human-caused fire" means any fire caused directly or indirectly by a person(s).

G. "Open burning" means burning of crop land, fields, rangeland, debris burning, slash piles, prescribed burning or weed burning.

H. "Open fire" means the use of any cooking, heating or ignition device using natural or artificial fuel that has either an open flame or requires that the heat source be placed physically within the device (e.g., charcoal, cigarette, fireworks).

I. "Order" means a declaration by the state forester of a restriction to prevent or suppress forest fires.

J. "Preparedness" means the state of being ready or prepared for use or action.

K. "Prevention" means all activities concerned with minimizing the incidence of uncontrolled human-caused fires.

L. "Restriction" means a limitation on the use of fire, equipment or other usage of or entry into an area.

M. "Smoking" means the use of a lighted cigarette, cigar, pipe, etc.

N. "Suppression" means all the work of extinguishing or confining a forest fire.

O. "Uncontrolled fire" means any fire which threatens or destroys life, property or natural resources.

[11/14/79, 12/19/89, 12/31/96; Recompiled 12/31/01]

19.20.3.8 RESTRICTIONS:

Whenever warranted by climatic conditions, drought, fire danger, fire frequency, fire behavior or other factors affecting danger of forest fire, the state forester may order restrictions or closures which place limitations on the use of fire or order the immediate extinguishment of fires to help reduce the potential of forest fires as follows:

A. Smoking, Campfires, Open Fires or Equipment Usage: Restrictions on smoking, campfires or open fires may be imposed in specifically defined areas. Use of logging

equipment or other equipment increasing the risk of forest fire may also be limited to specified hours of operation on state and private land.

(1) Smoking may be restricted to designated areas, within structures or within vehicles equipped with ashtrays while on paved or surfaced roads. Open fires or campfires may be restricted to developed campgrounds or in areas designated in writing by the landowner and chimneys of wood burning stoves must be equipped with approved spark arresters; access to land is not limited.

(2) Use of logging equipment may be limited to specified hours of operation by the division.

(3) The state forester may allow exceptions to these restrictions with written notification.

B. Closure: Closures will be imposed in specifically defined areas when widespread drought conditions, extreme fire danger, fire frequency, fire behavior and other factors exist within an area of the state that pose a threat to public safety, life, property and the natural resources of the state. All open fires, open burning and operation of equipment (i.e., chainsaws, cutting torches, welders, etc.) are prohibited without the prior written approval of the state forester. Access to private lands is limited to landowners and persons with the landowners written permission.

[11/14/79, 12/19/89, 12/31/96; Recompiled 12/31/01]

19.20.3.9 IMPLEMENTATION:

Implementation of restrictions or closures will be coordinated between fire management agencies within areas of the state where fire restrictions become necessary to protect public safety, life, property and natural resources from forest fires. The division will provide notice to the public when restrictions are imposed, changed or rescinded.

[12/31/96; Recompiled 12/31/01]

19.20.3.10 PENALTIES:

Violation of this Part is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail not to exceed one year or both for each and every violation pursuant to Section 68-2-17 NMSA 1978.

[12/19/89, 12/31/96; Recompiled 12/31/01]

PART 4: COMMERCIAL TIMBER HARVESTING REQUIREMENTS

19.20.4.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Forestry Division.

[19.20.4.1 NMAC - N, 1/1/2002]

19.20.4.2 SCOPE:

This part applies to persons, partnerships, associations, corporations, and other entities engaged in harvests of commercial forest species on non-municipal or non-federal lands after the effective date except for those harvests permitted in accordance with 19.20.2 NMAC.

[19.20.4.2 NMAC - N, 1/1/2002]

19.20.4.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the authority granted the Energy, Minerals and Natural Resources Department in NMSA 1978, Section 9-1-5 and in the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25.

[19.20.4.3 NMAC - N, 1/1/2002]

19.20.4.4 DURATION:

Permanent.

[19.20.4.4 NMAC - N, 1/1/2002]

19.20.4.5 EFFECTIVE DATE:

January 1, 2002, unless a later date is cited at the end of a section.

[19.20.4.5 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.6 OBJECTIVE:

19.20.4 NMAC's objective is to require appropriate harvesting practices of commercial forest species be conducted in a manner that supports forest practices that assist in forest fire prevention and suppression and the control of forest pests, and maintain and enhance forest health to ensure the continued economic benefits of forests and forest resources to New Mexico.

[19.20.4.6 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.7 DEFINITIONS:

A. "Act" means the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25.

B. "Alternate practice" means a forest practice standard used in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC. The applicant may request to use an alternate practice in the harvest permit application or at a later time. The alternate practice is not effective until the division provides written approval.

C. "Applicant" means the owner.

D. "Basal area" means the cross sectional area of the stem at diameter at breast height or at diameter at root collar of all trees in a stand, generally expressed as square units per unit area (e.g. square feet per acre).

E. "Cessation of harvest activities" means absence of harvesting within a cutting unit for six consecutive days.

F. "Closed road" means a road constructed for the harvest that will be closed upon the harvest's completion.

G. "Commercial forest species" means:

<u>SCIENTIFIC NAME</u>	<u>COMMON NAME</u>
Abies concolor	white fir
Abies lasiocarpa	subalpine fir
Abies lasiocarpa var. arizonica	corkbark fir
Cupressus arizonica	Arizona cypress
Juniperus coahuilensis or erythrocarpa	redberry juniper/rose-fruited juniper
Juniperus deppeana	alligator juniper
Juniperus monosperma	one seed juniper
Juniperus osteosperma	Utah juniper
Juniperus pinchotii	Pinchot juniper/redberry juniper
Juniperus scopulorum	Rocky Mountain juniper
Picea engelmannii	Engelmann spruce
Picea pungens	Colorado blue spruce
Pinus aristata	bristlecone pine
Pinus arizonica	Arizona pine
Pinus cembroides	Mexican piñon
Pinus discolor	border piñon
Pinus edulis	piñon
Pinus engelmannii	Apache pine
Pinus flexilis	limber pine
Pinus leiophylla	Chihuahuan pine
Pinus monophylla	singleleaf piñon

Pinus ponderosa	ponderosa pine
Pinus strobiformis	southwestern white pine
Populus tremuloides	quaking aspen
Pseudotsuga menziesii	Douglas-fir
Quercus spp.	oak species when in tree form or when harvested with other commercial forest species

H. "Construction project" includes clearing of right of ways for utilities, pipelines, fences or roads, except for roads facilitating harvesting of commercial forest species; clearing for construction of residences or businesses with an approved building permit; or clearing related to the development of other regulated industries such as mining or landfills.

I. "Continuing violation" means that a permittee or responsible person or entity has received a notice of deficient condition and has failed to take corrective action.

J. "Contract harvester" means a person or entity, other than the owner or the owner's direct employees, harvesting commercial forest species.

K. "Contractor" means a person or entity that the applicant or permittee has reached an agreement with to harvest or purchase commercial forest species.

L. "Cutting unit" means an area within the forest harvest practice plan not exceeding 300 forested acres. The designation of each unit is based on the topography of the area to be harvested, the number of persons to be engaged in the harvest, transportation, climate and other relevant factors. The applicant shall divide an area larger than 300 forested acres into two or more cutting units, unless the division determines that a larger area is appropriate because of the topography, equipment or the harvest's objectives and number of persons to be participating in harvest activities.

M. "Damaged trees" means trees over three feet in height not intended for harvest that, as a result of the harvest, are damaged or knocked down to the extent that mortality or serious deterioration is likely to occur or partially pushed over so as to result in permanent lean or visible damage to the root system.

N. "Deficient condition" means a harvest activity not in conformance with the act, 19.20.4 NMAC or a harvest permit. It also means the failure to have statements of understanding for each person or entity conducting major harvest activities.

O. "Diameter at breast height" means the tree's outside bark diameter measured at four and one half feet above the forest floor on the tree's uphill side. For the purposes of determining breast height, the forest floor includes the duff layer that may be present, but does not include unincorporated woody debris that may rise above the ground line.

P. "Diameter at root collar" means the diameter of the tree's trunk measured outside the bark at ground level.

Q. "District forester" means the supervisory forester of one of the six district offices located in Bernalillo, Capitan, Chama, Cimarron, Las Vegas and Socorro.

R. "Division" means the New Mexico energy, minerals and natural resources department, forestry division or forestry division personnel.

S. "Erosion control measure" means a method of reducing soil erosion including seeding, using mulch or slash for ground cover, reducing slope of roads and skid trails, installing water bars, crowning roads, outsloping roads, dipping roads with lateral relief ditches, culverts and avoidance of excessive slopes.

T. "Evidence of ownership" means a deed or other document, recorded with the county clerk in the county where the commercial forest species are located, containing a property description included in the harvest permit application evidencing ownership of the land surface or the right to control the land including harvesting commercial forest species, or a timber deed including the commercial forest species subject to the harvest permit application. Evidence of ownership does not include commercial forest species purchased through a contract, purchase agreement or similar document that indicates that the commercial forest species' ownership will transfer after the trees are harvested.

U. "Excessive slope" means a slope of more than 40 percent over a ground distance of 80 yards or more.

V. "Felling equipment" means equipment used to sever the tree stem from its stump such as chainsaws, feller-bunchers and harvesters.

W. "Firewood" means any part or portion of a tree that has been cut and removed from its original location and is to be used for heating or cooking in an open pit, grill, fireplace or stove. Firewood does not mean wood that is used in biomass facilities to create electricity or thermal heat or wood that is used to create ethanol.

X. "Forest" means an area of at least one acre with at least 10 percent tree crown cover.

Y. "Gully erosion" means erosion caused by water accumulating in narrow channels and removing the soil from the channel to depths of one foot or more and that carries sediment downstream.

Z. "Harvest or harvesting" means activities related to removing a commercial forest species or its products from the property where the activities are occurring, including: constructing haul roads and skid trails; cutting and severing, pushing over, plucking, chipping or masticating standing trees; skidding or removing trees to landings; transporting the tree or wood products from the cutting site or landing; installing erosion

control measures; or supervising or directing such activities. Harvest or harvesting does not mean digging commercial forest species that are planted and cultivated for balled and burlap stock, landscaping or live Christmas trees; or removal by any means during maintenance, renovation or removal of a windbreak.

AA. "Harvest permit" means the harvest permit application, the forest harvest practice plan and the harvest permit approval letter.

BB. "Intermittent watercourse" means a stream or reach of stream, as shown on a United States geological survey 1:24000 scale topographic map or as otherwise identified on the property by the division or the owner, that contains water only at certain times of the year, such as when it receives flow from springs, melting snow or precipitation.

CC. "Lake" means an inland body of freshwater, but does not include stock ponds or windmills.

DD. "Landowner" means a person or entity, or the person or entity's agent, owning or having a right to control the surface of the land where the commercial forest species to be harvested are located.

EE. "Lateral yarding distance" means the maximum distance perpendicular to each side of a cable within which a log can be attached for yarding.

FF. "Leave trees" means those trees to be left in the cutting unit after the harvest is completed.

GG. "Long butting" means the cutting of a portion of the main stem that does not meet the utilization standards provided in Subsection H of 19.20.4.9 NMAC.

HH. "Lop and scatter" means a hand method of removing the upward-extending branches from tops of felled trees to keep slash low to the ground, to increase the decomposition rate, to lower the fire hazard or as a pretreatment prior to burning.

II. "Major harvest activity" means felling trees; skidding or yarding; and construction of roads, skid trails and landings.

JJ. "Mineral soil" means the portion of the soil immediately below the litter and duff layers.

KK. "Multiple cutting unit permit" means a harvest permit for an area with two or more designated cutting units.

LL. "Municipal lands" means the territory a municipality has incorporated or annexed pursuant to NMSA 1978, Sections 3-2-1 *et seq.*, Sections 3-3-1 *et seq.* or Sections 3-7-1 *et seq.*

MM. "Noxious weed" means a plant species that is not indigenous to New Mexico and that has been targeted pursuant to the Noxious Weed Management Act, NMSA 1978, Section 76-7D-1 *et seq.* for management or control because of its negative impact on the economy or the environment.

NN. "Owner" means the landowner, unless there is a timber deed owner who owns the commercial forest species that are the subject of the harvest permit application. Then the timber deed owner is the owner.

OO. "Perennial watercourse" means a stream or river, or reach of a stream or river, as shown on a United States geological survey 1:24000 scale topographic map or as otherwise identified on the property where the harvest will occur by the division or the owner, that contains water continuously throughout the years in all years; its upper surface, generally, is lower than the water table of the region adjoining the stream or river.

PP. "Permittee" means an owner to whom the division issues a harvest permit.

QQ. "Personal delivery" means delivery to the individual personally; or if the individual is absent, delivery to a person residing at the individual's usual residence who is over the age of 15 years.

RR. "Public road" means a highway or road open for public motor vehicle access including federal highways, state highways, state roads, county roads and United States forest service roads.

SS. "Pre-commercial thinning" means thinning that is made as an investment in the future growth of a stand of trees where the owner does not sell or exchange for service the utilized trees.

TT. "Responsible person or entity" means a person, partnership, corporation, association or other entity, other than the owner, required to sign a statement of understanding or, when Subsection A of 19.20.4.8 NMAC does not require a harvest permit, that have an active role in major harvest activities or a management role that may impact the harvest.

UU. "Rill erosion" means erosion that cuts a number of small channels less than one foot in depth into the soil by water moving over and concentrating in low places in the soil surface.

VV. "Rub tree" means a tree used as a pivot in cable yarding or on skid trails to protect the remaining trees during extraction.

WW. "Silviculture" means the theory and practice of controlling forest establishment, composition, growth or harvesting.

XX. "Skid trail" means a path built for log skidding or caused by skidding equipment's use.

YY. "Slash" means branches, boughs or pieces of a tree's main stem severed or damaged as a result of the harvest.

ZZ. "State forester" means the director of the energy, minerals and natural resources department, forestry division or the state forester's designee.

AAA. "Statement of understanding" means the statement that persons, partnerships, corporations, associations or other entities that have an active role in major harvest activities or a management role that may impact the harvest shall sign verifying that they are aware that they must comply with the act, 19.20.4 NMAC and the harvest permit. A supervisor of a business entity conducting harvest activities may sign a statement of understanding accepting responsibility for the entity's employees performing major harvest activities.

BBB. "Streamside management area" means the area near a lake, perennial or intermittent watercourse or a wetland designated for special protection in the forest harvest practice plan.

CCC. "Timber deed owner" means the owner of a timber deed recorded with the county clerk in the county where the commercial forest species are located. It does not include a person, corporation, partnership or other entity that has agreed to purchase commercial forest species through a contract, purchase agreement or similar document with title to be transferred after the trees are harvested.

DDD. "Tree" means a woody perennial plant usually having a single main stem generally with few or no branches on its lower part; however, species such Gambel oak (*quercus gambelii*) and one seed juniper (*juniperus monosperma*) may be multi-stemmed and species such as fir (*abies*), spruce (*picea*) and juniper (*juniperus*) may have many branches on the stem's lower part.

EEE. "Utilization" means the removal of trees, tree stems or portions of trees from areas within the harvest permit boundaries.

FFF. "Water bar" means a drainage structure such as a ditch, mounded earth or staked log installed across the entire width of a road or skid trail at an approximate 30-degree downslope angle that diverts water runoff into adjacent undisturbed areas.

GGG. "Wetland" means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal

circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico.

HHH. "Working days" means Monday through Friday, excluding state holidays.

[19.20.4.7 NMAC - N, 1/1/2002; A, 6/29/2007; A, 9/14/2007]

19.20.4.8 HARVEST PERMITS:

A. ACTIVITIES REQUIRING HARVEST PERMITS: An owner shall obtain a harvest permit before harvest activities, except those listed in Subsection B of 19.20.4.8 NMAC, are conducted in the following circumstances:

(1) harvests in an area of 25 acres or more of forest, or a combination of areas totaling 25 acres or more of forest in a calendar year if the harvest sites are on the same or adjacent property; or

(2) harvests in an area of less than 25 acres of forest in one calendar year if:

(a) the owner has been convicted of a criminal violation associated with harvest activities within the previous three years; or

(b) the owner is contracting with or employing a person or entity on the harvest that has been convicted of a criminal violation associated with harvest activities within the previous three years.

B. ACTIVITIES NOT REQUIRING HARVEST PERMITS: Owners are not required to obtain a harvest permit for:

(1) cutting firewood for personal use;

(2) cutting firewood for sale in compliance with 19.20.4.9 NMAC on up to 75 acres of forest in a calendar year or a combination of areas totaling up to 75 acres or more of forest in a calendar year if the harvest sites are on the same or adjacent property;

(3) cutting Christmas trees;

(4) pre-commercial thinning conducted in compliance with 19.20.4.9 NMAC;

(5) harvest activities related to construction projects such as pipeline or powerline installation or maintenance, construction pursuant to a building permit, fence building or construction of roads unrelated to harvest activities;

(6) clearing for defensible space within 100 feet of a building;

(7) harvests for wildland urban interface projects or hazardous fuel reduction projects if conducted pursuant to a contract with the energy, minerals and natural resources department that requires compliance with 19.20.4.9 NMAC;

(8) harvests conducted under a division funded or administered landowner assistance program in compliance with 19.20.4.9 NMAC; or

(9) rangeland or meadow restoration performed according to a conservation plan reviewed by a soil and water conservation district and conducted in compliance with 19.20.4.9 NMAC where the owner does not sell or exchange for services the trees that are harvested during the restoration or the resulting wood products.

C. APPLICATION FOR HARVEST PERMIT:

(1) An owner shall file an application for a harvest permit in the district office in the district where the harvest will take place for approval at least 30 calendar days before the proposed harvest is to start. The owner may begin harvest activities when the division issues the harvest permit and the permittee or responsible person or entity gives appropriate notification.

(2) The harvest permit application shall include the following, if applicable:

(a) the owner's name;

(b) a legal description of the land where the harvest will occur;

(c) sale name;

(d) evidence of ownership;

(e) the owner's mailing address (if the commercial forest species to be harvested are owned under a timber deed, the harvest permit application shall include names and mailing addresses of both the timber deed owner and the landowner);

(f) the owner's e-mail address, if available (if the commercial forest species to be harvested are owned under a timber deed, the harvest permit application shall include e-mail addresses of both the timber deed owner and the landowner);

(g) the names, mailing addresses and, if available, e-mail addresses of persons or entities that will directly manage the harvest;

(h) the time schedule for harvesting (*i.e.* beginning and ending dates);

(i) if the commercial forest species to be harvested are owned under a timber deed, the timber deed owner shall consult with the landowner about the land management goals and objectives included in the forest harvest practice plan; the

landowner shall approve roads constructed for the harvest that will not be closed at the end of the harvest;

- (j) statements of understanding;
- (k) a forest harvest practice plan; and
- (l) the owner's signature and the date of application.

D. FOREST HARVEST PRACTICE PLAN: The forest harvest practice plan shall include the following information:

(1) Harvest Description: The harvest description shall include the following:

(a) a description of the current stand condition including types of tree species, any insect and disease occurrence and the stocking level (e.g., an estimate of trees per acre or square feet of basal area and average diameter at breast height or diameter at root collar, or green tons per acre, as applicable);

(b) the owner's land management goals and harvest objectives such as forest management, forest production, wildlife habitat, dwarf mistletoe control, improved forage for wildlife or livestock or type conversion; the division shall consider a forest harvest practice plan inadequate unless it contains a silviculturally sound method of achieving the described land management goals and objectives that complies with the act and 19.20.4 NMAC;

(c) the harvest permit boundaries and cutting units to be established as shown on a United States geological survey topographic map with a scale no larger than 1:24000 (e.g., 7.5 minute quadrangle);

(d) the access route to and from the harvest permit area to a public road;

(e) identification of excessive slopes located within the cutting unit;

(f) identification of lakes, perennial or intermittent watercourses or wetlands located within the cutting unit on a United States geological survey topographic map with a scale no larger than 1:24000;

(g) a description of the proposed harvest method such as seed tree, shelterwood, single tree or group selection or patchcut;

(h) a description of the equipment the permittee or responsible person or entity will use during the harvest such as chainsaw, feller-buncher, skidder, delimber, plucker, forwarder or chipper;

(i) the residual stand condition including types of tree species and an estimate of trees per acre and the trees' average diameter at breast height, or, if applicable, diameter at root collar; if the harvest method is a patchcut a description of the size of the area to be harvested, by length and width, and the adjacent stand's height; and

(j) a description of the regeneration method such as natural regeneration, natural seeding or vegetative reproduction, or artificial regeneration, planting, reasonably calculated to ensure adequate forest regeneration if forest regeneration is the land management objective; if artificial regeneration is to be used the description shall include: when the planting will occur, the tree species to be planted, the seed source of the seedlings, the number of seedlings to be planted per acre, the method of seedling protection and site preparation.

(2) Erosion Management: Description of the erosion management measures that the permittee or responsible person or entity will take to comply with Subsection D of 19.20.4.9 NMAC.

(3) Skid Trails: Description of how the permittee or responsible person or entity will treat skid trails and landings to control erosion and comply with Subsection E of 19.20.4.9 NMAC.

(4) Roads: Description of road location, road erosion control measures and post-harvest maintenance or closure. The description shall contain sufficient detail to indicate compliance with Subsection F of 19.20.4.9 NMAC. If a road will be closed after harvest, the description shall identify the closure method and erosion control measures.

(5) Streamside Management Area: Description of the streamside management area designating the area to be included and describing the measures that the permittee or responsible person or entity will take to comply with Subsection G of 19.20.4.9 NMAC. If an existing road is located within a streamside management area, the applicant shall include a description of the road's location.

(6) Slash Treatment: Description of the means of treating slash, such as lop and scattering or pile burning, to comply with Subsection I of 19.20.4.9 NMAC.

(7) Fire: Description of the precautions the permittee or responsible persons or entities will take during the harvest and the modifications to harvesting operations they will take during periods of high, very high and extreme fire danger. Description of how the permittee or responsible person or entity will react to a fire caused by harvest activities including the equipment that the permittee or responsible person or entity will locate on the harvest site and use if a fire starts and notice to local fire departments and the division. Additionally, if the permittee or responsible persons or entities will burn slash, a description of whether they will broadcast or pile burn the slash and the precautions that they will take when the burning occurs. Precautions shall include

obtaining necessary permits for burning and notifying the local governments and fire departments prior to burning.

(8) Excessive Slopes: Description of how the permittee or responsible person or entity will meet forest harvest practices standards on excessive slopes.

E. HARVEST PERMIT ISSUANCE OR DENIAL:

(1) Within 30 calendar days after receipt of the harvest permit application, the division shall either:

(a) issue a harvest permit approval letter including such conditions or recommendations as the division may deem necessary provided the harvest permit application contains the information required by Subsections C and D of 19.20.4.8 NMAC, the applicant has submitted the statements of understanding and the planned harvest is expected to comply with the act and 19.20.4 NMAC; or

(b) deny the harvest permit application in writing for the following reasons:

(i) the harvest permit application does not contain the information required by Subsections C and D of 19.20.4.8 NMAC;

(ii) the applicant is not the owner or the holder of a power of attorney or other authority sufficient to make decisions affecting the commercial forest species subject to the harvest permit application;

(iii) a material misrepresentation or false statement is included in the harvest permit application;

(iv) the proposed harvest would not comply with the act or 19.20.4 NMAC; or

(v) the applicant or contractor currently has a continuing violation.

(2) If the division denies the harvest permit application, the applicant may provide additional information to complete the harvest permit application or revise the harvest permit application to comply with the forest harvest practices standards. The applicant shall submit the additional information or revisions for reconsideration. If the division finds that the additional information or revisions correct the defects in the harvest permit application it shall issue the harvest permit. The division shall either issue the harvest permit or uphold the denial of the harvest permit application within 30 calendar days after receiving the additional information or revisions.

(3) When the division issues a harvest permit to a timber deed owner, the division shall provide a copy of the harvest permit to the landowner by first class mail or personal delivery.

F. STATEMENTS OF UNDERSTANDING:

(1) A person, partnership, corporation, association or other entity that has an active role in major harvest activities or a management role that may impact the harvest shall sign a statement of understanding in a form provided and developed by the division. This includes the owner, the owner's direct employees, consultants involved in the harvest, contract harvesters and other contractors or subcontractors.

(2) Anyone who must sign the harvest permit application or a statement of understanding shall comply with the act, 19.20.4 NMAC and the harvest permit. A supervisor of a business entity may sign a statement of understanding for the business entity's employees if the supervisor accepts responsibility for the employees' actions. Failure to keep statements of understanding current with the participation of new personnel or entities may result in violations or permit revocation.

(3) The statement of understanding shall be a division-provided form that includes:

(a) information identifying the person signing the statement such as name; birth date; social security, federal tax identification number or driver's license number; address and telephone number and, if applicable, the person's authority to sign for a partnership, corporation, association or other entity; the person's own employees; or the partnership, corporation, association or other entity's employees;

(b) the signature of the person signing the statement and date; and

(c) a statement that the person is aware that the person must comply with the act, 19.20.4 NMAC and the harvest permit and shall be accountable as provided for in 19.20.4 NMAC for such compliance and acknowledges that the person has read and understands the requirements of 19.20.4 NMAC and the harvest permit; if a person is signing on behalf of partnership, corporation, association or other entity, a statement that the entity is aware that it must comply with the act, 19.20.4 NMAC and the harvest permit and shall be accountable as provided for in 19.20.4 NMAC for such compliance; if a person is signing on behalf of the person's employees or a partnership, corporation, association or other entity's employees, a statement that the person is aware that the person is accepting responsibility for the person's own employees or the entity's employees and shall be accountable for the employees' compliance with 19.20.4 NMAC and the harvest permit.

G. PERMIT REVISIONS:

(1) The division may order revision of a harvest permit if it appears, after inspection, that the land management goals and objectives are not being met, if deficient conditions are occurring or if there are mistakes in the harvest permit.

(2) The owner may request revision of the harvest permit if there are mistakes in the harvest permit, ownership will change or other conditions make changes appropriate. The owner shall revise the permit during the harvest as needed to keep it current with operations.

(3) The owner may request the division revise the harvest permit to include additional acreage if the acreage is located in an area that is adjacent to or in close proximity to the area included in the current harvest permit, the land management goals and objectives and the proposed harvest operation are similar to those in the current harvest permit, the cover type is the same as the cover type in the current harvest permit and the same roads will be used to access the harvest area.

(4) The division shall approve or deny the owner's request for revision of the harvest permit within 30 calendar days after the request's receipt.

H. HARVEST PERMIT EXTENSIONS: When unforeseen circumstances beyond the permittee's control prevent completion of the harvest or a portion of the harvest activities as required by 19.20.4 NMAC within the time limits provided in the harvest permit, the division may, upon the permittee's written request, grant in writing additional time for completion of the harvest not to exceed one year. The division may grant no more than three such extensions.

I. NOTIFICATIONS: A permittee or responsible person or entity shall inform the division prior to or, in no case later than 48 hours following the event, either by telephone, in person or in writing of the following actions taken under the harvest permit:

(1) commencement or completion of major harvest activities in a cutting unit;
or

(2) when a unit is complete and the permittee is requesting the unit be closed.

[19.20.4.8 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.9 FOREST HARVEST PRACTICES STANDARDS:

A. APPLICABILITY: The forest harvest practices standards apply to harvests of commercial forest species, regardless of the acreage, except for activities listed in Subsection B of 19.20.4.8 NMAC that do not specifically require compliance with 19.20.4.9 NMAC.

B. MULTIPLE CUTTING UNITS: Unless the division provides written approval, the owner, permittee or responsible person or entity shall not commence harvesting under a multiple cutting unit harvest permit in a third cutting unit unless they have completed forest harvest practices standards, except for burning of slash piles, on at least one of the previous two active units.

C. MARKING:

(1) The division may require the permittee to mark the cutting unit boundary with flagging or tree marking paint if needed to meet the forest harvest practice plan's requirements.

(2) The division may require the permittee to mark leave trees or the trees to be cut with tree marking paint if needed to meet the land management goals and objectives in the forest harvest practice plan, particularly if the harvest method is group or single tree selection.

D. EROSION MANAGEMENT:

(1) The owner, permittee or responsible person or entity shall implement erosion control measures to minimize channelized flow erosion such as rill and gully erosion.

(2) Erosion Control Measures:

(a) Time Limit: The owner, permittee or responsible person or entity shall install erosion control measures as soon as practical but no later than 30 calendar days after the cessation of major harvest activities within the cutting unit.

(b) Placement: The owner, permittee or responsible person or entity shall place water bars or other erosion control measures on closed roads and skid trails with mineral soil exposed by harvest activities. The owner, permittee or responsible person or entity shall place water bars at the locations or intervals and at the height and width necessary to minimize erosion considering grade, sidehill drainage, soil texture and structure, vegetation and other pertinent factors.

PERCENT GRADE MINIMUM INTERVALS FOR WATER BARS

PERCENT GRADE	MINIMUM INTERVAL
0.0 -- 4.9	150 feet
5.0 -- 9.9	130 feet
10.0 -- 14.9	75 feet
15.0 -- 40.0	50 feet

The division may require additional water bars if the minimum intervals will not sufficiently minimize erosion. The division may require fewer water bars if a combination of soil properties, depth of duff layer or amount of slash or other cover will minimize erosion.

(3) Seeding:

(a) Time Limit: After cessation of major harvest activities within a cutting unit and at the time best calculated to produce maximum germination, but in no event later than 180 calendar days following the cessation of major harvest activities within a cutting unit, the owner, permittee or responsible person or entity shall seed closed roads, skid trails, landings and areas of mineral soil exposed by harvest activities within the cutting unit, unless the division has approved other erosion control measures. Appropriate site preparation shall take place prior to seeding. For example, soil preparation would be needed prior to seeding a hard packed road that is to be closed upon completion of harvesting.

(b) Seed Mix: The owner or permittee shall obtain the division's prior approval for the seed mix to be used. The seed mix shall be suitable for the land management goals and objectives specified in the forest harvest practice plan and shall not introduce noxious weeds. The owner or permittee shall provide proof of the purchase date, the seed mix viability and germination rate. The owner or permittee may use the certification tag from the bag if it provides the required information.

E. SKID TRAILS AND LANDINGS:

(1) Skid Trails:

(a) The owner, permittee or responsible person or entity shall not locate skid trails on excessive slopes unless the owner or permittee shows that it is technically or economically infeasible to remove the felled trees by other means.

(b) Skidding shall not destroy a stream channel or bank or reduce the stream channel's capacity to carry water.

(c) Skidding is not allowed within watercourses. Skidding shall not take place across perennial watercourses unless the owner or permittee shows that it is technically and economically infeasible to remove felled trees by other means. If the division approves skidding across a perennial watercourse, the owner, permittee or responsible person or entity shall limit skidding to designated crossings. Crossings shall be at a right angle to the main channel and the approach to the crossing shall be at a minimal grade. The owner, permittee or responsible person or entity shall divert drainage at a distance from the stream that provides filtering of sediment.

(d) The owner, permittee or responsible person or entity should plan skid trails in advance to minimize damage to the residual stand, soil compaction and erosion.

(e) The owner, permittee or responsible person or entity should flag skid trails so skidder operators can easily follow them.

(f) The owner, permittee or responsible person or entity should keep skid trails as narrow as possible.

(2) Landings: The owner, permittee or responsible person or entity:

(a) shall provide adequate drainage for the landing and ensure that runoff does not discharge directly into a watercourse; and

(b) should plan landings in advance.

F. ROADS:

(1) The owner, permittee or responsible person or entity shall:

(a) design, construct and maintain roads used or constructed for a harvest of commercial forest species to minimize erosion and impact on soils and vegetation in areas adjacent to the road;

(b) construct and maintain roads to drain properly and not cause gully erosion; the division may require the owner, permittee or responsible person or entity to take action if rill erosion is frequent and the depth exceeds three inches;

(c) outslope or ditch roads on the uphill side and provide appropriate surface drainage by using adequate cross drains, ditches, drivable dips, culverts, water bars, diversion ditches or other structures demonstrated to be equally effective;

(d) construct and maintain roads so the stream channel or bank is not destroyed and the stream channel's capacity to carry water is not diminished; and

(e) design road widths excluding any portion not intended for travel to sufficiently carry the anticipated traffic load with reasonable safety, but not to exceed 24 feet.

(2) Road location, design and construction shall address:

(a) building the fewest roads necessary for the harvest;

(b) locating the road to fit the topography to minimize alteration of natural features;

(c) avoiding road construction along or within narrow canyons;

(d) building roads on locations away from streams such as benches, ridge tops and the tops of slopes unless there is no feasible alternative;

(e) the stability of slopes where roads are cut;

(f) avoiding slopes of 60 percent or greater; and

(g) keeping the road grade to a minimum, usually less than 10 percent.

(3) Road construction: The owner, permittee or responsible person or entity shall:

(a) not use organic debris as a fill material;

(b) prior to construction, remove and utilize or treat as slash trees or portions of trees within the road corridor;

(c) not windrow trees or portions of trees within the road corridor, unless used as filter strip and are less than three feet in height;

(d) remove debris in stream channels that is added during construction (natural materials may be used as part of a sediment control structure);

(e) deposit organic debris and surplus soil and rock where runoff will not be carried into a lake or watercourse;

(f) size culverts, if used, to handle a minimum 25-year flood event; in determining the appropriate size consider debris potential and the potential for increased runoff from a reduction in vegetation resulting from the harvest; and install them to prevent blockage and erosion of fill materials at the outlet;

(g) install bridges where drainage structures cannot carry the water flow; and

(h) divert road drainage at a distance from the stream that provides filtering of sediment such as through the use of cross drains.

(4) The owner, permittee or responsible person or entity shall close roads intended for closure when the cutting unit closes unless needed for other cutting units. Upon closure, the owner, permittee or responsible person or entity shall treat the road to control erosion and remove stream-crossing structures.

G. REQUIREMENTS FOR STREAMSIDE MANAGEMENT AREAS:

(1) Streamside management areas shall include the area within 50 feet of the ordinary high water mark of a lake or wetland or within 50 feet of both high water marks for a perennial or intermittent watercourse. When a preexisting road is within 50 feet of the ordinary high water mark the streamside management area ends at the road's edge nearest to the watercourse. The owner, permittee or responsible person or entity shall minimize disturbance in the streamside management area.

(2) The owner, permittee or responsible person or entity shall not harvest within 50 feet of the ordinary high water mark of a lake or watercourse or within 50 feet of both high water marks of a perennial or intermittent watercourse, unless the division has approved an alternate practice pursuant to 19.20.4.10 NMAC for activities such as riparian restoration or hazardous fuel reduction.

(3) Within streamside management areas, the owner, permittee or responsible person or entity:

(a) shall not locate landings;

(b) shall design and flag skid trails in advance to minimize disturbance;

(c) shall not construct new roads unless the permittee or owner shows that it is technically or economically infeasible to construct the road elsewhere or that the damage to the environment would be greater if the road was constructed elsewhere; if the division approves construction of a new road within a streamside management area, in addition to other requirements in Subsection F of 19.20.4.9 NMAC, the owner, permittee or responsible person or entity shall limit stream crossings to those that are essential with crossings at a right angle to the main channel and the approach to the crossing at a minimal grade; and

(d) should use directional felling.

H. TREE UTILIZATION:

(1) Unless contract or market conditions require different utilization standards that are included in the harvest permit, the owner, permittee or responsible person or entity shall utilize

(a) commercial forest species to a minimum six-inch top diameter (inside bark) except that harvesting for other than lumber production shall utilize trees to a minimum four-inch top diameter (outside bark); and

(b) the tree's main stem as stated above in Paragraph (1) of Subsection H of 19.2.4.9 NMAC when the net scale of the severed log or section of the main stem is more than 50 percent of the total gross volume using the Scribner Decimal C log scale table.

(2) Long Butting: Long butting is prohibited except when resulting from removal of defects up to the limit of Paragraph (1) of Subsection H of 19.20.4.9 NMAC.

(3) Stump Height: Stump height shall be half the diameter of the tree where severed or 12 inches, whichever is less, on the uphill side except when immovable objects such as rocks or other trees prevent operation of felling equipment. The owner,

permittee or responsible person or entity shall ensure that stumps less than eight inches in diameter shall have a flat, horizontal top surface.

I. SLASH:

(1) The owner, permittee or responsible person or entity shall treat slash and damaged trees in a cutting unit, unless piled, to stand no higher than three feet above ground level, unless chipped or within one quarter of a mile of a structure. Chipped slash shall not exceed two inches in depth. The owner, permittee or responsible person or entity shall treat slash within one quarter of a mile of a structure to stand no higher than two feet above ground level.

(2) The owner, permittee or responsible person or entity shall:

(a) construct slash piles for safe and efficient burning; to be free of mineral soil and to cause no more than minimal soil sterilization; and

(b) locate slash piles to avoid damage to the residual stand.

(3) The owner, permittee or responsible person or entity shall treat slash, unless piled, no later than 30 calendar days from the movement of harvest operations out of the subject cutting unit into another cutting unit under a multiple cutting unit permit, or no later than 30 calendar days following the cessation of major harvest activities within the cutting unit, whichever occurs first. In any event, the time shall not exceed 365 calendar days from the start of harvesting within the cutting unit. The owner, permittee or responsible person or entity may allow piled slash to cure, but shall burn it no later than the end of the next winter burning season following the cessation of major harvest activities within that cutting unit. If weather conditions prevent piled slash from being burned by the end of the next winter burning season, the owner or permittee may request an extension of time.

(4) For the purpose of creating a fuel break along public roads, the owner, permittee or responsible person or entity shall eliminate slash greater than two feet in length or larger than one inch in diameter at the large end and within 50 feet of either side of the center line of a public road by chipping, burning, removal or equivalent means within 365 calendar days of cessation of major harvest activities within the cutting unit.

(5) Unless incorporated into a sediment control structure, slash is not allowed within the ordinary high water mark of an intermittent or perennial watercourse, lake or wetland.

J. COARSE WOODY DEBRIS RETENTION AND RECRUITMENT: Where available, the owner, permittee or responsible person or entity shall retain one to five scattered down logs per acre in a variety of stages of decomposition, with preference for down logs that have a diameter at breast height of 15 inches or greater and a length of

15 feet or greater. If scattered down logs are not available but unmerchantable trees have been harvested, the owner, permittee or responsible person or entity may scatter one to five unmerchantable trees per acre, with preference for logs that have a diameter at breast height of 15 inches or greater and a length of 15 feet or greater.

K. LOG DECKS: The owner, permittee or responsible person or entity shall remove log decks no later than 365 calendar days from the start of harvesting within the cutting unit.

L. CABLE YARDING: The following requirements apply to cable yarding:

(1) The yarding system shall have lateral yarding capabilities, using a carriage that can maintain a fixed position on the skyline during lateral pulls and shall keep one end of the log suspended above the ground during in-haul.

(2) The owner, permittee or responsible person or entity shall use uphill yarding unless the yarder cannot be located on a ridge top, bench or on top of a slope. If the owner, permittee or responsible person or entity must use downhill yarding, they shall suspend the leading end of the log above the ground.

(3) The applicant shall include corridor design in the harvest permit application and the owner, permittee or responsible person or entity shall mark actual corridors on the ground prior to clearing and felling. Cable corridors shall not be closer than an average of 75 feet, center to center, at a point one-half way to the end of the corridor where radial corridors are required; and an average of 140 feet where parallel corridors are used. No more than four cable corridors shall radiate from a single yarder position.

(4) The owner, permittee or responsible person or entity shall initially cut cable corridors to a maximum 12-foot width, prior to felling in the cutting unit, to allow passage of the carriage and turn of logs. Corridors shall not exceed 20 feet in width after yarding is completed and the owner, permittee or responsible person or entity has removed the rub trees.

(5) The owner, permittee or responsible person or entity shall fell harvested trees except corridor trees along the contour or diagonally to the slope to facilitate yarding and reduce damage to the residual trees.

(6) When topography and ground conditions permit, the owner, permittee or responsible person or entity shall pull logs endwise from where they are felled. Lateral yarding distance shall be limited to no more than 75 feet.

M. DAMAGE: The owner, permittee or responsible person or entity shall remove trees damaged by harvest activities or treat them as slash. If the damaged trees were intended to be leave trees then the harvest is not in compliance with the harvest permit. If a leave tree is damaged the division may require that the owner, permittee or

responsible person or entity leave additional trees as leave trees or require other means of regeneration.

N. TRASH AND LITTER: The owner, permittee or responsible person or entity shall remove all human-made trash and litter resulting from harvest and transportation activities from the harvest area and properly dispose of it.

O. SPILLS: The owner, permittee or responsible person or entity shall comply with 20.6.2.1203 NMAC with respect to discharge of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life or property, or unreasonably interfere with the public welfare or property use. The owner, permittee or responsible person or entity shall not service trucks, graders, dozers, felling equipment or other equipment where spills may contaminate soils, wetlands, lakes or watercourses.

P. MARKING OF LOG BUTTS:

(1) The owner, permittee or responsible person or entity shall mark one to five logs per load, if being transported in log form, or mark the load with a sign readable from 30 feet if the wood product is transported in another form such as chips, with the following information in the color of paint assigned to the district where the harvesting is occurring:

(a) if a harvest permit is required, with the two letter designator assigned by the district and the sequential load number (*i.e.* JV 011); or

(b) if a harvest permit is not required, with the landowner's first and last initials or the initial's of the ranch or property name and the abbreviation of the county in which the harvest is occurring (*i.e.*, if the landowner is Bill Smith and the harvest is occurring in San Miguel county the mark would be BS/SM).

(2) The following colors are assigned to the districts:

(a) Bernalillo - orange

(b) Capitan - red

(c) Chama - black

(d) Cimarron - blue

(e) Las Vegas - green

(f) Socorro – white.

Q. FIRE EQUIPMENT:

(1) The owner, permittee or responsible person or entity shall:

(a) have a long handled shovel; pulaski, McLeod or combi-tool; and a five-pound capacity ABC dry chemical fire extinguisher available at the harvest location when harvesting is occurring;

(b) ensure that each skidder, feller-buncher, delimber, dozer, log truck, etc. is equipped with a long handled shovel and a five-pound capacity ABC dry chemical fire extinguisher; and

(c) ensure each passenger vehicle, light truck or medium truck up to 40,000 GVW is equipped with a long handled shovel and a two and one half pound capacity ABC dry chemical fire extinguisher.

(2) The owner, permittee or responsible person or entity shall ensure that the tools and fire extinguishers are in good working condition.

[19.20.4.9 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.10 ALTERNATE PRACTICES:

An applicant or permittee may request to use an alternate practice in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC, so long as equivalent or better protection regarding fire, insect and disease control and erosion control measures is provided. The request to use an alternate practice shall describe the mitigation measures that the applicant or permittee will take so that the division can determine that the proposal offers equivalent or better protection. The division shall make the decision to grant or deny the use of an alternate practice within 30 calendar days after the request's receipt. The division's written approval or disapproval shall state the reasons why the division granted or denied the request. The division shall not allow the applicant or permittee to use an alternate practice if it is known to result in violation of other applicable state laws. The permittee may appeal the denial of a request to use an alternate practice to the state forester pursuant to Subsection A of 19.20.4.13 NMAC.

[19.20.4.10 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.11 WEATHER CLOSURES:

The division may temporarily close roads built for harvest activities, close streamside management areas or suspend harvesting when adverse weather conditions exist such as flooding, heavy rain or snowmelt.

[19.20.4.11 NMAC - N, 1/1/2002]

19.20.4.12 VIOLATIONS:

A. NOTICE OF DEFICIENT CONDITION: The division may issue a notice of deficient condition for violation of the act, 19.20.4 NMAC or a harvest permit. The division may issue a notice of deficient condition for violations that harm the forest or forest resources and will require the permittee or responsible person or entity to cease the violation and take corrective action to repair the deficient condition.

(1) The division may serve upon the permittee or responsible person or entity a notice of deficient condition if:

(a) there is a violation of the act, 19.20.4 NMAC or a harvest permit; or

(b) the violation or activity creates harm or the potential for harm to the forest or forest resource.

(2) The notice of deficient condition shall set forth:

(a) the specific nature of the violation charged or harm to the forest or forest resources;

(b) the specific course of action needed to correct such violation;

(c) the date such correction shall be completed; and

(d) the recipient's right to a hearing to review the notice of deficient condition.

(3) The division shall serve the notice of deficient condition upon the permittee or responsible person or entity by personal delivery or certified mail return receipt requested. If the notice is not served upon the permittee the division shall provide a copy to the permittee by first class mail or personal service.

B. REVOCATION OF A HARVEST PERMIT:

(1) The state forester may revoke a harvest permit for the following:

(a) refusal to allow the division to enter and inspect a permitted area;

(b) failure to timely complete corrective action after receiving a notice of deficient condition;

(c) discovery that any of the reasons for harvest permit application denial exists; or

(d) failure to keep statements of understanding current.

(2) To proceed with revocation of a harvest permit the division shall schedule a revocation hearing and provide written notice of intent to revoke to the permittee by

personal delivery or certified mail return receipt requested at least 10 working days before the date set for the hearing. The written notice of the intent to revoke shall include the hearing's date, time and location.

(a) The hearing shall be held before the state forester.

(b) The division shall provide evidence as to the reasons to revoke the harvest permit and the permittee may provide evidence as to the reasons not to revoke the harvest permit.

(c) Oral testimony at the hearing shall be made under oath. The division shall make a tape or stenographic record of the hearing.

(d) If the state forester finds that a preponderance of the evidence supports revocation, the state forester shall revoke the harvest permit.

(e) The state forester shall issue a written final decision within 10 working days after the close of the hearing or deadline for the submission of additional materials following the hearing.

[19.20.4.12 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.13 ADMINISTRATIVE REVIEW:

A. DENIAL OF PERMITS, REQUEST TO USE ALTERNATE PRACTICES OR PERMIT REVISIONS:

(1) To request review of the denial of a harvest permit application, use of alternate practices or a harvest permit revision, an applicant or permittee shall submit a written request for review, which includes the reasons for requesting review, to the state forester within 15 calendar days after the issuance and provide written notice to the district office that denied the harvest permit application, use of alternate practices or harvest permit revision. If the applicant submitted additional information or revisions to the harvest permit application pursuant to Paragraph (2) of Subsection E of 19.20.4.8 NMAC the time period starts with the last denial.

(2) The applicant or permittee and the district office shall submit written statements to the state forester within 10 working days after the applicant or permittee submits the request for review.

(3) The state forester shall base the review decision on the written statements unless the applicant or permittee or the district office requests the opportunity to call witnesses or make oral arguments within 10 working days after the applicant or permittee submits the request for review. A request for a hearing shall explain the need for witness testimony or oral argument. If the applicant or permittee or the district office asks to make oral arguments or call witnesses, the state forester may set a hearing to

be held within 10 working days after receiving that request and provide notice of the hearing date, time and location to the applicant or permittee and the district office. Oral testimony shall be made under oath. The division shall make a tape or stenographic record of oral argument or witness testimony.

(4) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10 working days after the date for submission of written statements, or a hearing, if any, and send copies to the applicant or permittee and the district office.

B. NOTICE OF DEFICIENT CONDITION:

(1) To request review of the issuance of a notice of deficient condition the permittee or responsible person or entity shall submit a written request for a hearing, which specifically states the reasons for the review, to the district forester within 10 working days after the notice's receipt. If the district forester issued the notice of deficient condition, then the district forester from another district shall conduct the hearing.

(a) The district forester shall consult with the permittee or responsible person or entity to set a hearing to be held within three working days after the request's receipt.

(b) The district forester shall issue a written decision within five working days after the hearing.

(c) The permittee or responsible person or entity may appeal the district forester's decision to the state forester by submitting a written request for review to the state forester within 10 working days after the decision and providing written notice to the district forester.

(2) The permittee or responsible person or entity and the district forester shall submit written statements to the state forester within 10 working days after the permittee or responsible person or entity submits the request for review.

(a) The state forester shall base the review decision on the written statements unless the permittee or responsible person or entity or the district forester requests the opportunity to call witnesses or make oral arguments within 10 working days after the permittee or responsible person or entity submits the request for review. A request for a hearing shall explain the need for witness testimony or oral argument.

(b) If the permittee or responsible person or entity or the district forester asks to make oral arguments or call witnesses, the state forester may set a hearing to be held within 10 working days after receiving that request and provide notice of the hearing date, time and location to the permittee, responsible person or entity and the district forester. Oral testimony shall be made under oath. The division shall make a tape or stenographic record of oral argument or witness testimony.

(c) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10 working days after the date for submission of written statements, or a hearing, if any, and send copies to the permittee, responsible person or entity and the district forester.

[19.20.4.13 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.14 FIRE RESTRICTIONS:

Whenever the state forester declares restrictions on use of lands or use of fire within an area permitted under 19.20.4 NMAC, the restrictions shall apply to harvesting. If these restrictions require that harvesting stop, it shall not be considered a cessation of harvesting pursuant to 19.20.4 NMAC.

[19.20.4.14 NMAC - N, 1/1/2002; A, 6/29/2007]

19.20.4.15 CRIMINAL PENALTIES:

A. Following the procedures in 19.20.4.12 NMAC does not limit the division in its ability or authority to issue citations or otherwise enforce the possible criminal penalties for violating the act, 19.20.4 NMAC or a harvest permit.

B. Violation of the act, 19.20.4 NMAC or a harvest permit is a misdemeanor punishable by a fine of not more than \$1000 or by imprisonment in the county jail not to exceed one year or both for each violation, NMSA 1978, Section 68-2-17.

[19.20.4.15 NMAC - N, 1/1/2002; A, 6/29/2007]

PART 5 PRESCRIBED BURN MANAGER CERTIFICATION PROGRAM

19.20.5.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Forestry Division.

[19.20.5.1 NMAC – N, 6/13/2023]

19.20.5.2 SCOPE:

19.20.5 NMAC applies to applicants for prescribed burn manager certification and individuals who are certified as prescribed burn managers pursuant to the Prescribed Burning Act, Sections 68-5-1 to 68-5-8 NMSA 1978.

[19.20.5.2 NMAC – N, 6/13/2023]

19.20.5.3 STATUTORY AUTHORITY:

19.20.5 NMAC is adopted pursuant to the Prescribed Burning Act, Section 68-5-7 NMSA 1978 and Subsection E of Section 9-1-5 NMSA 1978.

[19.20.5.3 – N, 6/13/2023]

19.20.5.4 DURATION:

Permanent.

[19.20.5.4 NMAC - N, 6/13/2023]

19.20.5.5 EFFECTIVE DATE:

June 13, 2023, unless a later date is cited at the end of a section.

[19.20.5.5 NMAC – N, 6/13/2023]

19.20.5.6 OBJECTIVE:

To create a prescribed burn manager certification program for private lands in New Mexico.

[19.20.5.6 NMAC – N, 6/13/2023]

19.20.5.7 DEFINITIONS:

For additional definitions refer to Section 68-5-2 NMSA 1978.

A. "Act" means the Prescribed Burning Act, Sections 68-5-1 to 68-5-8 NMSA 1978.

B. "Broadcast burning" means an activity where fire is applied generally to most or all of an area with well-defined boundaries.

C. "Broadcast burn manager" means the person acting as the prescribed burn manager with responsibility for ensuring all local and state required permits are secured, ensuring the burn plan is written and sufficient for the prescribed burn, coordinating fire resources and equipment, monitoring weather conditions and notifications and directing the implementation of the broadcast burn.

D. "Committee" means a committee established pursuant to 19.20.5.13 NMAC to review applications for prescribed burn manager certification; provide oversight of the development and updating of training modules, refresher courses and recertification; and cross-walk the training modules with other training and experiences.

E. "Council" means the New Mexico prescribed fire council.

F. "Course" means an online or in-person learning experience taught by the cooperative extension service, division, contractor or other persons.

G. "Curriculum" means the minimum topics to be covered in a course.

H. "National wildfire coordinating group (NWCG)" means the organization of member agencies and organizations that provides national leadership to establish interagency wildland fire operations standards including qualification requirements for prescribed burning on federal lands.

I. "Nine-element course" means training that covers legal requirements, safety, weather, fire behavior, smoke management, prescribed burn techniques, public relations, planning and contingencies as specified in Subsection A of Section 68-5-7 NMSA 1978.

J. "Pile burn manager" means the person acting as the prescribed burn manager with responsibility for ensuring all local and state required permitting is secured, coordinating fire resources and equipment, monitoring weather conditions and notifications and directing the implementation of the pile burn. Specifically, it means a burn of piles conducted with sufficient moisture or other limiting factor such as bare mineral soil to prevent the spread of fire between piles.

K. "Fire management" means all activities for the management of wildland fires to meet land management objectives. Fire management includes the entire scope of activities from planning, prevention, fuels or vegetation modification, prescribed fire, hazard mitigation, fire response, rehabilitation, monitoring and evaluation.

L. "Proficiency workbook" means a tool to provide an observable, measurable and standardized means to evaluate and document proficiency for the distinct attributes of a pile or broadcast burn manager. Each proficiency workbook shall be approved by the division, made available in all its offices and on its website and will have evaluation elements with accompanying signatures for demonstrating proficiency.

[19.20.5.7 NMAC – N, 6/13/2023]

19.20.5.8 LEVELS OF PRESCRIBED BURN MANAGER CERTIFICATION:

The two levels of certification for prescribed burn managers from lowest to highest shall be:

A. certified pile burn manager; and

B. certified broadcast burn manager.

[19.20.5.8 NMAC – N, 6/13/2023]

19.20.5.9 REQUIREMENTS FOR PILE BURN MANAGER CERTIFICATION:

A. Individuals shall successfully complete the following requirements before applying for pile burn manager certification, unless receiving waivers or reciprocity pursuant to Subsections B or C of 19.20.5.9 NMAC. Individuals shall successfully complete the requirement in Paragraph (2) of Subsection A of 19.20.5.9 NMAC, before applying for pile burn manager certification if receiving a partial waiver pursuant to Subsection D of 19.20.5.9 NMAC.

(1) Prior to beginning the proficiency requirement in Paragraph (3) of Subsection A of 19.20.5.9 NMAC, individuals may complete the NWCG S-110 basic wildland fire orientation (15 minutes online) or other substitute orientation approved by the division. Any supplemental materials, such as videos the division may develop, or substitute orientation, will be made available and posted on the division's website.

(2) Individuals shall complete (passing score of seventy percent or better) the nine-element course, which may be an online or in-person training course.

(3) Individuals shall successfully complete the proficiency requirement, which consists of burning experience in the role of pile burn manager, which shall include demonstration of general knowledge of fire behavior, weather, holding, fire techniques, control lines, smoke management, firing devices, tools and equipment. Successful demonstration of those elements shall be documented in a division approved proficiency workbook. The burning experience must be documented in the proficiency workbook by

(a) a pile burn manager certified pursuant to 19.20.5.9 NMAC;

(b) division personnel; or

(c) an individual with at least NWCG prescribed burn boss type 3 qualifications.

B. Upon satisfactory review of their qualification documents by the committee, the division may grant pile burn manager certification by waiver to individuals with the following qualifications:

(1) NWCG qualifications for single resource boss or above that are current or have lapsed within the past five years; or

(2) a nationally recognized structural firefighter I in accordance with national fire protection association (NFPA) 1001 with wildland fire training or experience that includes at least S-190 wildland fire behavior or NFPA equivalencies; and

(3) completion (passing score of seventy percent or better) of the following modules from the nine-element course specified in Subsection A of 19.20.5.11 NMAC: legal requirements, smoke management and permitting.

C. Reciprocity.

(1) The division may conduct a review of another state's certified prescribed burn manager program and post a list of states that the division grants reciprocity for pile burn manager certification on the division's website. Applicants from a state for which the division has granted reciprocity shall provide proof of a current certification in a reciprocity state. Applicants from a state for which the division has granted reciprocity shall complete (passing score of seventy percent or better) the following modules from the nine-element course specified in Subsection A of 19.20.5.11 NMAC: legal requirements, smoke management and permitting.

(2) The committee shall determine whether an applicant who is not certified in a state on the reciprocity list qualifies for reciprocity based on proof of certification in that other state and successful completion of course work, field experience, proficiency requirements or other requirements that state requires for certification. An applicant for reciprocity of pile burn manager certification issued in another state not on the reciprocity list shall

(a) complete (passing score of seventy percent or better) the nine-element course;

(b) provide proof of certification in the other state; and

(c) provide proof of successful completion of the course work, field experience, proficiency requirements or other requirements that state requires for certification.

D. An individual who has prior prescribed burn manager experience, but who is not certified in another state as a prescribed burn manager, who does not possess NWCG qualifications for single resource boss or above that are current or have lapsed within the past five years or who is not qualified as a nationally recognized structural firefighter I in accordance with national fire protection association (NFPA) 1001 with wildland fire training or experience that includes at least S-190 wildland fire behavior or NFPA equivalencies, may apply for a waiver of the proficiency requirement in Paragraph (3) of Subsection A of 19.20.5.9 NMAC.

(1) An applicant shall provide a letter or other written documentation from a pile or broadcast burn manager certified pursuant to 19.20.5 NMAC, an individual with at least NWCG prescribed burn boss type 3 qualifications or a certified prescribed burn manager from another state on the division reciprocity list attesting they have observed the applicant conducting pile burns as a pile burn manager and the applicant has

satisfactorily conducted pile burns as a pile burn manager and demonstrated the proficiency requirement in Paragraph (3) of Subsection A of 19.20.5.9 NMAC.

(2) The committee shall review the documentation of the applicant's prescribed burn manager experience to determine if the applicant meets the proficiency requirement in Paragraph (3) of Subsection A of 19.20.5.9 NMAC. If the committee determines the applicant's prior experience meets the proficiency requirement in Paragraph (3) of Subsection A of 19.20.5.9 NMAC, the division shall waive the proficiency requirement in Paragraph (3) of Subsection A of 19.20.5.9 NMAC and the requirements in Paragraph (1) of Subsection A of 19.20.5.9 NMAC. Applicants seeking a partial waiver under Subsection D of 19.20.5.9 NMAC shall complete (passing score of seventy percent or better) the nine-element course.

E. The renewal of pile burn manager certification is required every five years with completion of a division approved refresher course (not to exceed eight hours) that is available online. Certified pile burn managers shall provide documentation they have taken the refresher course to the division. If they fail to take the refresher course or to provide proof to the division, the division shall suspend their certification and provide written notification.

F. To obtain recertification after the division has suspended their certification, individuals shall take a refresher course and conduct at least one day of supervised burning by a pile or broadcast burn manager certified pursuant to 19.20.5 NMAC, division personnel or an individual with at least NWCG prescribed burn boss type 3 qualifications. Individuals seeking recertification shall provide documentation the individual has completed both requirements to the division.

[19.20.5.9 NMAC – N, 6/13/2023]

19.20.5.10 REQUIREMENTS FOR BROADCAST BURN MANAGER CERTIFICATION:

A. Individuals shall successfully complete the following requirements before applying for broadcast burn manager certification, unless receiving waivers or reciprocity pursuant Subsections B or C of 19.20.5.10 NMAC.

(1) Individuals, including those who have completed the training for pile burn manager certification, shall successfully complete the following prior to beginning the proficiency requirements in Paragraph (3) of Subsection A of 19.20.5.10 NMAC:

(a) NWCG S-190 wildland fire behavior (eight hours) or a division approved substitute course;

(b) NWCG S-290 intermediate fire behavior (32 hours) or a division approved substitute course; and

(c) burn plan writing course approved by the division.

(2) Individuals shall complete (passing score of seventy percent or better) the nine-element course. Individuals who have previously completed the training for pile burn manager certification do not need to retake the nine-element course.

(3) Individuals shall successfully complete the proficiency requirement, which consists of burning experience in the role of broadcast burn manager, running a firing operation, managing smoke and managing a holding operation. Documentation of burning experience shall be in a division approved proficiency workbook. Documentation of burning experience in the specified roles shall also include demonstration of intermediate knowledge of fire behavior, weather, burn plan review, firing techniques, firing devices, holding, control lines, smoke management, tools and equipment and procedures in the event of an escape. Successful demonstration of those elements shall be documented in the applicant's proficiency workbook by

(a) a broadcast burn manager who is certified pursuant to 19.20.5 NMAC;

(b) division personnel; or

(c) an individual with at least NWCG prescribed burn boss type 2 qualifications.

B. The division may grant broadcast burn manager certification by waiver to individuals who possess NWCG burn boss type 1 or 2 qualifications with completion (passing score of seventy percent or better) of the following modules from the nine-element course: legal requirements, smoke management and permitting.

C. Reciprocity.

(1) The division may conduct a review of another state's certified broadcast burn manager program and post a list of states with reciprocity for broadcast burn certification on the division's website. Applicants from a state for which the division has granted reciprocity shall provide proof of a current certification in a reciprocity state in satisfaction of the certification requirements of 19.20.5.10 NMAC. Applicants from a state for which the division has granted reciprocity shall complete (passing score of seventy percent or better) the following modules from the nine-element course specified in Subsection A of 19.20.5.11 NMAC: legal requirements, smoke management and permitting.

(2) The committee shall determine whether an applicant who is certified in a state not on the reciprocity list qualifies for reciprocity based on proof of certification in that other state and successful completion of course work, field experience, proficiency requirements or other requirements that state requires for certification. The applicant for reciprocity of broadcast burn manager certification issued in another state not on the reciprocity list shall

(a) complete (passing score of seventy percent or better) the nine-element course;

(b) provide proof of certification in the other state; and

(c) provide proof of successful completion of the course work, field experience, proficiency requirements or other requirements that state requires for certification.

D. The renewal of broadcast burn manager certification is required every five years with completion of a division approved refresher course (not to exceed eight hours) that is available online. Certified broadcast burn managers shall provide documentation they have taken the refresher course to the division. If they fail to take the refresher course or provide documentation to the division, the division shall suspend their certification and provide written notification.

E. To obtain recertification of broadcast burn manager certification after the division has suspended their certification, individuals shall complete the refresher course and demonstrate one day of field proficiency experience with documentation provided by a broadcast burn manager who is certified pursuant to 19.20.5 NMAC, division personnel or an individual with at least NWCG prescribed burn boss type 2 qualifications. Individuals seeking recertification shall provide documentation the individual has completed both requirements to the division.

[19.20.5.10 NMAC – N, 6/13/2023]

19.20.5.11 DEVELOPMENT OF TRAINING AND BURN PLAN WRITING AND REFRESHER CURRICULUMS AND COURSES:

A. Training modules approved by the division shall be provided by New Mexico state university, cooperative extension service to address at a minimum the first nine elements:

- (1) legal requirements;
- (2) safety;
- (3) weather;
- (4) fire behavior;
- (5) smoke management;
- (6) prescribed burn techniques;
- (7) public relations;

- (8) planning;
- (9) contingencies; and
- (10) other information specific to burning in New Mexico as determined necessary or appropriate.

B. The division shall develop the burn plan writing curriculum and course or may substitute an equivalent NWCG course.

C. The division shall develop the pile burn manager certification refresher curriculum and course.

D. The division shall develop the broadcast burn manager certification refresher curriculum and course.

E. The division shall make available information about any division approved substitute courses on the division's website and in its offices.

F. The division shall post notice of prescribed burning opportunities on the division website and may provide other notifications such as posting in division offices. Organizations or entities may provide prescribed burning opportunities and may post opportunities by any means.

[19.20.5.11 NMAC – N, 6/13/2023]

19.20.5.12 APPLICATION FOR CERTIFICATION:

A. The division shall develop application forms for certification, which shall include the applicant's name, address, phone number, e-mail address, prescribed burning experience and training and the certification for which the individual is applying, and to document completion of certification requirements.

B. Applicants shall submit applications with proficiency workbooks, training certificates, letters of experience records and any other relevant materials to the division.

C. Review of applications for certification.

(1) Applicants shall submit completed documentation of courses and field experience to the division.

(2) The division shall provide the committee with applications to review.

(3) The committee shall document its decision to approve or deny certification and the documentation shall be available to the applicant upon request.

D. The division shall issue the certification to the applicant or notify the applicant in writing of the denial and specify the reasons for denial.

E. Applicants may appeal a certification denial in writing to the state forester within 30 days of the denial. Applicant shall provide a written response stating why the application should not have been denied. The state forester shall review the application and denial and the applicant's appeal and either provide a written decision upholding the denial or issue the requested certification.

[19.20.5.12 NMAC – N, 6/13/2023]

19.20.5.13 ESTABLISHMENT OF COMMITTEE:

A. The division shall establish a committee to review applications for prescribed burn manager certification and provide oversight of the development and updating of training modules, refresher courses and recertification and cross-walk the training modules with other training and experiences.

B. Members of the committee shall include one division employee appointed by the state forester, one non-governmental organization representative and one council member representative. Ad-hoc members may be added at the request of the committee or the state forester.

C. Terms for the non-governmental organization and council member shall be for two years.

D. Minimum qualifications to serve on the committee as a non-governmental organization representative or council member representative include two years' experience planning and implementing prescribed burns.

E. Committee members may be nominated by submitting a letter with a description of qualifications to the state forester. The division shall post notice when nominations for committee members are being taken on the division's website.

F. The state forester shall select and appoint the committee members and shall have the authority to remove committee members prior to the end of their terms or replace the division employee appointed to the committee at the state forester's sole discretion.

[19.20.5.13 NMAC – N, 6/13/2023]

19.20.5.14 FEES:

[RESERVED]

CHAPTER 21: ENDANGERED PLANTS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: ENDANGERED PLANT SPECIES LIST AND COLLECTION PERMITS

19.21.2.1 ISSUING AGENCY:

Energy, Minerals and Natural Resources Department, Forestry Division.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.1 NMAC - Rn & A, 19 NMAC 21.2.1, 11/30/2006]

19.21.2.2 SCOPE:

All persons who take, possess, transport, export from the state, process, sell or offer for sale or shipment an endangered plant species.

[8/31/1995; 19.21.2.2 NMAC - Rn, 19 NMAC 21.2.2, 11/30/2006; A, 7/28/2020]

19.21.2.3 STATUTORY AUTHORITY:

Section 75-6-1 NMSA 1978 directs the energy, minerals and natural resources department to investigate all plant species in the state to develop information relating to population, distribution, habitat needs, limiting factors and other biological and ecological data, and to determine conservation measures and requirements necessary for survival. The department shall establish a list of endangered plant species based upon the investigations. It also authorizes the department to prohibit the taking, possession, transportation, exportation from the state, processing, sale or offer for sale or shipment of listed plants or plant materials, except for permitted scientific purposes or propagation and transplantation activities that enhance the survival of endangered species.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.3 NMAC - Rn & A, 19 NMAC 21.2.3, 11/30/2006; A, 7/28/2020]

19.21.2.4 DURATION:

Permanent.

[8/31/1995; 19.21.2.4 NMAC - Rn, 19 NMAC 21.2.4, 11/30/2006]

19.21.2.5 EFFECTIVE DATE:

August 31, 1995, unless a later date is cited at the end of a section.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.5 NMAC - Rn & A, 19 NMAC 21.2.5, 11/30/2006]

19.21.2.6 OBJECTIVE:

To establish rules to implement Section 75-6-1 NMSA 1978 including establishing a list of endangered plant species.

[8/31/1995; 19.21.2.6 NMAC - Rn & A, 19 NMAC 21.2.6, 11/30/2006; A, 7/28/2020]

19.21.2.7 DEFINITIONS:

A. "Agricultural practice" means grazing and grazing management practices such as feeding, herding or gathering; ditch clearing or burning; planting; applying herbicides to cultivated fields; harvesting; mowing of hay fields or pastures; burning pastures or fields or cultivating, plowing or disking fields or similar activities; road maintenance; and the maintenance, repair or replacement of fences, dirt tanks (earthen impoundments), water tanks and troughs, wells and windmills, pumps or solar panels powering wells, loading chutes, corrals, erosion control structures and water pipelines.

B. "Applicant" means the person applying for a permit required by 19.21.2 NMAC to take endangered plants for scientific study, propagation or collection of voucher specimens or to take an endangered plant(s) where taking is incidental and not the purpose of carrying out an otherwise lawful activity. If a governmental entity is issuing a permit, lease, license, authorization, right-of-way, easement or similar document that allows a person to conduct the lawful activity (drilling, fence installation, pipeline construction, etc.), the applicant for an incidental take permit shall be the person conducting the lawful activity not the governmental entity.

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

D. "Endangered plant" means a plant that is a member of the species listed in 19.21.2.9 NMAC.

E. "Harm" means direct physical injury or damage to a plant that results in reduced viability of the plant, including reproductive potential and future health and growth.

F. "Permittee" means the person issued a permit by the state forester or a person required to have a permit pursuant to 19.21.2 NMAC. The permittee shall be the person responsible for the scientific study, propagation or collection of voucher specimens of endangered plants or the person undertaking a lawful activity where taking of an endangered plant(s) is incidental and not the purpose of carrying out the otherwise lawful activity. If a governmental entity is issuing a permit, lease, license, authorization, right-of-way, easement or similar document that allows a person to conduct the lawful activity (drilling, fence installation, pipeline construction, etc.), the permittee for an

incidental take permit shall be the person conducting the lawful activity not the governmental entity.

G. "Person" means an individual or entity including partnerships, corporations, associations or joint ventures and its officers, agents or employees; the state or a political subdivision of the state and its officers, agents or employees; or an agency, department or instrumentality of the United States and its officers, agents or employees.

H. "Population site" means an area of occurrence of a particular species.

I. "Specimen" means the physical parts or a plant in its entirety taken from a population site for the purpose of scientific study.

J. "State forester" means the director of the department's forestry division and the department secretary's designated representative for the purposes of administering the department's authorities and responsibilities under Section 75-6-1 NMSA 1978 including endangered plant investigations and issuance of scientific study, propagation, collection of voucher specimen or incidental take permits.

K. "Taking" means to remove, harm, kill, destroy, possess, transport, export, sell, or offer for sale any of the plants, or parts thereof, listed in 19.21.2.9 NMAC, from the places in the state of New Mexico where they naturally grow including federally owned land, private land, state owned land or land owned by political subdivisions of the state, but not tribal trust or restricted fee land or individual trust allotments. Taking does not include the

(1) incidental removal, harm, killing or destruction of endangered plants resulting from agricultural practices; or

(2) removal, harm, killing, destruction, possession or transport of endangered plants by tribal members for religious purposes.

L. "Tribal member" means a member of an Indian nation, tribe or pueblo.

M. "Voucher specimen" means an identifiable and representative specimen taken by a botanical collector from a population site for the purpose of documenting that site as occupied habitat. It shall be accompanied by pertinent information on location, habitat, collector, date taken and any other notes the collector can present concerning the population site.

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.7 NMAC - Rn & A, 19 NMAC 21.2.7, 11/30/2006; A, 7/28/2020; A, 4/25/2023]

19.21.2.8 CRITERIA FOR INCLUSION ON THE ENDANGERED PLANT SPECIES LIST:

The following are the criteria for listing a plant as a state endangered plant:

A. the taxon is listed as threatened or endangered under the provisions of the Federal Endangered Species Act (16 U.S.C. Sections 1531 *et seq.*), or is considered proposed under the tenets of the Act; or

B. the taxon is a rare plant across its range within the state, and of such limited distribution and population size that unregulated taking could adversely impact it and jeopardize its survival in New Mexico.

[10/29/1985, 8/31/1995; 19.21.2.8 NMAC - Rn, 19 NMAC 21.2.8, 11/30/2006; A, 7/28/2020]

19.21.2.9 LIST OF NEW MEXICO STATE ENDANGERED PLANT SPECIES:

The following list of plants constitutes the New Mexico state endangered plant species list. Listed are the plant's scientific name, its common name and the criterion for inclusion by the subsection in 19.21.2.8 NMAC:

Agalinis calycina (Leoncita false-foxglove)	Subsection B of 19.21.2.8 NMAC
Aliciella formosa (Aztec gilia)	Subsection B of 19.21.2.8 NMAC
Allium gooddingii (Goodding's onion)	Subsection B of 19.21.2.8 NMAC
Amsonia tharpia (Tharp's bluestar)	Subsection B of 19.21.2.8 NMAC
Argemone pinnatisecta (Sacramento prickly-poppy)	Subsection A of 19.21.2.8 NMAC
Asplenium scolopendrium var. americanum (American Hart's-tongue fern)	Subsection A of 19.21.2.8 NMAC
Astragalus humillimus (Mancos milkvetch)	Subsection A of 19.21.2.8 NMAC
Peniocereus greggii (night-blooming cereus)	Subsection B of 19.21.2.8 NMAC
Castilleja ornata (Swale paintbrush)	Subsection B of 19.21.2.8 NMAC
Castilleja tomentosa (Tomentose paintbrush)	Subsection B of 19.21.2.8 NMAC
Cirsium vinaceum (Sacramento Mountains thistle)	Subsection A of 19.21.2.8 NMAC
Cirsium wrightii (Wright's marsh thistle)	Subsection B of 19.21.2.8 NMAC
Cleome multicaulis (slender spiderflower)	Subsection B of 19.21.2.8 NMAC
Coryphantha robustispina ssp. scheeri (Scheer's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
Cylindropuntia viridiflora (Santa Fe cholla)	Subsection B of 19.21.2.8 NMAC
Cymopterus spellenbergii (Spellenberg's springparsley)	Subsection B of 19.21.2.8 NMAC
Cypripedium parviflorum var. pubescens (golden lady's slipper)	Subsection B of 19.21.2.8 NMAC
Echinocereus fendleri var. kuenzleri (Kuenzler's hedgehog cactus)	Subsection A of 19.21.2.8 NMAC
Erigeron hessii (Hess' fleabane)	Subsection B of 19.21.2.8 NMAC

Erigeron rhizomatus (Zuni fleabane)	Subsection A of 19.21.2.8 NMAC
Eriogonum gypsophilum (gypsum wild buckwheat)	Subsection A of 19.21.2.8 NMAC
Escobaria duncanii (Duncan's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
Escobaria organensis (Organ Mountain pincushion cactus)	Subsection B of 19.21.2.8 NMAC
Escobaria sneedii var. leei (Lee's pincushion cactus)	Subsection A of 19.21.2.8 NMAC
Escobaria sneedii var. sneedii (Sneed's pincushion cactus)	Subsection A of 19.21.2.8 NMAC
Escobaria villardii (Villard's pincushion cactus)	Subsection B of 19.21.2.8 NMAC
Hedeoma todsenii (Todsens pennyroyal)	Subsection A of 19.21.2.8 NMAC
Helianthus paradoxus (Pecos sunflower)	Subsection A of 19.21.2.8 NMAC
Hexalectris colemanii (Coleman's coralroot)	Subsection B of 19.21.2.8 NMAC
Hexalectris nitida (shining coralroot)	Subsection B of 19.21.2.8 NMAC
Hexalectris arizonica (crested coralroot)	Subsection B of 19.21.2.8 NMAC
Ipomopsis sancti-spiritus (Holy Ghost ipomopsis)	Subsection A of 19.21.2.8 NMAC
Lepidospartum burgessii (gypsum scalebroom)	Subsection B of 19.21.2.8 NMAC
Lilium philadelphicum (wood lily)	Subsection B of 19.21.2.8 NMAC
Linum allredii (Allred's flax)	Subsection B of 19.21.2.8 NMAC
Opuntia arenaria (sand prickly pear)	Subsection B of 19.21.2.8 NMAC
Pediocactus knowltonii (Knowlton's cactus)	Subsection A of 19.21.2.8 NMAC
Pediomelum pentaphyllum (Chihuahua scurfpea)	Subsection B of 19.21.2.8 NMAC
Penstemon metcalfei (Metcalf's beardtongue)	Subsection B of 19.21.2.8 NMAC
Polygala rimulicola var. mescaleorum (San Andres milkwort)	Subsection B of 19.21.2.8 NMAC
Puccinellia parishii (Parish's alkali grass)	Subsection B of 19.21.2.8 NMAC
Sclerocactus cloverae (Clover's cactus)	Subsection B of 19.21.2.8 NMAC
Sclerocactus mesae-verdae (Mesa Verde cactus)	Subsection A of 19.21.2.8 NMAC
Scrophularia macrantha (Mimbres figwort)	Subsection B of 19.21.2.8 NMAC
Spiranthes magnicamporum (lady tresses orchid)	Subsection B of 19.21.2.8 NMAC
Townsendia gypsophila (gypsum Townsend's aster)	Subsection B of 19.21.2.8 NMAC

[10/29/1985, 12/23/1991, 8/31/1995; 19.21.2.9 NMAC - Rn & A, 19 NMAC 21.2.9, 11/30/2006; A, 1/15/2019; A, 7/28/2020; A, 4/25/2023]

19.21.2.10 PROTECTION:

The taking of endangered plants, other than pursuant to a permit issued by the state forester, is prohibited.

[19.21.2.10 NMAC – N, 4/25/2023]

19.21.2.11 INCIDENTAL TAKE PERMIT:

The state forester may issue, issue with conditions or deny requests for an incidental take permit to allow a permittee to take endangered plants so long as taking is incidental to and not the purpose of carrying out an otherwise lawful activity. Such requests shall be subject to the following requirements.

A. The state forester may issue an incidental take permit only if the applicant submits a completed application on a form designated by the state forester that contains the following:

(1) the impact on the species that will likely result from the taking including the number of endangered plants to be taken;

(2) information and analysis that establishes that such taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild including range wide and local species status, number of endangered plants in the activity area, number of endangered plants in the activity area taken, number of endangered plants in the activity area avoided, direct and indirect effects on the species and population resulting from the activity, disturbance frequency and intensity, cumulative effects resulting from the activity and interrelated effects affecting the species' survival and any supporting documentation;

(3) the best management practices and mitigation activities the applicant will use to avoid, minimize and mitigate the impacts to the species from such a taking during the implementation of the proposed activity (e.g., fencing off areas with endangered plants during construction period, saving topsoil layer and returning to site after construction, dust mitigation, seed collection, adjusting or reducing project footprint, biological monitoring on site during construction); and

(4) signed commitment that applicant will implement the best management practices and mitigation activities and submit a written report upon completion of the practices and activities.

B. An application must also include

(1) the applicant's name, address, phone number, email address and, if applicable, name and title of the applicant's authorized representative;

(2) the location of the proposed activity with a map, location coordinates (if available) and size (acreage) of proposed activity;

- (3) description of the proposed activity;
- (4) property ownership; and
- (5) a signed certification by the applicant that states that the applicant assumes complete responsibility for any resulting impacts on endangered plants or the occupied habitat of such plants caused by the activity.

C. An incidental take permit application for an endangered plant also listed under federal law must be accompanied by United States department of the interior, fish and wildlife service consultation response or biological opinion if federal law requires the response or biological opinion.

D. The state forester may authorize or require transplantation of endangered plants as a condition of an incidental take permit if the applicant demonstrates the need for transplantation or the state forester otherwise determines it is necessary. Where transplantation is proposed, in addition to the information required by Subsection A of 19.21.2.11 NMAC, the applicant shall:

- (1) explain the need for transplantation;
- (2) identify the number of plants to be transplanted;
- (3) explain the transplantation method/protocol to be employed;
- (4) identify the site to which the plants will be taken for transplantation and describe the long-term protections provided at the site;
- (5) identify the timeline for the proposed transplantation;
- (6) describe the monitoring plan for transplantation; and
- (7) include the name and qualifications of the person carrying out the transplantation.

E. If the state forester denies an application for an incidental take permit or issues an incidental take permit with conditions, the state forester shall provide the reasons for the denial or conditions in writing.

F. A permittee may not transfer an incidental take permit without the state forester's written approval.

G. The state forester's issuance of an incidental permit is not authorization to conduct the proposed activity; the incidental take permit only authorizes the incidental take. If the permittee does not own the land where the activity will occur, the permittee shall also possess or obtain the landowner's authorization for the incidental take if the

landowner requires. A permittee shall comply with other applicable federal, state or local laws; possess or obtain permits, licenses or other authorizations other entities require; and if not the owner of the land where the activity will occur, possess or obtain the landowner's authorization to conduct the activity or use the land for the activity.

H. The division does not require a person conducting an activity to survey to determine the existence of endangered plant(s), but this does not relieve the applicant to conduct surveys that may be required by federal, other state or local agencies.

I. Emergency response. The following are exempt from the requirement to obtain an incidental take permit: law enforcement or emergency responses or other federal, state or local agency civil actions, whether or not undertaken by or in coordination with the division, that are necessary to prevent or respond to immediate threats to public health, safety or environment, including firefighting and flood management or controlling, containing and capturing releases of hazardous or harmful materials. If the division is not involved in the emergency response, it should be notified of the response as soon as practicable. Any known endangered plant(s) within the area of emergency response should be monitored to the extent practicable so that any adverse effects can be avoided or mitigated.

[19.21.2.11 NMAC – N, 4/25/2023]

19.21.2.12 PERMITS FOR SCIENTIFIC STUDY OR PROPAGATION:

A. The state forester may also issue permits to take specimens for the purpose of conducting scientific studies that enhance understanding of the distribution of an endangered plant species, or will generate new knowledge in the genetic, anatomical, chemical, morphological, life history or in other relevant areas of research enhancing the understanding of the conditions required for survival of an endangered plant species; or for propagation activities that will enhance the survival of endangered plant species. If the state forester denies an application for a permit or issues a permit with conditions, the state forester shall provide the reasons for the denial or conditions in writing.

B. The state forester may deny applications for scientific study or propagation permits in locations where endangered plant survival is especially precarious.

C. Each person applying for a scientific study or propagation permit must demonstrate sufficient expertise to carry out the permitted activities in a competent manner. The following information may be used to support the request for a permit: education in botany or related area, field experience, collection numbers, accessions into a recognized herbarium, publications and recommendations from recognized authorities.

D. The permittee's or permittee's representative's signature on the permit acknowledges willingness to comply with all applicable laws, rules or regulations and permit conditions.

E. A state permit to take endangered plants for scientific study or propagation is not required for federal employees working within the lands of their jurisdiction, nor for activities on tribal trust or restricted fee lands or individual trust allotments.

F. A permittee may not transfer a scientific study or propagation permit without the state forester's written approval.

[19.21.2.12 NMAC – Rn & A, 19.21.2.10 NMAC, 4/25/2023]

19.21.2.13 GENERAL PROVISIONS FOR SCIENTIFIC STUDY OR PROPAGATION:

A. When a permittee takes specimens pursuant to a scientific study permit, the permittee shall deposit at least one voucher specimen at either the university of New Mexico herbarium or New Mexico state university herbarium. When possible, the permittee shall take specimens in such a way as to not reduce the population (e.g., take a single stem from an herbaceous perennial, leaving the root intact, or other methods appropriate to the particular species).

B. The permittee or permittee's representative shall carry a copy of the scientific study or propagation permit at all times during the collection and transportation of endangered plants.

C. A scientific study or propagation permit for an endangered plant that is also listed under federal law must be accompanied by the United States department of the interior, fish and wildlife service recovery permit.

D. A scientific study or propagation permit does not extend to the permittee the privilege to trespass or enter on lands without the owner's permission. The permittee should contact the appropriate management agency or landowner before beginning studies or taking specimens on lands the permittee does not own or manage.

[19.21.2.13 NMAC – Rn & A, 19.21.2.11 NMAC, 4/25/2023]

19.21.2.14 VOUCHER SPECIMENS:

A. The state forester may issue a permit to take endangered plant voucher specimens during botanical inventories and environmental surveys for the purposes of species verification and documentation of population sites.

B. Taking specimens for the sole purpose of exchange with other herbaria is prohibited.

C. The collection of voucher specimens shall make no long-term detrimental effect on the population. The permittee may take a maximum of three specimens, if the population is sufficient. If the population is very small and the taking of a single individual is detrimental, then the state forester may condition the permit so that the permittee may take only a fragment of an individual for voucher purposes.

D. The permittee shall deposit at least one specimen of the three taken from each locality at the university of New Mexico herbarium or New Mexico state university herbarium. The permittee may send duplicates to the western New Mexico university herbarium, government agency collections within New Mexico or herbaria in other states that are formally listed in index herbariorum. The label affixed to each specimen shall contain information on collection location, description of the habitat, collector's name, date of collection and estimated size of the population.

E. To assist in the identification and preservation of endangered plant species in New Mexico, permittees shall report all permitted collections of voucher specimens to the state forester by December 31 of each year. The report shall contain the voucher specimen label information and the place or places of deposition of specimens.

[19.21.2.14 NMAC – Rn, 19.21.2.12 NMAC, 4/25/2023]

19.21.2.15 PERMIT APPROVAL:

The state forester shall only issue a permit if the application meets the applicable requirements in 19.21.2.11, 19.21.2.12, 19.21.2.13 or 19.21.2.14 NMAC for approval of an incidental take permit, scientific study, propagation or collection of voucher specimen permit. The state forester may not approve an application for a permit if an applicant (a) has taken an endangered plant outside the scope of a prior permit's provisions or without a permit, (b) otherwise failed to comply with a prior permit, (c) provided false information on a permit application or (d) attempted to transfer a prior permit without the state forester's written approval or allow someone else to use a prior permit.

[19.21.2.15 NMAC – Rn & A, 19.21.2.13 NMAC, 4/25/2023]

19.21.2.16 PERMIT AMENDMENT:

A permittee shall submit a written application to the state forester to request an amendment to a permit. The application shall describe the amendment requested and explain why the amendment is needed.

[19.21.2.16 NMAC – N, 4/25/2023]

19.21.2.17 PERMIT REVOCATION:

A. The state forester may revoke a permit for actions or events including taking of endangered plants outside the scope of the permit's provisions or without a permit, failure to comply with the permit, discovery that any of the reasons that would have

resulted in the state forester not approving a permit application exist, failure to deposit a voucher specimen in a designated New Mexico herbarium as required by Subsection A of 19.21.2.13 NMAC for a scientific study permit or by Subsection D of 19.21.2.14 NMAC for voucher specimen permits, taking specimens under a permit for commercial use, providing false information on the permit application, attempting to transfer the permit without the state forester's prior written approval or allowing someone else to use the permit.

B. The state forester shall provide 30 days' prior written notice of the permit revocation to the permittee unless such notice will result in long-term detrimental effect on the endangered plant population's survival. If such notice will result in long-term detrimental effect on the endangered plant population's survival, the state forester shall provide at least 48 hours written notice.

[19.21.2.17 NMAC – Rn & A, 19.21.2.14 NMAC, 4/25/2023]

19.21.2.18 PERMIT TERM:

The permit term shall be for the scope of the activity or five years, whichever is less. If the activity is not completed within five years, the permittee shall apply for a new permit. The scope of the activity does not include subsequent maintenance, repair or replacement, which are considered separate activities.

[19.21.2.18 NMAC – N, 4/25/2023]

19.21.2.19 PENALTIES:

A. Pursuant to Section 75-6-1 NMSA 1978, violation of 19.21.2 NMAC is a misdemeanor punishable by a fine of not less than \$300, nor more than \$1,000 or imprisonment for a term of not more than 120 days or both. Each individual endangered plant taken without a valid permit issued by the state forester is a violation of 19.21.2.10 NMAC; each individual incidence or occurrence is a violation of other provisions in 19.21.2 NMAC (e.g., failing to obtain a required permit, providing false information on a permit application, failing to comply with a permit condition).

B. Any law enforcement officer may seize any endangered plants taken, possessed, transported, exported, processed, sold or offered for sale or shipped in violation of 19.21.2 NMAC.

[19.21.2.19 NMAC – Rn & A, 19.21.2.15, 4/25/2023]

19.21.2.20 TRANSITION:

The prohibition on removing, harming, killing or destroying endangered plants without a permit issued by the state forester shall not apply to ground-disturbing activities for which a person received a permit or similar authorization from a federal, state or local

government agency prior to April 25, 2023 so long as the ground disturbance commences by October 22, 2023.

[19.21.2.20 NMAC – N, 4/25/2023]

CHAPTER 22-24: [RESERVED]

CHAPTER 25: ADMINISTRATION AND USE OF WATER - GENERAL PROVISIONS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: HEARINGS UNIT PROCEDURES

19.25.2.1 ISSUING AGENCY:

Office of the State Engineer ("OSE").

[19.25.2.1 NMAC - Rp, 19 NMAC 25.2.1, 8-30-2013]

19.25.2.2 SCOPE:

This rule governs the conduct and procedures of hearings before the state engineer conducted pursuant to NMSA 1978, Sections 72-2-16, 72-2-17, and 72-2-18. This rule shall not govern public rulemaking proceedings held pursuant to NMSA 1978, Section 72-2-8, expedited proceedings under NMSA 1978, Section 72-2-9.1, or appeals from a district water master to the state engineer in accordance with NMSA 1978, Section 72-3-3.

[19.25.2.2 NMAC - Rp, 19 NMAC 25.2.2, 8-30-2013]

19.25.2.3 STATUTORY AUTHORITY:

NMSA 1978, Section 72-2-8 (authorizing state engineer to adopt regulations prescribing administrative procedures), Section 72-2-12 (authorizing state engineer to promulgate rules in connection with hearings and to appoint hearing examiners), Section 72-2-16 (granting state engineer authority to conduct hearings prior to appeal), Section 72-2-17 (establishing certain requirements for hearings) and Section 72-12-18 (granting state engineer authority to issue compliance orders).

[19.25.2.3 NMAC - Rp, 19 NMAC 25.2.3, 8-30-2013]

19.25.2.4 DURATION:

Permanent.

[19.25.2.4 NMAC - Rp, 19 NMAC 25.2.4, 8-30-2013]

19.25.2.5 EFFECTIVE DATE:

August 30, 2013, unless a later date is cited at the end of a section.

[19.25.2.5 NMAC - Rp, 19 NMAC 25.2.5, 8-30-2013]

19.25.2.6 OBJECTIVE:

The objective of this rule is to establish procedures that govern hearings before the state engineer and the hearings unit and to ensure the expeditious and orderly handling of all administrative and enforcement matters consistent with the requirements of due process.

[19.25.2.6 NMAC - Rp, 19 NMAC 25.2.6, 8-30-2013]

19.25.2.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meaning as set forth in NMSA 1978, Chapter 72. The use of a masculine pronoun to refer to individuals is for grammatical convenience and is intended to be gender neutral.

A. "Administrative litigation unit" or "ALU" means that division of the OSE designated to provide legal counsel to and legal representation of the water rights division ("WRD") in administrative hearings and to represent the state engineer in judicial proceedings.

B. "Aggrieved applicant" means an applicant whose unprotested application has been acted on by the WRD without hearing, and who disagrees with the action or decision and files a timely request for a hearing on the merits of the application.

C. "Applicant" means a person who has filed an application involving the beneficial use of water with the OSE.

D. "Alternative dispute resolution ("ADR") officer" means that person appointed or designated by the state engineer to facilitate settlement or alternative resolutions of disputed matters pending before the hearing unit.

E. "Compliance order" means a written administrative directive issued on the authority of the state engineer pursuant to NMSA 1978, Section 72-2-18 that states the specific nature of an alleged violation of a state engineer-issued permit, license or order, or any statute, regulation, or court order subject to administration by the state engineer; and that requires compliance by the respondent within a specified time period.

F. "Docket" means the hearings unit's record containing the date of entry of a case, its numerical designation, and the calendar of those cases awaiting action through the hearing process.

G. "Ex parte communication" means a communication regarding substantive issues between a party to a matter pending before the hearings unit and the hearing examiner or state engineer, without all other parties being present or having received prior notice of such communication.

H. "Hearing" means a formal proceeding or hearing before the state engineer or his hearing examiner. This rule governs the following three types of hearings:

(1) **"compliance hearing"** that provides a person named in a compliance order an opportunity to respond to or contest the alleged violation of law or order;

(2) **"aggrieved application hearing"** that provides an aggrieved applicant an opportunity to be heard on the merits of the application; or

(3) **"protested application hearing"** that provides an applicant whose application has been protested and any protestant an opportunity to be heard on the merits of the application, including whether it will be detrimental to the objector's water right or otherwise result in impairment to existing water rights, be contrary to the conservation of water within the state, or detrimental to the public welfare of the state.

I. "Hearing examiner" means that person appointed or designated by the state engineer to conduct hearings with respect to matters properly before the state engineer. Hearing examiners report directly to the state engineer and are assigned to the hearings unit. For purposes of this rule, references to a hearing examiner shall apply to the state engineer when he presides at hearing.

J. "Hearings unit" means the division of the OSE comprising the hearing examiners, alternative dispute resolution officers and the hearings unit administrator.

K. "Hearings unit administrator" means that person designated by the state engineer to direct, provide and perform administrative duties in support of the hearing process and serve as the official custodian of the hearings unit files and official record of proceedings.

L. "Party" means an applicant, respondent, or protestant who has paid any required hearing fees and appears and participates in a hearing. The WRD shall be a party to every proceeding. A party other than an individual must be represented by an attorney licensed in the state of New Mexico.

M. "Person" means an individual, firm, corporation, or other entity, or a political subdivision of the state or its agencies, instrumentalities and institutions.

N. "Pro se party" means an individual who appears on his or her own behalf and participates in a hearing without legal representation by an attorney.

O. "Protestant" means a person who files a timely written protest to an application in the form and manner required by the WRD.

P. "Respondent" means a person named in a compliance order.

Q. "Water rights division" or "WRD" means the OSE division designated by the state engineer to process applications and administer water rights pursuant to the permits and licenses issued by and declarations filed with the state engineer and water rights as adjudicated by decree pursuant to NMSA 1978, Section 72-4-19.

[19.25.2.7 NMAC - Rp, 19 NMAC 25.2.7, 8-30-2013]

19.25.2.8 LIBERAL CONSTRUCTION:

This rule shall be liberally construed to carry out its purpose.

[19.25.2.8 NMAC - Rp, 19 NMAC 25.2.8, 8-30-2013]

19.25.2.9 DOCKETING AND STANDING:

A. WRD transmittals. WRD shall transmit timely for hearing by aggrieved applicants and any timely protests to an application to the ALU for filing with the hearings unit through a request to docket the matter for hearing.

B. Timeliness. An aggrievement by the applicant to initial action taken by the WRD on an application and any protest to an application must be timely filed.

(1) Aggrieved applications. An aggrieved applicant must file a request for a hearing within 30 days of the date of receipt, by certified mail, of WRD's action on an application. If no request for hearing is filed with the WRD within 30 days, the state engineer's findings, decision or action taken through the WRD shall be conclusive.

(2) Protests to applications. Protests to an application must be filed on or after the date of the first publication of notice of application and before the close of business on the tenth day after the last date of publication. Only persons filing a timely protest may participate at hearing with the applicant and ALU. Motions to intervene are disallowed and shall be rejected by the hearings unit.

C. Request to docket a hearing. The ALU will file a request to docket a proceeding within a reasonable amount of time of its receipt of a request for hearing transmitted by the WRD. The ALU pleading shall:

(1) request that the hearings unit administrator issue a notice of scheduling conference that identifies a hearing examiner, and sets the date for the scheduling conference;

(2) state the grounds, if any, to extend or delay the hearing, including but not limited to, prior pending hearings, or ongoing settlement negotiations among parties to the hearing;

(3) include background documents to the hearings unit administrator such as a copy of the application, publication materials, written protests accepted by the WRD, and other relevant information that the ALU determines may be useful for docketing a proceeding; and

(4) provide a list of parties entitled to notice of the proceedings.

D. Compliance orders. A respondent named in a compliance order may request a hearing on the alleged violations, pursuant to the procedures set forth in 19.25.2.23 NMAC.

E. Special procedure for standing of protestant upon docketing. The standing of protestants may be challenged by the applicant, WRD, or the hearing examiner at any point once an application has been docketed by the hearings unit: Upon such challenge, the protestant shall be required:

(1) if alleging impairment to the protestant's water right, to provide evidence of a valid existing water right, including but not limited to, the protestant's OSE water right file number(s) or if there is no OSE file number, then a description of the affected water right(s) that specifies the place and purpose of use, amount of water placed to beneficial use, point of diversion and the water source (aquifer or stream) by name, and priority date; or

(2) if alleging conservation or public welfare issues, to provide evidence that the protestant will be substantially and specifically affected by the granting of the application.

[19.25.2.9 NMAC - N, 8-30-2013]

19.25.2.10 HEARING UNIT DOCKET AND FEES:

A. Docketing procedures. The hearings unit shall maintain a docket of matters to be heard and a hearing calendar. Upon receipt of a docketing request from the ALU, the hearings unit administrator shall assign a hearing examiner and a docket number. The hearings unit administrator or the hearing examiner shall issue a notice that:

(1) shall advise the parties of the docketing of the matter, the hearing number and caption, and procedural requirements concerning filing and service of documents with the hearings unit, including electronic service and posting of documents;

(2) shall set a deadline for the applicant and all protestants to pay any required hearing fee;

(3) may set a deadline for all protestants to identify in writing, by OSE file number or other description, all water rights under the protestant's ownership or control that may be adversely affected by the application, including a description of the affected water right(s) that specifies the place and purpose of use, amount of water placed to beneficial use, point of diversion and the water source (aquifer or stream) by name, and priority date, together with a statement explaining how the protestant will be substantially and specifically affected by the granting of the application;

(4) may set a date and time for a scheduling conference to be held, no earlier than 10 business days after the deadline for payment of fees and identification of affected water rights;

(5) may direct one or more parties to file and serve on all other parties a proposed date for scheduling conference and a proposed pre-hearing order that includes proposed procedural dates for discovery, motions and hearing, identifies all issues the party proposes to address at hearing, and sets forth the party's position on each known or anticipated issue; and

(6) may include a draft form of scheduling order and hearing instructions for parties.

B. Hearing fees. Pursuant to NMSA 1978, Section 72-2-6(J), the state engineer shall require a nonrefundable payment of twenty-five dollars (\$25.00) from an applicant and from each protestant.

C. Copying and other fees. The hearings unit may impose fees for copying papers, testimony, or records as are reasonable, in accordance with Section 72-2-6 and based on charges set by the state records center for similar types of copies. The hearing examiner shall order that costs associated with the issuance of any subpoena, as further described by this rule, be borne by the requesting party.

D. Failure to comply with fee or docketing requirements. If an applicant fails to make the payment as required, the hearing examiner shall deny the application and dismiss the docket. If a protestant fails to make the payment as required, the protest shall be dismissed by the hearing examiner. Failure to comply with any other docketing requirement may result in dismissal of an application or a party from the proceedings, the exclusion of information or issues at hearing, or other limitation as determined by the hearing examiner.

E. Inactive dockets. If a matter docketed for hearing has been inactive for six months, the hearing examiner may place the case on the hearings unit's inactive docket, and the hearings unit administrator shall maintain a separate docket list for inactive cases. If a matter placed on the inactive docket has not had any activity for six months thereafter, the hearing examiner, after notice to the parties, may deny the application. In no event shall any matter remain on the inactive docket for more than 12 months without an order so specifying from the hearing examiner.

[19.25.2.10 NMAC - Rp, 19 NMAC 25.2.13, 8-30-2013]

19.25.2.11 REPRESENTATION OF PARTIES:

Parties may be represented by an attorney or may appear pro se, as described below, in hearings before the state engineer or designated hearing examiner. All communications by parties with the hearings unit shall be made through a party's attorney or a person appearing pro se, unless otherwise provided for by the hearing examiner.

A. Attorneys. An attorney representing a party shall enter his appearance in the record. Withdrawal or substitution of counsel shall be by notice to the parties and hearings unit, and all issues relating to withdrawal or substitution of counsel shall be resolved in a form and manner at the discretion of the hearing examiner.

B. Pro se appearance. An individual may appear as a pro se party. Parties appearing pro se shall be responsible for familiarizing themselves with this rule, the rules of civil procedure for the district courts of New Mexico, the rules of evidence governing non-jury trials for the district courts of New Mexico, the instructions for parties in administrative proceedings, and all other rules of the OSE.

C. Applicants, respondents and protestants other than a pro se party. A party that is not an individual shall be represented by an attorney.

D. Ex parte communications prohibited. There shall be no ex parte communications with the hearing examiner or the state engineer in any pending proceeding on any substantive issue unless notice is given and an opportunity afforded all parties to participate or respond. Any continued ex parte communications after a single state engineer order to cease will result in dismissal of the offending party. Routine procedural questions may be addressed to the hearings unit administrator.

[19.25.2.11 NMAC - Rp, 19 NMAC 25.2.19, 8-30-2013]

19.25.2.12 HEARINGS UNIT FILING REQUIREMENTS:

A. Filing of documents and number of copies. Written communications shall contain the name, address, and telephone number of the communicator and an appropriate reference to hearings unit files by docket and OSE file number(s) pertaining

to the subject of the communication. All motions and other pleadings shall be filed with the administrator of the hearings unit in triplicate, consisting of the original plus two copies. Motions requesting an order from the hearing examiner shall be accompanied by a proposed order and stamped, addressed envelopes for service by the hearings unit administrator of such order on all parties.

B. Rejection of documents. A document that does not reference the hearings unit's docket number and OSE file number in the caption of the document, or that is not in substantial compliance with this rule, may be rejected by the hearings unit administrator or hearing examiner. No motion or pleading requesting discovery shall be filed with the hearings unit prior to the matter being docketed by the hearings unit.

C. Date of filing. A pleading or document is considered filed on the date stamped by the hearings unit administrator, unless the pleading or document is subsequently rejected. Any pleading or document received after regular business hours will be stamped and considered filed on the next regular business day.

D. Facsimile and electronic filing. In the discretion of the hearings unit administrator, a pleading or document, not to exceed 10 pages, may be filed by facsimile transmission, subject to any additional filing requirements that may be required by the hearings unit administrator. Such facsimile transmissions must be received before 4 p.m., mountain standard or daylight time. When feasible, the hearing examiner may order pleadings and other documents to be filed electronically if electronic filing procedures by the hearings unit have been established.

E. Service. Except as otherwise provided by this rule or by order of the hearing examiner, a party shall serve upon all parties to the proceeding all pleadings and documents that are filed with the hearings unit. Service shall be made by delivering or mailing a copy to the party's counsel and to any individual party appearing pro se. Proof of service shall be made by a certificate of service, which shall include a list of all parties served. Upon agreement, service among parties may be by electronic means.

F. Notification of change of address or other information. Each party shall provide the hearings unit administrator and other parties with a current mailing address, telephone number, and facsimile information. A party shall be deemed to have received notice of all pleadings and notices mailed or sent by facsimile to the address or facsimile number of record. If a party fails to provide a current mailing address, and pleadings or notices sent to the address of record are returned by a postal service as undeliverable, the hearing examiner shall dismiss that party.

G. Amendments and withdrawal. Requests to amend or withdraw a pleading shall be made by motion or application subject to response by the WRD or other parties, and if granted shall be subject to such conditions as the hearing examiner may deem appropriate. Amendments to any pleading shall not broaden the scope of the issues originally filed unless allowed by the hearing examiner, and shall be subject to such additional notice or other responses as ordered by the hearing examiner.

H. Computation of time. The time within which an act is to be done as provided in any rule or order, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

I. Extensions of time. Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the hearing examiner for good cause, upon a motion made before the expiration of the period prescribed or previously extended. The filing of the motion does not toll the running of the time period prescribed.

[19.25.2.12 NMAC - N, 8-30-2013]

19.25.2.13 AUTHORITY AND DUTIES OF THE HEARING EXAMINER:

A. Powers of hearing examiner. In the absence of any limiting order, a hearing examiner appointed to hear any particular case shall have the power to regulate the proceedings before him and to perform all acts and take all measures necessary to conduct such hearing, including the following powers:

- (1)** to explain the events and requirements of the hearing process, including the use of electronic service, notice and posting on the OSE website;
- (2)** to establish a procedural schedule for the administrative proceedings and to modify procedural orders on his own motion or on motion of a party when necessary or appropriate;
- (3)** to schedule and conduct conferences and preliminary hearings when necessary or appropriate to: identify substantive issues for hearing, set a discovery schedule and hearing date, establish an official service list, address other preliminary matters, encourage settlement, and rule on preliminary motions;
- (4)** to order parties to hold appropriate settlement conferences before or during any hearing, provided that the hearing examiner shall not take part in any settlement conference unless all parties agree to his participation;
- (5)** to dismiss parties or actions;
- (6)** to apply the procedures of this rule and to grant such waivers to those procedures as he deems necessary or appropriate;
- (7)** to issue subpoenas to produce materials and to require persons to appear;
- (8)** to provide for appropriate methods of discovery;

(9) to administer oaths and affirmations;

(10) to ensure that all relevant issues relating to impairment, conservation of water within the state and the public welfare of the state are considered during the evidentiary hearing and to request, receive and make part of the record all evidence (testimony and exhibits) determined necessary to decide the issues and rule upon all objections and motions;

(11) to regulate the conduct and course of the hearing consistent with due process, including the scheduling, recessing, reconvening, and adjournment thereof;

(12) to cause a complete record of the proceedings to be made in accordance with the requirement of NMSA 1978, Section 72-2-17(C);

(13) to make a report and recommendation to the state engineer based upon the record of the proceedings; and

(14) to take such other action as may be necessary and appropriate to the discharge of these duties, consistent with the statutory authority or other authorities under which the state engineer functions and with the rules and policies of the OSE.

B. Limitation of authority. The state engineer may limit the authority of the hearing examiner to the specific consideration of enumerated issues or the performance of certain acts, such as presiding as directed at hearing, pursuant to a limiting order.

C. Subpoenas. In accordance with NMSA 1978, Section 72-2-14, the hearing examiner has the authority to issue subpoenas and to require the production of evidence in any proceeding before the state engineer, including all hearings, conferences and discovery proceedings. If a subpoena is issued, the return of service shall be filed with the hearings unit promptly after service, and shall include a certificate or affidavit attesting to service.

D. Substitution of parties. Substitution of parties may be permitted upon motion and for good cause, at the hearing examiner's discretion.

[19.25.2.13 NMAC - Rp, 19 NMAC 25.2.10, 8-30-2013]

19.25.2.14 DISQUALIFICATION:

Any party may file a motion to disqualify a hearing examiner for lack of impartiality. A motion to disqualify a hearing examiner must be filed no later than 10 days after the initial scheduling conference and shall state with specificity the grounds for disqualification. A hearing examiner shall excuse himself in a proceeding in which the hearing examiner's impartiality might reasonably be questioned, including but not limited to instances of personal bias or prejudice concerning a party or a party's attorney or

disputed evidentiary facts; or other bias or prejudice which would cause the hearing examiner to not render an impartial decision.

[19.25.2.14 NMAC - Rp, 19 NMAC 25.2.12, 8-30-2013]

19.25.2.15 SCHEDULING AND CONDUCT OF PRE-HEARING MATTERS:

The hearing examiner may establish conferences at regular times and places and at intervals sufficiently frequent for the orderly management of the proceedings. These may include scheduling conferences, status reviews, settlement conferences, motions hearings, pre-hearing conferences, and all other matters relevant to the achievement of a productive and efficient decision making process.

A. Procedural schedule. The hearing examiner shall issue a procedural order that contains a statement of the issues to be heard and sets a procedural schedule. In the absence of a specific finding and order from the hearing examiner, all discovery and motions shall be completed within 150 days from the date of the initial scheduling conference, and the final hearing shall be held within 180 days from the date of the scheduling conference. The hearing examiner may periodically conduct status reviews of the progress of the proceedings, and may issue procedural orders modifying the procedural schedule as necessary or appropriate.

B. Pre-hearing and status conferences. The hearing examiner may conduct pre-hearing or other status conferences to simplify issues for hearing; rule on or otherwise consider outstanding motions or other pleadings; address stipulations, and admissions of fact and documents; address limitations on the number of witnesses or time allocated to particular witnesses or issues at hearing, order of witness presentation and scheduling of testimony and amount of time anticipated for direct and cross examinations; and any other relevant matters that may aid in the hearing process. The orders and rulings resulting from the pre-hearing conference shall control the subsequent course of the proceedings and final hearing, unless otherwise ordered by the hearing examiner.

C. Alternative dispute resolution. The hearing examiner may order any or all parties to participate in an OSE-facilitated ADR process or to attend a settlement conference to assist in reaching a settlement at the earliest possible stage, resolve disputed facts or issues, expedite the hearing process, and conserve resources.

D. Motions hearings. The hearing examiner may rule on a motion, other than for summary judgment, based on the pleadings or may schedule a hearing on the motion, at the hearing examiner's discretion.

E. Summary judgment motions. Motions for summary judgment that are dispositive of any administrative or enforcement matter shall not be granted without a hearing. The hearing examiner shall submit a report and recommendation as to the

dispositive motion to the state engineer for final decision in accordance with 19.25.2.28 and 29 NMAC.

F. Attendance at scheduled proceedings. All parties shall attend scheduled hearings, conferences or other proceedings fully prepared to discuss all matters noticed and to address any outstanding motions or pleadings. Without good cause shown, the failure of a party to attend or be prepared to discuss those matters set to be heard shall constitute a waiver of any objection to any agreement reached or to any order or ruling made as a result of the proceeding, and may be grounds for adverse action by the hearing examiner on the pleading of the party failing to appear.

G. Scheduling of site visits. The hearing examiner may schedule site visits, subject to notice to the parties and the opportunity for parties to attend.

[19.25.2.15 NMAC - Rp, 19 NMAC 25.2.14 & 15, 8-30-2013]

19.25.2.16 PROCEDURAL REQUIREMENTS AND DEADLINES:

A. Applicability of Rules of Civil Procedure. Conduct and procedure with respect to discovery and prehearing matters before the hearing unit shall be generally consistent with the New Mexico Rules of Civil Procedure for the District Courts, except as otherwise set forth in this rule or as otherwise permitted by the hearing examiner.

B. Specificity of motions. All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, state the relief sought, and state whether the motion is opposed or unopposed. An opposed motion shall state that consent of the other parties to the motion was sought and not obtained, or the reason such consent was not sought. An unopposed motion shall state that concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing examiner's consideration.

C. Deadline for response and reply to motions. Any party upon whom an opposed motion is served shall have 15 days to file a response. A non-moving party failing to file a timely response may be deemed to have waived any objection to the granting of the motion. The moving party may file a reply within 15 days after a response to a motion.

D. Prefiled testimony and exhibits. The hearing examiner may require advance filing of certain exhibits (subject to objections), including but not limited to copies of the application, notice, expert reports or written testimony, locational photographs or maps, and any other exhibits which may aid in an efficient hearing process. Where a proceeding involves complex and technical issues to be presented through multiple witnesses, the hearing examiner may require the filing of written testimony by witnesses in advance of the hearing.

[19.25.2.16 NMAC - Rp, 19 NMAC 25.2.9, 8-30-2013]

19.25.2.17 DISCOVERY:

No discovery shall be had on the state engineer, a hearing examiner, or ADR officer in proceedings before the hearings unit. The hearings unit favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the parties for this exchange.

A. Types of discovery. Discovery shall include all depositions, written interrogatories, requests for production of documents, and requests for admissions. Parties shall have the right to take the testimony of any witnesses by deposition and may seek a subpoena for the attendance of witnesses and the production of documents or records. Parties shall make a good-faith effort to obtain public records through the relevant agency's open records process prior to requesting production of such documents from other parties.

B. Filing and service, and limitations. Discovery requests and responses, or objections thereto, and deposition transcripts, shall not be routinely filed with the hearings unit; provided however that the party making a discovery request shall file a certificate of service with the hearings unit. Interrogatories, requests for production or inspection of documents, requests for admissions and other written discovery requests shall be served upon the party to which such discovery is directed and all other parties requesting such service. Any given discovery request shall be limited to no more than a total of 50 interrogatories, requests for production of documents, and requests for admissions, including subparts, which shall be separately counted toward the limit of 50. Parties desiring copies of the written discovery materials of other parties may request copies from either party, subject to the requesting party's agreement to pay the reasonable costs of reproduction.

C. Responses, objections and supplementation. Written answers or responses to discovery requests shall be served within 30 days of service of the discovery requests, unless otherwise directed by the hearing examiner or agreed to by the parties. Written answers or responses to discovery requests shall be verified by the person providing the answer or response. Objections shall identify the request objected to and shall state with particularity the factual and legal basis for the objections, and the response to the request shall be deferred until a determination has been made on such objections. A party who has responded to a request for discovery shall reasonably and promptly amend or supplement a previous response if he subsequently obtains information which would have been responsive if the information had been available at the time the response was served.

D. Motions to compel. Parties are expected to engage in discovery in good faith for the purpose of fair and efficient presentation of evidence at hearing, and they are expected to make every good faith effort to resolve discovery disputes informally. A party may move for an order compelling discovery only if the movant has made a good faith effort to resolve the dispute and was unable to do so. Any motion for an order compelling discovery shall document the good faith efforts taken by the movant to

resolve the dispute, and shall include copies or complete restatements of the discovery requests or notices to which the movant seeks compelled responses, along with copies of any responses or objections to the subject discovery requests or notices, and any other pertinent materials.

E. Order for protection of parties, or witnesses. The hearing examiner may issue such orders for the protection of parties or witnesses from annoyances, embarrassment, or oppression as may be just and proper under the circumstances. If the hearing examiner determines that a party has not acted in good faith in propounding, undertaking, responding to, or otherwise participating in the discovery process, the order may include, but is not limited to, the exclusion of evidence, limitation of issues, or dismissal of a party.

[19.25.2.17 NMAC - Rp, 19 NMAC 25.2.9, 8-30-2013]

19.25.2.18 STIPULATIONS AND SETTLEMENTS:

Parties to a proceeding shall make a reasonable effort to stipulate to facts to be relied upon in a hearing or on appeal. Stipulations of fact or of resolutions of specific issues shall be in writing and signed or approved by all stipulating parties, and shall be filed with the hearings unit administrator, unless entered into within five days of any final hearing, whereupon the stipulation shall be presented at hearing. Objections to a stipulation shall be in writing, unless the stipulation is presented at hearing, whereupon any objections shall be presented at hearing. Settlements of all or a portion of the issues pending may be presented in writing before hearing or in writing or orally at hearing, and shall include the parties' procedural recommendation for disposition of the pending matter. The state engineer shall review and either accept, modify or reject any stipulation or settlement. If the state engineer modifies the stipulation or settlement, the parties shall have the opportunity to accept such modification or to void the stipulation. If the state engineer rejects any stipulation or settlement, the hearing shall proceed or be reconvened to take evidence on the merits of the pending matters, which may include the resolution of issues as presented in the stipulation or settlement.

[19.25.2.18 NMAC - N, 8-30-2013]

19.25.2.19 CONTINUANCE AND POSTPONEMENT:

A. Continuance of hearing. A scheduled hearing or conference may be continued with notice prior to the hearing or conference, or it may be recessed during the hearing or conference and reconvened at a later date. Grounds for continuance may include, but are not limited to: mandatory deference to the resolution of prior pending applications; limitations with regard to OSE resources available to investigate or evaluate the application and claims of the parties; and settlement of some or all issues among any or all parties.

B. Postponement of evidentiary hearing. A party may request postponement of the scheduled hearing, subject to determination by the hearing examiner. Grounds for postponement may include, but are not limited to, ongoing settlement negotiations, the unavailability of an expert witness, or the inability of a party to complete technical reports and exhibits. Repeated requests for postponement will not be viewed favorably unless good cause is presented.

[19.25.2.19 NMAC - Rp, 19 NMAC 25.2.25, 8-30-2013]

19.25.2.20 DISMISSAL OR WITHDRAWAL OF PARTY OR ACTION:

A. Dismissal of party or action for failure to participate. If the hearing examiner determines that the applicant has failed to meet his or her obligation to go forward with the application by timely participation in the administrative hearings process, the hearing examiner shall deny a protested application or shall reinstate the action by the WRD on an aggrieved application, and shall dismiss the hearing. If the hearing examiner determines that a protestant has failed to meet his burden of timely participation in the administrative hearings process, the hearing examiner shall dismiss the protestant. In the event that all protestants are dismissed, the hearing examiner may remand the application to the WRD for further action.

B. Withdrawal of request for hearing from aggrieved WRD decision. An aggrieved applicant may file a motion to withdraw the request for a hearing with the hearings unit and shall serve the motion on the ALU attorney of record. If granted, the hearing examiner shall reinstate the original decision or action of WRD. Upon motion by the applicant or the WRD, the hearing examiner may order that the application be withdrawn or remanded to WRD for other action, including but not limited to modification of the original WRD decision or action. The hearing examiner shall not grant the withdrawal of an aggrieved application once a hearing on the merits has concluded.

C. Withdrawal of protested application. A protested application may be withdrawn by the applicant by pleading filed with the hearings unit and served on the ALU attorney of record and all protestants, prior to hearing. The hearing examiner may require that upon withdrawal of a protested application, the applicant shall not file the same or substantially similar application for a specified period of time. Once the hearings unit has concluded a hearing on the merits a protested application may not be withdrawn.

[19.25.2.20 NMAC - Rp, 19 NMAC 25.2.32, 8-30-2013]

19.25.2.21 LOCATION OF HEARINGS:

All hearings shall be held in Santa Fe, New Mexico, unless otherwise ordered by the hearing examiner. Scheduling, status, and pre-hearing conferences and motions hearings shall be held in Santa Fe, New Mexico. At the discretion of the hearing examiner, any conference or hearing may be held telephonically.

19.25.2.22 CONDUCT OF HEARINGS ON AGGRIEVED AND PROTESTED APPLICATIONS:

Evidentiary hearings on the merits of a pending matter are formal, recorded proceedings at which the testimony of witnesses is taken under oath and exhibits are presented for consideration of the hearing examiner for admission as evidence in the record. The course of the hearing shall generally proceed as follows, unless otherwise directed by the hearing examiner:

A. Entry of appearances. The parties shall enter their appearances at the beginning of the hearing and shall be made through counsel of record, or individually by any pro se party.

B. Preliminary matters. The hearing examiner will address preliminary matters, including outstanding motions, the presentation and admission of exhibits deemed admitted pursuant to the scheduling order, stipulations, and other items not previously ruled on as deemed appropriate.

C. Opening statements. At the discretion of the hearing examiner, the parties may present brief opening statements summarizing their positions concerning the issues in dispute, prior to the presentation of any witnesses.

D. Order of witnesses. Unless otherwise directed by the hearing examiner, evidence will be presented in the order of applicant's direct case, including witnesses and exhibits, in support of its position; protestant(s)' responsive case, including witnesses and exhibits, in support of their position and in rebuttal to applicant's position and evidence; the WRD's presentation of its direct and rebuttal case, including direct witnesses and exhibits and rebuttal witnesses and exhibits; and applicant's rebuttal case. Surrebuttal shall only be allowed at the discretion of the hearing examiner.

E. Cross-examination. The parties shall have a reasonable opportunity to cross-examine the witnesses of opposing parties. Cross-examination shall be limited to matters addressed on direct examination of the witness or matters contained in exhibits prepared by the witness, unless otherwise permitted by the hearing examiner. The hearing examiner may limit repetitious cross-examination.

F. Supplementation of testimony. Testimony of a witness may, at the discretion of the hearing examiner and subject to cross examination and objection, be supplemented with graphics or computerized presentations, provided that the presenting party has given advance notice of its intent to do so, the projected images presented are disclosed as proposed exhibits pursuant to the scheduling order, and the proposed exhibit number or identifiers are clearly marked and visible on each graphic presentation.

G. Closing statements. Closing statements may be allowed at the discretion of the hearing examiner.

H. Conduct of participants. All parties, witnesses, counsel, staff, spectators and other persons shall conduct themselves in a respectful and orderly manner. Disruptions of any kind at hearings shall not be permitted. Any disregard of the rulings of the hearing examiner on matters of order and procedure by any person may be noted on the record and the hearing examiner may take appropriate action pursuant to Chapter 72 of the New Mexico Statutes Annotated, the Rules of Civil Procedure for District Courts and the Rules of Professional Conduct. The hearing examiner may adjourn, recess, or continue any hearing if the behavior of any person interferes with the proper and orderly conduct of a hearing, and for any other cause or circumstance that may prevent the proper conduct of a hearing.

[19.25.2.22 NMAC - N, 8-30-2013]

19.25.2.23 COMPLIANCE ORDERS AND ENFORCEMENT HEARINGS:

A. Compliance order. A compliance order shall consist of a written statement that identifies the subject water right or docket number and describes the following with specificity:

- (1) acts or omissions with which the respondent is charged;
- (2) citation of the statute, rule, order, or other authority that the respondent is alleged to have violated, or any other grounds for the compliance order;
- (3) directive as to whether the alleged violation must cease immediately, or a specific time period in which a respondent must come into compliance.

B. Service. The WRD shall cause the compliance order to be served upon the respondent by certified mail, return receipt requested.

C. Evidence of compliance. The respondent shall have 10 days to contact the water master by telephone, email, or in writing to demonstrate that the alleged violation has ceased or that the respondent has come into compliance. Upon confirmation of compliance from the water master, WRD shall request dismissal of the docket.

D. Request for hearing. If the respondent desires a hearing or otherwise contests a compliance order, the respondent shall submit a written request for hearing to the state engineer within 30 days of receipt of a compliance order.

E. Failure to request hearing. If a written request for hearing is not submitted by the respondent within 30 days after receipt of a compliance order, the order shall be final, enforceable and non-appealable.

F. Procedures for compliance hearings. The hearings unit shall establish regular hearing dates in Santa Fe for compliance orders. Requested hearings shall be held no less than 15 and no more than 60 days from the date the request is filed. The conduct of hearings on compliance orders shall be established in accordance with the general procedures and requirements set forth in this rule. The hearing examiner shall issue a written decision within five business days after the scheduled hearing date.

G. Waiver of appearance at hearing. The respondent may waive the right to appear at hearing and make oral arguments or present testimony, and instead may submit the matter to the hearing examiner for decision on written submissions and documentary evidence. All such waivers shall be made in writing and shall be final and binding upon the respondent. Upon receipt of a written waiver, the hearing examiner shall render a decision within five business days on the basis of the submissions.

H. Failure to appear or participate at hearing. Failure to appear or participate at hearing shall constitute a waiver of the respondent's right to a hearing and to contest the merits of the compliance order. The hearing examiner may dismiss the request for hearing. Upon dismissal for failure to appear or participate, the compliance order shall be final, enforceable and non-appealable. The respondent may appeal the order of dismissal pursuant to NMSA 1978, Section 72-7-1.

[19.25.2.23 NMAC - N, 8-30-2013]

19.25.2.24 EVIDENCE:

A. General. Each party is responsible for presenting evidence on the record. The New Mexico Rules of Evidence as applied in the district courts of the state shall generally apply. At the discretion of the hearing examiner, evidence not otherwise admissible under those rules of evidence may be admitted when necessary to ascertain relevant facts. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded upon the determination of the hearing examiner.

B. Oral and written testimony under oath. All testimony received by the hearing examiner in formal hearings shall be made under oath, except matters officially noticed or entered into by stipulation. All witnesses must be present at the hearing unless a witness' presence at hearing is waived by the hearing examiner upon notice to and without objection from the parties. Written testimony shall be introduced as an exhibit and shall be on pages containing line and page numbers, and shall identify the witness and party for whom the witness is testifying, and the hearing caption and docket number. Written testimony shall be accompanied by a statement by the witness attesting to or verifying the contents and substance of the written testimony. Where written testimony has been filed in advance of the hearing, such testimony shall be adopted by the witness at hearing, subject to any necessary or appropriate corrections or amendments, and shall have the same force and effect as though it were stated orally by the witness and need not be repeated. The witness shall be subject to cross-examination on both oral and written testimony. Expert witnesses providing oral

testimony shall also provide a detailed summary of their testimony in exhibit form, in the form of a written report or pre-filed testimony, in accordance with the scheduling order.

C. Stipulation as to facts and issues. The parties may, by stipulation in writing filed with the hearings unit or entered in the record at hearing, agree upon facts or issues involved in the controversy, which stipulation shall be binding upon the parties entering into the stipulation and may be regarded and used by the hearing examiner as evidence at the hearing. The hearing examiner may require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

D. Exhibits. Documentary factual or legal information may be received in evidence in the form of accurate copies or duplicates of the original. The original plus two copies of any document or exhibit shall be filed with the hearings unit pursuant to the requirements of the scheduling order. A copy of the document or exhibit, including any expert report that forms the basis of a witness' testimony or is anticipated to be sponsored by a witness, must be served by the submitting party upon the other parties to the proceeding prior to hearing, in accordance with the scheduling order. To the extent practicable all exhibits, including those to be introduced on cross-examination, shall be marked before the start of hearing. All exhibits shall be marked numerically in the order of introduction by the moving party. Documentary and other physical evidence may be authenticated or identified by any reasonable means that shows that the evidence is what the proponent claims it to be. Upon admission by the hearing examiner of an exhibit, it shall be entered into the record. A party shall make reasonable efforts to limit the amount of voluminous evidence when preparing and offering exhibits. Where an exhibit is an excerpt, summary or abstract of a larger document or set of materials, other parties shall be given reasonable opportunity in advance of the hearing to examine the underlying source of the exhibit and the excerpt, abstract, or summary.

E. Administrative notice. Requests to take administrative notice of OSE files are discouraged. In lieu of requesting that administrative notice be taken of documents, parties are encouraged to submit those documents or portions of documents in the form of exhibits in accordance with the scheduling order. The hearing examiner may take administrative notice of matters of which the district courts of this state may take judicial notice. In addition, administrative notice may be taken of generally recognized technical or scientific facts, published reports of governmental and state agencies, site visits conducted by the hearing examiner with notice to parties, and studies and conclusions within the state engineer's specialized knowledge. In addition, the hearing examiner may take administrative notice on the record of the results of the hearings unit previous experience in similar situations and general information concerning a subject within the OSE's or hearings unit's expert knowledge. When a party requests that the hearing examiner take administrative notice of a fact, the noticed fact and its source shall be stated at the earliest possible time before or during the hearing and other parties, upon timely request, shall be provided an opportunity to show why notice should not be taken.

F. Additional evidence. At any stage of the proceeding the hearing examiner may require the production of further evidence upon any issue. Such evidence may, at the

discretion of the hearing examiner, be in writing or presented orally. All parties will be given an opportunity to rebut or otherwise respond to such evidence submitted and cross-examine the witness under oath.

G. Objections. Any evidence offered in whatever form shall be subject to appropriate and timely objection. The evidence to be admitted at hearing shall be material and relevant to the issue. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the hearing examiner. The hearing examiner has discretion, with or without objection, to exclude inadmissible, incompetent, cumulative, or irrelevant evidence or order the presentation of such evidence discontinued. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. Formal exceptions to rulings are not necessary and need not be taken.

H. Offers of proof. An offer of proof for the record may be made and shall consist of a statement of the substance of the evidence to which objection has been sustained. The hearing examiner may require offers of proof to be submitted in writing in question and answer form.

I. Rebuttal evidence. Rebuttal evidence is evidence that tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence that is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence. The hearing examiner may permit or require rebuttal evidence to be submitted in prepared form in accordance with this rule prior to its introduction.

[19.25.2.24 NMAC - Rp, 19 NMAC 25.2.21 & 22, 8-30-2013]

19.25.2.25 BURDEN AND STANDARD OF PROOF:

The burden of proof in a proceeding on a pending application is on the applicant to demonstrate that unappropriated waters are available for appropriation where a new appropriation is sought, and that the application will not impair or be detrimental to existing water rights, is not contrary to conservation of water within the state and is not detrimental to the public welfare of the state. In a compliance order hearing the burden of proof is on the WRD. The standard of proof for hearings unit proceedings shall be based on a preponderance of the evidence.

[19.25.2.25 NMAC - N, 8-30-2013]

19.25.2.26 RECORDING AND TRANSCRIPTION:

All hearings shall be recorded or transcribed by the hearings unit. In accordance with NMSA 1978, Section 72-2-17(B)(5), the oral proceedings may be transcribed upon the request of any party. Parties requesting that proceedings be transcribed shall arrange for the appearance by a stenographer and shall pay the cost of the transcription directly

to the preparer of the transcript. In the event that the proceedings are transcribed upon the hearing examiner's own request, the parties may obtain copies of the transcript upon payment of any applicable fees. Copies of recorded proceedings may be obtained by the parties upon payment of applicable fees charged by the hearings unit.

[19.25.2.26 NMAC - Rp, 19 NMAC 25.2.18, 8-30-2013]

19.25.2.27 PROPOSED FINDINGS OF FACT AND RECOMMENDATIONS:

At the conclusion of the hearing, the hearing examiner may request that the parties submit proposed findings of fact, conclusions of law, and recommendations that will become part of the administrative record. At the hearing examiner's discretion, proposed findings of fact, conclusions of law, and recommendations may be accompanied by supporting legal memoranda from the parties.

[19.25.2.27 NMAC - Rp, 19 NMAC 25.2.29, 8-30-2013]

19.25.2.28 HEARING EXAMINER'S REPORT AND RECOMMENDATIONS:

After completion of an evidentiary or summary judgment hearing on the merits, the hearing examiner shall prepare and submit a report and recommendation to the state engineer for final decision.

[19.25.2.28 NMAC - Rp, 19 NMAC 25.2.30, 8-30-2013]

19.25.2.29 FINAL DECISION:

Upon filing of the hearing examiner's report and recommendation, the state engineer shall issue a written final decision.

A. Record evidence. The state engineer shall base the final decision upon the record, including the hearing examiner's report and recommendation. Evidence upon which the state engineer may base the final decision includes the following:

- (1) any records, investigation reports, stipulations, and other relevant documents in the state engineer's possession that is offered and made a part of the record of the proceeding;
- (2) sworn testimony of witnesses and exhibits entered into the record by the hearing examiner; and
- (3) any facts that have been administratively noticed.

B. Entry of decision. After submission and consideration of the hearing examiner's report and recommendation, the state engineer shall enter the final decision or shall

order the hearing examiner to reopen the record of proceedings in order to take further evidence or testimony.

C. Notice of decision. The state engineer's decision shall be mailed to all parties, or to their counsel of record if legally represented, by certified mail, return receipt requested, within 10 days after entry of the decision.

D. Finality. A decision of the state engineer is final after 30 days, unless an appeal has been timely filed in accordance with NMSA 1978, Sections 72-2-16 and 72-7-1. The state engineer shall not seek enforcement of a compliance order until it is final, except where an emergency exists or the public health or safety necessitates.

[19.25.2.29 NMAC - Rp, 19 NMAC 25.2.31, 8-30-2013]

19.25.2.30 RECONSIDERATION:

A party may file a written request for reconsideration with the state engineer within 10 days of receipt of a final decision, and shall serve such request on all parties to the proceeding. A request for reconsideration shall state the factual and or legal basis for reconsideration of the state engineer's decision, and shall contain appropriate citations to the record. The filing of a request for reconsideration does not operate to toll or otherwise delay the time for filing an appeal as set forth in NMSA 1978, Section 72-7-1. If the state engineer takes no action on a request for rehearing within 10 days of its filing, it shall be deemed denied. If the state engineer grants a request for reconsideration, the state engineer shall issue an order vacating the final decision.

[19.25.2.30 NMAC - N, 8-30-2013]

19.25.2.31 APPEAL FROM FINAL DECISION:

After hearing, appeal of the state engineer's decision may be taken by a party to a district court of the state, pursuant to NMSA 1978, Section 72-7-1, and other applicable laws of the state.

A. Time for filing notice of appeal. Any applicant or other party dissatisfied with the decision of the state engineer shall serve a notice of appeal within 30 days after receipt by certified mail of notice of the state engineer's decision, in accordance with the requirements of NMSA 1978, Section 72-7-1. The filing of a request for reconsideration by any party shall not operate to toll or otherwise delay the time for filing an appeal as set forth by statute.

B. Transmittal of record. Upon being served with a notice of appeal, the hearings unit administrator shall provide counsel for the state engineer a certified copy of the administrative hearing record for transmittal to and filing with the district court in accordance with NMSA 1978, Section 72-7-2.

[19.25.2.31 NMAC - N, 8-30-2013]

19.25.2.32 ADMINISTRATIVE RECORD:

In accordance with NMSA 1978, Section 72-2-17(C), the administrative record shall include, at a minimum, all pleadings, motions, and intermediate rulings; evidence admitted at hearing; matters or items administratively noticed; questions and offers of proof, and objections and rulings thereon; any proposed findings submitted; the transcript or recordings of the administrative hearing; and any decision, opinion, or report by the state engineer or hearing examiner who conducted the hearing.

[19.25.2.32 NMAC - Rp, 19 NMAC 25.2.28, 8-30-2013]

19.25.2.33 DECISION OF DISTRICT COURT:

The decision of the district court shall be binding on the state engineer upon the expiration of the deadline for appeal from the district court's decision if an appeal has not been taken in accordance with statutes and the procedural rules of the New Mexico supreme court. The state engineer shall take such action as is necessary or required in accordance with such decision, and shall include a copy of the decision from the court in the OSE files.

[19.25.2.33 NMAC - N, 8-30-2013]

PART 3: MAPS AND PLANS

19.25.3.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.25.3.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.25.3.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978 Compilation.

[Recompiled 12/31/01]

19.25.3.4 DURATION:

[RESERVED]

[Recompiled 12/31/01]

19.25.3.5 EFFECTIVE DATE:

Filed November 1, 1966.

[Recompiled 12/31/01]

19.25.3.6 OBJECTIVE:

This rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[RESERVED]

[Recompiled 12/31/01]

19.25.3.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.25.3.8 MAP QUALITY:

All maps made from actual field surveys shall be original tracings, accurately and neatly prepared on good quality tracing material. As all tracings are part of the permanent record, they must be prepared with permanent waterproof India drawing ink or the equivalent. This requirement also applies to all signatures, dates and acknowledgments appearing on the sheets. Sheets which fail to comply with these provisions will not be accepted.

[SE-66-1 Article 5-1, Recompiled 12/31/01]

19.25.3.9 SCALE AND SIZE:

A. Maps for all basins except the Mimbres and Animas shall be seventeen (17) inches wide and twenty-three (23) inches long on the trim lines with margins of one (1) inch on the top, one-half (1/2) inch on the right side and bottom, and one and a half (1 1/2) inches on the left or long side for binding purposes. The map shall have a scale of one (1) inch equals four hundred (400) feet, unless otherwise specified by the state engineer. See page 36 [now 19.25.3.16 NMAC] for sample plat. If more than one sheet

is required, they shall be properly numbered in sequence (Example - Sheet 1 of 3 sheets).

B. Mimbres and Animas basins: Maps for the Mimbres and Animas basins shall be fourteen (14) inches wide and seventeen (17) inches long on trim lines with margins of one-half (1/2) inch on the top, right side and bottom, and one and a half (1 1/2) inches on the left or long side for binding purposes. The map shall have a scale of one (1) inch equals five hundred (500) feet.

[SE-66-1 Article 5-2 and 5-2.1, Recompiled 12/31/01]

19.25.3.10 DECLINATION AND DATE:

Maps shall be plotted to the true meridian and all bearings shown shall be true bearings. The direction of north shall be indicated on the map. Magnetic declination should be shown if used in making the field survey. The date that the field survey is made shall be shown on the final maps.

[SE-66-1 Article 5-3, Recompiled 12/31/01]

19.25.3.11 LEGAL DESCRIPTION AND LEGEND:

The map shall show the legal subdivisions, accurate locations of the well or wells, reservoirs, if any, main canals, streams, highways and other important physical features. The source of water shall be designated by the appropriate symbol hereinafter given, placed in the corners and around the perimeter as needed to clearly delineate the area, with one-eighth (1/8) inch tick marks indicating the boundaries of the irrigated area. When the acreage is irrigated by more than one source, the symbols used shall so indicate.

<u>Source of Supply</u>	<u>Symbol</u>
Artesian ground water	1/8 inch open circle
Shallow ground water	1/8 inch open square
Surface water	Letter S
Artificial water	1/8 inch open diamond

[SE-66-1 Article 5-4, Recompiled 12/31/01]

19.25.3.12 LOCATION OF WELL AND DESCRIPTION OF ACREAGE:

The location of the well or wells from which water is diverted shall be accurately determined and plotted on the map. The course and distance or coordinate distances

from a known legal subdivision corner shall be shown. A one-eighth (1/8) inch solid circle shall represent an artesian well and a one-eighth (1/8) inch solid square shall represent a shallow ground water well. Sections and subdivisions thereof in which the well and the lands lie shall be accurately indicated and the number of acres irrigated within the subdivisions shall be shown. When a part of a ten (10) acre subdivision is irrigated, the acreage within the ten (10) acre subdivision must be accurately shown. The ownership of lands and file numbers pertinent to the filing shall be shown on the map.

[SE-66-1 Article 5-5, Recompiled 12/31/01]

19.25.3.13 RESERVOIRS AND DITCHES:

The location, area and capacity of any reservoirs shall be shown on the map. The main ditches shall be shown and the direction of flow shall be indicated.

[SE-66-1 Article 5-6, Recompiled 12/31/01]

19.25.3.14 ADDITIONAL REQUIREMENTS:

The tracing shall include the following statement and certificate: Plat of underground water project to accompany land surveyor's permit report to:

(Appropriate the underground waters of the state of New Mexico, change place or purpose of use, etc.)

Permit No. _____, _____ Permittee.

The areas where the water has been beneficially applied under the provisions of the permit are described (to the

nearest ten (10)-acre subdivision where necessary) as follows:

SUBDIVISION OWNER*	SECTION	TOWNSHIP	RANGE	ACRES	
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

* Omit if permittee named above is sole owner. NOTE: If all or part of the lands received water from more than one source, detail such sources by file no., legal subdivisions, and acreages so affected. This may be done by adding other columns to above table in which to designate file numbers of sources supplying water, or by preparing separate tabulations of the acreages irrigated from each source.

[SE-66-1 Article 5-7, Recompiled 12/31/01]

19.25.3.15 CERTIFICATE:

The land surveyor or professional engineer and land surveyor making or directing the survey shall place upon the map (or the first sheet if more than one) his certificate. His license number together with an impression of his seal shall also appear. The certificate shall read as follows:

CERTIFICATE

I, _____, hereby certify that I am the _____ who prepared the above map and statement from field notes of actual surveys conducted on _____, 19__, by me or under my direction, and that the same are true and correct to the best of my knowledge and belief.

(SEAL)

Engineer and Land Surveyor

Registered Land Surveyor or Professional

License No.

Date Submitted

[SE-66-1 Article 5-8, Recompiled 12/31/01]

19.25.3.16 SAMPLE PLAT - WATER RIGHT FILING MAP:

[SE-66-1 Article 5-9, Recompiled 12/31/01]

PART 4: [RESERVED]

PART 5: FORMS AND FEES

19.25.5.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.25.5.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.25.5.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978 Compilation.

[Recompiled 12/31/01]

19.25.5.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.25.5.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.25.5.6 OBJECTIVE:

This rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.25.5.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.25.5.8 DECLARATIONS AND APPLICATIONS:

The following is a list of fees to be received by the state engineer for issuing certain documents and performing other services in connection with administration of the underground water law:

<u>Form to be Completed and Filed</u>	<u>Filing Fee</u>
Declaration of Right	\$1.00
Application to Appropriate/Requiring Publication and Notice	\$5.00
Application to Appropriate/Other/	\$1.00
Application for Supplemental Well	\$5.00
Application to Repair or Deepen Well	\$1.00
Application to Change Location of Well	\$5.00
Application to Change Place and/or Purpose of Use	\$5.00
Application to Change Location of Well and Place and/or Purpose of Use	\$5.00
Application to Combine Water Rights	\$5.00
Application for Extension of Time	\$5.00
Application for Well Driller's License	\$20.00
Application to Amend Well Driller's License	\$5.00
Application for Well Driller's License, Renewal	\$10.00

[SE-66-1 Article 6-1, Recompiled 12/31/01]

19.25.5.9 FEES FOR OTHER SERVICES:

For reviewing plans for the development of ground water from a well or wells that have not been put to beneficial use prior to the time a basin is declared or extended.

Fee for each proposed well in plan	\$5.00
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For issuing any license to appropriate, for each permit therein	\$5.00
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One (1) Dollar for issuing any miscellaneous water right document. For such other work as may be required of this office, such reasonable fees as, in the judgment of the state engineer, the character and extent of the work shall justify.

[SE-66-1 Article 6-2, Recompiled 12/31/01]

PART 6-7: [RESERVED]

PART 8: GROUND WATER STORAGE AND RECOVERY ACT

19.25.8.1 ISSUING AGENCY:

Office of the State Engineer.

[19.25.8.1 NMAC - N, 01-31-2001]

19.25.8.2 SCOPE:

These regulations govern the application process, the hydrologic, technical and financial capability report requirements, and the permit terms and conditions for projects authorized under the Ground Water Storage and Recovery Act (the "Act"), NMSA 1978, 72-5A-1 through 72-5A-17 (1999 Supp.). These regulations shall not be construed to limit or otherwise alter the jurisdiction, power, or authority of the state engineer.

[19.25.8.2 NMAC - N, 01-31-2001]

19.25.8.3 STATUTORY AUTHORITY:

NMSA 1978, 72-5A-6(D) (1999)

[19.25.8.3 NMAC - N, 01-31-2001]

19.25.8.4 DURATION:

Permanent

[19.25.8.4 NMAC - N, 01-31-2001]

19.25.8.5 EFFECTIVE DATE:

January 31, 2001.

[19.25.8.5 NMAC - N, 01-31-2001]

19.25.8.6 OBJECTIVE:

The objective of these regulations is to govern the proceedings before the state engineer to ensure the expeditious and orderly handling of applications and administration matters related to the Act.

[19.25.8.6 NMAC - N, 01-31-2001]

19.25.8.7 DEFINITIONS:

Unless defined below or in a specific section, all other words used in these regulations shall be given their customary and accepted meanings.

A. Area of hydrologic effect: The underground area where the water is stored and located, hydrologically connected surface waters, adjacent ground water areas in which water rights exist that may be impaired, the land surface above the underground areas, and any additional land surface used for seepage or infiltration.

B. Capability Report: The short name for the Hydrologic, Technical, and Financial Capability Report (detailed in Appendix A) to accompany an application for Underground Storage and Recovery.

C. Project: A permitted, engineered facility specifically designed, constructed, and operated to add measured volumes of water by injection or infiltration to an aquifer or system of aquifers, to store the water underground, and to recover the stored water for beneficial use.

D. Stored Water: The water that has been stored underground for the purpose of recovery.

[19.25.8.7 NMAC - N, 01-31-2001]

19.25.8.8 LIBERAL CONSTRUCTION:

These regulations shall be liberally construed to carry out the provisions of the Act.

[19.25.8.8 NMAC - N, 01-31-2001]

19.25.8.9 PURPOSE OF THE ACT:

In 1999, the New Mexico Legislature enacted the Act to allow governmental entities to store surplus supplies of water underground and to withdraw the recoverable amount at a later date for use by the governmental entity. In adopting the Act, the Legislature found that:

A. Conjunctive use and administration of both surface and ground waters are essential to the effective and efficient use of the state's limited water supplies; and

B. Ground water recharge, storage, and recovery have the potential to:

(1) Offer savings in the cost of capital investment, operation and maintenance, and flood control, and may improve water and environmental quality.

(2) Reduce the rate at which ground water levels will decline and may prevent oversteering or dewatering aquifer systems.

(3) Promote conservation of water within the state.

(4) Serve the public welfare of the state.

(5) Lead to more effective use of the state's water resources.

[19.25.8.9 NMAC - N, 01-31-2001]

19.25.8.10 AUTHORIZED APPLICANTS:

Only governmental entities defined as Indian nations, tribes, or pueblos, or state political subdivisions, including municipalities, counties, acequias, irrigation districts, or conservancy districts may apply for a permit.

[19.25.8.10 NMAC - N, 01-31-2001]

19.25.8.11 AUTHORIZED PROJECTS:

These regulations cover artificial recharge, underground storage, and water recovery projects. These regulations do not cover the incidental recharge to an aquifer (such as from septic tanks or unlined ditches).

[19.25.8.11 NMAC - N, 01-31-2001]

19.25.8.12 PERMIT REQUIRED:

A governmental entity may only construct or operate an artificial recharge, storage, and recovery project in the state of New Mexico after receiving a permit from the state engineer. One permit shall be granted for each project.

[19.25.8.12 NMAC - N, 01-31-2001]

19.25.8.13 PRE-APPLICATION MEETING AND PROJECT PROPOSAL:

Prior to submission of an application, every applicant is required to attend a pre-application meeting with representatives of the state engineer. At the pre-application meeting, the applicant shall provide a written project proposal that summarizes the project goals and objectives and describes the method(s) to be used to achieve the project goals. The following information, unless considered inappropriate by the state engineer and the applicant, is to be included in the project proposal and discussed at the pre-application meeting:

A. The mapped location of the proposed project and related facilities which shows existing and planned features of the site

B. Description of the purpose and scope of the proposed project

C. Description of the estimated area of hydrologic effect of the project

D. Description of the purpose and scope of the pilot/demonstration project

E. Description of the estimated area of hydrologic effect of the pilot/demonstration project

F. Description of the proposed method of recharge (i.e. aquifer storage and recovery wells, injection wells, and infiltration basins)

G. Topographic map which shows the location of surface water bodies (natural and man-made), canals and ditches, wells, other recharge and recovery sites, and areas within the estimated area of hydrologic effect where there is potential for impairment to water rights or harm to land owners

H. Relevant information on hazardous waste or other contamination sites, potential environmental impacts, and plans for mitigating any harmful effects

I. Information on existing wells, springs, seeps, and wetlands and a description of the methods that will be used to analyze possible impairment and harm from the artificial recharge, storage, and recovery project

J. Source water characterization including flow rate, total volume, reliability of deliveries, chemical composition, and conveyance methods

K. Water characterization of the ambient water in the aquifer in which the recharged water will be stored

L. Scope of work for proposed hydrologic investigations to include: the installation of monitoring wells, infiltration testing, methodologies for obtaining aquifer parameters, ground water level and quality monitoring plans, surface water (including springs and base flow) flow and quality measurements, subsidence measurements, and ground water and/or surface water modeling

M. Discussion of the proposed method to calculate the amount of recoverable water in storage

N. Discussion of the proposed method of recovery

O. Hydrogeologic information:

- (1) Depth to ground water and elevation of ground water (or potentiometric surface of ground water) in the area of hydrologic effect
- (2) Perched ground water conditions
- (3) Ground water flow direction
- (4) A description of the aquifer selected for storage, including its areal extent and any associated confining or semi-confining layer(s)
- (5) Rock and soil types in the vicinity of the site
- (6) Subsurface lithology and mineralogy/geochemistry in the vicinity of the site
- (7) Aquifer test parameters
- (8) Ground water quality data and the methods used to estimate their values
- (9) Wells within the estimated area of hydrologic effect
- (10) Subsidence data

P. Planned duration of the project and its facilities

Q. Secondary uses associated with the facility, if applicable, such as recreation, water quality treatment, or wetlands

R. Relevant information on past and present land use

S. Demonstration that the applicant has a valid water right and will meet all relevant state and federal rules and regulations

T. A file stamped copy of the Notice of Intent to Discharge (per Section 1201 of the New Mexico Water Quality Control Commission Regulations) filed with the New Mexico Environment Department.

[19.25.8.13 NMAC - N, 01-31-2001]

19.25.8.14 APPLICATION FOR PERMIT:

The application procedure for an Underground Storage and Recovery Permit is a two-step process.

A. Pilot/Demonstration Project: The applicant shall file a complete description of the pilot/demonstration project on a form prescribed by the state engineer, a capability report for the pilot/demonstration project, and a preliminary description of the full-scale

project (the preliminary description should attempt to estimate the area of hydrologic effect and the scope and purpose of the full-scale project as closely as possible). After making the initial filing, the applicant shall proceed to meet the requirements set forth in sections 15 through 22 of these regulations for the pilot/demonstration project. The information required for a pilot/demonstration project capability report is the same as that for a full-scale project. However, during the course of developing the capability report for a pilot/demonstration project it may become apparent that not all the necessary information is available. In this case, an abbreviated capability report may be submitted. In cases where data does not exist or is lacking, the applicant must indicate how they plan on collecting the necessary data during the pilot/demonstration project. The data required for the pilot/demonstration project are dependent on the duration, volume, purpose, operation, and the geologic and hydrologic complexity of the project.

B. Full-Scale Project: Upon completion of a successful pilot/demonstration project, the permittee shall prepare a complete description of the full-scale project on a form prescribed by the state. The description shall be accompanied by the findings from the pilot/demonstration project and a capability report for the full-scale project that is based on the information gathered during the pilot/demonstration project. After filing their application for a full-scale project, the applicant shall proceed to meet the requirements set forth in sections 15 through 22 of these regulations for the full-scale project. However, the applicant shall not have to publish a legal notice for the full-scale project if the state engineer determines that the legal notice published after the filing of the pilot/demonstration project application reasonably informed the public of the final proposed full-scale project. A revised notice shall be published if the state engineer determines that the scope of the full-scale project has significantly changed since the publication of the original notice.

C. Filing Fee: A complete application shall be filed with the proper filing fee of five thousand dollars (\$5000.00), payable at the time the application is filed, plus five dollars (\$5.00) per acre-foot of the annual capacity of the full-scale artificial recharge, storage, and recovery project, payable upon the filing of the full-scale project. The total application fee shall not exceed fifty thousand dollars (\$50,000).

[19.25.8.14 NMAC - N, 01-31-2001]

19.25.8.15 PILOT OR DEMONSTRATION PROJECT:

A pilot or demonstration project is a prerequisite of a full-scale project.

A. Definitions:

(1) Demonstration project: A demonstration project is considered a full-scale test of a project, in part or in whole, for a limited period of time. An example of a demonstration project is testing a full-size aquifer storage and recovery well.

(2) Pilot Project: A pilot project is considered a scale model test of a full-scale project.

B. The purposes of a pilot/demonstration project are to determine if a full-scale, long-term project is hydrologically feasible and to collect and evaluate the operational, hydrologic, and geologic data needed to support an application for permit for a full-scale project. The source water used in a pilot/demonstration project should be from the same source proposed for the full-scale project.

C. A pilot/demonstration project will enable a governmental entity to collect and evaluate technical information to determine the feasibility of a full-scale, long-term project. A pilot/demonstration project permit will allow a governmental entity to store small amounts of water for a limited period of time in order to generate the data necessary for a full-scale project. A pilot/demonstration project permit will be limited to a volume and duration determined acceptable by the state engineer. The water stored under a pilot project is considered recoverable.

D. If an applicant has completed a pilot/demonstration type project prior to the enactment of the Act, and the state engineer is satisfied that the applicant's project fulfills the essential purposes of the state engineer prescribed pilot/demonstration project, then the state engineer will accept the applicant's pilot/demonstration type project and its results in support of a full-scale project.

[19.25.8.15 NMAC - N, 01-31-2001]

19.25.8.16 CAPABILITY REPORT:

The hydrologic, technical, and financial capability report shall include the following information:

- A. Executive Summary
- B. Project Objectives
- C. Evidence of Technical Capability
- D. Evidence of Financial Capability
- E. Evidence of Hydrologic Feasibility
- F. Area of Hydrologic Effect of Proposed Artificial Recharge, Storage, and Recovery Project
- G. Hydrogeologic Characterization of the Area of Hydrologic Effect

H. Evaluation of Impairment to Water Rights and Harm to Owners of Land Within the Area of Hydrologic Effect

I. Validity of the Source Water Right

J. Site Description

K. Facility Description

L. Facility Design

M. Facility Operation and Maintenance

N. Hydrogeographic Characterization of the Area of Hydrologic Effect

O. Effects Created by a Underground Storage and Recovery Project

P. Water Level Monitoring Plan

Q. Description of Water Quality Monitoring and Treatment Plans Required by a State or Federal Agency or Department

R. Contingency Plan

S. All other relevant information detailed in Appendix A

[19.25.8.16 NMAC - N, 01-31-2001]

19.25.8.17 INITIAL REVIEW OF APPLICATION:

After receipt of an application, the state engineer will conduct an initial review of the application. If the state engineer determines that an application is incomplete, defective as to form, is not in compliance with these regulations, or if he determines that it may be necessary to limit the duration of the permit (see Section 26), he shall return the application to the applicant. The applicant shall provide all information required by the state engineer. An application that is determined by the state engineer to be complete, in compliance with these regulations, and in recognition that any issued permit may be limited in duration, will be accepted for filing. The state engineer will advise the applicant in writing when an application has been accepted for filing.

[19.25.8.17 NMAC - N, 01-31-2001]

19.25.8.18 NOTICE--PUBLICATION:

Within thirty (30) days after receipt of a letter from the state engineer informing the applicant that their application has been accepted for filing, the applicant shall submit a notice for publication to the state engineer for review.

A. The notice shall set forth the contents of the application in a form containing the following information:

- (1) The name and address of the applicant;
- (2) The legal and common descriptions (per NMSA 1978, Section 14-11-10.1) of the location of the proposed project facilities and the area of hydrologic effect;
- (3) A brief description of the pilot/demonstration project.
- (4) A brief description of the proposed full-scale project, as appropriate, including the capacities;
- (5) The requirements for a protest, as set forth in Section 20 hereafter;
- (6) Disclosure that protests to the application shall be filed within ten (10) days after the date of the last publication of the notice; and
- (7) The day of the last publication (to be on the notice when published);
- (8) All other relevant information required by the state engineer.

B. The state engineer will review the notice and return it to the applicant within thirty (30) days of receipt with all corrections and additions noted. After making all changes to the notice required by the state engineer, the applicant shall publish the notice once a week for three (3) consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the project. The cost of the publication shall be borne by the applicant.

[19.25.8.18 NMAC - N, 01-31-2001]

19.25.8.19 PUBLICATION – EXPENSE:

The completeness and accuracy of the notice for publication is the responsibility of the applicant. If the published notice contains substantive errors, a revised notice shall be published at the expense of the applicant.

[19.25.8.19 NMAC - N, 01-31-2001]

19.25.8.20 PROTESTS:

A person may protest such an application by filing a protest alleging how the granting of the application will substantially and specifically affect the protestant and that it will impair the protestant's water right and/or be contrary to the conservation of water within the state and/or be detrimental to the public welfare of the state. The state or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all political subdivisions of the state and their agencies, instrumentalities and institutions shall have standing to file a protest. A protest shall be in writing and filed with the state engineer, Post Office Box 25102, Santa Fe, New Mexico 87504-5102. The protest shall state the name and mailing address of the protestant, identify the grounds for the protest, and contain the signature of the protestant or an authorized representative. The state engineer will provide the applicant with a copy of all filed protests to encourage the parties to reach a resolution. The applicant will provide each protestant with a copy of its pilot/demonstration project permit so that the protestant(s) may develop independent information during the pilot/demonstration project. The applicant will further provide each protestant with a copy of its full-scale project application at the time the application is filed with the state engineer.

[19.25.8.20 NMAC - N, 01-31-2001]

19.25.8.21 HANDLING OF PROTESTS - HEARING:

If any protests remain at the time the applicant has filed for its full-scale project, a hearing shall be conducted pursuant to the state engineer Hearing Procedures (19 NMAC 25.2). The state engineer will notify the applicant and protestant(s) in writing of the date of the prehearing conference.

[19.25.8.21 NMAC - N, 01-31-2001]

19.25.8.22 BURDEN OF PROOF:

Prior to the state engineer approving an application for Underground Storage and Recovery, the applicant must meet its burden of proof. The applicant has the burden of proving:

- A. the applicant has the technical and financial capability to construct and operate the project;
- B. the project is hydrologically feasible;
- C. the project will not impair existing water rights or the state's interstate obligations;
- D. the project will not be contrary to the conservation of water within the state;
- E. the project will not be detrimental to the public welfare of the state;

F. the applicant has a valid water right for the recharge water quantified by one of the following legal processes:

- (1) a water rights adjudication;
- (2) a consent decree;
- (3) an act of congress, including a negotiated settlement ratified by congress;
- (4) a contract pursuant to the Colorado River Storage Project Act, 43 U.S.C. Section 620 (1986 and Supp. 1999); or
- (5) an agreement with an owner who has a valid water right subject to an application for a change in purpose, place of use or point of diversion

G. the applicant will obtain all other permits for the project required by state and federal law. A project shall not be operated under the Act until an applicant has obtained all other state and federal permits required for the project; and

H. the project will not impair water rights or cause harm to owners or land within the area of hydrologic effect.

[19.25.8.22 NMAC - N, 01-31-2001]

19.25.8.23 ACTION BY THE STATE ENGINEER ON THE APPLICATION:

If no timely protest has been properly filed or remains standing, the state engineer will, upon finding that the application meets the requirements of the Act and the Rules and Regulations of the state engineer, issue a permit to the applicant to construct and operate the project to artificially recharge, store, and recover all or part of the waters applied for. All applications will be conditionally approved as a pilot/demonstration project permit (see Section 15) unless the state engineer has granted a variance. The state engineer will deny an application if there is reason to believe that the granting of the application would impair existing water rights or the state's interstate stream obligations, cause harm to land owners within the area of hydrologic effect, be contrary to the conservation of water within the state, or would be detrimental to the public welfare of the state.

[19.25.8.23 NMAC - N, 01-31-2001]

19.25.8.24 APPEAL:

Upon receipt of notice from the state engineer of the decision made on the application, the applicant may, within thirty (30) calendar days of such receipt, request in writing that the decision be set aside. The request that the action be set aside shall specify whether

the applicant will submit information for reconsideration or will request that the matter proceed to hearing through the state engineer hearing process (19 NMAC 25.2).

[19.25.8.24 NMAC - N, 01-31-2001]

19.25.8.25 PERMIT -- CONTENTS:

The state engineer will grant an Underground Storage and Recovery Permit and monitor compliance with the permit in the exercise of the full oversight authority provided by the Act and as otherwise delegated to the state engineer by the laws of New Mexico. The state engineer permit shall automatically terminate if the permittee fails to comply with or maintain all other state and federal permits required for the project. A permit issued will set forth:

A. the name and mailing address of the governmental entity to which the permit has been issued;

B. the name of the declared underground water basin in which the project will be located;

C. the plan of operation and capacity of the project;

D. the monitoring program required;

E. duration of permit (see section 26)

F. all conditions required by these regulations and as otherwise deemed appropriate by the state engineer;

G. other relevant information the state engineer determines to be appropriate.

[19.25.8.25 NMAC - N, 01-31-2001]

19.25.8.26 PERMIT DURATION AND RENEWAL, IF NECESSARY:

The state engineer will determine whether the circumstances necessitate an Underground Storage and Recovery Permit being limited in duration. If the state engineer limits the duration of a permit, a renewal shall be requested in writing by the permittee and filed with the state engineer at least one year prior to the expiration date of the permit. Failure to file the request for permit renewal in a timely manner may result in the expiration of the permit. A permit may be renewed multiple times. Upon expiration of a permit, the permittee has the right to withdraw all waters within storage that are recognized and approved by the state engineer as being recoverable.

[19.25.8.26 NMAC - N, 01-31-2001]

19.25.8.27 MODIFICATION OF PROJECT PERMIT:

The state engineer retains jurisdiction over every permit issued under these regulations and may modify its conditions to prevent impairment to water rights, to prevent harm to land owners, to prevent detriment to the public welfare of the state, and to prevent actions that are contrary to the conservation of water within the state. The conditions of a permit may also be modified to meet the purposes of the Act, to meet the original intent of the permit, or to account for a change to the scope of a project resulting from information gathered during the operation and maintenance of a full-scale project. A revised notice must be published if the state engineer determines that the scope of the full-scale project has significantly changed as a result of the modification. The state engineer will set aside his action if the permittee requests in writing that the action be set aside for reconsideration or for hearing through the state engineer hearing process (19 NMAC 25.2). The request from the permittee must be filed within thirty (30) calendar days of receipt of notice from the state engineer that a condition of the permit has been modified. The permittee must specify the basis for the request. The Water Rights Division will review a request for reconsideration and a request for hearing will be forwarded to the Administrative Litigation Unit.

[19.25.8.27 NMAC - N, 01-31-2001]

19.25.8.28 CHANGE OF OWNERSHIP OF PERMIT:

A permit issued under these regulation may be changed in ownership to another governmental entity upon the filing of an application with the state engineer for Change of Ownership. The Change of Ownership shall be approved if the state engineer determines that all provisions of these regulations will be met. If approved, a Change of Ownership will include conditions deemed appropriate by the state engineer.

[19.25.8.28 NMAC - N, 01-31-2001]

19.25.8.29 STORED WATER NOT AVAILABLE FOR APPROPRIATION - STORED WATER NOT SUBJECT TO FORFEITURE:

Water stored in an aquifer for subsequent diversion for beneficial use pursuant to these regulations is not available for appropriation and is not subject to forfeiture pursuant to NMSA 1978, 72-5-28 (1907) or 72-12-8 (1931).

[19.25.8.29 NMAC - N, 01-31-2001]

19.25.8.30 USE OF RECOVERED WATER:

A permittee may use water recovered only for the same place(s) and purpose(s) of use for which the diversion of the water was authorized prior to storage unless a permit to change the place(s) and/or purpose(s) of use has been issued by the state engineer.

[19.25.8.30 NMAC - N, 01-31-2001]

19.25.8.31 STORAGE ACCOUNT – LIMIT ON AMOUNT OF WATER RECOVERED:

Based on the information provided in the capability report, and as reported by the permittee pursuant to Section 32, the state engineer will establish a storage account for each project. If the project includes stored water from more than one source, a sub-account will be established for each source. A permittee may recover only the amount of water, as recognized and approved by the state engineer, that has reached the aquifer, remained within the area of hydrologic effect, and may be recovered without impairment to water rights or harm to land owners within the area of hydrologic effect, unless such impairment and harm is mitigated by a method acceptable to the state engineer. The permittee is solely responsible for protecting their stored water.

[19.25.8.31 NMAC - N, 01-31-2001]

19.25.8.32 ANNUAL REPORT TO STATE ENGINEER:

Each permittee shall file an annual report with the state engineer. Upon submission of the annual report to the state engineer, the permittee shall file an annual fee (subject to amendment) in the amount of fifty cents (\$0.50) per acre-foot of water placed in storage during the period of time covered by the annual report. The annual report shall include:

- A. the total quantity of water stored and recovered under the permit
- B. the amount of water stored and recovered during the previous calendar year
- C. a discussion on the water quality of the recharge water, the water in the receiving aquifer, and the recovered water
- D. measurements of the static level of the water table (or potentiometric surface) within the area of hydrologic effect;
- E. discussion on effects to surface water, including springs, seeps, and wetlands
- F. discussion on the operation and maintenance of the facilities
- G. discussion on the development of the project facilities
- H. discussion of changes to estimates or parameters used in the capability report
- I. discussion of any other revisions to the capability report
- J. discussion on permittee's compliance with all other relevant state and federal permits required to operate the artificial recharge, storage, and recovery project;

K. list of the expiration dates for all other state and federal permits required to operate the recharge, storage and recovery facility

L. list of all significant deviations between monitored and modeled results for water level and water quality analysis

M. discussion of recommendations for changes to the monitoring program or the operation and maintenance of the site facilities that may be implemented upon approval by the state engineer

N. all other relevant information requested by the state engineer

O. a sworn affidavit attesting to the truthfulness and accuracy of the report

[19.25.8.32 NMAC - N, 01-31-2001]

19.25.8.33 PERMIT REVIEW:

The permittee shall attend a permit review meeting with a representative of the state engineer on an annual basis. The permit review meeting should coincide with the submittal of the annual report.

[19.25.8.33 NMAC - N, 01-31-2001]

19.25.8.34 PENALTY FOR FAILURE TO FILE ANNUAL REPORT:

The annual report shall be maintained on a calendar year basis and shall be filed with the state engineer no later than March 31 for the preceding calendar year. If a permittee fails to file an annual report by the deadline established on the permit, the state engineer may assess and impose a penalty of Five Hundred Dollars (\$500) for each month or portion of a month that the report is not filed. The total penalty assessed annually pursuant to this subsection shall not exceed Five Thousand Dollars (\$5,000).

[19.25.8.34 NMAC - N, 01-31-2001]

19.25.8.35 FORM OF REPORTS:

All records and reports required to be maintained and filed pursuant to these regulations shall be in a form acceptable to the state engineer.

[19.25.8.35 NMAC - N, 01-31-2001]

19.25.8.36 INVESTIGATION OF A PROJECT BY THE STATE ENGINEER:

The state engineer may at any time investigate and review a project to determine if the permittee is complying with the terms and conditions of the permit. The state engineer

has the authority and duty to enter upon, and to order the project owner to permit the entry upon, private property at any reasonable time to inspect the various means or proposed means of artificial recharge, storage, or recovery, to observe well construction and plugging, to read and verify the accuracy of meters and other measuring devices, and to inspect records.

[19.25.8.36 NMAC - N, 01-31-2001]

19.25.8.37 SHOW CAUSE ORDER:

Except as otherwise provided herein, if the state engineer has reason to believe that a permittee has violated a provision of the Act, or a condition of their permit, or a rule or regulation, the state engineer may issue a written notice directing that the person or governmental entity appear and show cause, at a hearing held before the state engineer not less than fifteen (15) days after receipt of the notice, why the person or governmental entity should not be ordered to cease and desist from the violation. The notice shall inform the person or governmental entity of the date, time and place of the hearing, and the consequences of the person's or governmental entity's failure to appear at the hearing.

[19.25.8.37 NMAC - N, 01-31-2001]

19.25.8.38 CEASE AND DESIST ORDER:

If the state engineer finds that a person or governmental entity is constructing or operating a project in violation of the Act, the state engineer may issue a temporary order directing the person or governmental entity to cease and desist the construction or operation pending final action by the state engineer. The order shall include written notice to the person or governmental entity of the date, time and place where the person or governmental entity shall appear at a hearing before the state engineer to show cause why the temporary order should be vacated. The hearing shall be held not less than fifteen (15) days after the date of the order and otherwise in accordance with the hearing procedures (19 NMAC 25.2).

[19.25.8.38 NMAC - N, 01-31-2001]

19.25.8.39 ISSUANCE OF ORDER:

After a hearing held pursuant to Sections 37 and 38, or after the expiration of the time to appear, the state engineer shall issue a decision and order in a form consistent with the hearing procedures under 19 NMAC 25.2. If the state engineer determines that a violation has occurred, the decision and order may include one or more of the following: a determination of violation, an order to cease and desist, a recommendation of a civil penalty, and an order directing that positive steps be taken by the permittee to abate or ameliorate any harm or impairment arising from the violation. Any person or

governmental entity affected by such decision may appeal to the district court pursuant to NMSA 1978, 72-7-1.

[19.25.8.39 NMAC - N, 01-31-2001]

19.25.8.40 CONTINUING VIOLATION:

If a person or governmental entity continues a violation after the state engineer has issued a decision and order pursuant to Section 39, the state engineer may apply for a temporary restraining order or a preliminary or permanent injunction from the district court.

Such action does not preclude the state engineer from seeking other forms of relief or enforcement against a violator.

[19.25.8.40 NMAC - N, 01-31-2001]

19.25.8.41 PENALTIES:

A person or governmental entity determined to be in violation of the Act, the terms or conditions of a permit issued, or the rules and regulations of the state engineer may be assessed a civil penalty. An action to recover penalties pursuant to this section shall be brought by the state engineer in the district court for the County in which the violation occurred. The civil penalty shall be in an amount not exceeding:

A. One Hundred Dollars (\$100) per day of violation not directly related to the illegal recovery or use of stored water; or

B. Ten Thousand Dollars (\$10,000) per day of violation directly related to the illegal recovery or use of stored water.

[19.25.8.41 NMAC - N, 01-31-2001]

19.25.8.42 PERMIT – REVOCATION AND/OR SUSPENSION:

The state engineer may permanently revoke or temporarily suspend a permit for good cause after an investigation and hearing pursuant to the provisions of 19 NMAC 25.2. Notice shall be sent by certified mail to the permittee at least thirty (30) days before any hearing on a revocation or suspension based on the permittee's alleged failure to comply with the terms and conditions of the permit. Upon revocation of a permit by the state engineer, the permittee has the right to withdraw all waters within storage that are recognized as recoverable. The method of withdrawal must be acceptable to the state engineer.

[19.25.8.42 NMAC - N, 01-31-2001]

19.25.8.43 CONSERVATION FEE EXEMPTIONS:

Conservation fees collected pursuant to NMSA 1978, 74-1-13 (1993) shall be charged only on water that is treated and stored underground and not on the same water subsequently recovered.

[19.25.8.43 NMAC - N, 01-31-2001]

19.25.8.44 OBLIGATIONS TO INDIAN NATIONS, TRIBES OR PUEBLOS:

Nothing in these regulations shall be construed to impair the rights of Indian nations, tribes or pueblos or affect the obligations of the United States to them.

[19.25.8.44 NMAC - N, 01-31-2001]

19.25.8.45 NON-EXEMPTION FROM PRIOR APPROPRIATION DOCTRINE:

Unless required by interstate obligations, nothing in these regulations shall be construed to exempt stored water from the rule that priority in time shall give the better right, pursuant to Chapter 72 NMSA 1978, or that priority of appropriation shall give the better right, pursuant to Article 16, Section 2 of the Constitution of New Mexico.

[19.25.8.45 NMAC - N, 01-31-2001]

19.25.8.46 LIMITATION OF DETERMINATION:

Any determination made by the state engineer for purposes of the Underground Storage and Recovery Regulations, including the validity or non-validity of a water right, is not binding in any other proceeding separate from the Underground Storage and Recovery Regulations.

[19.25.8.46 NMAC - N, 01-31-2001]

19.25.8.47 REQUEST FOR VARIANCE:

A variance to these regulations may be requested in writing by an authorized applicant or permittee. The request shall include a detailed justification for the variance and shall demonstrate that such a variance is necessary to preclude unreasonable hardship or that application of the regulations would not be practicable. The state engineer may grant the variance if the request is found to be reasonable and just. The state engineer shall respond in writing to the request for variance and, if the variance is granted, the state engineer may impose terms and conditions.

[19.25.8.47 NMAC - N, 01-31-2001]

19.25.8.48 KNOWLEDGE OF AND COMPLIANCE WITH RELEVANT STATUTES, RULES, REGULATIONS, AND CODES:

It shall be the responsibility of each applicant and permittee to know of and comply with all applicable statutes, rules, regulations, and codes.

[19.25.8.48 NMAC - N, 01-31-2001]

19.25.8.49 STATE ENGINEER OPTION TO REVISE REGULATIONS:

These regulations may be modified as needed to assist in administering Underground Storage and Recovery Permits. Any major revision to these regulations will be duly published and presented for public comment. Removal of a regulation or a section of these regulations, whether by a court or by the state engineer, shall not affect the validity of the remaining regulations.

[19.25.8.49 NMAC - N, 01-31-2001]

PART 9: PROHIBITIONS ON USE OF SURFACE WATER AND GROUND WATER IN DESIGNATED AREAS

19.25.9.1 ISSUING AGENCY:

Office of the State Engineer.

[19.25.9.1 NMAC - N, 07/31/03]

19.25.9.2 SCOPE:

This rule applies to all geographic areas within the jurisdiction of the state engineer. This rule shall not be construed to limit or otherwise alter the jurisdiction, power, or authority of the state engineer.

[19.25.9.2 NMAC - N, 07/31/03]

19.25.9.3 STATUTORY AUTHORITY:

Section 72-2-1 NMSA 1978 grants the state engineer the general supervision of waters of the state. Section 72-2-8 NMSA 1978 grants the state engineer the authority to adopt regulations and codes, and to issue orders that are necessary to accomplish its duties.

[19.25.9.3 NMAC - N, 07/31/03]

19.25.9.4 DURATION:

Permanent; until later amended, repealed or replaced.

[19.25.9.4 NMAC - N, 07/31/03]

19.25.9.5 EFFECTIVE DATE:

July 31, 2003, unless a later date is cited in the history note at the end of a section.

[19.25.9.5 NMAC - N, 07/31/03]

19.25.9.6 OBJECTIVE:

The objective of this Part is to place restrictions on wells and transfers of either surface water or ground water within the boundaries of certain areas as determined by the state engineer in the interest of safety and the protection of life and property within the state of New Mexico.

[19.25.9.6 NMAC - N, 07/31/03]

19.25.9.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in Chapter 72 NMSA 1978. Unless defined below or in a specific section, all other words used in these regulations shall be given their customary and accepted meanings: "Superfund" means federal and state laws designed to clean up sites where past, improper disposal of hazardous substances caused soil, surface water and ground water contamination.

[19.25.9.7 NMAC - N, 07/31/03]

19.25.9.8 PROHIBITED ACTIVITIES:

It shall be unlawful for any person or persons to drill new wells, or transfer either surface water or ground water to existing wells in any areas designated by the state engineer as restricted from such activities.

[19.25.8 NMAC - N, 07/31/03]

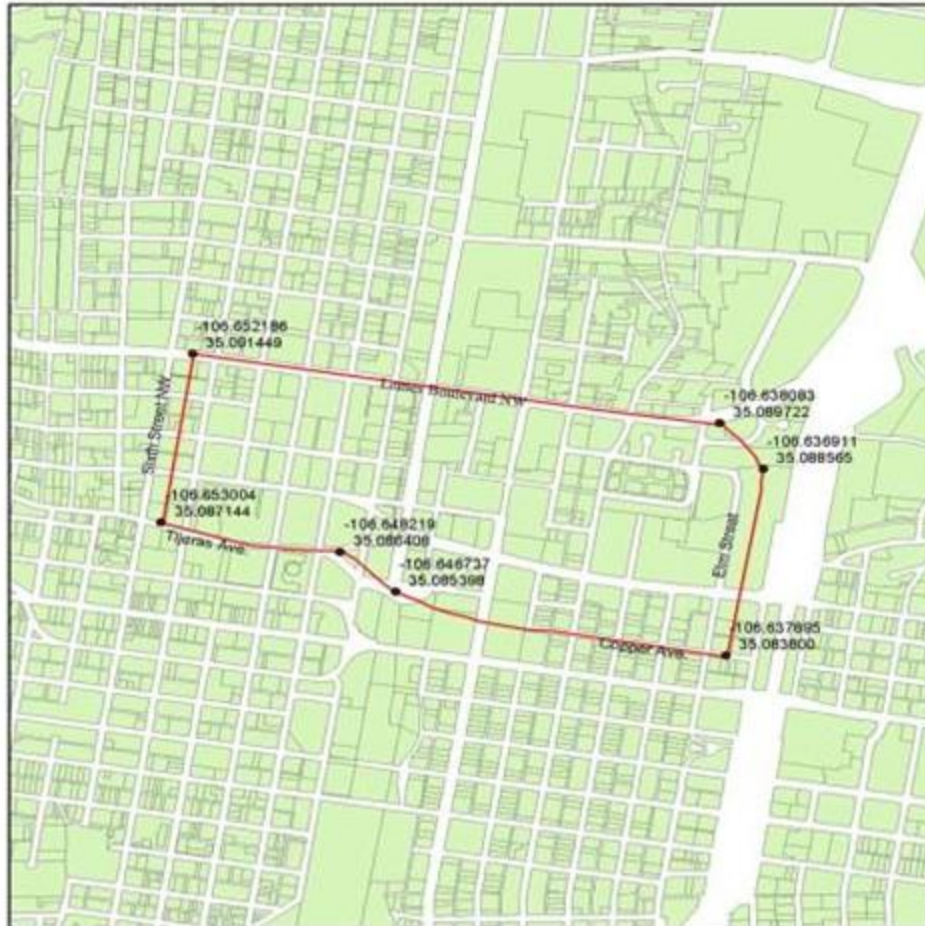
19.25.9.9 AREAS SUBJECT TO PROHIBITIONS:

By order of the office of the state engineer, it is prohibited to drill new wells, appropriate new surface water or ground water, or transfer either surface water or ground water to existing wells within the following geographic areas: **FRUIT AVENUE PLUME SUPERFUND SITE**. The state engineer hereby prohibits any drilling of new wells or transfer of either surface water or ground water to existing wells within the boundaries in Albuquerque, New Mexico identified as the Fruit Avenue Plume Superfund Site within which the ground water is contaminated with tetrachloroethene (PCE), trichloroethene (TCE), cis-1, 2-dichloroethene and trans-1, 2-dichloroethene. Both PCE and TCE levels

are above drinking water standards, and this prohibition is necessary to protect the public welfare. The Fruit Avenue Plume area is approximately bounded by Fruit Avenue to the north, Elm Street to the east, Tijeras/Martin Luther King Avenue to the south, and 4th Street to the west. The precise delineations of the area are as follows:

State Plane Nad-27 feet

Latitude	Longitude	X	Y
35.087144	-106.653004	379,437	1,487,207
35.091449	-106.652186	379,688	1,488,772
35.089722	-106.638083	383,904	1,488,127
35.088565	-106.636911	384,253	1,487,705
35.083800	-106.637895	383,952	1,485,972
35.085398	-106.646737	381,309	1,486,564
35.086408	-106.648219	380,867	1,486,933



Fruit Avenue Plume Superfund Site



0 315 630 1,260 1,890 2,520 Feet

[19.25.9.9 NMAC - N, 07/31/03]

19.25.9.10 PENALTIES:

Violation of this Part is a misdemeanor punishable by a fine of not less than twenty-five dollars (\$25.00), nor more than two hundred and fifty dollars (\$250.00), for each offense; and each day of continued violation shall constitute a separate offense; or by imprisonment in the county jail not to exceed one year or both for each and every violation pursuant to Section 72-12-11 NMSA 1978.

[19.25.9.10 NMAC - N, 07/31/03]

PART 10: REVIEW AND ELIGIBILITY OF PROPOSED WATER PROJECTS

19.25.10.1 ISSUING AGENCY:

New Mexico Water Trust Board.

[19.25.10.1 NMAC - Rp, 19.25.10.1 NMAC, 7/31/08]

19.25.10.2 SCOPE:

All persons applying for financial assistance under the water project fund from the New Mexico finance authority, NMSA 1978, 72-4A-5 and NMSA 1978, 72-4A-9.

[19.25.10.2 NMAC - Rp, 19.25.10.2 NMAC, 7/31/08]

19.25.10.3 STATUTORY AUTHORITY:

NMSA 1978, 72-4A-5 and NMSA 1978, 72-4A-9.

[19.25.10.3 NMAC - Rp, 19.25.10.3 NMAC, 7/31/08]

19.25.10.4 DURATION:

Permanent.

[19.25.10.4 NMAC - Rp, 19.25.10.4 NMAC, 7/31/08]

19.25.10.5 EFFECTIVE DATE:

July 31, 2008, unless a later date is cited at the end of a section.

[19.25.10.5 NMAC - Rp, 19.25.10.5 NMAC, 7/31/08]

19.25.10.6 OBJECTIVES:

A. Section 72-4A-5, NMSA 1978 provides that the New Mexico water trust board is required to adopt rules governing terms and conditions of grants and loans recommended by the board for appropriation by the state legislature from the water

project fund giving priority to projects that have urgent needs, that have been identified for implementation of a completed regional water plan that is accepted by the interstate stream commission and that have matching contributions from federal or local funding sources; and authorizes qualifying water projects to the authority that are for: (1) storage, conveyance or delivery of water to end users; (2) implementation of federal Endangered Species Act of 1973; (3) restoration and management of watersheds; (4) flood prevention; and (5) conservation, recycling, treatment or reuse of water as provided by law. Additionally, the board shall create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions. Section 72-4A-9, NMSA 1978, creates the "water project fund" within the New Mexico finance authority.

B. Section 72-4A-5, NMSA 1978, provides that the board shall give priority to qualifying water projects that (1) have been identified by the board as being urgent to address public health and safety issues; (2) have matching contributions from federal or local funding sources available and (3) have obtained all requisite state and federal permits and authorizations necessary to initiate the qualifying water project. The purpose of these rules is to set forth the intent of the board and to outline, in general terms, the criteria and procedures to be used in evaluating and funding qualifying water projects.

C. Section 72-4A-5, NMSA 1978, provides that the board shall evaluate projects, including their environmental impacts, and recommend projects to the interstate stream commission pursuant to the provisions of Section 72-14-45, NMSA 1978.

D. Section 72-4A-6, NMSA 1978, provides that the authority shall provide support for the water trust board, develop application procedures and forms for qualifying entities to apply for grants and loans from the water project fund; and make loans or grants to qualifying entities for qualifying water projects authorized by the state legislature, provided that the service area for the project is wholly within the boundaries of the state or the project is an interstate project that directly benefits New Mexico.

E. Section 72-4A-9, NMSA 1978, provides that the authority may adopt separate procedures and rules for administration of the water project fund and recover from the water project fund costs of administering the water project fund and originating grants and loans.

[19.25.10.6 NMAC - Rp, 19.25.10.6 NMAC, 7/31/2008; A, 4/22/2025]

19.25.10.7 DEFINITIONS:

A. "Act" means the Water Project Finance Act, Sections 72-4A-1 through 72-4A-10, NMSA 1978, as the same may be amended and supplemented.

B. "Agreement" means the document or documents signed by the board and a qualifying entity which specify the terms and conditions of obtaining financial assistance from the water project fund.

C. "Applicant" means a qualifying entity which has filed a water project proposal with the authority for initial review and referral to the board's project review committee.

D. "Authority" means the New Mexico finance authority.

E. "Authorized representative" means one or more individuals duly authorized to act on behalf of the qualifying entity in connection with its financial application, water project proposal or agreement.

F. "Board" means the New Mexico water trust board created by the act.

G. "Bylaws" means the bylaws of the board adopted on September 25, 2001, and amended on June 27, 2007, and as may be further amended and supplemented.

H. "Financial application" means a written document filed with the authority by an applicant for the purpose of evaluating the applicant's qualifications for types of financial assistance which may be provided by the board.

I. "Financial assistance" means loans, grants and any other type of assistance authorized by the act, or a combination thereof, provided from the water project fund to a qualified entity for the financing of a qualifying water project.

J. "Policy committee" means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review policies and policy related matters and make recommendations to the full board.

K. "Political subdivision" means a municipality, county, land grant-merced controlled and governed pursuant to Section 49-1-1 through 49-1-18 or 49-4-1 through 49-4-21 NMSA 1978, regional or local public water utility authority created by statute, irrigation district, conservancy district, special district, acequia or soil and water conservation district, water and sanitation district, or an association organized and existing pursuant to the Sanitary Projects Act, Chapter 3, Article 29 NMSA 1978.

L. "Project review committee" means a standing committee, appointed by the chairman of the board from the members of the board pursuant to the bylaws to review water projects to be recommended for funding from the water project fund.

M. "Qualifying entity" means a state agency, a political subdivision of the state, an intercommunity water or natural gas supply association or corporation organized under Chapter 3, Article 28 NMSA 1978, a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico or an association of

such entities created pursuant to the Joint Powers Agreement Act, Chapter 11, Article 1 NMSA 1978 or other authorizing legislation for the exercise of their common powers.

N. "Qualifying water project" means a project recommended by the board for funding by the legislature which includes a water project serving an area wholly within the boundaries of the state for (1) storage, conveyance or delivery of water to end users; (2) implementation of federal Endangered Species Act of 1973 collaborative programs; (3) wastewater conveyance and treatment; (4) restoration and management of watersheds; (5) flood prevention; or (6) conservation, recycling, treatment or reuse of water as provided by law and which has been approved by the state legislature pursuant to Subsection B of Section 72-4A-9, NMSA 1978.

O. "State" means the state of New Mexico.

P. "State agency" means any agency or institution of the state.

Q. "Water project account" means a fund designated by a qualifying entity exclusively for receipt of financial assistance.

R. "Water project fund" means the fund of that name created in the authority by Section 72-4A-9, NMSA 1978.

S. "Water project proposal" means a written proposal submitted by a qualifying entity for review by the project review committee.

T. "Water trust fund" means the fund of that name created in the state treasury by Section 72-4A-8, NMSA 1978.

[19.25.10.7 NMAC - Rp, 19.25.10.7 NMAC, 7/31/2008; A, 12/30/2013; A, 4/22/2025]

19.25.10.8 ELIGIBILITY: PRIORITIZATION OF WATER PROJECTS:

The board will develop and consider a variety of factors in reviewing and evaluating water project proposals to determine which water projects to recommend as qualifying water projects for appropriation by the state legislature. The board shall give priority to projects that have urgent needs and that have matching contributions from federal or local sources as provided for in Section 72-4A-5 NMSA 1978. Pursuant to Section 72-4A-5.1 NMSA 1978, the board, in conformance with the state water plan and pursuant to the provisions of the Water Project Finance Act, shall prioritize the planning and financing of water projects required to implement the plan. The board shall identify opportunities to leverage federal and other funding. The board shall establish policies for prioritization of water projects.

[19.25.10.8 NMAC - Rp, 19.25.10.8 NMAC, 7/31/2008; A, 12/30/2013; A, 4/30/2015; A, 4/22/2025]

19.25.10.9 WATER PROJECT PROPOSAL, PROCEDURES AND APPROVAL PROCESS:

A. The authority will administer an outreach program to notify qualifying entities that water project proposals are being accepted to identify water projects for review by the project review committee and the board for recommendation for funding to the state legislature as qualifying water projects.

B. The authority will provide forms and guidelines for water project proposals and financial applications.

C. The authority staff will forward all completed water project proposals from qualified applicants for qualified water projects to the project review committee. The project review committee will consider the water project and may confer with outside parties, including any local interdisciplinary teams familiar with the water project, as necessary to obtain more information on the feasibility, merit, and cost of the water project. The project review committee will make a recommendation to the board on each water project proposal.

D. Upon the recommendation of the project review committee, the board will evaluate the qualifying water projects for recommendation to the legislature.

E. After completion of the review process by the project review committee and the board and receipt of a favorable recommendation on the water project proposal, the water project will be recommended by the board for approval by the state legislature, which recommendation and approval are required by Sections 72-4A-5 and 72-4A-9 NMSA 1978.

F. No later than January of each year, the board will recommend to the legislature a list of projects recommended for funding. After the legislature authorizes qualifying water projects, the project review committee will review evaluations of financial applications and water project proposals prepared by staff and recommend to the board a final list of projects to be authorized by the board for funding by the authority. The authority will provide financial assistance for qualifying projects as authorized by the legislature under policies jointly established by the board and authority.

[19.25.10.9 NMAC - Rp, 19.25.10.9 NMAC, 7/31/08; A, 12/30/13; A, 4/30/15]

19.25.10.10 EVALUATION OF FINANCIAL APPLICATION AND WATER PROJECT PROPOSAL:

The authority staff will complete an initial evaluation of the financial application and water project proposal upon receipt. Such evaluation will include, to the extent applicable, an evaluation of water project feasibility, administrative capacity, financial position, debt management and economic and demographic factors. The authority may

rely upon the advice of an interdisciplinary team in evaluating water project proposals and financial applications.

[19.25.10.10 NMAC - Rp, 19.25.10.10 NMAC, 7/31/08]

19.25.10.11 QUALIFYING WATER PROJECTS AND ELIGIBLE COSTS:

A. The board may authorize the authority to provide financial assistance from the water project fund to qualifying entities only for qualifying water projects as provided by Section 72-4A-6 and Section 72-4A-7, NMSA 1978.

B. Financial assistance shall be made only to qualify entities that:

(1) agree to provide for the operation and maintenance of the water project so that it will function properly over the structural and material design life;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18, NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the authority to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records in accordance with all applicable laws; and

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the authority.

C. Plans and specifications for a water project shall be approved by the authority after review and upon the recommendation of the state engineer and the environment department before grant or loan disbursements to pay for construction costs are made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and operational design for water efficiency.

D. Financial assistance shall be made for eligible items, which include:

(1) matching requirements for federal and local cost shares;

(2) engineering feasibility reports;

- (3) contracted engineering design;
- (4) inspection of construction;
- (5) special engineering services;
- (6) environmental or archeological surveys;
- (7) construction;
- (8) land acquisition;
- (9) easements and rights of way; and
- (10) legal costs.

E. A qualified entity which has had financial assistance approved by the state legislature for financing a qualifying water project may apply to the board to redirect the financial assistance to a different water project made necessary by unanticipated events. The decision to redirect the financial assistance to a different qualifying water project will be at the sole discretion of the board and subject to approval of the state legislature as required by Subsection B of Section 72-4A-9, NMSA 1978.

[19.25.10.11 NMAC - Rp, 19.25.10.11 NMAC, 7/31/2008; A, 5/28/2010; A, 4/22/2025]

19.25.10.12 QUALIFYING WATER PROJECT FINANCING:

The authority may provide financial assistance packages that include loans, grants and any other type of assistance authorized by the authority. The structure, terms and conditions of the financial assistance will be determined by the authority. Financial assistance for qualifying water projects may be pooled, at the sole discretion of the authority, under policies jointly established by the board and authority.

[19.25.10.12 NMAC - Rp, 19.25.10.12 NMAC, 7/31/08; A, 4/30/15]

19.25.10.13 FINANCING APPROVAL REQUIREMENTS:

Based on the priority and evaluation factors set forth in Sections 19.25.10.8, 19.25.10.10, and 19.25.10.11, the board may recommend to the authority approval of the qualifying water project for financial assistance.

[19.25.10.13 NMAC - Rp, 19.25.10.13 NMAC, 7/31/08]

19.25.10.14 RECONSIDERATION OF BOARD DECISIONS:

Any applicant or qualifying entity may request reconsideration of a decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant or qualifying entity believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chairman of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant or qualifying entity of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[19.25.10.14 NMAC - Rp, 19.25.10.14 NMAC, 7/31/08; A, 5/28/10]

19.25.10.15 FINANCIAL ASSISTANCE AGREEMENT:

A. The authority and the qualified entity will enter into an agreement to establish the terms and conditions of financial assistance from the water project fund. The agreement will include the terms of repayment and remedies available to the authority in the event of a default. The authority will monitor terms of the agreement and enforce or cause to be enforced all terms and conditions thereof, including prompt notice and collection.

B. The interest on any financial assistance extended shall be determined by the authority based on the cost of funds and ability of a qualified entity to repay a loan. The interest rate shall not change during the term of the financial assistance unless refinanced or unless the financial assistance is structured as a variable rate obligation.

C. The agreement will contain provisions which require financial assistance recipients to comply with all applicable federal, state and local laws and regulations.

D. In the event of default under a financial assistance agreement by a qualified entity, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and applicable federal law.

[19.25.10.15 NMAC - Rp, 19.25.10.15 NMAC, 7/31/08; A, 12/30/13]

19.25.10.16 ADMINISTRATIVE COSTS:

A. The board may impose and collect reasonable fees and costs in connection with the filing of a water project proposal or a financial application for approval of a water project and for financial assistance with the board and the authority. The board also may impose and collect an administrative fee from each qualifying entity that receives

financial assistance from the water project fund. If an administrative fee is assessed, the administrative fee will be a percentage of the principal amount of the financial assistance provided to a qualifying entity. The administrative fee may be withheld from the principal amount of the financial assistance and will be retained in the water project fund. Alternatively, the board may levy an annual fee equal to a percentage of the outstanding principal amount of a loan. Specific percentages will be based on, among other things, the volume of financial assistance being provided to qualifying entities, the administrative costs of the board and the authority, and the availability of other revenue sources to cover the board's and the authority's administrative costs. The filing and administrative fee or fees may be used for, among other purposes, reimbursing the board or the authority for all or part of the costs of issuing bonds and other administrative costs, including any audits of the water project fund and the water trust fund.

B. The board and the authority may establish such other charges, premiums, fees and penalties deemed necessary for the administration of the water project fund and the water trust fund.

[19.25.10.16 NMAC - Rp, 19.25.10.16 NMAC, 7/31/08]

19.25.10.17 ADMINISTRATION OF THE WATER TRUST FUND:

A. The water trust fund shall be administered by the state treasurer's office and shall be invested by the state investment officer in the same manner as land grant permanent funds are invested under state law. All investment earnings on the water trust fund shall be credited to the water trust fund. The water trust fund shall not be expended for any purpose.

B. Annual distributions to the water project fund from the water trust fund shall be made as required by the authority.

[19.25.10.17 NMAC - Rp, 19.25.10.17 NMAC, 7/31/08]

19.25.10.18 ADMINISTRATION OF THE WATER PROJECT FUND:

A. The water project fund shall be administered by the authority as a separate account but may consist of such subaccounts as the authority deems necessary to carry out the purposes of the fund.

B. Money in the water project fund may be used by the authority to (1) make loans or grants to qualified entities recommended by the water trust board, (2) hire contractors to provide financial and administrative capacity development and direct technical assistance to entities on water projects, and (3) pay administrative costs of the authority.

C. Money from repayments of loans made by the board for qualifying water projects shall be deposited in the water project fund. The water project fund shall also consist of any other money appropriated, distributed or otherwise allocated to the water project fund for the purpose of financing qualifying water projects.

D. The authority shall adopt a uniform accounting system for the water project fund and each account and subaccount established by the authority, based on generally accepted accounting principles.

E. The authority may establish procedures and adopt rules as required to administer the fund and to recover from the fund costs of administering the fund and originating grants and loans.

[19.25.10.18 NMAC - Rp, 19.25.10.18 NMAC, 7/31/2008; A, 4/22/2025]

19.25.10.19 BOND ISSUANCE:

A. The authority may issue and sell revenue bonds as required to provide funds to:

- (1)** replenish the principal balance of the water project fund;
- (2)** pay, fund or refund the principal of or interest or redemption premiums, if any, on bonds issued by the authority whether the bonds or interest to be paid, funded or refunded have or have not become due;
- (3)** establish or increase reserve funds to secure bonds; and
- (4)** pay the costs and expenses incident to the issuance of bonds.

B. The authority will consider market and other economic conditions in determining the type of sale and the timing of the issuance of bonds.

C. The bonds shall be authorized and issued by the authority in accordance with the provisions of the New Mexico Finance Authority Act, Chapter 6, Article 21, NMSA 1978.

[19.25.10.19 NMAC - Rp, 19.25.10.19 NMAC, 7/31/08]

19.25.10.20 AMENDMENT OF RULES:

This rule may be amended or repealed at any time by a majority vote of a quorum of the board.

[19.25.10.20 NMAC - Rp, 19.25.10.20 NMAC, 7/31/08]

PART 11: [RESERVED]

PART 12: DAM DESIGN, CONSTRUCTION AND DAM SAFETY

19.25.12.1 ISSUING AGENCY:

New Mexico Office of the State Engineer.

[19.25.12.1 NMAC - N, 3/31/2005]

19.25.12.2 SCOPE:

These regulations apply to the design and construction of all jurisdictional dams in New Mexico and are intended to facilitate the continued safe operation and maintenance of all non-federal jurisdictional dams. These regulations govern the review and acceptance of plans for construction, alteration, modification, repair, enlargement and removal of a jurisdictional dam. These regulations ensure the continued safe operation, maintenance, site security and emergency preparedness for existing non-federal jurisdictional dams. These regulations do not authorize the appropriation or use of water pursuant to 19.26 NMAC and 19.27 NMAC.

[19.25.12.2 NMAC - N, 3/31/2005]

19.25.12.3 STATUTORY AUTHORITY:

Section 72-5-32 NMSA requires any person, association or corporation, public or private, the state or the United States that is intending to construct a jurisdictional dam to submit detailed plans to the state engineer. Sections 72-5-9 and 72-5-10 NMSA establish the state engineer's authority over the construction of works and issuing certificates of construction. Sections 72-5-8 and 72-5-14 NMSA require construction to be completed in a time limit set by the state engineer and procedures for requesting an extension of time. Sections 72-5-11, 72-5-12 and 72-5-13 NMSA gives the state engineer jurisdiction over unsafe works, penalties for failure to comply with state engineer orders and priority of liens. Section 72-2-6 NMSA gives the state engineer the authority to assess fees. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him. Section 72-8-1 NMSA gives the state engineer the authority to enter upon private property for the performance of his duties. Nothing in these rules shall be construed so as to limit the state engineer's authority to take lawful alternative or additional actions relating to the design, construction and safety of dams.

[19.25.12.3 NMAC - N, 3/31/2005]

19.25.12.4 DURATION:

Permanent.

[19.25.12.4 NMAC - N, 3/31/2005]

19.25.12.5 EFFECTIVE DATE:

March 31, 2005 unless a later date is cited at the end of a section.

[19.25.12.5 NMAC - N, 3/31/2005]

19.25.12.6 OBJECTIVE:

To establish minimum design requirements, minimum submittal requirements and dam site owner responsibilities that shall be addressed to the state engineer's satisfaction in order to ensure a dam is designed, constructed, operated, maintained and secured in a safe manner.

[19.25.12.6 NMAC - N, 3/31/2005]

19.25.12.7 DEFINITIONS:

Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meaning.

A. Terms starting with the letter 'A' are defined as follows:

(1) **Abutment:** That part of the valley side against which the dam is constructed. The left and right abutments of dams are defined with the observer viewing the dam looking in the downstream direction.

(2) **Aesthetic fill:** Cosmetic fill added to the downstream slope of a dam that is not required to address the safe design. Aesthetic fill shall not be considered when determining the properties of the dam for the purposes of evaluating the jurisdictional status and shall not be used to support the safe design.

(3) **Alteration, modification, repair, rehabilitation or enlargement of an existing dam:** To change from the state engineer accepted construction drawings and specifications or current condition.

(4) **Appurtenant structure:** Auxiliary features of a dam such as outlets, spillways, access structures, tunnels and related housing at a dam.

(5) **ASTM:** Standards promulgated by ASTM international for testing the properties of materials. Methods cited in these regulations include laboratory compaction characteristics of soils.

B. Terms starting with the letter 'B' are defined as follows: **Breach:** An opening through a dam or spillway that is capable of draining a portion of the reservoir or the entire reservoir. A controlled breach is a constructed opening. An uncontrolled breach is an unintentional discharge from the reservoir.

C. Terms starting with the letter 'C' are defined as follows:

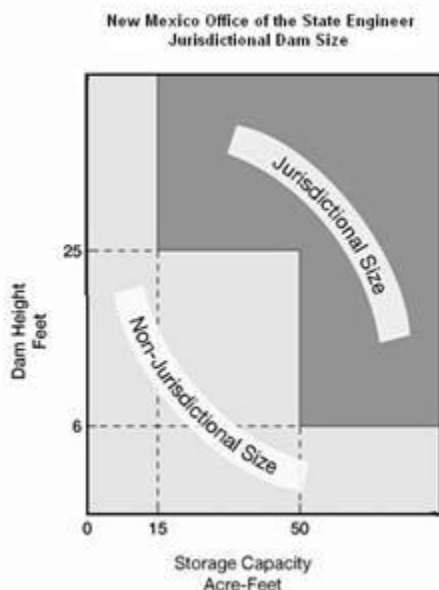
(1) **Consequences of failure:** Potential loss of life or property damage downstream of a dam caused by waters released at the dam or by waters released by partial or complete failure of dam; includes effects of landslides upstream of the dam on property located around the reservoir.

(2) **Crest width:** The thickness or width of a dam at the crest level (excluding corbels or parapets). In general, the term thickness is used for gravity and arch dams and width is used for other dams.

D. Terms starting with the letter 'D' are defined as follows:

(1) **Dam:** A man-made barrier constructed across a watercourse or off-channel for the purpose of storage, control or diversion of water.

(a) **Jurisdictional dam:** A dam 25 feet or greater in height, which impounds more than 15 acre-feet of water or a dam that impounds 50 acre-feet or more of water and is 6 feet or greater in height. For purposes of these regulations, reference to a dam means a jurisdictional dam unless otherwise noted. See figure of jurisdictional dam size.



(b) **Non-jurisdictional dam:** Any dam not meeting the height and storage requirements of a jurisdictional dam. The state engineer does not regulate the design, construction and operation of a non-jurisdictional dam unless the dam is unsafe and there is a threat to life or property, as determined by the state engineer. Waters impounded by a non-jurisdictional dam may not be exempt from water right permit requirements; therefore a separate state engineer water right permit for the water impounded in the reservoir created by a non-jurisdictional dam may be required. Non-

jurisdictional dams shall meet the requirements of 19.26.2.15 NMAC unless otherwise exempt. The structures listed below are considered non-jurisdictional dams:

(i) **Levee or diversion dike:** A structure where water flows parallel to the length of the levee or diversion dike as determined by the state engineer.

(ii) **Roadway embankment:** A structure across a watercourse designed for the sole purpose of supporting a roadbed or other means of conveyance for transportation as determined by the state engineer; where the area upstream has not been enlarged to increase flood storage; and where the embankment is provided with an uncontrolled conduit of sufficient capacity to satisfy requirements of the appropriate state or local transportation authority. If no transportation authority has jurisdiction over the structure, the current drainage design criteria of the New Mexico department of transportation shall apply.

(2) **Dam crest:** The uppermost surface of a dam, usually a road or walkway excluding any parapet wall, railing, etc.

(3) **Dam failure:** The breakdown of a dam, characterized by the uncontrolled release of impounded water.

(4) **Dam height:** The vertical distance from the lowest point on the downstream toe to the lowest point on the dam crest.

(5) **Dam incident:** An event at a dam that interrupts normal procedures and performance, affects the safety of the dam or results in a potential loss of life or damage to property.

E. Terms starting with the letter 'E' are defined as follows:

(1) **Earthquake:** A sudden motion or trembling of the earth caused by the abrupt release of accumulated stress along a fault.

(a) **Operating basis earthquake:** The earthquake that can reasonably be expected to occur within the service life of the dam or appurtenant structures.

(b) **Maximum credible earthquake:** The greatest earthquake that can reasonably be expected to be generated by a specific source on the basis of seismological and geological evidence.

(2) **Evacuation map:** A map prepared in collaboration with local emergency managers defining the area to be evacuated from a dam failure.

F. Terms starting with the letter 'F' are defined as follows:

(1) **Fetch:** The straight-line distance between the dam and farthest reservoir shore subject to wind forces. The fetch is one of the factors used to calculate wave heights in a reservoir.

(2) **Freeboard:** The vertical distance between the spillway crest and the lowest point of the dam crest not including camber.

(3) **Functional exercise:** A meeting in a conference room environment involving the dam owner and state and local emergency personnel with responsibilities in the emergency action plan. The exercise takes place in a stress-induced environment with time constraints and involves simulation of a dam failure and other specific events. The exercise is designed to evaluate both the internal capabilities and responses of the dam owner and the workability of the information in the emergency action plan used by emergency management officials.

G. Terms starting with the letter 'G' are defined as follows: **Geotextile:** Any fabric or textile (natural or synthetic) used as an engineering material in conjunction with soil, foundations or rock. Geotextiles provide the following uses: drainage, filtration, separation of materials, reinforcement, moisture barriers and erosion protection.

H. Terms starting with the letter 'H' are defined as follows: **High water line:** The highest water level elevation in the reservoir as determined from routing the spillway design flood or inflow design flood.

I. Terms starting with the letter 'I' are defined as follows:

(1) **Incremental impacts:** Under a given flood, earthquake or other conditions, the difference in impacts that would occur due to failure or misoperation of the dam and appurtenant structures compared to those that would have occurred without failure or misoperation of the dam and appurtenant structures.

(2) **Inundation map:** A map delineating the area that would be flooded by a particular flood event.

J. Terms starting with the letter 'J' [RESERVED]

K. Terms starting with the letter 'K' [RESERVED]

L. Terms starting with the letter 'L' are defined as follows:

(1) **Length of dam:** The length measured along the dam axis at the dam crest. This also includes the spillway, powerplant, navigation lock, fish pass, etc., where these form part of the length of the dam. If detached from the dam these structures shall not be included.

(2) **Loss of life:** The likely number of human fatalities that would result from a dam failure flood event. No allowances for evacuation or other emergency actions by the population shall be considered.

M. Terms starting with the letter 'M' [RESERVED]

N. Terms starting with the letter 'N' are defined as follows:

(1) **Naturally dry watercourse:** A watercourse or portion thereof, which under normal conditions is dry, which flows only in direct response to precipitation and whose channel is at all times above the groundwater table.

(2) **Normal operating level:** The water level elevation corresponding to the maximum storage level that excludes any flood control or surcharge storage.

(3) **North American vertical datum 1988 (NAVD 88):** The current vertical control datum in use in North America established from nine space geodetic stations. This basis of establishing elevation provides a precise surface, whereas the national geodetic vertical datum 1929 (NGVD 29) is elevation established from mean sea level.

O. Terms starting with the letter 'O' are defined as follows:

(1) **One-hundred year flood:** A flood that has 1 chance in 100 of being equaled or exceeded during any year.

(2) **Owner:** The individual, association or corporation, public or private, the state or the United States, owning the land upon which a dam is constructed; having a contractual right to construct, operate or maintain a dam; or the beneficiary of an easement to construct, operate or maintain a dam.

P. Terms starting with the letter 'P' are defined as follows:

(1) **Probable:** Likely to occur, reasonably expected, realistic.

(2) **Probable maximum precipitation:** Theoretically, the greatest depth of precipitation for a given duration that is physically possible over a given size storm area at a particular location during a certain time of year.

Q. Terms starting with the letter 'Q' [RESERVED]

R. Terms starting with the letter 'R' are defined as follows: Residual freeboard: The vertical distance between the high water line and the lowest point on the dam crest.

S. Terms starting with the letter 'S' are defined as follows:

(1) **Spillway:** A structure over or through which excess flow is discharged from a reservoir. If the rate of flow is controlled by mechanical means such as gates, it is considered a controlled spillway. If the geometry of the spillway is the only control, it is considered an uncontrolled spillway. For purposes of these regulations, an uncontrolled outlet conduit that is used to drain the reservoir is not considered a spillway.

(2) **Spillway crest:** The lowest level at which water can flow over or through the spillway.

(3) **Spillway design flood:** The required flood that a spillway must pass without failure of the dam.

(4) **Storage:** For purposes of determining whether a dam is jurisdictional, the storage is the volume of water impounded by the dam above the lowest elevation of the downstream toe to the elevation of the spillway crest. For dams with no spillway, storage is measured to the dam crest. Definitions of specific types of storage in reservoirs are:

(a) Dead storage is the storage volume of a reservoir that lies below the invert of the lowest outlet and therefore, cannot readily be withdrawn from the reservoir.

(b) Flood surcharge storage is the storage volume between the maximum operating level and the maximum water level during the spillway design flood.

(c) Live storage is the storage volume of a reservoir that is available for use and lies above the invert of the lowest outlet.

(d) Reservoir storage capacity is the sum of the dead and live storage of the reservoir.

(e) Maximum storage is the sum of the reservoir storage capacity and flood surcharge storage.

(5) **Sunny day failure:** Dam failure with the reservoir at the normal operating level.

T. Terms starting with the letter 'T' are defined as follows:

(1) **Tabletop exercise:** A meeting in a conference room environment involving the dam owner and state and local emergency personnel with responsibilities in the emergency action plan. The format is a discussion of an emergency event, response procedures to resolve concerns regarding coordination and responsibilities.

(2) **Toe:** The contact line between the outer shell of the dam and the natural ground surface.

U. Terms starting with the letter 'U' [RESERVED]

V. Terms starting with the letter 'V' [RESERVED]

W. Terms starting with the letter 'W' are defined as follows: Wave runup:
Vertical height above the water level to which water from a specific wave will run up the face of a structure or embankment.

X. Terms starting with the letter 'X' [RESERVED]

Y. Terms starting with the letter 'Y' [RESERVED]

Z. Terms starting with the letter 'Z' [RESERVED]

[19.25.12.7 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.8 FEE SCHEDULE:

The state engineer assesses fees for filing forms, reviewing plans and specifications for dams and appurtenant structures and construction inspections.

A. For filing an application for permit to construct and operate a dam the fees shall be \$25.

B. For filing an application to alter, repair or rehabilitate a dam the fee shall be \$25.

C. For each review of design plans, construction drawings and specifications for a dam the fee shall be \$2 per \$1000 or fraction thereof of the estimated construction cost. For determination of fees, inclusion of contingencies, taxes and other permit fees is not required. Assessment of multiple review fees for the same application is at the sole discretion of the state engineer.

D. For issuing an extension of time for construction of a dam the fee shall be \$50.

E. For inspecting construction of a dam the fee shall be \$100/8-hour day and actual and necessary traveling expenses.

F. For filing a proof of completion of works for a dam the fee shall be \$25.

G. For filing a change of ownership for a dam the fee shall be \$5.

H. The state engineer shall charge reasonable fees for copy and reproduction to offset the cost of the service, consistent with the state engineer's current policy adopted pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978 Section 14-2 et seq.

[19.25.12.8 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.9 SIZE CLASSIFICATION:

A dam shall be less than or equal to the maximum height and storage to qualify for the size classification.

A. Small: A small dam is 25 feet or greater but less than or equal to 40 feet in height, or 50 acre-feet or greater but less than or equal to 1000 acre-feet of storage.

B. Intermediate: An intermediate dam is greater than 40 feet but less than or equal to 100 feet in height, or greater than 1000 acre-feet but less than or equal to 50,000 acre-feet of storage.

C. Large: A large dam is greater than 100 feet in height or greater than 50,000 acre-feet of storage.

[19.25.12.9 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.10 HAZARD POTENTIAL CLASSIFICATION:

The hazard potential classification is a rating for a dam based on the potential consequences of failure. The rating is based on loss of life, damage to property and environmental damage that is likely to occur in the event of dam failure. No allowances for evacuation or other emergency actions by the population shall be considered. The hazard potential classification is not a reflection of the condition of the dam.

A. Low hazard potential: Dams assigned the low hazard potential classification are those dams where failure or misoperation results in no probable loss of life and low economic or environmental losses. Losses are principally limited to the dam owner's property.

B. Significant hazard potential: Dams assigned the significant hazard potential classification are those dams where failure or misoperation results in no probable loss of human life but can cause economic loss, environmental damage, disruption of lifeline facilities, or can impact other concerns. Significant hazard potential classification dams are often located in predominantly rural or agricultural areas but could be located in populated areas with significant infrastructure.

C. High hazard potential: Dams assigned the high hazard potential classification are those dams where failure or misoperation will probably cause loss of human life.

[19.25.12.10 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.11 DESIGN OF A DAM:

Any person, association or corporation, public or private, the state, or the United States that is intending to construct a dam shall submit an application to construct and operate a dam and supporting documentation acceptable to the state engineer. This section primarily addresses the design and construction of embankment dams. Other types of dams shall conform to sound engineering principles and current state of the practice. Because each site, design and operating practice is unique, waivers of specific requirements in this section will be considered on a case-by-case basis. Request for waiver shall be in writing accompanied with documentation justifying the request. If the request is not justified to the satisfaction of the state engineer the request will be denied. If the supporting documentation for the design of a dam does not meet acceptable engineering standards and does not conform to these regulations, as determined by the state engineer, a quality management plan or third party review may be required by the state engineer. Construction shall not begin until the state engineer has accepted the supporting documentation and approved the application with permit conditions. The application and supporting documentation shall include the information described below.

A. Application: An application form shall be completed with original signature of the dam owner and accompanied with a filing fee in accordance with Subsection A of 19.25.12.8 NMAC. The form will be the only information available to the public before the project is approved for construction. All other supporting documentation is considered draft until accepted by the state engineer. A plan review fee in accordance with Subsection C of 19.25.12.8 NMAC shall accompany the submittal of the design report, construction drawings and specifications. A detailed estimate of the construction cost for the proposed dam and appurtenant structures shall be submitted in support of the plan review fee.

B. Water right: A water right is required for water impounded by the dam. If the dam owner has a permit for the diversion of water, documentation addressing the necessity for storage, diversion periods and release conditions for the reservoir may be required. This requirement is waived for flood control dams that do not detain water longer than 96 hours in accordance with Subparagraph (b) of Paragraph (7) of Subsection C of 19.25.12.11 NMAC or provide documentation that a waiver by the state engineer has been granted. Flood control dams that do not drain within 96 hours require a water right for water permanently stored beyond the 96-hour drain time requirement and for associated losses due to evaporation and other potential depletions to the system unless a waiver in accordance with 19.25.12.11 NMAC is obtained.

C. Design report: A design report, which includes information to evaluate the safe design of the dam and appurtenant structures, shall be submitted in a form acceptable to the state engineer. The final design report shall also be submitted in an electronic format acceptable to the state engineer. The design report may be submitted as a single report or as individual reports documenting the information described below. A professional engineer licensed in the state of New Mexico qualified in the design and construction of dams shall prepare or supervise the preparation of the design report. The front cover shall show the name of the dam, the county in which the dam is located,

the dam owner and the type of report. The first page behind the front cover shall show the name of the dam, the county in which the dam is located, a signed certification from the engineer and a certification for the state engineer in accordance with Subsections B and E of 19.25.12.12 NMAC. The design report shall contain the information described below and any other additional information determined necessary by the state engineer to evaluate if the design is safe.

(1) Hazard potential classification. A hazard potential classification shall be based on the dam failure condition that results in the greatest potential for loss of life and property damage. If the state engineer concurs, the classification may be based on the judgment and recommendation of the professional engineer. For all other cases, a low or significant hazard potential classification shall be supported by a dam breach and flood routing analysis, which includes calculations and data that supports the predicted dam failure flood. This analysis shall also address the potential for foreseeable future development. Evaluation of the effects of flooding from dam failure shall extend at least to the location downstream where the classification can be properly identified. The dam breach and flood routing analysis shall include, but not be limited to:

- (a)** description of the dam breach and flood routing methodology;
- (b)** a tabulation and justification of parameters used in the analysis;
- (c)** a sensitivity analysis of the parameters used in the analysis;
- (d)** references to all computer models, data and supporting justification used in the analysis;
- (e)** appropriate data sheets, computer program input and output computations and electronic files from computerized analysis;
- (f)** table of results for the flood routing for the sunny day failure and the failure and no failure scenarios for multiple flood events up to and including the spillway design flood as defined in Subparagraph (a) through (d) of Paragraph (3) of Subsection C of 19.25.12.11 NMAC; the table of results for all critical locations downstream shall include the depth of flow in feet, velocity of flow in feet per second, rate of flow in cubic feet per second and the incremental impacts; and
- (g)** dam failure inundation maps downstream of the dam for the sunny day failure and failure during the spillway design flood event showing the depth of flow in feet, average velocity in feet per second and rate of flow in cubic feet per second at critical locations downstream.

(2) Hydrologic analysis. The hydrologic analysis shall include a discussion of methodology used to calculate the spillway design flood for determining the available flood storage and spillway capacity. Consideration of how the dam will perform under

these hypothetical flood conditions shall be evaluated. The hydrologic analysis shall include, but not be limited to:

(a) a topographic map of the drainage area above the dam with the drainage area and sub-basins delineated and presented on a map of appropriate scale and size;

(b) a description of the topography, soils and vegetative cover and land treatment of the drainage area;

(c) a discussion of the depth, duration and distribution of the spillway design storm;

(d) a tabulation, discussion and justification of all hydrologic parameters and methodology used to calculate runoff from rainfall;

(e) a discussion of the peak inflow, volume of runoff and maximum reservoir water level elevation for the inflow hydrograph;

(f) a plot of the reservoir inflow and outflow hydrographs extended until flow is negligible and plotted on the same figure of appropriate size and scale;

(g) a table showing the reservoir area (in acres) and storage capacity (in acre-feet) for each foot of elevation above the bottom of the reservoir to the dam crest; the table shall be determined from the reservoir topography map; indicate the amount of dead storage, elevation of the invert of the outlet and elevation of the crest of each spillway; all elevations shall be based on North American vertical datum 1988 or more recent adjustment; and

(h) appropriate data sheets and computer program output computations from computerized analysis.

(3) Spillway design flood. The spillway design flood is the flood that a spillway must be capable of conveying without dam failure. For perimeter embankment dams with no spillway and no external drainage area, the dam must be capable of impounding the spillway design flood without dam failure. A spillway design flood less than these requirements is acceptable to the state engineer if an incremental damage analysis is presented to justify the inflow design flood in accordance with Paragraph (4) of Subsection C of 19.25.12.11 NMAC. The spillway design flood is based on size classification and hazard potential classification of the dam as described below.

(a) Dams classified as low hazard potential, regardless of size, shall have spillways designed to pass a flood resulting from a 100-year precipitation event expressed as a percentage of the probable maximum precipitation.

(b) Dams classified as small and intermediate, with a significant hazard potential rating shall have spillways designed to pass a flood resulting from 50 percent of the probable maximum precipitation.

(c) Dams classified as large, with a significant hazard potential rating shall have spillways designed to pass a flood resulting from 75 percent of the probable maximum precipitation.

(d) Dams classified as high hazard potential, regardless of size, shall have spillways designed to pass a flood resulting from the probable maximum precipitation.

(4) Incremental damage assessment. Where spillways are not in compliance with Paragraph (3) of Subsection C of 19.25.12.11 NMAC an incremental damage assessment shall justify the inflow design flood used to size the spillway. The spillway design flood from an incremental damage assessment is the flood above which the incremental increase in downstream water surface elevation due to failure of a dam is no longer considered to present an unacceptable additional downstream threat when compared to the same flood without dam failure. The lower limit is the flood resulting from the 100-year precipitation. The assessment shall compare the incremental impacts on downstream areas including existing and foreseeable future development. The assessment shall include a dam breach and flood routing analysis in accordance with Subparagraphs (a) through (g) of Paragraph (1) of Subsection C of 19.25.12.11 NMAC for the failure and non-failure conditions. Methods for assessing the damage between failure and non-failure conditions shall be fully documented.

(5) Spillway capacity. The spillway capacity shall be adequate to pass the spillway design flood in accordance with Paragraph (3) of Subsection C of 19.25.12.11 NMAC or accepted inflow design flood in accordance with Paragraph (4) of Subsection C of 19.25.12.11 NMAC without failure of the dam. If the outlet works are gated, the design discharge of the outlet works shall not be considered when routing the spillway design flood through the reservoir and spillway. The water level shall be at the normal operating level at the beginning of the spillway design storm. A spillway rating curve and table showing elevation in one-foot increments versus maximum discharge capacity shall be prepared. The rating curve and table shall include data from the crest of the spillway to the dam crest. The parameters used to calculate the spillway capacity shall be justified and appropriate data sheets and computer program output computations from computerized analysis shall be provided. Elevations shall be based on North American vertical datum 1988 or more recent adjustment.

(6) Spillway design. Spillways shall be evaluated for erosion potential during normal operation and the design flood event. Damage to a spillway during the design flood event is acceptable; however, a breach of the spillway is unacceptable. The spillway design shall address the minimum requirements described below.

(a) The material required for spillway lining depends on the spillway location, frequency of discharge and velocity of discharge to adequately address erosion and

breach potential. The design shall provide adequate justification for the material selected.

(b) The design shall provide aeration of the nappe for cavitation control where control weirs are used at the spillway crest.

(c) The spillway must discharge away from the toe of the dam and abutment slopes.

(d) The design shall address the potential for the accumulation of debris that may block the spillway.

(e) The design shall address energy dissipation to adequately control erosion of the natural channel due to spillway discharge reasonably expected to occur during the life of the dam.

(f) Channel lining shall be placed on a suitably prepared, stable subgrade. All edges and joints in channel lining material must be designed to prevent undermining and erosion. Concrete channel lining must be provided with adequate jointing to permit thermal expansion and contraction and adequate reinforcing to control thermal cracking. Adequate water stops are required at joints in the spillway lining. Concrete lining shall be adequately anchored against displacement and uplift and shall be provided with adequate subdrainage to relieve hydrostatic pressure and prevent frost heave.

(g) Where training dikes are used to divert the water away from the dam, the dike shall be designed with a compaction to at least 95% of the maximum standard Proctor density, ASTM D 698, or at least 90% of the maximum modified Proctor density, ASTM D 1557. Erosion protection for the dike shall be addressed in accordance with Paragraph (16) of Subsection C of 19.25.12.11 NMAC.

(7) Outlet works capacity. Dams shall be designed with a low level outlet to drain the entire contents above the elevation of the downstream toe of the dam. If environmental consequences prevent draining of the reservoir, the state engineer will grant a waiver if written justification is provided to the satisfaction of the state engineer. The outlet shall be sized to provide adequate capacity to satisfy water rights of downstream priority users. A stage discharge curve and table showing elevation in one-foot increments versus discharge capacity shall be prepared. The rating curve and table shall be from the invert of the outlet to the dam crest. The parameters used to calculate the outlet works capacity shall be justified and appropriate data sheets and computer program output computations from computerized analysis shall be provided. Elevations shall be based on North American vertical datum 1988 or more recent adjustment. The outlet works capacity shall meet the minimum requirements described below.

(a) Outlets for water storage dams shall drain the reservoir in 45 days with supporting calculations provided.

(b) Outlets for flood control dams shall drain the reservoir in 96 hours unless a waiver is granted by the state engineer. The 96-hour time frame begins once the reservoir storage drops to the emergency spillway crest or reaches its peak during the 100-year, 24-hour event. Documentation supporting the waiver shall include the time to drain more frequent events.

(8) Outlet works design. The outlet works design includes the intake structure, conduit and terminal structure. The outlet works design shall meet the minimum requirements described below.

(a) Minimum conduit diameter is 18 inches unless a waiver is granted by the state engineer. Documentation supporting a waiver shall include identification of methods to inspect the interior of the conduit.

(b) Metal conduits used in dams that are classified as significant hazard potential where the sole purpose of the dam is flood control, or in dams classified as low hazard potential, shall have adequate strength after corrosion for a minimum of 200 years, based on corrosivity testing of onsite soils. Cathodic or other protection of metal conduits is permissible and may be considered in this analysis. Metal conduits are not acceptable for dams classified as high hazard potential or dams classified as significant hazard potential with permanent water storage except as interior forms for cast-in-place concrete conduits.

(c) Outlet conduits for storage reservoirs shall be gated at the upstream end unless a waiver is granted by the state engineer. Where gates are located other than at the upstream end of the conduit, a guard gate or bulkhead shall be provided at the upstream end to allow draining of the conduit for inspection, maintenance and repair.

(d) Outlet conduits shall be adequately vented and shall include all supporting calculations. Where the outlet conduit ties directly to a downstream pipe, a by-pass valve shall be provided. An exception to the by-pass valve will be granted when the conduit discharges to an ungated downstream storm drain with adequate access for inspection and maintenance.

(e) Outlet controls and equipment shall be properly designed to be secure from damage due to vandalism, weather, ice, floating debris, wave action, embankment settlement and other reasonably foreseeable causes. The outlet control operators shall remain accessible during outlet works and spillway releases.

(f) Outlets for flood control structures shall be ungated. Where a gate is required to satisfy downstream release restrictions, a waiver from the state engineer is required. The written request for waiver shall include a plan for timely release of the floodwater.

(g) Outlet works intake structures shall be provided with trash racks or grates to prevent clogging with debris. Grate opening area or bar spacing shall be adequate to

satisfy applicable public safety requirements, if appropriate. Total area of grate openings must be at least three times the cross-sectional area of the outlet conduit.

(h) The design of the outlet works terminal structure shall address energy dissipation to prevent erosion and shall include supporting calculations.

(i) Outlet conduits shall be designed for full embankment loading and for hydrostatic pressure equal to the maximum reservoir head, acting separately and in combination, with an adequate factor of safety for the conduit material. If future increases in embankment height or reservoir head are foreseeable, allowance shall be made in the design.

(j) The conduit together with all joints and fittings shall be watertight at the design pressure and shall be pressure tested prior to backfilling. Conduits shall be designed for all reasonably foreseeable adverse conditions including corrosion, abrasion, cavitation, embankment settlement and spreading, thermal effects and seismic loading. The ability of the conduit to withstand deflection and separation at the joints shall be addressed in the design of the outlet conduit.

(k) Outlet works shall be supported by stable, well-consolidated foundation materials. Where the conduit is placed in embankment fill or native overburden materials, settlement analysis shall be performed.

(l) Minimizing seepage along conduits shall be addressed including the methods for ensuring compaction of backfill around and beneath the conduit. Seepage collars are not an acceptable design standard for controlling seepage.

(m) All supporting documentation and calculations for the outlet works design shall be provided. The outlet works design shall include all foreseeable loading conditions, including but not limited to ice loading, debris buildup, wave action and embankment settlement. Structural design calculations for the intake structure, conduit and outlet structure shall be submitted.

(9) Geological assessment. A geological assessment of the dam and reservoir site is required for all dams classified as high or significant hazard potential. The geological assessment may be included in the geotechnical investigation or seismic study, or may be submitted as a separate document. The geological assessment shall address regional geologic setting; local and site geology; geologic suitability of the dam foundation; slide potential of the reservoir rim and abutment areas; and seismic history and potential.

(10) Geotechnical investigation. A geotechnical investigation shall assess site conditions and support the design. A professional engineer licensed in the state of New Mexico qualified to provide geotechnical expertise in the design and construction of dams shall prepare, stamp and sign the geotechnical investigation, which may be submitted as a separate report. The scope of the geotechnical investigation is

dependent on the size classification, hazard potential classification, anticipated materials and construction methods, site geology and seismicity, anticipated soil strata and other site-specific conditions. The geotechnical investigation shall include a field investigation and laboratory testing. Results of field and laboratory testing shall be presented in a report, including recommended parameters to be used in design and construction of the dam and appurtenant structures. The field investigation and laboratory testing shall include but not be limited to the following:

(a) test borings in the footprint of the embankment, spillway excavations and appurtenant structures extending to bedrock or to a depth equal to at least the height of the dam; where appropriate, borings may include coring of bedrock materials to determine the quality and character of the rock;

(b) standard penetration tests or other field-testing to assess soil character and consistency;

(c) "undisturbed" sampling for further tests such as insitu density, shear strength and compressibility;

(d) supplemental test pits, if deemed necessary, to obtain bulk and undisturbed samples, assess soil layering and measure bedrock orientation;

(e) measurement of water level in drill holes;

(f) field permeability testing, if feasible;

(g) logs of test borings and test pits, location map and profile along dam axis with soil information shown;

(h) testing to determine the relevant properties of the material to be used in construction, including but not limited to shear strength, permeability, compressibility and filter characteristics; the testing method shall conform to accepted industry standards and be appropriate for the material being tested;

(i) evaluation of liquefaction potential and dynamic shear strength testing if deformation analysis is required; and

(j) identification of the location of the borrow material to be used during construction.

(11) Seepage and internal drainage. The effects of seepage and potential for internal erosion shall be evaluated. For dams with aesthetic fill on the downstream slope, the effects of seepage shall be evaluated with and without the aesthetic fill. A seepage analysis shall be performed to address the performance of the embankment under steady-state conditions for dams classified as high or significant hazard potential. All parameters and assumptions used in the analysis shall be summarized in a table

and justified in the seepage analysis. A waiver may be requested in writing for flood control dams that drain in 96 hours. The seepage analysis and internal drainage design shall include the minimum requirements described below.

(a) Flow nets of appropriate size and scale shall be prepared. The effects of anisotropy with respect to permeability shall be addressed. Ratios of horizontal to vertical permeability of less than 4 for constructed embankments and less than 9 for native deposits shall be supported by field and laboratory permeability tests. Appropriate data sheets and computer program output computations from computerized analysis shall be provided.

(b) The design shall address the effects of anticipated seepage beneath, around and through the dam. Seepage shall not exit on the dam face and excessive exit seepage gradients are unacceptable. All filter, transition and drainage zones within earth dams shall have a thickness adequate to address constructability and enhance seismic stability with a minimum thickness of 3 feet for each zone.

(c) Collector pipes and conduits for internal drains shall be made of non-corrodible material capable of withstanding the anticipated loads. If possible, pipes shall be located where they can be exposed for repair or replacement without threatening the stability of the dam. Collector pipes for drains shall be enveloped in a free-draining medium meeting filter criteria for adjacent embankment or foundation zones. Where surging or hydraulic gradient reversal is likely, perforation size must be less than the diameter at which 15 percent of the surrounding medium is finer. Where surging or hydraulic gradient reversal are unlikely, the perforation size must be less than the diameter at which 85 percent of the surrounding medium is finer.

(d) Drain pipes shall be sized to provide a flow depth no more than $\frac{1}{4}$ of the pipe diameter when carrying the anticipated discharge. Drain pipes shall be at least 6 inches in diameter unless the availability of technology for inspection and maintenance can be demonstrated. Individual pipes shall discharge to a gallery, well, manhole, or to daylight such that the flow of each pipe can be monitored and measured. Manifold connections, tees and wyes are not permitted. A seepage measuring device must be appropriate for the rate of anticipated flow. The measuring device must include an upstream catchment to detect any sediment in the seepage. Where pipes from internal drains are discharged to daylight, a rodent screen shall be provided.

(12) Stability analysis. Cross-sectional design for dams shall be supported by slope stability analysis. For dams with aesthetic fill on the downstream slope, the stability of the downstream slope shall be evaluated with and without the aesthetic fill. Dams classified as low hazard potential with upstream slopes no steeper than 3 horizontal to 1 vertical, downstream slopes no steeper than 2 horizontal to 1 vertical and which are 25 feet or less in height will not require slope stability analysis. Stability analysis of the reservoir rim is required where slopes are steeper than 3 horizontal to 1 vertical. The analysis model shall adequately represent the geometry and zoning, shear strength parameters, material unit weights, pore pressure and seepage conditions,

external loading and other relevant factors of the critical cross section or sections. Manual computations in the analysis will be accepted if judged to be sufficiently rigorous. Where appropriate, the analysis shall consider noncircular or block and wedge type failure surfaces as well as circular failures. All parameters and assumptions used in the analysis shall be summarized in a table and justified in the geotechnical investigation. A scale drawing, utilizing the same scale for vertical and horizontal dimensions, shall be provided for each cross-sectional model used in the analysis, with the critical failure surface(s) identified. Appropriate data sheets and computer program output computations from computerized analysis shall be provided. Dams shall be designed to provide the following minimum factors of safety from the stability analysis:

- (a)** 1.5 for steady state long-term stability;
- (b)** 1.5 for operational drawdown conditions;
- (c)** 1.3 for rapid drawdown conditions; and
- (d)** 1.3 for end of construction.

(13) Seismic design and analysis. Dams and appurtenant structures classified as high or significant hazard potential shall be analyzed for seismic stability. Seismic analysis for water storage dams shall be based on full reservoir under steady state seepage conditions. Flood control dams with ungated outlets that satisfy Subparagraph (b) of Paragraph (7) of Subsection C of 19.25.12.11 NMAC without waiver shall be designed for earthquake loads under empty reservoir conditions and need not consider steady-state seepage. Dams sited on active faults shall obtain a waiver from the state engineer. To obtain a waiver the analysis shall show that the location of the dam is unavoidable and the dam must be designed to withstand anticipated fault movement without compromising its integrity. Appropriate data sheets and computer program output computations from computerized analysis shall be provided. The seismic analysis shall meet the minimum requirements described below.

(a) A seismological investigation for the dam area and reservoir area shall be performed. This study may be part of the geological or geotechnical report for the structure, or may be a separate effort. The study shall determine and justify the appropriate seismic parameters to be used for design. The dam and appurtenant structures shall be capable of withstanding the operating basis earthquake with little to no damage and without interruption of function. The operating basis earthquake has a 50% probability of exceedance during the service life of the dam or appurtenant structures. In no case shall the service life be less than 100 years. The dam and appurtenant structures critical to the safety of the dam shall be capable of withstanding the design earthquake without failure. The seismic parameters shall be based on the design earthquake requirements described below.

(i) Dams classified as high hazard potential other than flood control structures shall be designed for the maximum credible earthquake or for a 1% probability of exceedance in 50 years (approximately 5000-year return frequency).

(ii) Dams classified as significant hazard potential or high hazard potential dams whose sole purpose is for flood control shall be designed for a 2% probability of exceedance in 50 years (approximately 2500-year return frequency).

(b) An analysis of materials in the foundation, reservoir area and proposed embankment shall be completed to determine the potential for liquefaction, earthquake-induced sliding, or other seismic sensitivity, which may be accomplished as part of the geotechnical investigation.

(c) Pseudostatic analysis will be acceptable for the following cases:

(i) the embankment is to be mechanically compacted to at least 95% of the maximum standard Proctor density, ASTM D 698, or at least 90% of the maximum modified Proctor density, ASTM D 1557; no materials prone to liquefaction are present in the foundation and peak ground acceleration is 0.20g or less; or

(ii) the embankment is to be mechanically compacted to at least 95% of the maximum standard Proctor density, ASTM D 698, or at least 90% of the maximum modified Proctor density, ASTM D 1557; potentially submerged portions of the embankment except for internal drain elements are constructed of clayey material; the dam is constructed on clayey soil or bedrock foundation and peak ground acceleration is 0.35g or less; and

(iii) all safety factor requirements in accordance with Subparagraphs (a) through (d) of Paragraph (12) of Subsection C of 19.25.12.11 NMAC are met;

(iv) minimum freeboard requirements in accordance with Subparagraphs (a) through (e) of Paragraph (15) of Subsection C of 19.25.12.11 NMAC are met; and

(v) the pseudostatic coefficient selected for analysis must be at least 50% of the predicted peak ground acceleration, but not less than 0.05g and the factor of safety under pseudostatic analysis shall be 1.1 or greater. In determining the factor of safety for pseudostatic analysis, a search for the critical failure surface shall be made.

(d) For dams not satisfying the requirements for pseudostatic analysis, a deformation analysis is required. The resulting embankment must be capable of withstanding the design earthquake without breaching and with at least 3 feet of freeboard remaining after deformation. The analysis shall also assess the potential for internal erosion as a result of cracking during deformation.

(14) Dam geometry. The dam geometry shall be supported by the stability and seismic analysis and shall meet the minimum requirements described below.

(a) The crest width shall be at least equal to the dam height in feet divided by 5 plus 8 feet, with the minimum permissible crest width being 10 feet and the maximum required crest width being 24 feet.

(b) Roads located on the crest shall have appropriate surfacing to provide a stable base that resists rutting and provides adequate friction for safety in wet conditions.

(c) The crest design shall provide a minimum of 2 feet of cover or the depth of frost penetration; whichever is greater, above clay cores to prevent cracking of the core due to desiccation or frost penetration.

(d) Turnarounds shall be provided on dead-end service roads on dam crests, located in such a manner that backing maneuvers longer than 300 feet are eliminated.

(e) The crest shall be provided with adequate cross slope to prevent ponding.

(f) The slope or slopes to which crest drainage is directed must be provided with adequate erosion protection to accept the crest drainage.

(g) The crest longitudinal profile shall be provided with adequate camber to maintain the profile after embankment settlement. Camber shall be based on a settlement analysis and shall be at least 2 percent of the total embankment height, with a minimum of 1 foot at the highest point of the dam. The tops of internal core zones shall also be provided with camber in a similar manner to the crest of the dam.

(h) In the event that safety berms, street curbs, or other longitudinal features which block, control, or concentrate drainage are required on the dam crest, the design shall provide for collection and conveyance of accumulated water to discharge away from the embankment without erosion.

(15) Freeboard. Dams shall be provided with adequate freeboard. Wave runup shall be determined taking into consideration wind speed, reservoir fetch, embankment slope and roughness of the slope surface. Freeboard shall satisfy the minimum requirements described below.

(a) Anticipated wave runup resulting from a 100 mph wind with reservoir level at the spillway crest will not overtop the dam.

(b) Anticipated wave runup resulting from a 50 mph wind with maximum reservoir level from routed spillway design flood will not overtop the dam.

(c) Clay core cover and capillary rise requirements in accordance with Subparagraph (c) of Paragraph (14) of Subsection C of 19.25.12.11 NMAC are satisfied.

(d) A minimum of 3 feet of freeboard remains after seismic deformation.

(e) In any case, at least 4 feet of freeboard shall be provided. The minimum of 4 feet of freeboard may be waived for perimeter embankment dams with no spillway and no external drainage area, provided a written request is made to the state engineer accompanied with supporting justification.

(16) Erosion protection. Erosion protection shall be addressed to protect the dam and appurtenant structures from erosion that can threaten the safety of the structure. Erosion protection shall address the minimum requirements described below.

(a) Wave erosion. The upstream slope shall be protected from wave erosion. The material selected and area of coverage shall be appropriate for the protection required with justification provided. Flood control dams in compliance with Subparagraph (b) of Paragraph (7) of Subsection C of 19.25.12.11 NMAC without waiver are exempt from wave protection.

(b) Surface erosion. The slope, crest, abutment and groins, toe areas and any other constructed areas associated with the dam and appurtenant structures shall be protected from wind erosion and erosion from concentrated and sheet flows. The material selected and area of coverage shall be appropriate for the protection required with justification provided.

(17) Geotextile design. Geotextiles are an acceptable material for use in dam design only if the geotextile is placed so that it does not jeopardize the dam or appurtenant structures during repair or failure of the geotextile. The geotextile shall be used in accordance with the manufacturer's recommendations and intended use for the product. Geotextile design computations shall be provided. Where a geotextile is used for fluid containment the installation shall be performed by certified personnel and the completed installation shall be certified by a qualified independent entity.

(18) Structural design. The structural design information for all appurtenant structures, addressing water, earth, ice and any other applicable load shall be provided. Reinforced concrete design including assumptions for loads and limiting stresses and sample calculations shall be provided. Appropriate data sheets and computer program output computations from computerized analysis shall be provided.

(19) Utilities design. Utility placement or relocation shall be addressed as applicable. Utilities located in the vicinity of the proposed embankment, spillway and seepage footprint should be relocated and trenches backfilled and compacted with suitable material to the satisfaction of the state engineer. If utilities are allowed to

remain, they will be required to satisfy applicable provisions for outlet conduits in accordance with Paragraph (8) of Subsection C of 19.25.12.11 NMAC.

(20) Miscellaneous design. Because each design is unique, all design elements not specifically addressed in these regulations shall be documented and justified with sample calculations and appropriate data sheets and computer program output computations from computerized analysis shall be included in the design report.

D. Construction drawings: Construction drawings shall be submitted in a form acceptable to the state engineer. The final construction drawings shall also be submitted in an electronic format acceptable to the state engineer. A professional engineer licensed in the state of New Mexico qualified in dam design and construction shall prepare the construction drawings. Illegible, mutilated, careless or otherwise poorly prepared drawings are not acceptable for filing with the state engineer. The construction drawings shall contain the information described below and any other additional information determined necessary by the state engineer to evaluate if the construction drawings are consistent with the design.

(1) Quality. Construction drawings and maps shall be made from actual field or photogrammetric surveys of an accuracy acceptable to the state engineer. Construction drawings and maps shall be prepared with permanent black ink on mylar. All original signatures, dates and acknowledgments appearing on the sheet(s) shall be in permanent ink. Construction drawings and maps shall always be rolled, never folded, for transmittal.

(2) Scale and size. Sheets shall range in size from twenty-two (22) to twenty-four (24) inches by thirty-four (34) to thirty-six (36) inches with one (1) inch margins on all sides. The scale(s) used on the drawings may vary according to requirements and space available to show all necessary data in detail clearly in feet and decimals and to be clearly legible when the drawings are reduced to eleven (11) inches by seventeen (17) inches. Detailed dimensions of appurtenant structures shall be given in feet and inches. All sheets shall have bar scales in order to allow scaling of reduced drawings.

(3) Sheet numbers. Each sheet shall be numbered sequentially with the first sheet being sheet number one in conjunction with the total numbered sheets (example Sheet 1 of 5). The sheet number on the last sheet shall equal the total number of sheets.

(4) Engineer's seal and signature. Each sheet shall have the responsible engineer's seal and signature.

Seals and signatures shall be presented in accordance with 16.39.3 NMAC.

(5) Orientation and date. The direction of north and the basis of bearings shall be shown on all maps. The date that field surveys are made or the date of the aerial photography used shall be shown on the maps.

(6) Title sheet. The first sheet of a set of construction drawings is the title sheet. The title sheet shall only contain sufficient information to summarize the scope of the project, the title of the project, signed certifications from the dam owner, engineer and a certification for the state engineer in accordance with Subsections A, B and E of 19.25.12.12 NMAC. The title sheet shall summarize the properties of the dam and shall include the following information, as appropriate:

- (a)** name of the dam (same as shown on the application);
- (b)** type of dam (material);
- (c)** hazard potential classification;
- (d)** maximum height above the downstream toe in feet;
- (e)** maximum length in feet;
- (f)** crest width in feet;
- (g)** slope of the upstream face (horizontal to 1 vertical);
- (h)** slope of the downstream face (horizontal to 1 vertical);
- (i)** elevation of the dam crest in feet;
- (j)** elevation of spillway crest in feet;
- (k)** length of the conduit in feet;
- (l)** invert elevation of the upstream end of the conduit in feet;
- (m)** invert elevation of the downstream end of the conduit in feet;
- (n)** freeboard in feet;
- (o)** residual freeboard in feet;
- (p)** maximum spillway discharge capacity in cubic feet per second;
- (q)** type of outlet conduit (give size and material);
- (r)** maximum outlet conduit discharge capacity in cubic feet per second; and
- (s)** location of the outlet works intake structure (using latitude and longitude in decimal degrees at least to the fifth place after the decimal).

(7) Vicinity map. A vicinity map of sufficient scale and size to locate the pertinent area shall be shown on the title sheet or second sheet of the drawings.

(8) Site topography. A detailed topography of the dam site including sufficient area upstream and downstream and at the abutments shall be provided. Elevations shall be based on North American vertical datum 1988 or more recent adjustment.

(9) Design details. Detailed information of the various construction features including plan view, elevations, cross-sections at the maximum section and along the outlet works, profile along and section through the centerline of the dam showing the foundation materials, construction features and cross-sections and a profile of the emergency spillway with dimensions and construction details shall be provided. Any other information necessary for the state engineer to determine the feasibility and safety of the dam shall be provided.

(10) Reservoir area, capacity and high water line traverse. The topography of any proposed reservoir site shall be determined to industry standards and a contour map with a contour interval of 1 foot shall be prepared. Elevations of the contours shall be tied to the North American vertical datum of 1988 or more recent adjustment.

The elevation of the high water line will be highlighted on the contour map. A curve and table of elevation versus area and storage capacity for the reservoir shall be prepared from the contour map. The curve and table shall be from the bottom of the reservoir to the dam crest. Area shall be provided in acres and storage capacity in acre-feet.

(11) Permanent bench mark. A permanent bench mark shall be established above the high water line at a location unlikely to settle or be disturbed. The North American vertical datum of 1988 or more recent adjustment for the bench mark elevation and the latitude and longitude in decimal degrees at least to the fifth place after the decimal for the bench mark location shall be provided. A detail of construction of the permanent bench mark shall be provided.

E. Specifications: A specification package shall be prepared for each project describing work to be done and materials to be used to supplement construction drawings. Specifications shall be submitted in a form acceptable to the state engineer. The specifications shall also be submitted in an electronic format acceptable to the state engineer. Reference to standard technical specifications is not acceptable. Inclusion of appropriate specification sections derived from model specifications is acceptable. Specifications must be clear and concise. Specifications shall include detailed methods of construction, qualities and sizes of materials, unit amounts to be used, methods and frequency of testing and quality control, construction supervision and frequency of inspection. Specifications shall be prepared by a professional engineer licensed in the state of New Mexico qualified in the design and construction of dams. The specifications shall contain the information described below and any other additional information determined necessary by the state engineer to evaluate if the construction methods are consistent with the design and construction drawings.

(1) The front cover of the specifications shall show the name of the dam (identical to the application) and the county in which the dam is located. The first page behind the front cover shall show the name of the dam (identical to the dam name on the application), the county in which the dam is located, a signed certification from the engineer and a certification for the state engineer in accordance with Subsections B and E of 19.25.12.12 NMAC.

(2) The specifications shall include a table of contents.

(3) The specifications shall be bound and submitted on 8 1/2-inch by 11-inch white paper.

(4) The general conditions shall include a statement that the construction drawings and specifications cannot be changed without the prior written approval of the state engineer and must recognize the authority of the state engineer to perform inspections during construction. An approved model statement is provided below. Changes to the model statement require prior approval of the state engineer. "All construction shall be performed in strict accordance with the accepted construction drawings and specifications. Changes to the accepted construction drawings or specifications require prior written approval of the state engineer. Representatives of the state engineer shall have full authority to perform inspections during construction and shall have full power to act pursuant to the law and in accordance with Title 19, Chapter 25, Part 12, Dam Design, Construction and Dam Safety of the New Mexico Administrative Code if construction drawings and specifications are not followed."

F. Boundary, easement or right of way plat of survey: A plat of survey shall be submitted in a form acceptable to the state engineer. A professional surveyor licensed in the state of New Mexico shall prepare a plat of survey showing the dam owner's property boundaries or easement or right of way granted by the land owner. The plat of survey shall be prepared in conformance with the requirements as set forth in the Minimum Standards for Surveying in New Mexico, 12.8.2 NMAC. The plat of survey shall clearly state to whom an easement is granted and what rights are conveyed with the easement. The plat of survey shall show the footprint of the dam and appurtenant structures and the high water line in the reservoir. The plat of survey shall be recorded with the county clerk of the county or counties in which the survey is located. A certificate signed by the surveyor in accordance with Subsection C of 19.25.12.12 NMAC shall appear on the plat of survey. A certified copy of the recorded plat of survey bearing the recorded page and endorsement of the county clerk shall be submitted to the state engineer for filing. Adequate property ownership, easement or right of way shall be required for the following conditions:

(1) to access the dam and outlet controls during normal and flood events;

(2) to prevent development encroachment into the reservoir area defined by normal operation and the spillway design flood that adversely affects the performance of the dam;

(3) to prevent development in the approach, control and discharge section of the spillway that may restrict flow through the spillway;

(4) to return outlet works and spillway discharge to the natural drainage and allow the outlet works to discharge freely; and

(5) to perform maintenance on the dam, appurtenant structures and surrounding areas to ensure the safe performance of the dam.

G. Dam site security: Dams classified as high or significant hazard potential shall address security at dams to prevent unauthorized operation or access. If in the opinion of the state engineer, the failure of the dam will result in catastrophic consequences, a security and risk management program for the dam will be required. Elements of a security and risk management program are:

(1) threat, vulnerability and risk assessments;

(2) physical security plans; and

(3) integration of security operational procedures.

H. Instrumentation plan: An instrumentation plan shall be submitted in a form acceptable to the state engineer. An instrumentation plan providing the ability to monitor and evaluate the performance of a dam is required for dams classified as high or significant hazard potential. Instrumentation details must be included on construction drawings and specifications must be consistent with the instrumentation plan. The instrumentation plan may be submitted as a separate report or as part of the design report. Minimum requirements of the instrumentation plan shall include:

(1) description and purpose;

(2) detailed description of installations;

(3) calibration and maintenance schedule and instructions;

(4) reading schedule and instructions;

(5) data reduction and interpretation instructions; and

(6) identification of critical readings.

I. Operation and maintenance manual: An operation and maintenance manual is required for dams classified as high or significant hazard potential. The operation and maintenance manual identifies activity necessary to address the continued safe operation, maintenance and overall performance of the dam. Any restrictions imposed by the design shall be addressed in the operation and maintenance manual. The

operation and maintenance manual shall conform to the requirements set forth in 19.25.12.17 NMAC.

J. Emergency action plan: An emergency action plan is required for dams classified as high or significant hazard potential. The emergency action plan identifies potential emergency conditions at a dam and specifies preplanned actions to be followed to minimize property damage and loss of life. The emergency action plan shall conform to the requirements set forth in 19.25.12.18 NMAC.

[19.25.12.11 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.12 CERTIFICATIONS:

Signed certifications by the dam owner, engineer, surveyor, local and state emergency management officials and the state engineer are required by these regulations on specific documents. Approved model certifications for the dam owner, engineer, surveyor, local and state emergency management officials and state engineer are provided below. Changes to the model certifications require prior approval of the state engineer.

A. DAM OWNER'S CERTIFICATE: A certificate followed by the dated signature of the dam owner and notary public acknowledgment is required on the title sheet of the construction drawings and first page behind the front cover of the operation and maintenance manual and emergency action plan. The following model certification is considered to be an example of the minimum that the dam owner shall certify. If the dam owner is a corporation, political subdivision or other governmental entity a model certificate is also provided.

I, (dam owner's name), being first duly sworn, upon my oath, state that I have read and examined the accompanying (construction drawings consisting of ____ sheets, operation and maintenance manual, or emergency action plan) and know the contents and representations therein for _____ dam and all that is shown herein is done with my free consent and in accordance with my wishes and state that the same are true and correct to the best of my knowledge and belief.

Dam owner signature

Date

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary public

My commission expires _____ (SEAL)

If a claimant is a corporation, political subdivision or other governmental entity the following shall be used:

I, (representative's name), being first duly sworn, upon my oath, state that I am the _____ (officer) of the _____, a (corporation or political subdivision) duly organized under the laws of the state of _____, that the accompanying _____ (construction drawings consisting of _____ sheets, operation and maintenance manual, or emergency action plan) for _____ dam were made under authority of the board of directors of said (corporation or political subdivision) and that, in their behalf, I have read and examined the statements and representations and all that is shown herein is done with their free consent and in accordance with their wishes and state that the same are true and correct to the best of my knowledge and belief.

Representative signature, title Date

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary public

My commission expires _____ (SEAL)

B. ENGINEER'S CERTIFICATE: A certificate followed by the dated signature, license number and seal of the engineer responsible for preparing the report, construction drawings, specifications, operation and maintenance manual and engineering elements of the emergency action plan is required. The certificate shall be placed on the title sheet of the construction drawings and first page behind the front cover of the report, specifications, operation and maintenance manual and emergency action plan. The following model certification is considered to be an example of the minimum that the engineer must certify to:

I, (engineer's name), hereby certify that I am a professional engineer licensed in the state of New Mexico, qualified in _____ (civil, geotechnical, etc.) engineering; that the accompanying _____ (report, construction drawings consisting of _____ sheets, specifications, _____ elements of the operation and maintenance manual, or _____ elements of the emergency action plan) for _____ dam was prepared by me or under my supervision; that the accompanying _____ (report, construction drawings consisting of _____ sheets, specifications, _____ elements of the operation and maintenance manual, or _____ elements of the

emergency action plan) is in compliance with the Dam Design, Construction and Dam Safety Regulations (19.25.12 NMAC) and that the same are true and correct to the best of my knowledge and belief.

(Engineer's signature) _____, License number _____
(SEAL)

Engineer's name

Date: _____

C. SURVEYOR'S CERTIFICATE: The professional surveyor licensed in the state of New Mexico preparing the plat of survey showing property boundaries, acquired easements or rights-of-way shall include a certificate on the plat of survey as modeled in Paragraph (2) of Subsection J of 12.8.2.9 NMAC, the Minimum Standards for Surveying in New Mexico. The following model certificate is considered to be an example of the minimum that the surveyor must certify to:

I, (surveyor's name), New Mexico professional surveyor no. (surveyor's license number), do hereby certify that this (boundary, easement, or right of way) plat of survey and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Surveying in New Mexico; and that it is true and correct to the best of my knowledge and belief. I further certify that this survey is not a land division or subdivision as defined in the New Mexico Subdivision Act and that this instrument is a (boundary, easement, or right of way) plat of survey of _____ dam.

(Surveyor's signature) _____, License number _____
(SEAL)

Surveyor's name

Date: _____

D. LOCAL AND STATE EMERGENCY MANAGEMENT OFFICIAL'S CERTIFICATE: Certificate forms for the local and state officials responsible for emergency management shall be placed at the front of the emergency action plan and immediately after the engineer's certificate. The local official's certificate shall be placed in front of the state official's certificate.

I hereby certify that the accompanying emergency action plan for _____ dam has been duly examined by me and accepted for filing on the _____ day of _____, 20__.

(Official's signature) _____

(Print official's name)

(Print name of local or state emergency management entity)

E. STATE ENGINEER'S CERTIFICATE: A certificate form for the state engineer acceptance shall be placed on the title sheet of the construction drawings and first page behind the front cover of the report, specifications, operation and maintenance manual and immediately after the state official responsible for emergency management in the emergency action plan. This certificate is to be signed by the state engineer or his representative after all necessary corrections or additions, if any, have been made.

I hereby certify that the accompanying _____ (report, construction drawings, specifications, operation and maintenance manual or emergency action plan) for _____ dam and appurtenant structures has been duly examined by me and accepted for filing on the _____ day of _____, 20____.

State engineer

[19.25.12.12 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.13 PERMIT CONDITIONS:

After reviewing the required documentation, the state engineer will notify the dam owner if any deficiencies are found with the submittal to construct and operate a dam. The dam owner will be given an opportunity to correct any deficiencies noted in the review process. Once all deficiencies have been addressed the state engineer will approve the application for permit to construct and operate a dam with conditions under which construction and operation shall occur. Failure to comply with conditions of the approved permit may result in the state engineer issuing an order to redesign, reconstruct or restrict operation of the dam and reservoir until conditions are met. Construction must be completed within two years of approving the application unless an extension of time for the construction is requested and approved by the state engineer. The permit conditions are described below and may include additional conditions determined necessary by the state engineer to ensure the dam is constructed and operated in a safe condition.

A. Engineer supervising construction: Prior to initiation of construction, the dam owner shall designate a professional engineer licensed in the state of New Mexico qualified in the design and construction of dams to supervise construction. If the state engineer finds the engineer acceptable, an order is issued approving the engineer and setting forth conditions under which the engineer will supervise construction. Construction supervision conditions are described below.

(1) The engineer supervising construction shall submit monthly progress reports that are signed and sealed. The report shall include:

- (a)** summary of construction activities;
- (b)** summary of test results;
- (c)** captioned and dated construction photographs; and
- (d)** a discussion of problems encountered and their solutions.

(2) Construction shall be in accordance with accepted drawings and specifications. State engineer approval of any modifications to the accepted drawings or specifications is required prior to undertaking the modifications. Requests for changes or modifications by the engineer supervising construction shall be submitted in writing, supported with appropriate documentation.

(3) The engineer supervising construction shall provide the state engineer a minimum of 72 hours notice to perform inspections as specified in the conditions of construction.

(4) Upon completion of construction, the engineer supervising construction shall submit to the state engineer the items described below.

(a) A construction completion report, which shall include a signed certification from the engineer supervising construction and a certification for the state engineer in accordance with Subsections B and E of 19.25.12.12 NMAC. The construction completion report shall also include:

- (i)** description of construction activities including problems and their solutions;
- (ii)** a summary of materials test data; and
- (iii)** captioned and dated construction photographs.

(b) Record mylar construction drawings including a signed certification on the title sheet from the dam owner and a certification for the state engineer in accordance with Subsections A and E of 19.25.12.12 NMAC. The record mylar drawings shall also contain a signed certificate from the engineer supervising construction that the dam was constructed in accordance with the record drawings and specifications and is in satisfactory condition. If design changes are made during construction, the design engineer may also be required to sign a certification in accordance with Subsection B of 19.25.12.12 NMAC. An approved model certificate for the engineer supervising construction is shown below. Changes to the language in the certification require prior approval by the state engineer.

I, _____, (engineer's name) state that I am a qualified professional engineer licensed in the state of New Mexico, that I have supervised the (construction, repair, rehabilitation) of _____ dam and appurtenant structures and find them to be completed in accordance with the record construction drawings and specifications and are now in a satisfactory condition for acceptance.

(Engineer's signature) _____, License number _____
(SEAL)

Engineer's name

Date: _____

B. State engineer's authority during construction: The state engineer may perform inspections at any time during construction of the dam and appurtenant structures. Inspections will vary with each project, based on the complexity of the design. Inspection of specific construction items are standard construction conditions in the permit and require the engineer supervising construction to provide the state engineer with a minimum of 72 hours advanced notice. If the state engineer receives a minimum of 72 hours advanced notice, a delay of construction to schedule a state engineer inspection is not required. State engineer inspection fees are charged in accordance with Subsection E of 19.25.12.8 NMAC. Fees for inspection of construction by the state engineer not paid on demand shall become a lien on any land or other property of the dam owner and may be recovered by the state engineer.

C. Completion of construction: Upon completion of construction, a proof of completion of works form for the dam shall be submitted in accordance with 19.25.12.14 NMAC. Owners of dams classified as high or significant hazard potential shall submit to the state engineer any required updates to the operation and maintenance manual in accordance with 19.25.12.17 NMAC and any required updates to the emergency action plan in accordance with 19.25.12.18 NMAC incorporating any modifications made during construction. Upon the satisfactory completion of all conditions in the permit, pending the issuance of a certificate of construction and license to operate a dam, use of the reservoir shall require written permission from the state engineer. Use of the dam and reservoir are restricted until the state engineer accepts the updated operation and maintenance manual and emergency action plan, if required.

D. Extension of time for construction: The state engineer will grant an extension of time for completing construction upon proper showing by the dam owner of due diligence or reasonable cause for delay and accompanied with a fee in accordance with Subsection D of 19.25.12.8 NMAC. An affidavit by a professional engineer licensed in the state of New Mexico qualified in the design and construction of dams shall be filed with the state engineer providing evidence that the design of the dam meets or exceeds the design requirements in accordance with 19.25.12.11 NMAC. An extension of time may be granted for a period not to exceed five (5) years. No extension of time shall be granted which in combination extend the time allowed by the permit beyond ten (10)

years from the initial date of approval of the application, unless the state engineer in his discretion expressly waives this limitation pursuant to NMSA 1978, Section 72-5-14. Failure to request an extension of time shall result in cancellation of the permit by the state engineer.

E. Operation conditions: Operation conditions will be identified in the permit to construct and operate a dam. Operation conditions are described below:

(1) The owner shall comply with the office of the state engineer rules and regulations for dams.

(2) Changes to the easements, that adversely affects the conditions outlined in paragraphs (1) through (5) of Subsection F of 19.25.12.11 NMAC require prior approval from the state engineer.

(3) Changes, alterations, or modifications to the dam or sediment removal or dredging not outlined in the operation and maintenance manual requires state engineer approval prior to making the change.

(4) The dam owner shall provide access to the state engineer for periodic dam safety inspections.

(5) The dam owner must comply with all state engineer safety orders issued for the dam.

(6) Owners of dams classified as low and significant hazard potential shall have the hazard classification periodically evaluated by a professional engineer licensed in New Mexico if downstream development occurs to ensure the dam design is not deficient.

(7) Operation of the dam must be in compliance with the approved operation and maintenance manual and emergency action plan.

(8) The dam owner shall operate the dam in compliance with any specific condition, requirement, or limitation established by the design engineer or otherwise applicable to the dam.

(9) Failure by the dam owner to comply with operation conditions may result in revocation of the permit or license to operate and an order to breach the dam in accordance with Subsection B or C of 19.25.12.19 NMAC.

[19.25.12.13 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.14 PROOF OF COMPLETION OF WORKS:

Upon completion of the construction conditions a proof of completion of works for the dam shall be filed on a form provided by the state engineer with appropriate fees in accordance with Subsection F of 19.25.12.8 NMAC. The proof of completion of works for the dam shall be filed with original signature of the dam owner and engineer supervising construction. The proof of completion of works form shall be provided to the state engineer as a separate submittal.

[19.25.12.14 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.15 CERTIFICATE OF CONSTRUCTION OF A DAM:

Upon receipt of the proof of completion of works form, the state engineer will determine if all construction conditions of the permit were met. Upon a determination by the state engineer that all construction conditions have been complied with, the state engineer shall issue a certificate of construction. The certificate of construction shall address the general properties of the dam and appurtenant structures. The dam owner shall record the certificate of construction with the county clerk of the county within which the works are located.

[19.25.12.15 NMAC - N, 3/31/2005]

19.25.12.16 LICENSE TO OPERATE A DAM:

Upon issuance of a certificate of construction the state engineer shall issue a license to operate a dam. The license to operate a dam shall address operation conditions and dams shall be operated in accordance with the operation conditions. In addition, dams classified as high and significant hazard potential shall operate in accordance with the operation and maintenance manual and emergency action plan prepared in accordance with Sections 17 and 18 of 19.25.12 NMAC. Failure to comply with the conditions of the license to operate a dam may result in a state engineer order that limits operation, requires specific action by the owner and if necessary the license to operate a dam may be revoked by the state engineer. If a license to operate a dam is revoked the state engineer may order the dam breached in accordance with Subsections B or C of 19.25.12.19 NMAC.

[19.25.12.16 NMAC - N, 3/31/2005]

19.25.12.17 OPERATION AND MAINTENANCE MANUAL:

Owners of dams classified as high or significant hazard potential shall prepare, maintain and adhere to an operation and maintenance manual that addresses the continued safe operation, maintenance and performance of the dam. Because each site, design and operating practice is unique, waivers of specific requirements in this section will be considered on a case-by-case basis. Request for waiver shall be in writing accompanied with documentation justifying the request. If the request is not justified to the satisfaction of the state engineer the request will be denied. If deemed appropriate,

the state engineer may require the owner to obtain the services of a professional engineer licensed in the state of New Mexico qualified in the design and construction of dams to prepare complex technical aspects of the operation and maintenance manual. The operation and maintenance manual shall be submitted in a form acceptable to the state engineer. The operation and maintenance manual shall also be submitted in an electronic format acceptable to the state engineer. The front cover shall identify the document as an operation and maintenance manual and shall show the name of the dam, the county in which the dam is located and the dam owner. The first page behind the front cover shall show the name of the dam, the county in which the dam is located, signed certifications from the dam owner, engineer if required and a certification for the state engineer in accordance with Subsections A, B and E of 19.25.12.12 NMAC. Operation or maintenance of the dam in violation of the procedures presented in the accepted operation and maintenance manual that affect the safety of the dam will result in an order being issued requiring the dam owner to address the problem. The state engineer may also issue an order restricting storage in order to improve the unsafe condition. Failure to comply with orders issued by the state engineer may result in the license to operate the dam being revoked and the dam being ordered breached in accordance with Subsection B or C of 19.25.12.19 NMAC. The operation and maintenance manual shall contain the information described below, if relevant to the project, and any other additional information determined necessary by the state engineer to evaluate if the dam will be operated and maintained in a safe condition.

A. General information: Information on the project shall include but not be limited to the following:

- (1) location and access;
- (2) purpose and description;
- (3) table of properties; and
- (4) history of construction, repairs and performance.

B. Operation: Operation instructions, frequency of operation and operator safety for the project shall include but not be limited to the following:

- (1) Reservoir:
 - (a) water right storage allocations;
 - (b) elevation, area and storage curve and table to the dam crest;
 - (c) elevation of the high water line;
 - (d) discharge rating table for the outlet conduit;

- (e) discharge rating table for the spillway;
 - (f) emergency reservoir evacuation procedures; and
 - (g) first filling criteria and monitoring requirements.
- (2) Outlet works:
 - (a) first operation;
 - (b) seasonal startup;
 - (c) seasonal shutdown;
 - (d) installation and removal of bulkhead;
 - (e) operation procedures for specific equipment; and
 - (f) electrical systems and controls.
- (3) Operator safety:
 - (a) confined space entry and permits;
 - (b) fall protection;
 - (c) lockout/tag out; and
 - (d) other applicable safety requirements.

C. Instrumentation: Instrumentation for the project shall include but not be limited to the following:

- (1) description and purpose;
- (2) detailed description of installation;
- (3) calibration and maintenance schedule and instructions;
- (4) reading schedule and instructions;
- (5) data reduction and interpretation;
- (6) identification of critical readings and notification procedures; and
- (7) schedule for reporting data with interpretations to the state engineer.

D. Security: Projects that include security measures shall describe the security measures along with instructions for monitoring, maintaining and inspection.

E. Maintenance: Maintenance requirements and frequency shall be included.

F. Inspection: Inspection requirements, frequency and recommended checklist shall be included.

G. Updates and revisions: An update and revision procedure shall be included.

H. Appendices: Appendices shall include documentation that supports and supplements the manual. The appendices shall include but not be limited to the following:

- (1) captioned and dated photographs;
- (2) key sheets from the record construction drawing set;
- (3) instrumentation construction drawings;
- (4) instrumentation rating tables and calibration details;
- (5) monitoring and inspection forms;
- (6) instrumentation plan to ensure any restrictions imposed by the design are incorporated into the operation and maintenance manual; and
- (7) copies of any relevant procedures.

[19.25.12.17 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.18 EMERGENCY ACTION PLAN:

Owners of dams classified as high or significant hazard potential shall prepare, maintain and exercise an emergency action plan for immediate action in the event of a potential dam failure. Because each site and operating practice is unique, waivers of specific requirements in this section will be considered on a case-by-case basis. Request for waiver shall be in writing accompanied with documentation justifying the request. If the request is not justified to the satisfaction of the state engineer the request will be denied. The emergency action plan shall follow the format provided by the state engineer or a format that has prior approval of the state engineer. The emergency action plan shall also be submitted in an electronic format acceptable to the state engineer. The front cover shall identify the document as an emergency action plan and shall show the name of the dam, the county in which the dam is located and the dam owner. The pages immediately behind the front cover shall show the name of the dam, the county in which the dam is located, signed certifications from the dam owner,

engineer, local and state officials responsible for emergency management and a certification for the state engineer in accordance with Subsections A, B, D and E of 19.25.12.12 NMAC. The dam owner shall coordinate with the local emergency management office in preparing the emergency action plan. The coordination is required to ensure that there is an agreement on the evacuation limits and responsibilities. The dam owner shall submit a copy to the local and state officials responsible for emergency management for acceptance prior to submittal to the state engineer. The dam owner shall review the emergency action plan annually, update as necessary and furnish a copy of updates to all official copyholders. The dam owner shall exercise the emergency action plan to verify those involved in its implementation know their roles and responsibilities. It is recommended the dam owner conduct a functional exercise of the emergency action plan every 5 years with a table top exercise conducted 2 to 3 years before the functional exercise. The exercise may result in updates to ensure the emergency action plan maintains operational readiness, timeliness and responsiveness. Failure to act in accordance with the accepted emergency action plan that affects public safety will result in an order being issued requiring the dam owner to address the problem. Failure to comply with orders issued by the state engineer may result in the license to operate the dam being revoked and the dam being ordered breached in accordance with Subsection B or C of 19.25.12.19 NMAC. A professional engineer licensed in the state of New Mexico qualified in the design and construction of dams shall prepare engineering information for the emergency action plan as specified below. An emergency action plan shall contain the information described below and any other additional information determined necessary by the state engineer or emergency management official to evaluate the planned response to an emergency situation by the dam owner.

A. Notification flowchart: A notification flowchart showing who is to be notified, by whom and in what priority.

B. Emergency detection, evaluation and classification: Procedures for reliably and timely identifying an emergency situation to ensure that an appropriate course of action is implemented. A professional engineer licensed in the state of New Mexico qualified in the design and construction of dams shall prepare this element.

C. Responsibilities: A list designating responsibilities for the emergency action plan related tasks including, but not limited to developing, maintaining, exercising, implementing, warning, evacuation and termination of the emergency.

D. Preparedness: A list of materials, equipment and manpower available to moderate or alleviate the effects of a dam failure or spillway release.

E. Evacuation map: An evacuation map delineating the areas that will be evacuated as a result of dam failure. The evacuation map shall extend to a point where the consequences of dam failure does not pose a threat to life and evacuation or restricting access is not required. If available, shape files from geographic information system software of the evacuation map shall be submitted. Evacuation maps shall

include the following information at critical locations downstream when required by the local official responsible for emergency management:

- (1) distance downstream from the dam;
- (2) arrival time of the leading edge of the flood wave;
- (3) peak flow depth, incremental rise or water surface elevation in feet; and
- (4) peak velocity in feet per second.

F. Inundation map: An inundation map delineating the areas that will be flooded as a result of dam failure. The inundation map shall be supported by a dam breach and flood routing analysis report. The dam breach and flood routing analysis shall evaluate the sunny day failure, failure at the high water line and any additional event deemed appropriate by the dam owner. If appropriate considering the consequences of dam failure, a simplified dam breach and flood routing analysis may be used with approval from the state engineer. If a dam is located downstream, failure scenarios with the downstream dam shall also be evaluated. Evaluation of the effects of flooding from dam failure shall extend at least to the location downstream where the consequences of dam failure does not pose a threat to life and evacuation or restricting access is not required. A professional engineer licensed in the state of New Mexico qualified in the design and construction of dams shall prepare this element. If available, shape files from geographic information system software of the inundation map shall be submitted. Inundation maps shall include the following information at critical locations downstream:

- (1) distance downstream from the dam;
- (2) arrival time of the leading edge of the flood wave;
- (3) peak flow depth, incremental rise and water surface elevation in feet; and
- (4) peak velocity in feet per second.

G. Appendices: All information that supports and supplements the material used in the development and maintenance of the emergency action plan. The dam breach and flood routing analysis report shall be submitted as a separate document.

[19.25.12.18 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.19 CHANGES TO AN EXISTING DAM:

A dam owner proposing to reconstruct, enlarge, modify, restore reservoir capacity, repair, remove or breach an existing dam must make application to and receive approval from the state engineer prior to undertaking any such action. The current condition of the dam, the type of repair or modification and the proposed means to

achieve the repair or modification shall dictate the detail of the information provided to the state engineer in order to obtain approval. Because each site, design change and operating practice is unique, waivers of specific requirements in this section will be considered on a case-by-case basis. Request for waiver shall be in writing accompanied with documentation justifying the request. If the request is not justified to the satisfaction of the state engineer the request will be denied. Existing dams present the same hazards to life and property downstream as new dams. Therefore, owners of dams classified as high or significant hazard potential shall evaluate the current condition of the dam and address in the submittal to the state engineer whether the dam is in compliance with the design requirements in Subsection C of 19.25.12.11 NMAC. If the state engineer determines compliance with requirements in Subsection C of 19.25.12.11 NMAC are critical to the safety of the dam, the state engineer shall issue an order requiring the deficiency be addressed as part of the proposed change. Owners of dams classified as low hazard potential shall comply with the design requirements in Subsection C of 19.25.12.11 NMAC for the proposed change only. Maintenance activity performed in accordance with 19.25.12.17 NMAC does not require prior state engineer approval. Dam owners shall not abandon a dam without breaching or removing the dam to ensure the dam no longer poses a risk to life, property, the environment surrounding the dam or downstream of the dam. In the event of any changes of ownership affecting the title to a dam, the new owner shall file a change of ownership form for a dam with the state engineer. Recognition of the responsibility and liability associated with dam ownership is required along with fees for filing the change in ownership form for a dam in accordance with Subsection G of 19.25.12.8 NMAC. This section exempts federal dams if no change to the water storage permit is required. A proposed change to an existing dam shall require the submittal of the information described below and any other additional information determined necessary by the state engineer to evaluate if the change to the dam is safe.

A. Proposed changes to an existing dam: For dam owners proposing to reconstruct, enlarge, modify, restore reservoir capacity, repair or add aesthetic fill to an existing dam, the information described below is required prior to undertaking any such action.

(1) An application to alter, repair or rehabilitate the dam and appurtenant structures. Fees for filing the application and for reviewing drawings and specifications shall be in accordance with Subsections B and C of 19.25.12.8 NMAC. Review fees identified in Subsection C of 19.25.12.8 NMAC are waived for the first review if the state engineer requires the change to address a dam safety deficiency.

(2) Documentation of sufficient water rights if changes in storage or release requirements are proposed in accordance with the requirements of Subsection B of 19.25.12.11 NMAC.

(3) A design report addressing the proposed change in accordance with the requirements of Subsection C of 19.25.12.11 NMAC. Owners of dams classified as high or significant hazard potential shall submit a design report addressing whether the

existing condition of the dam is in compliance with the design requirements listed in Subsection C of 19.25.12.11 NMAC. Where the existing condition of the dam is not in compliance with the design requirements of Subsection C of 19.25.12.11 NMAC, the design report shall propose changes to address compliance with the design requirements of Subsection C of 19.25.12.11 NMAC or request a waiver that the deficiency is not critical to the safety of the dam and provide adequate justification for the waiver.

(4) Construction drawings and specifications addressing the proposed change in accordance with the requirements of Subsections D and E of 19.25.12.11 NMAC.

(5) A plat of survey showing the dam owner's property boundaries, easement, or right of way. The plat of survey shall be in accordance with the requirements of Subsection F of 19.25.12.11 NMAC.

(6) For dams classified as high or significant hazard potential, a dam site security assessment in accordance with the requirements of Subsection G of 19.25.12.11 NMAC.

(7) For dams classified as high or significant hazard potential, an instrumentation plan in accordance with the requirements of Subsection H of 19.25.12.11 NMAC.

(8) For dams classified as high or significant hazard potential, an updated operation and maintenance manual and emergency action plan in accordance with the requirements of Sections 17 and 18 of 19.25.12 NMAC.

B. Removal or breach of dams classified as high or significant hazard potential: Dam owners intending to breach or remove a dam classified as high or significant hazard potential shall submit a plan to the state engineer for approval prior to breaching or removing the dam. The plan shall evaluate the potential effects of the dam removal or breach on life, property and the environment downstream. A professional engineer licensed in the state of New Mexico qualified in the design and construction of dams shall prepare the plan. The state engineer will revoke the license to operate a dam upon completion of all construction conditions. The plan shall meet the conditions described below.

(1) The reservoir shall be emptied in a controlled manner, which will not endanger lives or damage property downstream.

(2) The dam or breach area shall be excavated down to the level of natural ground and the breach shall be of sufficient width to safely pass the 100-year, 24-hour flood peak discharge without attenuation of the flood through the reservoir.

(3) The side slopes of the breach shall be excavated to a stable angle.

(4) The breach shall be armored as necessary to prevent erosion of the breach area.

(5) The plan shall address the control of sediment previously deposited in the reservoir.

(6) Drawings and specifications shall be prepared in accordance with the appropriate requirements listed in Subsections D and E of 19.25.12.11 NMAC and shall include a title sheet with required certifications and signatures, the location, dimensions and lowest elevation of the breach and any other detail to sufficiently describe the proposal.

(7) Designation of the professional engineer licensed in the state of New Mexico qualified in the design and construction of dams that will supervise construction of the breach or dam removal. Submittal of the professional engineer's qualifications for state engineer approval is required.

C. Removal or breach of dams classified as low hazard potential: Owners of dams classified as low hazard potential shall submit a written notice to the state engineer of intent to breach the dam. The state engineer will revoke the license to operate a dam upon completion of all construction conditions. The breach notice shall meet the minimum requirements described below.

(1) The bottom width elevation of the breach shall be to original ground.

(2) The bottom width of the breach shall be a minimum of one-half the height of the dam but not less than 10 feet.

(3) The side slopes shall not be steeper than one horizontal to one vertical.

(4) The excavated material shall not be placed in the streambed.

D. Closure of a tailings facility: A closure plan must be prepared to address the closure of a tailings facility. State engineer approval is required before any modification occurs to a jurisdictional tailings dam. A professional engineer licensed in the state of New Mexico qualified in the design and construction of tailings dams shall prepare the closure plan, which shall include a design report, drawings and specifications prepared in accordance with the appropriate requirements listed in Subsections C, D and E of 19.25.12.11 NMAC. The state engineer will revoke the license to operate a dam upon completion of all construction conditions. The plan shall address the following issues:

(1) long-term stability under static and dynamic conditions;

(2) control of surface runoff to avoid erosion;

(3) plan for long term monitoring, if appropriate; and

(4) identification of an engineer licensed in the state of New Mexico qualified in tailings dam design and construction to supervise implementation of the closure plan; submittal of the engineer's qualifications for state engineer approval is required.

E. Construction and operating conditions: After reviewing the required documentation, the state engineer will notify the dam owner if any deficiencies are found with the submittal. The dam owner will be given an opportunity to correct any deficiencies noted in the review process. Once all deficiencies have been addressed the state engineer will approve the amended application or proposed change with conditions under which construction and operation shall occur. Action by the state engineer will be in accordance with 19.25.12.13 NMAC, appropriately modified to address the proposed changes.

F. Proof of completion of works, certificate of construction and license to operate: The requirement for a proof of completion of works form for the dam, certificate of construction and license to operate a dam for changes to a dam will be made on a case by case basis by the state engineer. The proof of completion of works form for the dam, certificate of construction and license to operate a dam, if required, shall be in accordance with the Sections 14, 15 and 16 of 19.25.12 NMAC, appropriately modified to address the proposed changes. If the dam is breached, the state engineer will cancel the permit and revoke the license to operate a dam.

[19.25.12.19 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.20 CHANGES TO AN EXISTING NON-JURISDICTIONAL DAM:

A dam owner proposing to reconstruct, enlarge, or modify a non-jurisdictional dam, resulting in a jurisdictional dam after construction is completed, shall comply with 19.25.12.11 NMAC before construction begins. If the ownership of a non-jurisdictional dam changes, resulting in a jurisdictional dam, the owner shall comply with 19.25.12.11 NMAC. The state engineer will give the owner a reasonable amount of time to comply with 19.25.12.11 NMAC. If the owner fails to comply with 19.25.12.11 NMAC, the dam will be ordered breached in accordance with Subsection B or C of 19.25.12.19 NMAC.

[19.25.12.20 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.21 EXISTING DAMS:

The state engineer may inspect existing dams to verify dams are operated and maintained in a safe manner. Access to the dam site shall be made available to the state engineer upon request. If a critical dam safety problem is observed by the state engineer or reported to the state engineer, an order may be issued requiring the dam owner to address the problem. If a dam incident occurs at a dam, the dam owners shall report the incident to the state engineer within 72 hours. If a major repair is required at an existing dam, the plan to repair the dam shall be in accordance with 19.25.12.19 NMAC. Minor repairs not identified as maintenance activity in accordance with

19.25.12.17 NMAC require state engineer approval. Failure to comply with state engineer directives or these regulations may result in an order to reduce storage or to take corrective action. Failure to comply with orders issued by the state engineer may result in the license to operate a dam being revoked and the dam ordered breached in accordance with Subsection B or C of 19.25.12.19 NMAC. Owners of existing dams shall comply with the requirements described below.

A. Owners acquiring property with a dam shall promptly notify the state engineer on a form provided by the state engineer of the change in ownership. Recognition of the responsibility and liability associated with dam ownership is required along with fees for filing the change in ownership form for a dam in accordance with Subsection G of 19.25.12.8 NMAC.

B. Owners of dams classified as low or significant hazard potential shall evaluate the hazard classification if downstream development occurs. The dam owner shall submit the results of the hazard potential evaluation prepared in accordance with Paragraph (1) of Subsection C of 19.25.12.11 NMAC to the state engineer for approval. If the hazard potential classification changes due to downstream development, the state engineer shall give the dam owner a time limit to address deficiencies. Deficiencies shall be addressed in accordance with Subsection C of 19.25.12.11 NMAC and Sections 17 and 18 of 19.25.12 NMAC.

C. Dams classified as high or significant hazard potential shall be inspected on an interval no greater than 5 years by a professional engineer licensed in the state of New Mexico qualified in the design and construction of dams. The owner is responsible for securing the services of the professional engineer. The professional engineer shall provide a signed and sealed report to the state engineer describing the findings of the inspection and recommendations for corrective action or changes to the operating procedures. Routine inspection by the state engineer as described in 19.25.12.21 NMAC satisfies this requirement.

D. Owners of dams classified as high or significant hazard potential in an unsafe condition may receive an order from the state engineer to address the deficiency pursuant to NMSA 1978, Section 72-5-11 (1979). The state engineer may also issue an order to an owner of a non-jurisdictional dam if the dam is unsafe and a threat to life or property, as determined by the state engineer. Owners shall comply with orders issued by the state engineer pursuant to NMSA 1978, Section 72-5-12 (1979).

E. Owners of dams classified as high or significant hazard potential shall comply with 19.25.12.17 NMAC requiring an operation and maintenance manual. Upon compliance with 19.25.12.17 NMAC the state engineer will issue a license to operate the dam.

F. Owners of dams classified as high or significant hazard potential shall comply with 19.25.12.18 NMAC requiring an emergency action plan. Dams classified as significant hazard potential for flood control purposes with no permanent storage shall

comply by December 31, 2012. Owners of 5 or more dams classified as high or significant hazard potential may propose a schedule for compliance with the emergency action plan requirement. The schedule must propose compliance dates for each dam and all dams must be in compliance by December 31, 2015. The compliance schedule is subject to review and approval or modification by the state engineer.

G. Dam owners that transfer the entire water right out of the reservoir shall have their license to operate a dam revoked and will receive from the state engineer an order to breach the dam in accordance with Subsection B or C of 19.25.12.19 NMAC.

H. Dam owners that fail to obtain state engineer approval prior to construction of a dam shall comply with all conditions imposed by the state engineer within a time limit established by the state engineer or the state engineer may order the dam breached in accordance with Subsection B or C of 19.25.12.19 NMAC.

[19.25.12.21 NMAC - N, 3/31/2005; A, 12/31/2010]

19.25.12.22 SEVERABILITY:

If any portion of this part is found to be invalid, the remaining portion of this part shall remain in force and not be affected.

[19.25.12.22 NMAC - N, 3/31/2005]

PART 13: ACTIVE WATER RESOURCE MANAGEMENT

19.25.13.1 ISSUING AGENCY:

Office of the State Engineer.

[19.25.13.1 NMAC - N, 12/30/2004]

19.25.13.2 SCOPE:

The state engineer adopts these rules and regulations to undertake the supervision of the physical distribution of water, to prevent waste, and to administer the available supply of water by priority date or by alternative administration, as appropriate. These rules apply to all water rights within the state from all sources of water, surface water and hydrologically connected groundwater.

[19.25.13.2 NMAC - N, 12/30/2004]

19.25.13.3 STATUTORY AUTHORITY:

These rules and regulations are established pursuant to constitutional authority set forth in Article XVI of the New Mexico Constitution, and statutory authority enumerated in

Sections 72-1-2; 72-2-8; 72-2-9; 72-2-9.1; 72-3-1-5; 72-4-20; 72-5-3 through 5; 72-5-18; 72-5-23; 72-5-24; 72-6-1 through 7; 72-8-1; 72-9-2; 72-12-1; 72-12-2; 72-12-8(D); 72-12-24; 72-13-2; 72-13-4 NMSA.

[19.25.13.3 NMAC - N, 12/30/2004]

19.25.13.4 DURATION:

Permanent.

[19.25.13.4 NMAC - N, 12/30/2004]

19.25.13.5 EFFECTIVE DATE:

December 30, 2004, unless a later date is cited at the end of a section.

[19.25.13.5 NMAC - N, 12/30/2004]

19.25.13.6 OBJECTIVE:

The objective of these rules is to establish the framework for the state engineer to carry out his responsibility to supervise the physical distribution of water to protect senior water right owners, to assure compliance with interstate stream compacts and to prevent waste by administration of water rights. These framework rules employ long-standing statutory mechanisms specified at Section 72-3-1 through Section 72-3-5 NMSA, which describe procedures for the creation of water master districts and the appointment of water masters with certain defined duties and authorities. In addition, these rules fulfill the mandates of Section 72-2-9.1 NMSA, requiring the state engineer to adopt rules for priority administration based on appropriate hydrologic models and expedited marketing and leasing within water master districts subject to priority administration.

[19.25.13.6 NMAC - N, 12/30/2004]

19.25.13.7 DEFINITIONS:

Unless defined below in a specific section of these rules, all words used herein shall be given their customary and accepted meanings. All uses of masculine pronouns or possessives shall be held to include the feminine.

A. Adjudication: A comprehensive court proceeding to establish the elements of each water right for all water right owners on a stream system with respect to the state of New Mexico and as among each other, including the priority, amount, purpose, periods and place of use and the specific tracts of land to which the water right is appurtenant, as provided by Section 72-4-19 NMSA.

B. Administrable water right: A water right or right to impound, store or release water, the elements of which have been determined by a court of competent jurisdiction or determined on an interim basis by the state engineer under these rules and regulations. The state engineer may make determinations of the elements of a water right for purposes of administration prior to the commencement or completion of, and during the pendency of, a water rights adjudication. State engineer determinations made for purposes of administration are subject to review by any court of competent jurisdiction and are not binding on that court. Such determinations are subject to the decrees of an adjudication court of competent jurisdiction, and are not binding on such an adjudication court.

C. Administration: Distribution by a water master of available water supplies within a water master district or sub-district, subject to any legal constraints identified by or imposed on the state engineer, for specific beneficial uses by the owners of administrable water rights that are in-priority. There are four forms of administration available to achieve different objectives. These forms are defined below together with subsidiary definitions. A water master may, based on the applicable district-specific regulations, use any of these forms of administration, depending on the specific legal and physical aspects of the water supplies that are subject to administration and the existence or absence of agreements for alternative administration. Administration may also combine these forms within a water master district, as the water master finds appropriate or necessary. The specific form of administration, or combination of forms of administration, that will be utilized in each water master district will be established through promulgation of district-specific regulations. Notice of such promulgation will be provided pursuant to Subsection D of 72-2-8 NMSA.

(1) Direct flow administration

(a) Direct flow water: All the flow of a stream, including storage reservoir inflows that are legally bypassed through that reservoir, but excluding sources of flow augmentation such as storage water releases or imported water.

(b) Direct flow administration: Distribution of direct flow water by a water master for diversion and beneficial use, or for diversion and storage in a reservoir, in accordance with the affected administrable water rights. Direct flow administration consists of both protection of available direct flow water for diversion and use by in-priority administrable water rights, and protection of direct flow water from out-of-priority diversion. Direct flow administration may incorporate changes to the water master's determination of which water rights are in-priority and which are out-of-priority on a daily basis, depending on the currently available direct flows.

(2) Storage water administration

(a) Storage water: Water stored in a reservoir in-priority and in accordance with the conditions of an administrable water right and subsequently released from

storage. Storage water does not include direct flow water that is bypassed through a reservoir.

(b) Storage water administration: Administration by a water master of the release from reservoirs and subsequent downstream diversion of storage water in accordance with the requirements of the applicable administrable water rights for such release and diversion. Storage water administration includes both the distribution of storage water released for the benefit of those having rights to its use, and also the protection of storage water releases from diversion by water right owners having only an administrable water right to direct flow water. Conveyance losses that occur as a result of the delivery of storage water shall be borne by the owner of the applicable administrable water right, and storage water administration shall account for those conveyance losses. For purposes of administration, imported water shall be administered in the same manner as storage water; however, imported water is subject to 100% depletion. The beneficial use of imported water is exclusive in the owner of the right to its use and is not subject to priority call in the basin of use, but its diversion from the basin of origin is subject to priority administration in that basin.

(3) Depletion limit administration

(a) Depletion limit: The amount of surface water that is available for depletion by both surface water rights and hydrologically connected groundwater rights within a water master district or sub-district, taking into account interstate stream compact compliance requirements. Taking into account the conjunctive nature of surface and groundwater, the depletion limit may be greater than, or less than, the physically available surface water supply.

(b) Administration date[s]: A date, or dates, to be determined by the state engineer, where administration within a specific water master district is to be in effect for a period of time to be determined by the state engineer for interstate stream compact compliance purposes, or to address substantial long-term groundwater effects on surface supply, as expressed in a depletion limit. If an administration date is determined and published for a district, no water rights with priority dates later than the administration date shall be exercised in the absence of a replacement plan approved by the state engineer.

(c) Depletion limit administration: Administration by a water master to curtail water rights with priority dates junior to an administration date. Such out-of-priority rights shall not use water in the absence of a replacement plan approved by the state engineer.

(d) Replacement water: Water acquired temporarily by an out-of-priority administrable water right from an in-priority administrable water right pursuant to a replacement plan for the purpose of offsetting surface water depletions attributable to an out-of-priority administrable water right and preventing impairment of in-priority administrable water rights.

(e) Replacement plan: A plan submitted by the owner(s) of administrable water rights, and approved by the state engineer for no more than two consecutive years, subject to renewal, for the purpose of offsetting depletions attributable to out-of-priority administrable water rights.

(4) Alternative administration: Administration that is based on water sharing agreement among affected water right owners, and that is acceptable to the state engineer. Such administration may include voluntary shortage sharing such as, but not limited to, percentage division or pro rata allocation, rotation of water use, and reduced diversions. Where there is an existing shortage sharing agreement between acequias or community ditches confirmed on the first Monday of April of each year in accordance with Section 73-2-47 NMSA or thereafter as necessary, it shall be recognized in the district-specific regulations, but nothing in this section shall be taken to impair the authority of the state engineer and water master to regulate the distribution of water from the various stream systems of the state to the ditches and irrigation systems entitled to water therefrom under the provisions of this article. Alternative administration may be substituted for any of the forms of administration above described.

D. Administration date[s]: See definition under Subsection C of 19.25.13.7 NMAC.

E. Consumptive irrigation requirement: See definition under Subsection S of 19.25.13.7 NMAC.

F. Consumptive use: The quantity of water beneficially consumed during the application of water to beneficial use.

G. Conveyance loss: The quantity of water that is effectively removed from a stream system due to seepage or evapotranspiration as calculated between a measurement device used to measure the available water supply and a downstream point of diversion for an administrable water right or a downstream point of delivery.

H. Depletion: That consumptively used portion of a diversion that has been evaporated, transpired, incorporated into crops or products or used by livestock, or man-made consumptive uses such as, but not limited to, municipal, industrial and domestic uses, or otherwise removed from, and not returned to, the available water supply, including all incidental depletions associated with the beneficial use. Depletions shall include, but not be limited to:

(1) any increase in depletions resulting from construction projects for the restoration and maintenance of fish and wildlife habitat that result in increased depletion of water over that amount that would have been depleted had there been no restoration; such projects are subject to the permitting authority of the state engineer;

(2) any increase in depletions resulting from changes in reservoir operations that increase the amount of water depleted over that amount which would have been depleted had there been no change in the reservoir's operations; such as, but not

limited to, changes in historic release patterns; such changes are subject to the permitting authority of the state engineer.

I. Depletion limit: See definition under Subsection C of 19.25.13.7 NMAC.

J. Depletion limit administration: See definition under Subsection C of 19.25.13.7 NMAC.

K. Direct flow administration: See definition under Subsection C of 19.25.13.7 NMAC.

L. Direct flow water: See definition under Subsection C of 19.25.13.7 NMAC.

M. District: When used in these regulations, means water master district.

N. Diversion: The quantity of water taken from a ground or surface water source by a constructed structure or project to supply a beneficial use.

O. Expedited marketing and leasing: Any process within a district in which water rights are subject to priority administration whereby changes in use or place of use of water may be effected so as to minimize costly and time-consuming administrative procedures. Expedited marketing and leasing processes may include, but are not limited to, expedited permit proceedings before the state engineer through the use of the appropriate hydrologic models adopted by the state engineer for the district. Subsection C of 72-2-9.1 NMSA expressly provides that rules and regulations concerning expedited marketing and leasing "shall not apply to acequias or community ditches or to water rights served by an acequia or community ditch."

P. Farm delivery requirement: See definition under Subsection S of 19.25.13.7 NMAC.

Q. Imported water: Water removed from, and not returned to, its hydrologic basin of origin delivered for use in a different basin or drainage.

R. In-priority: If the currently available direct flow water is sufficient for distribution to a specific use administrable water right, then that right is in-priority. If a water right has a priority date that is senior to the applicable administration date, that water right is in-priority. In the case of storage water, that amount of the total inflow to a reservoir that exceeds the volume of water that must flow through the dam to serve senior administrable water rights to direct flow water is in-priority for storage.

S. Irrigation water requirements: Irrigation water requirements can be expressed in several ways, depending on circumstances:

(1) Consumptive irrigation requirement (CIR): The quantity of irrigation water, expressed as a depth or volume, exclusive of effective rainfall, that is

consumptively used by plants or is evaporated from the soil surface during one calendar year. The CIR may be numerically determined by subtracting effective rainfall from the consumptive use.

(2) Farm delivery requirement: The quantity of water, exclusive of effective rainfall, that is delivered to the farm head gate or is diverted from a source of water that originates on the farm itself, such as a well or spring, to satisfy the consumptive irrigation requirement of crops grown on a farm during the irrigation accounting year, or as otherwise provided by permit.

(3) Project diversion requirement: The annual quantity of water necessary to be diverted from a source of water to satisfy the farm delivery requirement and to account for off-farm ditch conveyance delivery losses during the irrigation accounting year.

T. Measuring devices: Gauging or metering devices, installed and operated as required by the state engineer.

U. Out-of-priority: If the currently available direct flow water is insufficient to serve all administrable water rights, and therefore an administration date is adopted or a priority call placed, then those administrable water rights are out-of-priority that have a priority date junior to the applicable administration date or are junior to the priority of the water right placing the priority call. In the case of storage water, if the inflow to a reservoir is equal to, or less than, the quantity of water necessary to serve downstream senior Administrable water rights from the direct flow, then such direct flow must be bypassed and the right to impound and store water in that reservoir is out-of-priority. Water that was stored in-priority is not available for use except by those with administrable water rights to the use of the storage water.

V. Priority administration: All the forms of administration defined under administration are methods of priority administration. Priority administration involves any administrative scheme implemented by a water master in accordance with the priority dates of administrable water rights, including direct flow, storage water and depletion limit administration. See, generally, administration.

W. Project: Any man-made works intended physically to control or to use water for a beneficial purpose of use.

X. Replacement water: See definition under Subsection C of 19.25.13.7 NMAC.

Y. Replacement plan: See definition under Subsection C of 19.25.13.7 NMAC.

Z. Return flow: That amount of diverted water returned to the available water supply.

AA. State engineer: The New Mexico state engineer, or his designated appointee.

BB. Storage water: See definition under Subsection C of 19.25.13.7 NMAC.

CC. Storage water administration: See definition under Subsection C of 19.25.13.7 NMAC.

DD. Waste: Diversion of water in excess of that amount reasonably necessary to supply a beneficial use in accordance with accepted water use practices that are consistent with considerations of water conservation.

EE. Water master: An official duly appointed by, and under the general supervision of, the state engineer, pursuant to Section 72-3-2 NMSA, who shall have immediate charge of the diversions and distribution of waters in the water master district.

FF. Water master district: An area designated as a water district or sub-district by the state engineer for purposes of administration, as provided in Section 72-3-1 NMSA.

GG. Water master district manager: The state engineer district supervisor is the manager of any water master district within his particular state engineer district and the direct supervisor of the water master.

[19.25.13.7 NMAC - N, 12/30/2004]

19.25.13.8 CONSTRUCTION:

These rules and regulations shall be construed as consistent with, and subject to, the authorities of the state engineer for the administration of water in the state of New Mexico. These rules and regulations shall not be construed as imposing any limitation on the authority of the state engineer to administer water rights, act on water rights applications, permit water rights, or order the curtailment, in whole or in part, of the use of water under any water right. Subsection H of 72-2-8 NMSA provides that these rules and regulations are presumed to be the correct implementation of the law.

[19.25.13.8 NMAC - N, 12/30/2004]

19.25.13.9 USE OF THESE RULES AND REGULATIONS:

These rules and regulations provide the framework for the promulgation of specific water master district rules and regulations.

[19.25.13.9 NMAC - N, 12/30/2004]

19.25.13.10 STATE ENGINEER ADOPTION OF DISTRICT-SPECIFIC RULES AND REGULATIONS:

For every district in which water rights administration is requested, or the state engineer determines in the performance of his duties under Section 72-2-1 NMSA that water rights administration is required for the economical and satisfactory apportionment of water, the state engineer shall adopt rules and regulations, pursuant to Subsection D of 72-2-8 NMSA, specific to the water master district, which incorporate and adapt the provisions of these rules and regulations to the needs of the specific district.

[19.25.13.10 NMAC - N, 12/30/2004]

19.25.13.11 STATE ENGINEER AUTHORITY TO CREATE WATER MASTER DISTRICTS AND APPOINT WATER MASTERS:

The state engineer may create water master districts and appoint water masters in any drainage areas of the state pursuant to Section 72-3-1 through Section 72-3-5 NMSA and these regulations. The water master district manager shall provide the water master with guidelines for administration, including his determination, for purposes of administration, of all administrable water rights within the water master district. Water master guidelines shall be in the form of a water master manual applicable to each water master district or sub-district. Comments from the public shall be taken and considered prior to finalizing the water master manuals. Notice shall be provided in accordance with Subsection D of 72-2-8 NMSA. The state engineer may administer water rights pursuant to a draft water master manual for a specific period of time, which will be determined in the district-specific regulations, prior to finalizing a manual so that the adopted manual will be based upon actual experience and the collective comments of the water right owners in the district.

[19.25.13.11 NMAC - N, 12/30/2004]

19.25.13.12 CREATION OF A WATER MASTER DISTRICT:

The state engineer may create water master districts within the state, provided that:

A. the state engineer finds that the creation of such a water master district is necessary for the economical and satisfactory administration of water;

B. the boundaries of the water master districts are in conformity with drainage areas as defined by the state engineer;

C. the water master districts are designated by names; and

D. as far as possible, the water master districts comprise one or more stream systems or stream reaches, including hydrologically connected groundwater, as defined by the state engineer.

[19.25.13.12 NMAC - N, 12/30/2004]

19.25.13.13 CHANGING A WATER MASTER DISTRICT:

Water master districts may be changed from time to time, as may be necessary in the opinion of the state engineer, for the economical and satisfactory apportionment of water.

[19.25.13.13 NMAC - N, 12/30/2004]

19.25.13.14 CREATION OF WATER MASTER SUBDISTRICTS:

When, in his opinion, it shall be in the best interests of the state and the owners of water rights within any stream system within the state, the state engineer may divide water master districts further into sub-districts, each of which shall be designated by a distinct name.

[19.25.13.14 NMAC - N, 12/30/2004]

19.25.13.15 APPOINTMENT OF A WATER MASTER:

Where the state engineer has created a water master district, the state engineer shall:

A. appoint a water master for such district upon the written application of a majority of the water right owners of any water master district; or

B. appoint a water master to administer the water master district and sub-districts where the state engineer finds that the public safety or interests of the state or water right owners in any water master district in the state require the appointment of a water master; where a water master has been appointed pursuant to such a finding, he may be appointed on either a temporary or a permanent basis.

[19.25.13.15 NMAC - N, 12/30/2004]

19.25.13.16 GENERAL AUTHORITY OF A WATER MASTER:

The water master shall have immediate charge of the administration of waters within a water master district as necessary to protect the public safety and the interests of water right owners in a district or for the economic and satisfactory apportionment of water to all administrable water rights from the available water supply, and shall so regulate and control the waters of the district as to prevent waste. Administration implemented by the water master may be direct flow administration, storage water administration, depletion limit administration, alternative administration, or any combination thereof, as defined by district-specific regulations, depending on the physical and legal circumstances affecting the water resources and administrable water rights of the water master district. The water master may, as necessary, to effect administration:

- A.** determine the available supply of water from time to time, considering conveyance losses, as appropriate and necessary for effective administration;
- B.** implement administration of the storage, diversion, and use of the waters of the water master district in accordance with the administrable water rights;
- C.** administer the diversion of the waters of the water master district in priority or under an alternative administration;
- D.** administer diversions of the waters of the water master district in accordance with any administration date declared by the state engineer;
- E.** facilitate the formation and operation of water right owner groups to, among other things, improve the management of water supplies, water conservation, cooperation among water right owners and administration;
- F.** facilitate the negotiation and implementation of alternative administration agreements, including cooperative agreements, for sharing available water supplies;
- G.** adjust headgates and restrict diversions or pumping as required to administer water in accordance with principles of prior appropriation and beneficial use, to prevent the illegal use of water, and to prevent waste; and
- H.** exercise all such authority as is required to accomplish effective water rights administration.

[19.25.13.16 NMAC - N, 12/30/2004]

19.25.13.17 SPECIFIC DUTIES OF A WATER MASTER:

Taking into account the available water supply in general and considering conveyance losses, the water master shall implement administration in the district. The water master is authorized to do the following, as may be provided by district-specific rules and regulations and as necessary to effect administration:

- A.** determine the physical capacity of diversion and delivery structures for each point of diversion expressed as a maximum rate of flow in cubic feet per second (cfs);
- B.** determine the maximum rate of flow, expressed in cfs, required to meet the total demand for administrable water rights served by that point of diversion;
- C.** take into account water needed to provide for adequate hydraulic pressure to ensure maximum irrigation efficiency and charge of the system;
- D.** take into account water needed for additional uses such as, but not limited to, silt-flushing;

E. during times of high stream flow, when there are no legal constraints imposed upon the physical administration of the available water supply, relax limits on the amount of water that may be diverted in order that the delivery system might operate more efficiently, except that under no circumstances may the total CIR of water rights served from the project increase;

F. with respect to all agricultural uses, require the designation by the water right owner of land to be irrigated in a particular season and verify the irrigability of that land;

G. ensure that water diversions do not exceed the amount needed to serve administrable water rights, except as provided in Subsections C through E, above;

H. administer direct flow water for delivery to in-priority administrable water rights, curtail diversions by out-of-priority administrable water rights, ensure the delivery of storage water to those having rights to its use, and protect storage water releases from diversion by those without rights to its use;

I. establish protocols for communication and exchange of information with water right owners as required for administration;

J. maintain accurate records of all administration activities, including meter readings, and establish a protocol for the inspection and copying of such records, at the requestor's expense;

K. identify waste and illegal use of water, including re-diversion and reuse of return flows other than as specifically provided for in an administrable water right;

L. upon a determination that a use is illegal or constitutes waste, cap, lock or otherwise temporarily disable any mechanism for illegal diversion; no permanent disablement may occur without hearing before the state engineer;

M. where he has determined that a facility must be permanently disabled, issue an order directing that the diversion be permanently disabled, which order shall be heard by the state engineer as provided below; pending review of the water master's order, the temporary disablement of the disputed diversion shall remain in place;

N. perform all such duties as are required to accomplish administration.

[19.25.13.17 NMAC - N, 12/30/2004]

19.25.13.18 NO CHANGE IN DITCH SYSTEM MANAGEMENT:

Except as required in the performance of the water master's duties to regulate the distribution of water from the various stream systems of the state to the points of diversion of ditches and irrigation systems entitled to water therefrom, these rules and regulations shall not be construed to affect the internal management of projects,

including acequias or community ditches and other water delivery systems, in accordance with Section 72-9-2 NMSA, which provides for the distribution of water from the ditches and acequias according to local or community customs, rules and regulations that have been properly adopted. The state engineer's authority, and that of his water master, to regulate the diversion of water from the source to a ditch or acequia is unaffected by either Section 72-9-2 NMSA or this provision.

[19.25.13.18 NMAC - N, 12/30/2004]

19.25.13.19 WATER MASTER SUPERVISION OF MEASUREMENT:

In all districts in which water masters are appointed, water masters shall have the authority to supervise the measurement of water in order to conduct administration.

[19.25.13.19 NMAC - N, 12/30/2004]

19.25.13.20 HEADGATES AND MEASURING DEVICES REQUIRED:

The state engineer shall determine those points of diversion from, and return flow discharge to, the stream system where measuring devices are necessary for the efficient administration of water within the water master district. The owners of private ditches, the commissioners of acequias or community ditches, the boards of irrigation and conservancy districts, and all other owners of administrable water rights and operators of projects that are notified by the water master of the need to comply with this rule shall cause to be installed and maintained headgates and measuring devices of types and at locations acceptable to the water master, as may be provided by district-specific rules and regulations, once promulgated and adopted by the state engineer and ordered by the state engineer, or as otherwise ordered pursuant to Paragraph 3 of Subsection B of Section 72-2-8 NMSA.

[19.25.13.20 NMAC - N, 12/30/2004]

19.25.13.21 WATER TO BE DIVERTED OR DELIVERED THAT WILL BE PLACED TO ACTUAL BENEFICIAL USE; ESTABLISHING BENEFICIAL USE REQUIREMENTS:

If a particular water right is in-priority, the water master shall allow the diversion or delivery of water that will be put to actual beneficial use without waste. The water master shall make such investigations, including inspections of lands, well records, diversion records and municipal records, as are necessary to determine, for purposes of administration, the current beneficial use needs for all types of water uses under administrable water rights during periods of priority administration. Water deliveries for irrigation uses shall not be made unless the land on which water will be used has an administrable water right as determined by the state engineer. Nothing in this provision shall be construed to allow the water master to prefer some beneficial uses to other beneficial uses on any grounds other than priority, unless he is doing so pursuant to

local agreements through alternative administration. Such determination shall not affect the maximum legal entitlement to water.

[19.25.13.21 NMAC - N, 12/30/2004]

19.25.13.22 FARM DELIVERY AND PROJECT DIVERSION REQUIREMENT DETERMINATIONS:

In the absence of applicable court orders or adjudication decrees, the state engineer shall, prior to administration, make a determination of farm delivery and project diversion requirements in water master districts that are subject to administration. The project diversion requirement may be expressed as a maximum rate of diversion, an annual maximum diverted volume of water for a specified use, or both. The state engineer may modify these determinations based on new information, including field experience of the water master. None of the requirements of this provision shall apply if a determination adequate for effective water administration has been made by a court of competent jurisdiction.

[19.25.13.22 NMAC - N, 12/30/2004]

19.25.13.23 OBJECTIONS TO, AND STATE ENGINEER REVIEW OF, WATER MASTER DECISIONS:

Objections to any act or failure to act of a water master shall be made in the first instance informally, or in writing, to the water master who shall take prompt action on the objection if he determines that any action is warranted. If the water master fails to resolve the objection, further objections shall be made to the state engineer, who shall hear the matter in accordance with Section 72-3-3 NMSA. Streamlined processes for the prompt hearing of appeals from water master decisions shall be set up for each water master district. Filing of an objection to an act or failure to act by the water master will not stay the water master's action or failure to act, or his authority to administer the water right, pending resolution of the objection.

[19.25.13.23 NMAC - N, 12/30/2004]

19.25.13.24 WATER MASTER ADMINISTRATION OF AN ADMINISTRATION DATE:

In the event that the state engineer determines an administration date for a water master district, the water master shall oversee the curtailment of all administrable water rights junior to the administration date. The water master shall not allow out-of-priority use in the absence of a replacement plan approved by the state engineer.

[19.25.13.24 NMAC - N, 12/30/2004]

19.25.13.25 WATER MASTER ENTRY ON PRIVATE OR PUBLIC LAND:

Pursuant to Section 72-8-1 NMSA, the water master shall have the right to enter private or public lands in order to:

- A. install, inspect, read, and adjust measuring devices and require the replacement or repair of such measuring devices;
- B. inspect and adjust headgates or require the repair of such headgates;
- C. make seepage evaluations;
- D. conduct inspections of canals, wells, wasteways or sluiceways;
- E. prevent waste and prevent illegal water use;
- F. cap, lock or otherwise temporarily disable any mechanism for illegal diversion;
and
- G. perform such other duties as are required to accomplish administration.

[19.25.13.25 NMAC - N, 12/30/2004]

19.25.13.26 WATER MASTER REPORTS:

Annually, the water master shall submit a report including a record of total diversions and deliveries of direct flow water and storage water, as applicable, a statement of expenditures, a list of infrastructure and metering improvements needed or performed, problems encountered, and any other pertinent issues or aspects of administration. The report shall also address the amount of water needed to supply the requirements of the water master district, the amount available, the works which are without their proper supply, the supply required during the period preceding the water master's next regular report and such other information as the state engineer may require. The report shall be submitted to the state engineer and be publicly available for inspection and copying, at the requestor's expense.

[19.25.13.26 NMAC - N, 12/30/2004]

19.25.13.27 ADMINISTRABLE WATER RIGHTS:

The water master district manager for each water master district will define each administrable water right by its elements as set forth in Subsections A through G below. In all instances where the state engineer makes determinations of priority based on best available evidence as set forth in Subsections A through G below, he shall publish a list of his determination of the water rights in the water master district for review and provide opportunity to affected water right owners to informally present evidence. The state engineer shall hear objections to the water master district manager's determination of an administrable water right in accordance with Section 72-2-16

NMSA. Filing of an objection to the water master district manager's determination of an administrable water right will not stay the state engineer's administration based upon that determination, pending resolution of the objection. Appeals from decisions of the state engineer shall be in accordance with Section 72-7-1 NMSA. The water master district manager for each water master district will define each administrable water right by its elements as set forth in:

A. a partial final decree or a final decree entered by an adjudication court of competent jurisdiction, subject to any state engineer permit issued subsequent to entry of said adjudication decree; or, if no decree has been entered, then;

B. a subfile order entered by an adjudication court of competent jurisdiction; or, if no subfile order has been entered, then;

C. an offer of judgment signed by the defendant in a water rights adjudication; or, if no offer of judgment has been signed, then;

D. a hydrographic survey conducted and filed in accordance with Section 72-4-17 NMSA or Section 72-4-16 NMSA; or, if no hydrographic survey has been filed, then;

E. a license issued by the state engineer; or, if no license has been issued, then:

F. a permit issued by the state engineer, accompanied by proof of actual beneficial use; and

G. a determination made by the state engineer based on the best available evidence, consisting of, where available, any filings with the office of the state engineer, field or documentary evidence of beneficial use associated with the right including historical aerial photography, diversions records of historical diversions, historical studies containing evidence regarding water use, and data regarding irrigation and water delivery system requirements.

[19.25.13.27 NMAC - N, 12/30/2004]

19.25.13.28 SUPERSESSON BY A COURT:

Any determinations made by the state engineer for administration purposes within any district subject to administration in the absence of a completed adjudication shall be subject to any decrees issued by an adjudication court of competent jurisdiction or any court of competent jurisdiction.

[19.25.13.28 NMAC - N, 12/30/2004]

19.25.13.29 ADMINISTRATION BY ADMINISTRATION DATE:

The state engineer may adopt an administration date, based on his best professional judgment of the water supply available for consumptive use by water right owners in the water master district or for depletion within the state of New Mexico as may be appropriate, and the date on which that administration date will be effective, by order in accordance with Paragraph 3 of Subsection B of 72-2-8 NMSA, for any water master district. The state engineer may revise an administration date as necessary to achieve the objectives of these rules and regulations. The state engineer shall publish the adoption or revision of an administration date once a week for two consecutive weeks in two newspapers of general circulation within the water master district affected by such adoption or revision. Upon the effective date of an administrative date, all out-of-priority administrable water rights must cease diversion, except as provided by an approved replacement plan. Determination of an administration date shall be ordered to implement depletion limit administration and shall be specifically provided for by the provisions of district-specific regulations to achieve compliance with an interstate stream compact; or, in the state engineer's performance of his duties under Section 72-2-1 NMSA upon further formal state engineer action pursuant to Section 72-2-8 NMSA for reasons of public safety or the interests of the water right owners in the district.

[19.25.13.29 NMAC - N, 12/30/2004]

19.25.13.30 OBJECTION TO, AND STATE ENGINEER REVIEW OF, STATE ENGINEER DETERMINATION OF AN ADMINISTRATION DATE:

Owners of administrable water rights are encouraged to resolve objections to the state engineer's determination of an administration date informally with the state engineer's district office. If such informal negotiations fail, the state engineer shall hear objections to his determination of an administration date in accordance with Section 72-2-16 NMSA. Filing of an objection to an administration date will not stay the state engineer's administration by administration date, pending resolution of the objection. Appeals from decisions of the state engineer shall be in accordance with Section 72-7-1 NMSA.

[19.25.13.30 NMAC - N, 12/30/2004]

19.25.13.31 APPLICATION FOR APPROVAL OF REPLACEMENT PLANS:

Replacement plans are available only during state engineer priority administration of the available water supply to prevent serious and imminent economic harm in response to, and only until water rights are permanently transferred, if necessary. The state engineer may approve replacement plans based on the adopted generalized hydrologic analysis that, in his professional judgment, provide sufficient replacement water to fully offset depletions to surface waters caused by out-of-priority diversions in order to prevent impairment of senior water right owners by the junior water right owner that would otherwise be out-of-priority. Replacement plans may be approved temporarily until permanent transfer of water is effected for water right owners who are likely to face permanent curtailment, or for limited periods when a water right owner is not likely to face permanent curtailment. The owner of an out-of-priority administrable water right

that is subject to administration in a water district may submit to the state engineer an application for approval of a replacement plan. The application shall contain the following information:

- A.** the name and address of the applicant;
- B.** the location, amount and priority date of applicant's existing administrable water right;
- C.** each source of replacement water and the amount of historic consumptive use related to the water right that is the source of replacement water, to be established by documentation satisfactory to the state engineer;
- D.** an estimate of the amount of water to be diverted by the applicant;
- E.** a map acceptable to the state engineer showing the source and point of diversion of the replacement water and the location of the proposed use;
- F.** a copy of any agreement between the applicant and the owner of water to be used as replacement water, or other documentation demonstrating to the state engineer's satisfaction that the applicant has a legal entitlement to a source of water to be used as replacement water;
- G.** the expected duration of the plan; and
- H.** any other information the state engineer deems necessary.

[19.25.13.31 NMAC - N, 12/30/2004]

19.25.13.32 GENERALIZED HYDROLOGIC ANALYSIS:

The state engineer will develop a generalized hydrologic analysis for a water master district subject to administration as the basis for the development, review and approval of replacement plans within that water master district. The generalized hydrologic analysis will be based upon, and obtained from, the best available hydrologic model or models designated by the state engineer for the water master district. The hydrologic models based upon the best available hydrogeologic data will take into account existing surface and groundwater diversions and the combined effect of groundwater and surface water uses on the basin groundwater and surface water system. Adoption of a generalized hydrologic analysis shall be undertaken in conjunction with the public rule-making process for district-specific regulations pursuant to Subsection D of 72-2-8 NMSA. The generalized hydrologic analysis shall include guidelines for the approval of applications. If an applicant agrees to the use of the generalized hydrologic analysis in the review of his application, the state engineer shall expedite his review of the application on that basis. The generalized hydrologic analysis may be adopted as part of basin-specific regulations developed by the state engineer for a specific water master

district, or subsequent thereto. A generalized hydrologic analysis shall not be adopted in the absence of proposed district-specific regulations for administration. After consideration of public comment on a proposed generalized hydrologic analysis, the state engineer may adopt a generalized hydrologic analysis for use to evaluate replacement plans pertinent to administration within the water master district. In order to adopt a generalized hydrologic analysis, the state engineer shall find that it is sufficiently conservative to assure that any replacement plan that is approved:

A. will not impair in-priority administrable water rights and by limiting diversions under the replacement plan to no more than the average of recent historical beneficial use will be a sufficient basis for such a finding; and

B. will not result in any increase in depletions within the water master district; accepting an applicant's assurance that no water shall be diverted under that portion of the in-priority administrable water right that is committed to the replacement plan, and finding that foregone average historic depletions associated with the temporarily transferred in-priority water right are at least 10 percent greater than the average historic depletions associated with the out-of-priority administrable water right, are together a sufficient basis for such a finding.

[19.25.13.32 NMAC - N, 12/30/2004]

19.25.13.33 APPROVAL OF REPLACEMENT PLANS:

The state engineer shall determine the adequacy of each source of water proposed for use as replacement water based upon the generalized hydrologic analysis adopted by the state engineer. Replacement plans shall be approved for a period not to exceed two years but may be renewed upon application. Upon finding that the approval of a replacement plan meets the criteria of Section 19.25.13.32 NMAC, is necessary to prevent crop loss or other serious economic harm to the owner of an out-of-priority administrable water right, and is not contrary to conservation of water or the public welfare of the state, the state engineer shall approve the replacement plan. The state engineer may require such terms and conditions for the approval of a replacement plan as he deems to be necessary, including time limitations on the duration of the replacement plan. State engineer approvals of replacement plans shall be presumed to be in proper implementation of the provisions of the water laws administered by him as provided by Subsection H of 72-2-8 NMSA. Any approved replacement plan shall continue in effect during the course of objections and appeals proceedings.

[19.25.13.33 NMAC - N, 12/30/2004]

19.25.13.34 AMENDMENT AND RENEWAL OF REPLACEMENT PLANS:

The holder of a replacement plan may submit an application to the state engineer at any time during the term of the replacement plan to amend or renew the replacement plan. Upon state engineer determination that the permanent acquisition of a senior water right

to replace the depletions caused by the exercise of an out-of-priority water right is not required, or upon a showing of a good faith effort to permanently acquire a senior water right in the absence of such a determination, the state engineer may approve the renewal or amendment of a replacement plan in the same manner as set forth in Section 19.25.13.33 NMAC, after a review of any new information or evidence of changed conditions submitted in support of the application.

[19.25.13.34 NMAC - N, 12/30/2004]

19.25.13.35 ACCURACY OR SUFFICIENCY OF INFORMATION; MODIFICATION:

Each applicant for, or holder of, a replacement plan is responsible for the accuracy and sufficiency of all material information provided in support of the application to the state engineer before or after approval of the replacement plan. If an approved replacement plan proves to be insufficient to replace depletions, the state engineer may require the holder of a replacement plan to provide additional replacement water at any time during the term of the replacement plan or within a reasonable period after the term of the replacement plan if necessary to offset cumulative impacts.

[19.25.13.35 NMAC - N, 12/30/2004]

19.25.13.36 REVOCATION OF REPLACEMENT PLANS:

The state engineer may revoke approval of a replacement plan, in whole or in part, where material information provided by the applicant for, or the present holder of, the replacement plan is inaccurate; for non-compliance with the terms and conditions of the replacement plan; or for non-compliance with these rules. Upon revocation of a replacement plan, to the extent of the revocation, all diversions authorized by the revoked portion of the replacement plan must cease and the holder of the replacement plan must, within a reasonable period after revocation of the replacement plan, replace the diversion and depletion overruns incurred, if any.

[19.25.13.36 NMAC - N, 12/30/2004]

19.25.13.37 FALLOWING AND NON-USE REQUIREMENTS:

Water once committed to a replacement plan cannot be used for any other purpose during the term of the replacement plan. In the event that the source of replacement water is irrigated land, the land to which the water right being used for replacement water is appurtenant shall be fallowed. Fallowed land shall not be irrigated from any source, including domestic and supplemental wells, without written approval by the state engineer. Fallowed land shall be specifically identified by map or survey, or by other means acceptable to the state engineer. Without written approval by the state engineer, no water shall be diverted on, or delivered to, fallowed land during the period in which the water is being used as replacement water. In the event the source of replacement water is not irrigated land, the use to which the owner of the water right that is the

source of replacement water is entitled under his right shall, during the term of the replacement plan, be reduced by the amount of water committed to the replacement plan.

[19.25.13.37 NMAC - N, 12/30/2004]

19.25.13.38 FORMATION OF WATER RIGHT OWNER GROUPS:

Water right owners are encouraged to form water right owner groups for the purpose of discussion and negotiation among themselves, with other water right owners, or with the water master, regarding the possibility of shortage sharing agreements and other forms of alternative administration and joint application for replacement plans. Subject to the exemption for acequias and community ditches under Subsection C of 72-2-9.1 NMSA, in the event that water right owner groups, aided by the water master, attempt to reach an agreement for Alternative administration, such efforts by the water right owner groups and the water master shall constitute promotion of expedited marketing and leasing as required by that statute.

[19.25.13.38 NMAC - N, 12/30/2004]

19.25.13.39 REPLACEMENT PLANS BY WATER RIGHT OWNER GROUPS:

Water right owners may, individually or collectively, submit applications for replacement plans as described above. Except as may be limited by a specific regulation or order, water conservancy districts, irrigation districts, municipalities, or other entities may initiate and submit plans in accordance with these rules. Water right owner groups operating under an approved replacement plan shall notify the state engineer of any plan participant who is not in compliance with the replacement plan.

[19.25.13.39 NMAC - N, 12/30/2004]

19.25.13.40 OBJECTIONS TO, AND APPEALS FROM, APPROVALS, DENIALS AND REVOCATIONS OF REPLACEMENT PLANS:

Within thirty days after approval of a replacement plan, the state engineer shall cause to be published a summary of the approved replacement plan providing for the opportunity to appeal the approval, denial or revocation of a replacement plan pursuant to Section 72-2-16 NMSA. The state engineer shall hear objections to his approval, denial or revocation of all part of a replacement plan in accordance with Section 72-2-16 NMSA but shall endeavor to hear such objections in the same prompt manner as provided by Section 72-3-3 NMSA for review of water master actions. Filing of an objection to an approval, denial or revocation of a replacement plan will not stay the state engineer's determination that all water use under all, or part of, a revoked replacement plan must cease, pending resolution of the objection.

[19.25.13.40 NMAC - N, 12/30/2004]

19.25.13.41 APPEALS FROM STATE ENGINEER DECISIONS:

All appeals from state engineer review of objections to any actions or decisions made pursuant to these rules and regulations shall be in accordance with Section 72-7-1 NMSA.

[19.25.13.41 NMAC - N, 12/30/2004]

19.25.13.42 REQUEST FOR ADMINISTRATION FROM THE INTERSTATE STREAM COMMISSION:

The state engineer shall proceed with water rights administration when requested to do so by the New Mexico interstate stream commission for the purpose of compliance with interstate stream compacts, which request shall be in the form of a resolution.

[19.25.13.42 NMAC - N, 12/30/2004]

19.25.13.43 EMERGENCY ADMINISTRATIVE ACTIONS:

The state engineer may determine that the need for water rights administration in a specific district is so urgent that water rights administration may proceed directly under order issued pursuant to the procedural requirements of Paragraph 3 of Subsection B of 72-2-8 NMSA.

[19.25.13.43 NMAC - N, 12/30/2004]

19.25.13.44 EXPEDITED MARKETING AND LEASING:

The state engineer will review and analyze permit applications in water master districts affected by priority administration on an expedited basis utilizing the appropriate hydrologic model adopted by the state engineer for the water master district. Expedited review of permit applications in water master districts affected by priority administration shall fulfill the requirements of Subsection C of 72-2-9.1 NMSA for the promotion of expedited marketing and leasing of water rights.

[19.25.13.44 NMAC - N, 12/30/2004]

19.25.13.45 KNOWLEDGE OF AND COMPLIANCE WITH STATUTES, RULES, REGULATIONS AND CODES:

It shall be the responsibility of all applicants and permittees to know of, and comply with, all applicable statutes, rules, regulations and codes.

[19.25.13.45 NMAC - N, 12/30/2004]

19.25.13.46 RETROACTIVE EFFECT:

These rules and regulations shall have retroactive effect on all water master districts already formed at the time of promulgation of these rules and regulations.

[19.25.13.46 NMAC - N, 12/30/2004]

19.25.13.47 SEVERABILITY:

If any provision or provisions of these regulations are found to be invalid, the remaining provisions shall continue to be in effect.

[19.25.13.47 NMAC - N, 12/30/2004]

19.25.13.48 ENFORCEMENT:

The state engineer may enforce these rules by all means within his legal authority.

[19.25.13.48 NMAC - N, 12/30/2004]

19.25.13.49 STATE ENGINEER OPTION TO REVISE RULES AND REGULATIONS:

The state engineer may modify these rules and regulations as needed to accomplish the objectives of these rules and regulations. Removal of a regulation or a section of these rules and regulations, whether by a court or by the state engineer, shall not affect the validity of the remaining rules and regulations.

[19.25.13.49 NMAC - N, 12/30/2004]

19.25.13.50 LIBERAL CONSTRUCTION:

These rules shall be liberally construed to carry out their purpose in accordance with Subsection H of 72-2-8 NMSA.

[19.25.13.50 NMAC - N, 12/30/2004]

PART 14: STRATEGIC WATER RESERVE

19.25.14.1 ISSUING AGENCY:

New Mexico Interstate Stream Commission.

[19.25.14.1 NMAC - N, 12-15-2005]

19.25.14.2 SCOPE:

These regulations will assist the interstate stream commission in implementing the strategic water reserve and in managing water and water rights held for the strategic water reserve.

[19.25.14.2 NMAC - N, 12-15-2005]

19.25.14.3 STATUTORY AUTHORITY:

These regulations are written pursuant to Section 72.14-3.3 NMSA 1978, authorizing the interstate stream commission to establish a strategic water reserve and requiring the promulgation of rules in conformity therewith.

[19.25.14.3 NMAC - N, 12-15-2005]

19.25.14.4 DURATION:

Permanent.

[19.25.14.4 NMAC - N, 12-15-2005]

19.25.14.5 EFFECTIVE DATE:

December 15, 2005, unless a later date is cited at the end of a section.

[19.25.14.5 NMAC - N, 12-15-2005]

19.25.14.6 OBJECTIVE:

These regulations will ensure that water and water rights acquired for the strategic water reserve are used only for the purposes of the reserve, that adequate public notice exists in each affected area for the acquisition or disposal of water rights and that the procedures for the acquisition of water and water rights for the strategic water reserve comply with the state engineer transfer procedures.

[19.25.14.6 NMAC - N, 12-15-2005]

19.25.14.7 DEFINITIONS:

Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meanings. "**Water rights**" means valid existing surface or groundwater rights that have sufficient seniority and a consistent, historic beneficial use to effectively contribute to the purpose of the strategic water reserve.

[19.25.14.7 NMAC - N, 12-15-2005]

19.25.14.8 LIBERAL CONSTRUCTION:

These regulations shall be liberally construed to carry out their intended purpose.

[19.25.14.8 NMAC - N, 12-15-2005]

19.25.14.9 IMPLEMENTATION OF STRATEGIC WATER RESERVE - RIVER REACH OR BASIN PRIORITIES:

A. During the first quarter of each year, the interstate stream commission, after consultation with the state engineer, and the attorney general, shall adopt river reach or ground water basin priorities for the strategic water reserve and for the acquisition of water or water rights and storage rights for the reserve. In establishing such priorities, the interstate stream commission shall consider:

- (1)** the urgency of need for water or water rights to be held in the strategic water reserve in a river reach or basin;
- (2)** the unavailability of water rights for sale or lease in the river reach or basin and/or whether storage exists for such water;
- (3)** the cost, location and seniority of the water or water rights in the river reach or basin;
- (4)** whether and to what extent water rights to be purchased or leased will assist the state in complying with its interstate stream compacts or court decrees or will assist the state in managing its waters for the benefit of threatened or endangered species;
- (5)** whether water or water rights are available by donation; and
- (6)** written comments, if any, from interested public and private entities.

B. The interstate stream commission shall publish its designated river reach or ground water basin priorities in newspapers of general circulation throughout the state. In addition, the interstate stream commission shall publish its designated river reach or ground water basin priorities on its website.

[19.25.14.9 NMAC - N, 12-15-2005]

19.25.14.10 IMPLEMENTATION OF STRATEGIC WATER RESERVE - PRIORITIZATION WITHIN RIVER REACH OR BASINS:

Consistent with Section 72-14-3.3 NMSA 1978, for each priority river reach or ground water basin, the interstate stream commission shall establish additional prioritization in coordination with the governing bodies of each Indian nation, tribe, pueblo, board of

county commissioners, municipality, special district established pursuant to Chapter 73 NMSA 1978, soil and water conservation district, water authority and water planning region within each affected river reach or ground water basin. Upon making the initial prioritization of river reach or groundwater basin, the commission shall notify the governing bodies of each such entity. Within thirty (30) days after adoption of such initial river reach or ground water basin priorities by the commission as provided in the preceding paragraph, or at the next regularly scheduled meeting of the commission that occurs at least fifteen (15) days after adoption of such priorities as provided in the preceding paragraph, the governing bodies of each such entity and any other interested public and private entities, shall submit comments and suggestions as to this additional prioritization of the acquisition of water or water rights within each priority river reach or groundwater basin. The interstate stream commission will publish notice of, and hear public comments regarding, its prioritization decisions.

[19.25.14.10 NMAC - N, 12-15-2005]

19.25.14.11 ACQUISITION OF WATER OR WATER RIGHTS:

Consistent with its prioritizations, the interstate stream commission shall acquire water or water rights from willing sellers or lessors. The commission shall acquire water or water rights at a price no higher than appraised market value, based upon the best available information and considering the seniority and the consistent historic beneficial use of the water or water rights. The interstate stream commission may acquire water or water rights by donation at any time. Acquisitions shall be contingent upon a successful transfer of the water rights to the interstate stream commission pursuant to the procedures for transfer of water rights established by the state engineer. The interstate stream commission shall not purchase or lease water or water rights that will result in an increase in net depletions in the affected river reach or that will create cumulative adverse impacts on existing water users or delivery systems or the ability of the state of New Mexico to properly manage its waters or meet interstate obligations. The commission shall not acquire water or water rights that are served by or owned by an acequia or community ditch established pursuant to Articles 2 and 3 of Chapter 73 NMSA 1978 for inclusion in the strategic water reserve. The interstate stream commission shall not acquire water or water rights that are served by an irrigation district established pursuant to Article 10 of Chapter 73 NMSA 1978 except through a contractual arrangement with the district board of directors or the interstate stream commission may establish a special water users association pursuant to 73-10-48 NMSA 1978. The interstate stream commission acquires water or water rights from a member of an irrigation or conservancy district established pursuant to Chapter 73 NMSA 1978, the interstate stream commission shall utilize funds from the strategic water reserve to pay the annual assessment to the district that would accrue to the district absent the transaction.

[19.25.14.11 NMAC - N, 12-15-2005]

19.25.14.12 APPLICATION FOR PERMIT WITH THE STATE ENGINEER:

All acquisitions of water or water rights by the commission for the strategic water reserve are subject to approval by the state engineer and shall comply with all state engineer rules and regulations governing surface and ground water transfer applications.

[19.25.14.12 NMAC - N, 12-15-2005]

19.25.14.13 MANAGEMENT OF WATER:

A. The interstate stream commission shall manage water and water rights within the strategic water reserve in order to assist the state in complying with its interstate compacts and court decrees or to assist the state and water users in water management efforts for the benefit of threatened or endangered species or in a program intended to avoid additional listings of species.

B. If water or water rights are purchased, leased or acquired through donation to assist the state and water users in water management efforts for the benefit of threatened or endangered species or in connection with a program intended to avoid additional listings of species, the interstate stream commission shall manage such water or water rights in conjunction with collaborative programs or processes where they exist.

C. The commission shall expedite the transfer and management of water rights donated to the strategic water reserve.

D. Water or water rights acquired for the strategic water reserve shall remain in their river reach or groundwater basin of origin.

[19.25.14.13 NMAC - N, 12-15-2005]

19.25.14.14 ADMINISTRATIVE COSTS:

The interstate stream commission shall determine annually its administrative costs associated with the strategic water reserve and consistent with Section 72-14-3.3 NMSA 1978 such costs shall be paid for from funds received for the strategic water reserve.

[19.25.14.14 NMAC - N, 12-15-2005]

19.25.14.15 DISPOSAL OF WATER RIGHTS:

The interstate stream commission may sell or lease water or water rights from the strategic water reserve only upon a finding by the commission that such water or water rights are no longer necessary for the reserve and only at a price no less than appraised market value. The interstate stream commission may lease water or water rights from the strategic water reserve to the United States but shall not sell water rights from the strategic water reserve to the United States. The interstate stream commission shall

utilize proceeds from the leasing of water rights from the strategic water reserve for carrying out the purposes of the strategic water reserve. Any sale of water or water rights from the strategic water reserve shall first be offered for the original purpose of use. Proceeds from such sales shall be used by the office of the state engineer to adjudicate water rights.

[19.25.14.15 NMAC - N, 12-15-2005]

19.25.14.16 ANNUAL LEGISLATIVE REPORT:

On or before December 15th of each year, the interstate stream commission shall report to the appropriate committee of the legislature on the status of the strategic water reserve.

[19.25.14.16 NMAC - N, 12-15-2005]

PART 15: PECOS RIVER BASIN LAND MANAGEMENT FUND

19.25.15.1 ISSUING AGENCY:

New Mexico Interstate Stream Commission.

[19.25.15.1 NMAC - N, 5/15/2010]

19.25.15.2 SCOPE:

This rule governs the administration of the Pecos river basin land management fund.

[19.25.15.2 NMAC - N, 5/15/2010]

19.25.15.3 STATUTORY AUTHORITY:

Section 72-1-2.4 to -2.6 NMSA.

[19.25.15.3 NMAC - N, 5/15/2010]

19.25.15.4 DURATION:

Permanent.

[19.25.15.4 NMAC - N, 5/15/2010]

19.25.15.5 EFFECTIVE DATE:

May 15, 2010, unless a later date is cited at the end of a section.

[19.25.15.5 NMAC - N, 5/15/2010]

19.25.15.6 OBJECTIVE:

The objective of this part is to implement the Pecos river basin land management fund, Section 72-1-2.5 NMSA.

[19.25.15.6 NMAC - N, 5/15/2010]

19.25.15.7 DEFINITIONS:

A. "Commission" means the New Mexico interstate stream commission.

B. "Commission lands" means the lands in the lower Pecos river basin acquired by the commission pursuant to Sections 72-1-2.2 and 72-1-2.4 NMSA.

C. "Land management fund" or "fund" means the Pecos river basin land management fund created pursuant to Section 72-1-2.5 NMSA.

[19.25.15.7 NMAC - N, 5/15/2010]

19.25.15.8 THE LAND MANAGEMENT FUND:

A. Managing commission lands: The commission shall manage commission lands in a cost-effective manner so as to minimize any threat to public health and safety and adverse impacts to adjacent landowners, to provide benefits to local economies and to promote the general welfare of the lower Pecos river basin.

B. Depositing revenues from commission lands: The fund consists of appropriations, grants, donations or bequests to the fund, income from land and water rights purchased pursuant to Chapter 72, Article 1 NMSA, revenue from land sold pursuant to Chapter 72, Article 1 NMSA and income from investment of the fund or money otherwise accruing to the fund. Money in the fund shall be invested pursuant to Chapter 6, Article 10 NMSA. Money in the fund shall not revert to any other fund at the end of a fiscal year. Money in the fund shall be disbursed on warrants signed by the secretary of the department of finance and administration pursuant to vouchers signed by the director of the commission or the director's authorized representative.

C. Administering the fund: The commission shall use money from the land management fund to manage commission lands and to manage the commission's augmentation well fields in the lower Pecos river basin, including those augmentation well fields created pursuant to the strategic water reserve, Section 72-14-3.3 NMSA.

[19.25.15.8 NMAC - N, 5/15/2010]

PART 16-19: [RESERVED]

PART 20: NAMBE - POJOAQUE - TESUQUE WATER DISTRICT: ACTIVE WATER RESOURCES MANAGEMENT

19.25.20.1 ISSUING AGENCY:

Office of the State Engineer.

[19.25.20.1 NMAC - N, 9/12/2017]

19.25.20.2 SCOPE:

This rule shall be read in conjunction with the settlement agreement and as a supplement to 19.25.13 NMAC, and shall apply to all administrable surface water and groundwater rights within the Nambé-Pojoaque-Tesuque water master district.

[19.25.20.2 NMAC - N, 9/12/2017]

19.25.20.3 STATUTORY AUTHORITY:

This rule is established pursuant to constitutional authority set forth in Article 16 of the Constitution of New Mexico, and statutory authority enumerated in Chapter 72, including, but not limited to, Sections 72-1-1 (1941); 72-1-2 (1907); 72-2-6 (1965); 72-2-8 (1976); 72-2-9 (1907); 72-2-9.1 (2003); 72-2-18 (2007); 72-3-1 (1919); 72-3-2 (2007); 72-3-3 (1953); 72-3-4 (1965); 72-3-5 (1941); 72-5-3 (1941); 72-5-4 (1941) 72-5-5 (1965); 72-5-18 (2007); 72-5-20 (1941); 72-5-22 (1907); 72-5-23 (1986); 72-5-24 (1985); 72-5-25 (1971); 72-5-28 (2002); 72-5-39 (1965); 72-6-1 - 72-6-7 (2014); 72-7-1 (1971); 72-8-1 (1907); 72-9-2 (1907); 72-12-1 (2003); 72-12-2 (1931); Subsection D of 72-12-8 (2002); 72-12-15 (1949); 72-12-16 (1949); 72-12-18 (1953); 72-12-24 (1959); 72-12-27 (1967) NMSA 1978 and the authority provided under the settlement agreement in *State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66cv6639 (D.N.M.) (dated April 19, 2012).

[19.25.20.3 NMAC - N, 9/12/2017]

19.25.20.4 DURATION:

Permanent.

[19.25.20.4 NMAC - N, 9/12/2017]

19.25.20.5 EFFECTIVE DATE:

September 12, 2017

[19.25.20.5 NMAC - N, 9/12/2017]

19.25.20.6 OBJECTIVE:

The objective of this rule is to provide for the distribution and administration of the available water supply and administrable water rights in the Nambé-Pojoaque-Tesuque basin ("NPT basin"), including the prevention of illegal diversions, waste and over-diversions, and to implement the terms and conditions of the settlement agreement and the final decree entered in *State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66cv6639 (D.N.M.).

[19.25.20.6 NMAC - N, 9/12/2017]

19.25.20.7 DEFINITIONS:

Unless otherwise defined below or in 19.25.13.7 NMAC, all words herein shall be given their customary and accepted meanings. All uses of masculine pronouns or possessives shall be held to include the feminine.

A. "Aamodt case" means the civil action filed in the United States District Court for the District of New Mexico in *State of New Mexico ex rel. State Engineer and United States of America, Pueblo de Nambé, Pueblo de Pojoaque, Pueblo de San Ildefonso, and the Pueblo de Tesuque v. R. Lee Aamodt, et al.*, No. 66cv6639 (D.N.M.) (the general adjudication of water rights of the Nambé-Pojoaque-Tesuque stream system).

B. "Aamodt Litigation Settlement Act" means the Claims Resolution Act of 2010, Pub. L. No. 11-291, tit. VI, §§ 601, 626, 124 Stat. 3064, 3134-56 (2010).

C. "Acequia" means a community ditch under the laws of New Mexico and Section 73-2-27 NMSA 1978.

D. "Administrable water right" or "water right" means a right to the use of water or a right to impound, store or release water determined by the decree court in subfile orders, the partial final judgment and decree ("PFD"), or the final decree, or a right established pursuant to a permit issued by the state engineer or recognized by a license issued by the state engineer.

E. "Administration" is defined in Subsection C of 19.25.13.7 NMAC. Administration includes:

- (1) direct flow administration,
- (2) storage water administration,
- (3) depletion limit administration, and

(4) alternative administration. Alternative administration includes, but is not limited to, Pueblo alternative administration, defined in Subsection LL of 19.25.20.7 NMAC and Tesuque alternative administration, set forth in 19.25.20.121 NMAC.

F. "AFY" means acre-feet of water per year.

G. "Agricultural use" means the use of surface or groundwater for cultivating the soil and growing crops or irrigating pasture for livestock grazing. Agricultural uses do not include domestic, community, commercial, industrial or livestock uses.

H. "CIR" or "consumptive irrigation requirement" means the quantity of irrigation water expressed as a depth or volume, exclusive of effective rainfall, that is consumptively used by plants or is evaporated from the soil surface during one calendar year. The CIR may be numerically determined by subtracting effective rainfall from the consumptive use.

I. "Commercial or industrial use" means the diversion and consumption of water in connection with any activity that provides, or offers to provide, goods or services for consideration, not including domestic uses incidental to a commercial or industrial facility.

J. "Compliance order" means a written order issued by the state engineer pursuant to Section 72-2-18 NMSA 1978 or the settlement agreement to an owner of record or person making an illegal diversion, violating a requirement or prohibition of Chapter 72 NMSA 1978, a regulation, code, order or special order adopted by the state engineer pursuant to Section 72-2-8 NMSA 1978, a condition of a permit or license issued by the state engineer pursuant to law, an order entered by the decree court adjudicating a water right, or the terms of the settlement agreement, partial final decree or final decree.

K. "Connection fund" or "Pojoaque valley water utility connect fund" means the Pojoaque valley water utility connection fund administered by Santa Fe county to pay the cost of connecting well water right owners to the county water utility.

L. "County water utility" or "CWU" means the water utility organized by the county to do the following:

- (1) receive water distributed by the regional water authority ("RWA");
- (2) provide the water received under Paragraph (1) of Subsection L of 19.25.20.7 NMAC to customers on non-Pueblo land in the NPT basin; and carry out any other activities in accordance with the Aamodt Litigation Settlement Act.

M. "Curtailment order" means a verbal or written order from the water master directing an owner of record or person diverting water to immediately curtail such diversion, in whole or in part.

N. "Decree court" means the United States District Court for the District of New Mexico in the Aamodt case.

O. "Domestic use" means the use of water for indoor and outdoor household purposes, including water used for drinking, sanitation, the irrigation of not to exceed one acre of noncommercial trees, lawn, garden, or landscaping, the care and feeding of household pets, and such uses of water incidental to a governmental, commercial or non-profit facility. Domestic uses do not otherwise include the use of water for agricultural purposes, and do not include any use of water for commercial, industrial, community or livestock watering purposes.

P. "Election" or "elect" means a choice to connect or not connect to the county water utility under the terms of the settlement agreement.

Q. "FDR" or "farm delivery requirement" means the quantity of water, exclusive of effective rainfall, that is delivered to the farm headgate or is diverted from a source of water that originates on the farm itself, such as a well or spring, to satisfy the CIR of crops grown on the farm during the irrigation accounting year, or as otherwise provided by permit.

R. "Final decree" means the *Final Judgment and Decree of the Water Rights of the Nambé, Pojoaque, and Tesuque Stream System* entered by the decree court.

S. "Household" means a single or multi-family residence including outbuildings such as guest houses, barns, and sheds.

T. "Hydrologic model" means the hydrologic model developed by the state of New Mexico and the United States pursuant to the settlement agreement, as updated and further developed by the state engineer for the administration and use of water in the NPT basin, and for determining the effects of administrative actions subject to the settlement agreement. Any generalized hydrologic analysis adopted by the state engineer for the NPT district shall be based upon the hydrologic model.

U. "Illegal diversion" means any of the following:

(1) a diversion that exceeds the quantity of an administrable water right or beneficial use requirements;

(2) a diversion in violation of a rule, statute, license, permit, PFD, final decree, subfile order, or other court order, other than a diversion described in paragraph (1) of this Subsection;

(3) in the case of an acequia or other entity entitled to divert and distribute water on behalf of its membership or constituency, any diversion that exceeds the sum total quantity of all the administrable water rights in that acequia or other entity;

- (4) waste;
- (5) a diversion in violation of a curtailment order or compliance order;
- (6) a diversion that is out-of-priority;
- (7) any diversion from an unauthorized point of diversion;
- (8) a diversion for conveyance to an unauthorized place of use or for an unauthorized purpose of use;
- (9) a diversion of groundwater in excess of the agreed amount of use pursuant to an election made under the settlement agreement; or
- (10) a diversion of surface or groundwater that is contrary to the alternative administration set forth in the settlement agreement.

V. "Interfere" or "interference" means a material adverse effect on the quality, divertible quantity, or the cost of diversion of surface water historically used to satisfy surface water rights subject to the settlement agreement.

W. "Livestock use" means the diversion and consumption of water for the care and feeding of domestic animals such as cattle or horses. Livestock use does not include the use of water in connection with the operation or maintenance of feedlots or agricultural use of water.

X. "Mitigation fund" means the fund created and administered by the state to mitigate impairment to non-Pueblo groundwater rights as a result of a new or changed Pueblo use of water on Pueblo land.

Y. "Mutual domestic water consumers association" or "MDWCA" means an association organized under or subject to the provisions of the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

Z. "Nambé Pojoaque Tesuque basin" or "NPT basin" means the Nambé-Pojoaque-Tesuque stream system, also known as the Pojoaque basin, which is the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which rainfall and runoff flow into arroyos, drainages, and named tributaries that drain to:

- (1) the Rio Pojoaque; or
- (2) the two unnamed arroyos immediately south of the Rio Pojoaque; and
- (3) the two arroyos (including the Arroyo Alamo) that are immediately to the north of the confluence of the Rio Pojoaque and the Rio Grande.

The term "NPT basin" includes the San Ildefonso Eastern Reservation recognized by the Act of September 14, 1961, 75 Stat. 505, Sec. 8.

AA. "Nambe Pojoaque Tesuque water master district" or "NPT district" is the same geographic area as the NPT basin.

BB. "Non-Pueblo water right" means a water right held by a non-Pueblo owner.

CC. "Offset water" means any quantity of water provided to offset adverse stream depletion effects caused by a particular diversion of water.

DD. "Out-of-priority" is defined under Subsection U of 19.25.13.7 NMAC.

EE. "Owner of record" means a person named in a subfile order or in a permit, license, change of ownership form or other documentation filed with the state engineer identified as the current owner of an administrable water right. For purposes of administration by the water master, the term owner of record shall include a lessee or other person authorized to use or manage the use of water, or the representative of an acequia or other entity authorized to divert water on behalf of its membership or constituency. The owner of record may or may not be the legal current owner of the water right.

FF. "Partial final decree" or "PFD" means the *Partial Final Judgment and Decree of the Water Rights of the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque* entered by the decree court on March 23, 2016 (docket no. 10547).

GG. "PDR" or "project diversion requirement" means the annual quantity of water necessary to be diverted from a source of surface water to satisfy the farm delivery requirement and to account for off-farm ditch conveyance delivery losses during the irrigation accounting year.

HH. "Person" means an individual, multiple individuals, legal entity, Pueblo or combination thereof.

II. "Post-1982 well agreement" means the *Post-1982 Domestic Wells Stipulation and Settlement Agreement* (May 27, 1999) (docket no. 5516) adopted and approved by the decree court (Oct. 4, 2001) (docket no. 5549) to provide for the appointment of a water master, metering of domestic wells under well permits issued by the state engineer after January 13, 1983, and agreed-upon amounts of water for domestic use without restriction as to indoor or closed system use.

JJ. "Pre-basin well" means a well in the NPT basin in existence prior to November 29, 1956.

KK. "Priority administration" is defined in Subsection 5 of 19.25.13.7 NMAC.

LL. "Pueblo alternative administration" means the form of alternative administration whereby the Pueblos agree to share water pursuant to section 4 of the settlement agreement.

MM. "Pueblos" means collectively the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque. "Pueblo" means each of the Pueblos of Nambé, Pojoaque, San Ildefonso or Tesuque.

NN. "Pueblo land" means any real property that is:

(1) held in trust by the United States for a Pueblo within the NPT basin:

(a) prior to March 21, 2016, the date on which the decree court approved the settlement agreement, or

(b) on or after March 21, 2016, if the real property is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter 5) or within the exterior boundary of any territory set aside for the Pueblo by law, executive order or court decree;

(2) owned by a Pueblo within the NPT basin:

(a) prior to March 21, 2016, the date on which the decree court approved the settlement agreement, or

(b) acquired by a Pueblo on or after March 21, 2016, if the real property is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter 5) or within the exterior boundary of any territory set aside for the Pueblo by law, executive order or court decree;

(3) owned by a Pueblo or held by the United States in trust for the benefit of a Pueblo outside the NPT basin that is located within the exterior boundaries of the Pueblo as recognized and confirmed by patent issued under the Act of December 22, 1858 (11 Stat. 374, chapter 5); or

(4) within the exterior boundaries of any real property located outside the NPT basin set aside for a Pueblo by law, executive order or court decree if the land is contiguous to land held in trust by the United States for that Pueblo as of January 1, 2005.

OO. "Pueblo water rights" means the water rights of the Pueblos as determined in the PFD, including the following:

(1) **"Alternative water"** means an amount of water equivalent to the Pueblo of Pojoaque's supplemental water rights and which the Pueblo of Pojoaque may receive through the regional water system;

(2) **"Existing basin use rights"** means those water rights as defined in the PFD;

(3) **"First priority rights"** means those water rights as defined in the PFD;

(4) **"Future basin use rights"** means those water rights as defined in the PFD;

(5) **"Reserved water rights"** means those water rights of the Pueblos of Nambé and San Ildefonso to reserved water rights to consumptively use the surface and groundwater of the NPT, to be diverted and used in accordance with the settlement agreement;

(6) **"Supplemental Pueblo rights"** means those water rights as defined in the PFD. The Pueblo of Pojoaque has a supplemental right to consumptively use groundwater and surface water of the NPT, to be diverted and used in accordance with the settlement agreement;

PP. **"Red tag"** means a tag affixed to a point of diversion by the water master to notify an owner of record or person that any further diversion of water is illegal.

QQ. **"Regional water authority"** or **"RWA"** means the Pojoaque basin regional water authority organized by the Pueblos and county of Santa Fe to operate and maintain the diversion and treatment facilities, transmission pipelines and other facilities of the regional water system.

RR. **"Regional water system"** means the regional water system as defined in the Aamodt Litigation Settlement Act.

SS. **"Report on anticipated uses"** means the report filed by each Pueblo each year describing the anticipated uses of that Pueblo's water rights for a calendar year.

TT. **"Section 4 protection"** means the protection provided non-Pueblo water rights during Pueblo alternative administration of the first priority rights of the Pueblos pursuant to section 4 of the settlement agreement.

UU. **"Section 72-12-1 well"** means a well permitted by the state engineer under Sections 72-12-1.1, 72-12-1.2, and 72-12-1.3 NMSA 1978, or their predecessor statutes.

VV. "Settlement agreement" means the settlement agreement approved by the decree court on March 21, 2016 (docket no. 10543) and incorporated into the decree court's partial final decree entered on March 23, 2016 (docket no. 10547), as authorized, ratified and confirmed by Section 602(18) of the Aamodt Litigation Settlement Act.

WW. "Settlement party" means any person that signed the settlement agreement or authorized a representative to sign the settlement agreement, and their successors in interest.

XX. "State engineer" means the New Mexico state engineer or his designated appointee.

YY. "Subfile order" means an order entered by the decree court adjudicating a non-Pueblo water right.

ZZ. "TBI letter" means written notice to the water master of the acreage to be irrigated under a ditch during a calendar year.

AAA. "Tributary" means the Rio Pojoaque, Rio Cuyamungue, Rio Tesuque, Rio Nambé, Rio Chupadero, or Rio en Medio.

BBB. "Water master" means the Nambé-Pojoaque-Tesuque water master or any of the sub-district water masters of the Nambé-Pojoaque-Tesuque water master district.

[19.25.20.7 NMAC - N, 9/12/2017]

19.25.20.8 CONSTRUCTION:

This rule shall be construed consistent with, and subject to, the authority of the state engineer for the administration of water in the state of New Mexico, and the authority of the state engineer under the settlement agreement and final decree. This rule shall not be construed as imposing any limitation on the authority of the state engineer to administer water rights created under state law, act on water rights applications pursuant to state law, permit water rights under state law, or order the curtailment, in whole or in part, of the use of water pursuant to state law or under the terms of the settlement agreement or final decree. This rule shall be construed consistent with the settlement agreement and the Constitution of New Mexico.

[19.25.20.8 NMAC - N, 9/12/2017]

19.25.20.9 SEVERABILITY:

If any provision of this rule is found to be invalid, the remainder shall continue to be in effect.

[19.25.20.9 NMAC - N, 9/12/2017]

19.25.20.10 KNOWLEDGE OF AND COMPLIANCE WITH STATUTES, RULES, REGULATIONS AND CODES:

It shall be the responsibility of all persons to know of, and comply with, all applicable statutes, rules, regulations and codes.

[19.25.20.10 NMAC - N, 9/12/2017]

19.25.20.11-19.25.16.100 [RESERVED]:

19.25.20.101 GENERAL AUTHORITY AND DUTIES OF THE NPT DISTRICT WATER MASTER:

A. The water master has the general authority and duties set out in 19.25.13.16 NMAC and 19.25.13.17 NMAC. In addition, the water master has the authority and duties described in this Section.

B. The water master may, as necessary to effect administration, and implementation of and compliance with the terms and conditions of the settlement agreement, the PFD and the final decree:

- (1) supervise all diversions from surface and underground water sources;
- (2) curtail surface and groundwater diversions to ensure compliance;
- (3) issue verbal or written orders requiring installation, calibration, repair, and replacement of adequate headgates and surface water measurement devices at all surface water diversion works, and all groundwater diversion measuring devices as necessary;
- (4) issue verbal or written orders requiring calibration, repair, replacement or installation of meters in accordance with the requirements of Subsection C of 19.27.5.13 NMAC to measure the amount of water diverted from each well;
- (5) issue or affix to points of diversion curtailment orders or red tags that provide notice of illegal diversions or diversions that are out of priority under priority administration or contrary to those allowed under the settlement agreement or final decree. Once a red tag has been affixed, the owner of record or person shall not divert water until the water master has removed the tag;
- (6) issue verbal or written curtailment orders to owners of record or persons making illegal diversions and document such illegal diversions;
- (7) issue verbal or written orders to achieve the objectives of this rule;

(8) take any action necessary to close, cap, lock or otherwise temporarily disable any diversion headgate, pump, or equipment to ensure compliance, and affix to the diversion structure a red tag whenever the water master takes such action;

(9) ensure compliance with applicable state engineer, water master or court orders;

(10) determine whether a new or changed Pueblo use of its first priority rights will interfere with any surface water rights eligible for section 4 protection, and the amount of any offsets required;

(11) determine if the change in point of diversion, purpose or place of use of Pueblo-owned state law water rights within the lands of a Pueblo will impair groundwater rights or interfere with any surface water rights. A determination by the water master of projected hydrologic effects from such changes to state water law rights within a Pueblo shall include consideration of remedies proposed by the Pueblo to reduce groundwater effects below the threshold level of impairment;

(12) enter private, public, or Pueblo lands to inspect, monitor, and maintain all measuring facilities and to operate, close or lock headgates;

(13) with respect to agricultural lands, enter upon private or public lands to verify the irrigability of lands designated by owners of record to be irrigated in a particular season and determine whether and to what extent irrigation occurs;

(14) maintain records, including records of elections made pursuant to the settlement agreement and subsequent compliance with such elections; and

(15) respond in a timely manner to requests for priority administration.

C. The water master may exercise any remedy available to him under applicable law to enforce compliance by owners of record and Pueblos with their obligations under the settlement agreement, the final decree, any election made pursuant to the settlement agreement, and this rule.

[19.25.20.101 NMAC - N, 9/12/2017]

19.25.20.102 WATER MASTER REPORT:

A. The water master shall by March first of each calendar year submit a report to the state engineer that describes all administrative action taken under or required by this rule in the previous calendar year.

B. The report shall be available to the public for inspection and copying at the office of the state engineer, at the requestor's expense by June first, and will be posted on the office of the state engineer's website.

C. The report shall include the information described in 19.25.13.26 NMAC and shall also include:

- (1) the quantity of water diverted through each meter for each quarter and total for the year;
- (2) a summary of all notices of alleged violation, and disposition thereof; and
- (3) a summary of all other actions taken by the water master during the year, including
 - (a) the number of times each meter was actually inspected to verify proper operation;
 - (b) actions taken to verify reported meter readings including a description of procedures used for any spot-checking; and
 - (c) other information as appropriate.

[19.25.20.102 NMAC - N, 9/12/2017]

19.25.20.103 REPORTING OF LANDS TO BE IRRIGATED:

A. By March first of each year, the mayordomo, acequia commissioner, or designated representative of each acequia and the members of each private ditch shall notify the water master in writing of the acreage under that ditch to be irrigated ("TBI letters") during that calendar year. TBI letters from acequias and members of private ditches shall be accompanied by maps that clearly identify the non-Pueblo lands to be irrigated that year and the respective acreage of the tracts. Where the ditch serves as a source of irrigation water for both Pueblo and non-Pueblo lands, the TBI letters shall include only information for non-Pueblo lands.

B. Pueblo lands intended to be irrigated shall be reported by the Pueblos in their annual report on anticipated uses of water.

C. Based upon the information provided, the water master shall determine the maximum diversion rate for each ditch in the stream system required to meet the total projected demand that year, including the demand associated with valid impoundments under each ditch for livestock uses, if any. The water master shall notify the mayordomo, acequia commissioner, or designated representative that submitted the TBI letter of each acequia, the members of each private ditch, and the Pueblos of the maximum diversion rates for all ditches and post the maximum diversion rate for each ditch at the point of diversion or headgate of the ditch.

[19.25.20.103 NMAC - N, 9/12/2017]

19.25.20.104 DISTRIBUTION OF WATER BY ACEQUIAS:

The water master shall regulate the rate and annual volume of diversions from the tributaries in the NPT basin by acequias in accordance with this rule. This rule shall not be construed to affect the internal management of acequias and the distribution of water by acequias in accordance with Section 72-9-2 NMSA 1978.

[19.25.20.104 NMAC - N, 9/12/2017]

19.25.20.105 GENERAL PRINCIPLES FOR USE AND ADMINISTRATION OF SURFACE WATER AND GROUNDWATER:

These general principles apply to the administration of all surface water rights and groundwater rights in the NPT basin.

A. The NPT basin is fully appropriated and there shall be no new appropriations of surface or groundwater.

B. No surface or groundwater diverted within the NPT basin may be delivered for use outside the NPT basin other than for Pueblo use on Pueblo land.

C. Diversions from the Rio Grande shall not be considered to be diversions within the NPT basin.

D. Any water rights diverted by the regional water authority within the NPT basin, whether based on state or federal law, including contractual rights to water, shall be administered at the point of diversion in accordance with state law and regulation.

E. For agricultural uses, the amount of water shall not exceed 4.65 AFY per acre diverted by the ditch at the point of diversion from the source of surface water (PDR), or 3.35 AFY per acre delivered at the farm headgate or well head (FDR), or a consumptive irrigation requirement of 1.84 AFY per acre (CIR), whichever is less.

F. For non-agricultural uses, the consumptive use amount shall be deemed to be equal to the amount of the diversion. The diversion amount shall not exceed the consumptive use amount unless a return flow plan is approved by the state engineer.

G. The priority and amount of water for all surface water rights is the priority and amount of water adjudicated in the final decree.

H. The point of diversion, purpose or place of use of non-Pueblo water rights may only be changed in accordance with state law and this rule.

I. After March 21, 2016, permits for new groundwater points of diversion in the NPT basin may only be issued on the condition that the diversion be metered and only as set forth in this rule.

J. The replacement, repair or deepening of a well pursuant to a permit from the state engineer shall not be considered a change in point of diversion, purpose or place of use.

K. An application for a change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 NMSA 1978 or Sections 73-3-1 through 73-3-11 NMSA 1978 shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA 1978.

[19.25.20.105 NMAC - N, 9/12/2017]

19.25.20.106 METERING OF NON-PUEBLO AND PUEBLO WELLS:

A. Pursuant to the well metering order for the NPT basin issued by the state engineer, each well owner of record shall install a totalizing meter in accordance with the requirements of Subsection C of 19.27.5.13 NMAC and any additional requirements of the state engineer, to measure the amount of water diverted from each well.

B. Each Pueblo shall install a totalizing meter to measure the amount of water diverted from each well located on Pueblo land, consistent with the well metering order for the NPT basin issued by the state engineer.

C. Each well owner of record shall file a meter installation and inspection report with the state engineer in accordance with the requirements of Subsection C of 19.27.5.13 NMAC and any additional requirements of the state engineer. Pursuant to the settlement agreement and the final decree, each Pueblo shall file a report with the state engineer consistent with the requirements of Subsection C of 19.27.5.13 NMAC.

D. Each well owner of record shall submit meter readings to the state engineer in accordance with the requirements of Subsection C of 19.27.5.13 NMAC and any additional requirements of the state engineer. Pursuant to the settlement agreement and the final decree, each Pueblo shall file a report with the state engineer consistent with the requirements of Subsection C of 19.27.5.13 NMAC.

E. The requirements of this Section shall also apply to all new wells drilled on Pueblo land after the effective date of this rule and a meter shall be installed on such wells at the time the well is drilled.

[19.25.20.106 NMAC - N, 9/12/2017]

19.25.20.107 DIVERSION, USE, AND ADMINISTRATION OF SURFACE WATER FOR NON-PUEBLO WATER RIGHTS:

Diversion, use, and administration of surface water for non-Pueblo water rights shall be subject to the following provisions.

A. Change in point of diversion from surface water to groundwater for agricultural uses. The state engineer may issue permits to change the point of diversion of a water right for agricultural use from surface water to groundwater, provided:

- (1) Water rights from within the NPT basin are moved to the new point of diversion in accordance with state law and this rule;
- (2) The priority and amount of the water rights that may be moved shall be determined under state law and shall be reduced in amount to account for historic supply at the original surface point of diversion.

B. Section 4 protection upon change in point of diversion, purpose or place of use of surface water. Section 4 protection and offset requirements for interference shall only apply to the amount of water that is determined to be the current use of water under a surface water right. The current use of water under a surface water right is the calculated average yearly use of water under the right for the five-year period immediately preceding any application to change the point of diversion, purpose or place of use of that right.

[19.25.20.107 NMAC - N, 9/12/2017]

19.25.20.108 DIVERSION, USE, AND ADMINISTRATION OF GROUNDWATER FOR NON-PUEBLO WATER RIGHTS:

A. Determination of priority and amount.

(1) The priority and the diversion amount for a Section 72-12-1 well, a pre-basin well or well drilled under a permit from the state engineer shall be the priority and amount adjudicated in the final decree or authorized in a subsequent permit or license issued by the state engineer, unless the use is limited by the terms of an election under the settlement agreement.

(2) If no amount is set forth in the final decree or in a subsequent permit or license, then the amount shall be the amount of historic beneficial use of water from the well.

B. Determination of historic beneficial use.

(1) If no specific amount of water is set forth in the final decree or in a subsequent permit or license, then the amount of historic beneficial use per household shall be presumed to be the following:

- (a) 0.7 afy for pre-basin wells (in existence prior to November 29, 1956);
- (b) 0.7 afy for Section 72-12-1 wells permitted before January 13, 1983;
- (c) 0.7 afy for Section 72-12-1 wells permitted after January 13, 1983 that entered into the post-1982 well agreement;
- (d) 0.5 afy for Section 72-12-1 wells permitted after January 13, 1983 that did not enter into the post-1982 well agreement.

(2) In no event shall the total diversion amount from a Section 72-12-1 well exceed 3 afy.

(3) Any owner of record seeking to prove an amount of historic beneficial use greater than the amounts set forth in Subsection (B)(1) of this Section shall provide the following information for review and evaluation by the water master:

(a) meter readings taken in compliance with state engineer requirements, consistent with the metering order for the NPT basin, for a period of one to three calendar years, which may be the first calendar year of meter readings at the owner of record's request; and

(b) a map of the area of the claimed beneficial use prepared by either a licensed professional surveyor or licensed professional engineer in the state of New Mexico formatted as required by 19.26.2.24 NMAC, or a hydrographic survey map or aerial photograph acceptable to the state engineer that designates the claimed area of beneficial use from each point of diversion; and

(c) any other documentation acceptable to the state engineer that demonstrates the history and continuity of historic beneficial use, and may include deeds, survey plats, affidavits or other evidence to substantiate the claim.

(4) The water master will determine the amount based upon the evidence submitted pursuant to Paragraph 3 of Subsection B of this Section of the highest amount of historic beneficial use in one calendar year,

(5) Any historic beneficial use amount less than 0.5 afy is not subject to a reduction under the settlement agreement. An owner of record who elects to reduce historic beneficial use pursuant to an election made under the settlement agreement may be subject to restrictions no sooner than five years after the entry of the well metering order for the NPT basin, but in no event shall an owner of record be required to reduce below 0.5 afy.

C. Elections relating to the settlement agreement and connection to county water utility.

(1) An owner of record of a water right from a well used for domestic, commercial or industrial purposes may elect pursuant to the settlement agreement to connect to the county water utility for water service as soon as that service is available.

(2) Except for new groundwater points of diversion for domestic, commercial or industrial uses, an owner of record of a groundwater right shall not be required to connect to the county water utility and shall not be required to cease use of their well.

(3) An owner of record that becomes a settlement party that makes an election and is in compliance with the terms of the election shall be eligible for protections under sections 4 and 3.1.7 of the settlement agreement.

D. State engineer permits to replace, repair or deepen a well:

(1) Section 72-12-1 well:

(a) Permits for replacement wells, or permits to deepen or repair a well, may be issued to Section 72-12-1 well owners of record until such time as those owners connect to the county water utility under the terms of the settlement agreement.

(b) No replacement well permit will be issued to a Section 72-12-1 well owner of record that makes an election to continue use of the well for domestic purposes in perpetuity, or to connect to the county water utility upon transfer of ownership of the property, until such well owner of record has provided documentation of compliance with all applicable county requirements.

(c) If the county water utility is unable to deliver water to an owner of record that has connected to the county water utility for water service, the CWU shall convey title to the water right back to the previous owner of record, who may apply to the state engineer for a permit to recommence diversions from the well or drill a replacement well for the purpose of diverting groundwater in the amount previously conveyed and permitted to the county water utility.

(2) Pre-basin or permitted wells (other than Section 72-12-1 wells): Permits for replacement wells, or permits to repair or deepen a well (other than Section 72-12-1 wells) may be issued in accordance with state law and rules, provided the well is metered and operated in compliance with any conditions of an applicable permit.

E. New groundwater points of diversion. Permits for new groundwater points of diversion for domestic, agricultural, commercial or industrial uses, including a permit for a Section 72-12-1 well, may be issued provided:

(1) Water rights from within the NPT basin are moved to the new groundwater point of diversion in accordance with state law and this rule;

(2) The priority and amount of the moved rights shall be determined under state law and reflect reductions in amount to account for historic supply; and

(3) The permitted diversions shall cease and the well owner of record shall connect to the county water utility as soon as water service is available.

(4) Existing mutual domestic water consumers associations and existing commercial users shall be required to cease the newly permitted diversion and connect to the county water utility once water service is available, unless they made an election to continue such water use under the terms of the settlement agreement and this rule.

(5) An application for a change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 NMSA 1978 or Sections 73-3-1 through 73-3-11 NMSA 1978 shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA 1978.

F. Change in point of diversion, purpose or place of use of groundwater.

(1) The point of diversion, purpose or place of use of groundwater rights from a pre-basin well or well drilled under a permit from the state engineer, other than wells permitted under Section 72-12-1, may be changed in accordance with state law and this rule. The point of diversion, purpose or place of use of groundwater rights from a well permitted under Section 72-12-1 may only be changed in accordance with 19.25.20.110 NMAC.

(2) Upon any such change, section 4 protection shall not apply unless the new diversion is metered and operated in compliance with any applicable permit conditions and consistent with the terms of the settlement agreement.

G. Supplemental groundwater points of diversion.

(1) Permits for a supplemental point of diversion from groundwater for an agricultural use may be issued, provided:

(a) The total diversion from surface and groundwater is limited to the historic supply of the surface water diversion.

(b) If a surface water diversion is permitted to continue and is not metered, the acreage served by the supplemented and supplemental points of diversion is reduced by the percentage of deficiency in the historic supply.

(c) If a groundwater point of diversion is used to supplement another groundwater point of diversion, both diversions shall be metered.

19.25.20.109 CONVEYANCE OF OWNERSHIP OF GROUNDWATER RIGHTS FOR DOMESTIC USE TO THE COUNTY WATER UTILITY:

A. General Provisions.

(1) Ownership of water rights for domestic use from a Section 72-12-1 well or a pre-basin well may be conveyed to the county water utility for the full or partial amount of the water right.

(2) The CWU may change the point of diversion, place and purpose of use of the water rights by application to the state engineer.

B. Section 72-12-1 wells. The amount of the water right to be conveyed to the county water utility per household from each Section 72-12-1 well shall be limited to one of the following options:

(1) **Full amount for single household wells.** If a household elects to connect to the CWU and to no longer divert water from a Section 72-12-1 well, ownership of the full amount adjudicated shall be conveyed to the CWU. If no amount is specified in the final decree or determined pursuant to Subsection (B) of 19.25.20.108 NMAC, the amount shall be presumed to be the following:

(a) 0.7 afy for Section 72-12-1 wells permitted before January 13, 1983;

(b) 0.7 afy for Section 72-12-1 wells permitted after January 13, 1983 that entered into the post-1982 well agreement;

(c) 0.5 afy for Section 72-12-1 wells permitted after January 13, 1983 that did not enter into the post-1982 well agreement.

(2) **Partial amount for single household wells.** If a household elects to connect to the CWU for indoor uses and to continue to divert a portion of its water right from a Section 72-12-1 well for outdoor use only, the household shall convey ownership of 0.3 afy to the CWU, as follows:

(a) A household with a water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right from the Section 72-12-1 well for outdoor use only.

(ii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and if allowed, livestock watering.

(b) A household with an adjudicated water right for a single household that does not define a specific amount of water shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert up to 0.2 afy from the Section 72-12-1 well for outdoor use only.

(ii) The amount that may be diverted may exceed 0.2 afy per household based upon a determination of greater historic beneficial use by the water master pursuant to Subsection (B) of 19.25.20.108 NMAC.

(iii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and, if allowed, livestock watering.

(3) **Full amount for multiple household wells.** If a household with a water right from a multiple household Section 72-12-1 well elects to connect to the CWU and to no longer divert water from the well, ownership of the full amount per household adjudicated shall be conveyed to the CWU. If no specific amount is defined in the final decree or determined pursuant to Subsection (B) of 19.25.20.108 NMAC, the amount per household is presumed to be the following amounts (or as limited by the maximum amount for all households combined from the Section 72-12-1 well):

(a) 0.7 afy for Section 72-12-1 wells permitted before January 13, 1983;

(b) 0.7 afy for Section 72-12-1 wells permitted after January 13, 1983 that entered into the post-1982 well agreement;

(c) 0.5 afy for Section 72-12-1 wells permitted after January 13, 1983 that did not enter into the post-1982 well agreement.

(4) **Partial amount for multiple household wells.** If a household with a water right from a multiple household Section 72-12-1 well elects to connect to the CWU for indoor uses and to continue to divert a portion of its water right from the well for outdoor use only, the household shall convey ownership of 0.3 afy to the CWU, as follows:

(a) A household with water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right in the well for outdoor use only (limited by the maximum amount for all households combined from the Section 72-12-1 well).

(ii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and if allowed, livestock watering.

(b) A household with an adjudicated water right from a multiple household Section 72-12-1 well that does not define a specific amount of water shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right from the Section 72-12-1 well for outdoor use only (limited by the maximum amount for all households combined from the Section 72-12-1 well).

(ii) The well shall be metered, not interconnected with the CWU water system, and the outdoor use shall be limited to irrigation not to exceed the amount of the household's remaining right in the well for up to one acre of noncommercial trees, lawn or garden, and, if allowed, livestock watering.

C. Pre-Basin Wells. Ownership of domestic use water rights from pre-basin wells may be conveyed to the CWU. The CWU may change the point of diversion, place and purpose of use of the water right by application to the state engineer. The amount of the water right to be conveyed to the county water utility from each pre-basin well shall be limited to one of the following options chosen by the owner of record:

(1) **Full amount for single household wells.** If a household elects to connect to the CWU and to no longer divert water from a pre-basin well, the household shall convey ownership of the full amount adjudicated to the CWU. For pre-basin wells that have not been adjudicated a specific amount of water in the final decree or determined pursuant to Subsection (B) of 19.25.20.108 NMAC, the amount is presumed to be 0.7 afy per well.

(2) **Partial amount for single household wells.** If a household elects to connect to the CWU and to continue to divert water from a pre-basin well for outdoor or other adjudicated uses only, the household shall convey ownership of 0.3 afy to the CWU as follows:

(a) A household with an adjudicated water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right in the well for outdoor or other adjudicated uses only.

(ii) The well shall be metered and not interconnected with the CWU water system.

(b) For pre-basin wells that have not been adjudicated a specific amount of water, the amount of water conveyed to the CWU shall be 0.3 afy.

(i) The household may continue to divert up to 0.4 afy from the pre-basin well for outdoor or other adjudicated uses only.

(ii) The amount of the retained water right may exceed 0.4 afy per based upon a determination of greater historic beneficial use by the water master pursuant to Subsection (B) of 19.25.20.108 NMAC, reduced by the total amount of the water right conveyed to the CWU from the well.

(iii) The well shall be metered and not interconnected with the CWU water system.

(3) **Full amount for multiple household wells.** If a household with a water right from a multiple household pre-basin well elects to connect to the CWU and to no longer divert water from the well, ownership of the full amount per household adjudicated in the final decree shall be conveyed to the CWU. If no specific amount is defined in the final decree or determined pursuant to Subsection (B) of 19.25.20.108 NMAC, the amount is presumed to be 0.5 afy per household (or as limited by the maximum amount for all households combined from the pre-basin well).

(4) **Partial amount for multiple household wells.** If a household with a water right from a multiple household pre-basin well elects to connect to the CWU for indoor uses and to continue to divert a portion of its water right from the well for outdoor or other adjudicated uses only, the household shall convey ownership of 0.3 afy to the CWU, as follows:

(a) A household with an adjudicated water right of 0.4 afy or greater shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert the amount of the household's remaining right in the well for outdoor or other adjudicated uses only (limited by the maximum amount for all households combined from the pre-basin well).

(ii) The well shall be metered and not interconnected with the CWU water system.

(b) A household with an adjudicated water right from a multiple household pre-basin well that does not define a specific amount of water shall convey ownership of 0.3 afy to the CWU.

(i) The household may continue to divert up to 0.4 afy from the pre-basin well for outdoor or other adjudicated uses only (limited by the maximum amount for all households combined from the pre-basin well).

(ii) The amount that may be diverted may exceed 0.4 afy per household based upon a determination of greater historic beneficial use by the water master pursuant to Subsection (B) of 19.25.20.108 NMAC, reduced by the total amount of the water right conveyed to the CWU from the well.

(iii) The well shall be metered and not interconnected with the CWU water system.

D. Subsequent conveyance of ownership of the remaining amount to CWU. A household that elected a partial conveyance of ownership may subsequently convey ownership of the remaining amount of the domestic use water right to the CWU. The CWU may change the point of diversion, place and purpose of use to the CWU by application to the state engineer.

[19.25.20.109 NMAC - N, 9/12/2017]

19.25.20.110 EXPEDITED MARKETING AND LEASING AND EXPEDITED PERMIT PROCEEDINGS:

A. New Domestic Well Points of Diversion. Permits for new groundwater points of diversion for domestic uses, including a permit for a Section 72-12-1 well, may be issued provided:

(1) Water rights from within the same hydrologic unit in the NPT basin are moved to the new groundwater point of diversion in accordance with this rule;

(2) The priority and amount of the moved rights shall be determined under state law and reflect reductions in amount to account for historic supply; and

(3) Any permitted diversions shall cease and the household shall connect to the county water utility as soon as water service is available.

B. Expedited change of a valid, existing water right to a Section 72-12-1 domestic well permit. The applicant for a new Section 72-12-1 domestic well permit or the owner of an existing Section 72-12-1 domestic well water right may apply to change the point of diversion, place and purpose of use of a valid, existing water right, other than a Section 72-12-1 water right, from the same hydrologic unit within the NPT basin into the Section 72-12-1 domestic well.

(1) **Application form and content.** Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information:

(a) the name and address of applicant,

(b) the pertinent state engineer file number(s),

- (c) the source of water supply for the move-from point of diversion,
- (d) the source of water supply for the move-to point of diversion,
- (e) the priority date of the water right,
- (f) the diversion amount to be retired,
- (g) the consumptive use amount to be moved,
- (h) the move-from purpose of use,
- (i) the legal description of the move-from place of use,
- (j) the location of the move-from point of diversion,
- (k) the location of move-to point of diversion, and
- (l) other information the state engineer deems necessary.

(2) **Process.** Consistent with the issuance of a Section 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor is protest allowed for an application for permit to change a valid, existing water right to a Section 72-12-1 domestic well permit.

(3) Once a valid, existing water right has been approved by the state engineer for an expedited change to a Section 72-12-1 domestic well, the point of diversion, place and purpose of use of the water right may subsequently be changed into another Section 72-12-1 domestic well from the same hydrologic unit within the NPT basin.

C. Expedited change of point of diversion, place and purpose of use of groundwater rights for domestic use to the county water utility.

The CWU may file one or more applications to the state engineer for permit to change the point of diversion, place and purpose of use of groundwater rights for domestic use whose ownership is conveyed to the CWU, including Section 72-12-1 domestic well water rights. The application may include multiple water rights. The CWU may consumptively use the full amount of the water right changed to the CWU.

(1) **Application form and content.** Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information:

- (a) the name and address of applicant,
- (b) the pertinent state engineer file number(s),

- (c) the source of water supply for the move-from point of diversion,
- (d) the source of water supply for the move-to point of diversion,
- (e) the consumptive use amount to be moved,
- (f) the location of the move-to point of diversion, and
- (g) other information the state engineer deems necessary.

(2) **Process.** The state engineer may adopt a generalized hydrologic analysis based upon the hydrologic model setting out guidelines for the expedited processing of applications filed pursuant to this Subsection.

(a) If the state engineer has adopted such a generalized hydrologic analysis, and if the CWU agrees to the use of the generalized hydrologic analysis in the review of the application, then the state engineer shall expedite the processing of the application as provided in the generalized hydrologic analysis.

(b) If the state engineer does not adopt such a generalized hydrologic analysis, or if the CWU does not agree to the use of the generalized hydrologic analysis, then notice of the application shall be published as provided under 19.26.2.12 and 19.27.1.30 NMAC, except that only the OSE file number or subfile number of the move-from water rights need be provided in the notice of the application. The notice shall provide that the full legal description of the water rights being moved is available in the final decree posted on the state engineer's website and available in the district office.

D. Water rights served by an acequia or community ditch may not be moved under this Section.

[19.25.20.110 NMAC - N, 9/12/2017]

19.25.20.111 CONNECTION FUND:

A. An owner of record of a water right from a well used for domestic, commercial or industrial purposes that elects pursuant to the settlement agreement to connect to the county water utility for water service as soon as that service is available shall be entitled to payment from the connection fund, as administered by Santa Fe county, for the expense of connecting to the county water utility. The county shall notify owners of record when service is available.

B. No water right owner of record electing to connect to the county water utility shall be required to cease use of their well and connect to the county water utility until such expenses have been paid by the connection fund or other third party.

C. If service is not available to an owner that elected to connect because Santa Fe county determines that the expense of connection exceeds the allowed connection expenses, the owner may pay the additional expenses so that the expenses of connection will be covered and service made available.

[19.25.20.111 NMAC - N, 9/12/2017]

19.25.20.112 DIVERSION, USE, AND ADMINISTRATION OF SURFACE WATER AND GROUNDWATER BY PUEBLOS:

Diversion, use, and administration of surface water and groundwater by the Pueblos under this rule shall be subject to, and in accordance with, the settlement agreement, the PFD and the final decree.

A. General principles.

(1) The Pueblos have decreed first priority water rights to consumptively use the surface and groundwater of the NPT basin for agricultural, community, domestic, livestock, commercial or industrial purposes in the amounts defined in the partial final decree. The Pueblos' first priority rights are designated as existing basin use rights or future basin use rights. The Pueblos' first priority rights are not subject to forfeiture, abandonment or loss by non-use.

(2) A Pueblo may lease, for any term up to 99 years, any portion of its first priority rights to another Pueblo or another water user for use within the NPT basin.

(3) For agricultural uses of a Pueblo's first priority rights, the amount of water shall not exceed 4.65 AFY per acre diverted by the ditch at the point of diversion from the surface source of water (PDR), or 3.35 AFY per acre delivered to the farm headgate or diverted at the well head (FDR), or a CIR of 1.84 AFY per acre, whichever is less.

(4) For non-agricultural uses, the consumptive use amount shall be deemed to be equal to the amount of the diversion. The diversion amount shall not exceed the consumptive use amount unless a return flow plan is approved by the state engineer.

(5) The provision of offset water by a Pueblo shall not constitute use of that Pueblo's first priority rights.

B. First priority rights: existing basin use rights.

(1) The current points of diversion, purposes and places of use of the Pueblos' existing basin use rights are set out in appendices one through four of the partial final decree. For the purposes of administering the mitigation fund, the exercise by the Pueblos of their existing basin use rights for the purposes and at the points of diversion and places of use set out in the PFD shall be presumed to not impair non-Pueblo groundwater rights.

(2) If a Pueblo consumes water in excess of the quantity designated in the PFD as the Pueblo's existing basin use rights, the excess consumption shall be deemed to be an exercise of that Pueblo's available supplemental or future basin use rights.

(3) No notice or other administrative process is required for the Pueblos to use water under such rights for the purposes and at the points of diversion and places of use set out in appendices one through four of the PFD.

C. First priority rights: future basin use rights on Pueblo land.

(1) Community, domestic and livestock uses.

(a) A Pueblo may exercise its future basin use rights to divert and consumptively use groundwater on that Pueblo's lands for new community or domestic uses by Pueblo members or their households or livestock uses.

(b) Surface water may be diverted and used for such uses subject to the provisions in section 4 of the settlement agreement.

(c) The owner of record of a non-Pueblo groundwater right that suffers impairment as a result of a Pueblo's exercise of its future basin use right for new community, domestic and livestock uses may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.20.118 NMAC.

(2) Agricultural uses from loss of section 4 protection for non-Pueblo agricultural uses.

(a) A Pueblo may exercise its future basin use rights to divert and consumptively use surface or groundwater on that Pueblo's land for new agricultural uses to the extent that non-Pueblo agricultural water rights are determined to be no longer eligible for section 4 protection under 19.25.20.122 NMAC.

(b) Any increase in a Pueblo's exercise of future basin use rights for agricultural uses implemented pursuant to this paragraph shall divert water from the same tributary from which water was diverted to irrigate the non-Pueblo water rights acreage that is no longer eligible for section 4 protection.

(3) Commercial and industrial uses and other new agricultural uses.

(a) A Pueblo may exercise its future basin use rights to divert and consumptively use surface or groundwater on that Pueblo's land for new commercial or industrial uses or new agricultural uses on that Pueblo's land in addition to those described above at Subparagraph a of Paragraph 2 of Subsection C of 19.25.20.112 NMAC.

(b) The owner of record of a non-Pueblo groundwater right that suffers impairment as a result of the Pueblo's exercise of its future basin use rights for new commercial, industrial or other agricultural uses may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.20.118 NMAC.

(c) The Pueblo shall offset any interference with non-Pueblo surface water rights caused by the new use in an amount determined by the water master in accordance with 19.25.20.115 NMAC.

(d) Non-Pueblo water rights eligible for section 4 protection shall not be curtailed to provide water for the new commercial, industrial or other agricultural use under Pueblo alternative administration.

D. Reserved water rights. The reserved water rights of the Pueblo of Nambé may be exercised in the NPT basin provided that:

- (1) The exercise shall not impair Pueblo or non-Pueblo water rights,
- (2) Non-Pueblo water rights shall not be curtailed to provide water for the exercise of these rights, nor shall the exercise of these rights be curtailed under priority administration or Pueblo alternative administration.
- (3) Any interference with any surface water rights resulting from the use of the reserved water rights of the Pueblo of Nambé shall be offset by the United States or the regional water authority in an amount determined by the state engineer in accordance with 19.25.20.115 NMAC.

E. Supplemental Pueblo rights.

- (1) Until alternative water is available for delivery to the Pueblo of Pojoaque, the Pueblo of Pojoaque has the right to divert the entirety of its supplemental Pueblo rights from wells located on Pueblo of Pojoaque lands. The Pueblo shall not divert its supplemental Pueblo rights to the extent alternative water is available for Pueblo use from the regional water system.
- (2) Until alternative water is available for delivery to the Pueblo of Pojoaque, the Pueblo of Pojoaque and the Pueblo of San Ildefonso shall maintain in effect a forbearance agreement for the exercise of at least 475 AFY of the Pueblo of San Ildefonso's first priority rights. During the tenure of the forbearance agreement the Pueblo of San Ildefonso shall forgo the exercise of 475 AFY of its first priority rights in accordance with the terms of the settlement agreement.
- (3) Until alternative water is available for delivery to the Pueblo of Pojoaque, the Pueblo may divert all or a part of its supplemental Pueblo rights from surface water allocated to the Pueblos and released from Nambé reservoir, provided the other

Pueblos and the Pojoaque Valley irrigation district agree after consultation with the United States and the United States bureau of reclamation.

(4) The owner of record of any non-Pueblo groundwater right that suffers impairment as a result of the Pueblo of Pojoaque's exercise of its supplemental Pueblo rights may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.20.118 NMAC.

F. Water rights acquired under state law.

(1) A Pueblo may acquire water rights in addition to the rights set forth in the PFD in accordance with, and subject to, state law and regulation. These rights shall be subject to priority administration in accordance with state law, and shall be eligible for section 4 protection.

(2) Water rights acquired by the Pueblos under state law after March 21, 2016 by or for the benefit of a Pueblo shall not be subject to forfeiture, abandonment or loss by non-use as long as the title to the water rights remains in the Pueblo or the United States acting as trustee for the Pueblo.

[19.25.20.112 NMAC - N, 9/12/2017]

19.25.20.113 PUEBLO REPORTING OF PUEBLOS' USES OF WATER UNDER THEIR FIRST PRIORITY RIGHTS; NOTICE OF OTHER PROPOSED ACTIONS:

A. Annual reports of anticipated uses.

(1) By December 31 of each year, each Pueblo shall submit to the water master a report on its anticipated uses of water under its first priority rights from groundwater for the next calendar year. By March first of each year, each Pueblo shall submit to the water master a report on its anticipated uses of water under its first priority rights from surface water for that calendar year. These reports on anticipated uses shall include the anticipated annual diversion and consumptive use amounts, points of diversion, and purposes and places of use of the Pueblos' first priority rights for each anticipated use for the calendar year.

(2) Pueblo lands intended to be irrigated shall be reported by the Pueblos in their annual reports on anticipated uses.

(3) For purposes of administration, the anticipated diversion and consumptive use amounts, points of diversion, and purposes and places of use of the Pueblo of Pojoaque's supplemental Pueblo rights for the next calendar year shall also be reported to the water master by December 31 and March first each year in the Pueblo's reports on anticipated uses.

B. Notice of proposed actions.

A Pueblo intending to take the following actions shall advise the water master, in writing, of any such proposed action at least 60 days in advance of implementing the proposed action.

(1) any change in the point of diversion, place or purpose of use of existing basin use rights of a Pueblo on that Pueblo's land from those set out in appendices one through four of the PFD; or

(2) any new or changed exercise of Pueblo future basin use water rights on that Pueblo's lands; or

(3) any change in the point of diversion, place or purpose of use of water rights acquired under state law on that Pueblo's land.

[19.25.20.113 NMAC - N, 9/12/2017]

19.25.20.114 CHANGES TO POINT OF DIVERSION, PURPOSE OR PLACE OF USE OF PUEBLO WATER RIGHTS ON THAT PUEBLO'S LANDS:

A. A Pueblo may change the point of diversion, purpose or place of use of its first priority water rights for use on that Pueblo's land from the uses set out in appendices one through four of the PFD as provided below.

(1) Prior consultation with the state engineer or the water master is not required for such changes.

(2) Changes shall be reported to the water master in the annual report of anticipated uses or at least 60 days prior to making any such change.

(3) After receiving the report, the water master shall determine whether any change in use will impair non-Pueblo groundwater rights in accordance with 19.25.20.116 NMAC.

(4) The owners of record of any such rights may seek reimbursement from the mitigation fund for the cost of mitigating the impairment in accordance with 19.25.20.118 NMAC.

(5) A Pueblo making a change in the exercise of its future basin use rights shall offset any resulting interference with non-Pueblo surface water rights in an amount determined by the water master in accordance with 19.25.20.115 NMAC.

(6) Non-Pueblo water rights eligible for section 4 protection shall not be curtailed to provide water for changes to the uses of water under future basin use rights for new commercial, industrial or agricultural uses under Pueblo alternative administration.

(7) Future basin use rights for domestic, community or livestock uses may not be changed. A Pueblo discontinuing uses of water under such rights may make new uses of water under its future basin use rights.

B. A Pueblo may change the point of diversion, purpose or place of use of any water rights acquired under state law for use on that Pueblo's land as provided below.

(1) Changes shall be reported to the water master at least 60 days prior to making any such change.

(2) The water master shall determine if the proposed change will impair any Pueblo or non-Pueblo groundwater rights, and consider any remedies proposed by the Pueblos to reduce the impacts resulting from the proposed change on groundwater rights to below the threshold for impairment.

(3) The water master shall determine if the proposed use will cause interference with any Pueblo or non-Pueblo surface water rights.

(4) An application shall be denied if the proposed change will cause interference with any Pueblo or non-Pueblo surface water rights or will impair any Pueblo or non-Pueblo groundwater rights and remedies are not available to offset or mitigate the interference or to reduce groundwater effects below the level of impairment.

[19.25.20.114 NMAC - N, 9/12/2017]

19.25.20.115 WATER MASTER DETERMINATION OF INTERFERENCE AND OFFSETS TO SURFACE WATER RIGHTS FROM EXERCISE OF PUEBLO WATER RIGHTS ON PUEBLO LANDS:

A. A Pueblo seeking a new or changed use of water under Pueblo future basin use water rights on that Pueblo's lands shall advise the water master, in writing, of any such proposed action at least 60 days before implementing the proposed action. Within 30 days of receiving notice of such a proposed action (or report of anticipated uses of water) under 19.25.20.114 NMAC, the water master shall determine and advise the Pueblo and other affected Pueblos and owners of record whether the proposed action interferes with Pueblo surface water rights or non-Pueblo surface water rights and the amount of any offsets that may be required to avoid interference. In making these determinations, the water master shall use the hydrologic model developed by the state of New Mexico and the United States.

B. A Pueblo whose proposed action is determined to cause interference shall offset the interference in the amount determined by the water master. Prior to implementing the proposed action, the Pueblo causing the interference shall notify the water master how it will offset any interference. Within 10 days of receiving such notification, the water master shall notify that Pueblo and any affected owners of record and other affected Pueblos whether the proposed actions are sufficient to offset any interference.

The Pueblo shall not implement the proposed action until the water master determines that the amount of the offset and the delivery method are sufficient to offset any interference.

C. The water master may work with the affected parties to resolve such matters either formally or informally and may discuss matters with one or more affected parties without the need to have all parties present.

D. If the hydrologic record after implementation of the proposed action does not support the water master's determination of interference and required offsets, an affected Pueblo or water right owner of record may request modification of the offset amounts. The Pueblo implementing the proposed action shall make the previously determined offsets until such time as the water master determines that a different amount is appropriate.

E. Provision of offset water by a Pueblo to avoid interference shall not constitute use of water under the Pueblo's first priority water rights. The Pueblos shall offset interference with Pueblo surface water rights and non-Pueblo surface water rights entitled to section 4 protection resulting from a Pueblo's provision of offset water.

[19.25.20.115 NMAC - N, 9/12/2017]

19.25.20.116 WATER MASTER DETERMINATION OF IMPAIRMENT TO GROUNDWATER RIGHTS FROM EXERCISE OF PUEBLO WATER RIGHTS ON PUEBLO LANDS:

A. Within 60 days of receiving notice of a proposed action (or report of anticipated uses of water) under 19.25.20.114 NMAC, the water master shall determine if any non-Pueblo groundwater rights will be impaired by a new use or change in use of water under Pueblo water rights on Pueblo lands. In making these determinations, the water master shall utilize the hydrologic model developed by the state of New Mexico and the United States.

B. Notice of any projected impairment shall be mailed to the affected owner of record by certified mail. The notice of impairment shall include a description of the factual or technical basis for the determination, and any recommended mitigation action such as drilling a replacement well or obtaining an alternate water supply. The water master shall post a notice of all projected impairments on the office of the state engineer's website, together with the reports on anticipated uses of water submitted by the Pueblos. Notice of all projected impairments shall also be mailed to the Governor of each Pueblo.

C. An owner of record that is not identified as being impaired by the uses identified in the Pueblos' reports on anticipated uses of water may within 60 days of the posting of the water master's notice of projected impairments on the office of the state engineer's website request in writing a hearing before the state engineer to demonstrate that their

groundwater rights will be impaired by the Pueblos' use of their first priority water rights and may seek reimbursement for the cost of mitigating the impairment from the mitigation fund in accordance with 19.25.20.118 NMAC.

D. The water master may identify owners of record that will be impaired in addition to those identified pursuant to Subsection A of this Section. The water master shall notify any additional affected owners of record and Pueblos in accordance with the provisions of this Section. Owners of record of water rights that are identified pursuant to this Subsection may seek reimbursement for the cost of mitigating the impairment from the mitigation fund in accordance with 19.25.20.118 NMAC.

[19.25.20.116 NMAC - N, 9/12/2017]

19.25.20.117 CHANGES TO POINT OF DIVERSION, PURPOSE OR PLACE OF USE OF PUEBLO WATER RIGHTS OR NEW EXERCISES OFF THAT PUEBLO'S LANDS:

A. By application to the state engineer, a Pueblo may change the point of diversion, purpose or place of use of its first priority water rights, including a lease of such rights to non-Pueblos, to a point of diversion, place or purpose of use off that Pueblo's lands within the NPT basin.

(1) Applications to the state engineer for use of Pueblo first priority water rights off that Pueblo's lands shall be governed by applicable statutory provisions and administrative rules.

(2) The water master shall determine if any Pueblo or non-Pueblo groundwater rights will be impaired by the granting of an application, and consider any remedies proposed by the Pueblos to reduce impacts on groundwater rights below the threshold for impairment.

(3) An application shall be denied if the proposed change will impair Pueblo or non-Pueblo water rights and remedies are not available to reduce groundwater effects below the level of impairment.

(4) The exercise of a Pueblo's first priority water rights on the lands of another Pueblo is not contrary to the conservation of water within the state or detrimental to the public welfare of the state. The exercise of a Pueblo's first priority water rights on non-Pueblo lands, in and of itself, is not contrary to the conservation of water in the state or detrimental to the public welfare of the state.

(5) An approval of a proposed change to a point of diversion, purpose or place of use off a Pueblo's land shall be conditioned to require offsets to avoid interference with Pueblo surface water rights or non-Pueblo surface water rights entitled to section 4 protection.

(6) Notice of the approval or denial of an application, and any required offsets, shall be mailed to the Pueblo tribal council or governor by certified mail, and posted on the state engineer's website.

(7) Non-Pueblo water rights eligible for section 4 protection shall not be curtailed to provide water for the new or changed exercise of future basin use rights under Pueblo alternative administration.

B. Applications to the state engineer for use of a Pueblo's state law water rights off that Pueblo's lands shall be governed by applicable statutes and administrative rules.

[19.25.20.117 NMAC - N, 9/12/2017]

19.25.20.118 MITIGATION FUND:

A. The New Mexico finance authority shall administer the mitigation fund. The unavailability of funds shall not affect the rights of the Pueblos to utilize their water rights.

B. Money in the mitigation fund may only be expended to mitigate the effects of impairment to non-Pueblo groundwater rights as determined in accordance with 19.25.20.116 NMAC, including reimbursement to non-Pueblo water rights owners of record for the cost to drill a replacement well or to obtain an alternative water supply.

C. An owner of record that is eligible for reimbursement from the mitigation fund pursuant to 19.25.20.116 NMAC may request reimbursement from the mitigation fund for the costs of mitigating the impairment. To request reimbursement, an owner of record shall:

(1) Within 30 days of the receipt of the notice of impairment or a favorable decision pursuant to 19.25.20.116 NMAC, notify the state engineer in writing of their intent to request reimbursement; and

(2) Within 90 days of the notification to the state engineer of their intent to request reimbursement, submit to the state engineer a proposal for mitigation of the impairment and estimated cost of the mitigation with supporting documentation. The state engineer may grant an extension of time to submit a mitigation proposal and estimated cost for good cause shown. The state engineer may request additional information as needed.

D. Within 60 days of receipt of the mitigation proposal and supporting documentation, the state engineer shall approve or disapprove of the mitigation proposal and estimated cost, and notify the owner of record of the determination by certified mail. The state engineer may rely on the documentation submitted by the owner of record or other information available to the office of the state engineer. If the

state engineer disapproves a mitigation proposal or cost estimate, the owner of record may request a hearing within 30 days of the notice of disapproval.

E. Within 90 days of completion of an approved mitigation proposal, the owner of record shall submit an accounting of the amount paid by the owner to mitigate the impairment of their water right.

F. Within 30 days of receipt of the accounting, the state engineer shall direct the New Mexico finance authority to reimburse the owner of record for the mitigation costs, and notify the owner of record of the amount of reimbursement by certified mail. The state engineer may limit the reimbursement to the amount of the approved estimate. An owner of record that is aggrieved by the state engineer's determination the amount of reimbursement from the mitigation fund may request a hearing within 30 days of the notice of the amount of reimbursement.

G. The New Mexico finance authority shall make expenditures from the fund in accordance with this Section and to pay for the finance authority's reasonable costs of administering the fund.

H. Payments from the mitigation fund shall be contingent upon the New Mexico finance authority receiving sufficient appropriations. Nothing in this rule establishes or creates any liability or responsibility on the part of the state to pay mitigation costs for impairment to non-Pueblo groundwater right owners of record as a result of new or changed Pueblo uses of water from any source other than the mitigation fund, nor shall the state have any liability or responsibility to make any payments if the balance in the fund is insufficient to cover those costs.

I. If the New Mexico finance authority determines that the mitigation fund balance is insufficient to reimburse the amount required to mitigate the effects of an impairment, the finance authority shall promptly notify that water right owner of record and the state engineer. Reimbursement shall be paid if and when sufficient amounts are available in the fund, subject to the provisions of this Section.

J. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the mitigation fund and shall be used solely for the purposes set forth in this Section.

[19.25.20.118 NMAC - N, 9/12/2017]

19.25.20.119 PRIORITY ADMINISTRATION:

A. The water master may implement priority administration in the NPT water master district. Priority administration may be initiated by the state engineer as a result of the state engineer's independent determination that priority administration is necessary, as provided by 19.25.13.43 NMAC, and in response to a request for priority administration

by a water right owner of record, Pueblo, the United States as trustee for the Pueblos, or the interstate stream commission.

B. The forms of priority administration applicable in the NPT are described in Subsection C of 19.25.13.7 NMAC, which include direct flow administration, storage water administration, depletion limit administration, and alternative administration. Depletion limit administration and alternative administration are the two forms of administration applicable when the exercise of groundwater rights is causing a surface water owner of record to not receive the water to which the surface water right owner of record is entitled.

C. Sections 2.4.4.5, 3.1.7.2 and 4 of the settlement agreement constitute Pueblo alternative administration that has been accepted by the state engineer as between the Pueblos' first priority rights and the water rights of the non-Pueblo settlement parties. Section 4.1.2 of the settlement agreement constitutes alternative administration that has been accepted by the state engineer of the Pueblo of Tesuque's existing basin use rights.

D. Non-settlement parties' water rights shall only be curtailed under Pueblo alternative administration to the extent such curtailment would occur without the settlement agreement.

E. Non-settlement parties seeking priority administration shall have the same rights and benefits that would be available without the settlement agreement.

[19.25.20.119 NMAC - N, 9/12/2017]

19.25.20.120 ESSENTIAL INDOOR HOUSEHOLD USES NOT SUBJECT TO CURTAILMENT:

Essential indoor household uses from domestic wells shall not be curtailed under priority or Pueblo alternative administration. Essential indoor household uses include drinking, cooking, indoor cleaning, sanitary, and cooling purposes, and exclude all uses made outside of a building.

[19.25.20.120 NMAC - N, 9/12/2017]

19.25.20.121 ALTERNATIVE ADMINISTRATION OF THE PUEBLO OF TESUQUE'S EXISTING BASIN USE RIGHTS:

Under alternative administration of the first priority of the Pueblo of Tesuque's existing basin use rights, the curtailment of non-Pueblo surface water rights entitled to protection under section 4 of the settlement agreement whose points of diversion on the Rio Tesuque are upstream from the Pueblo of Tesuque's southern boundary ("upstream acequias"), shall be limited to the extent necessary to provide a diversion amount by the Pueblo of Tesuque from the Rio Tesuque for irrigation of 71 acres of Pueblo land (71

acres x 4.65 AFA/Y=330.15 AFY). To ensure that the Pueblo of Tesuque receives the 330.15 AFY, the Pueblo of Tesuque and the upstream acequias have agreed that:

A. Upstream acequias may proceed with lawful diversions if, for a period of more than 48 hours:

(1) the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of 3 cubic feet per second ("cfs") or more, or

(2) the USGS No.08308050 Rio Tesuque Below Diversions gage, at or near the Pueblo's southern boundary, indicates a flow of 1.5 cfs or more.

B. Upstream acequias shall reduce or cease their diversions as specified by the water master if the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of less than 3 cfs and the USGS No. 08308050 Rio Tesuque Below Diversions gage, at or near the Pueblo's southern boundary indicates a flow of less than 1.5 cfs but more than 0.8 cfs.

C. Upstream acequias will cease all diversions and will allow all water in the Rio Tesuque to flow down to the Pueblo boundary if for a period of 48 hours, the USGS 08302500 Tesuque Creek Above Diversions gage indicates a flow of less than 1.5 cfs, or the USGS No. 08308050 gage, at or near the Pueblo's southern boundary, indicates a flow of less than 0.8 cfs.

[19.25.20.121NMAC - N, 9/12/2017]

19.25.20.122 IDENTIFICATION AND REPORTING OF NON-PUEBLO IRRIGATED ACREAGE WHICH MAY NO LONGER BE ELIGIBLE FOR SECTION 4 PROTECTION:

A. The water master shall each year compile a list of non-Pueblo lands with surface water irrigation rights that were not irrigated in the past calendar year and that may no longer be eligible for section 4 protection.

B. The list shall include the names and addresses of the current owners of record as they are shown in subfile orders and the records of the office of the state engineer, a description of the location and amount of the non-irrigated acreage, and the number of consecutive years that the acreage has not been irrigated.

C. This list shall be made available for review on the state engineer's website and at the district VI office of the water rights division of the office of the state engineer, and shall be provided to each Pueblo and the United States by July 1 of the following year.

D. After four consecutive years of non-use, the water master shall provide written notice to the owner of record that the water right may no longer be eligible for section 4

protection if the water right is not put to beneficial use within one year, subject to the exceptions described in Subsection C of 19.25.20.123 NMAC.

E. If the water right is not put to beneficial use for more than five consecutive years the irrigation water right is no longer eligible for section 4 protection, unless the owner of the water right demonstrates that (1) such non-use is due to circumstances beyond the control of the water right owner and (2) that the water could not be placed to beneficial use by the owner's diligent efforts.

[19.25.20.122 NMAC - N, 9/12/2017]

19.25.20.123 VOLUNTARY ALTERNATIVE ADMINISTRATION:

A. In addition to Pueblo alternative administration, voluntary alternative administration may be accepted by the water master if the criteria below are met. Voluntary alternative administration may include shortage sharing, such as, but not limited to, percentage division or pro rata allocation, rotation of water use, and reduced diversions. The owners of record of administrable water rights subject to priority administration may request that the water master implement a voluntary form of alternative administration by submitting a written plan to the water master that includes:

- (1) an agreement by the owners of record to the terms and conditions of the plan;
- (2) the name, address and phone number, and electronic mail address, if applicable, of the person designated as the contact person for the owners of record, or in the case of an acequia, the mayordomo of the ditch;
- (3) a description of the water rights included in the plan, the proposed operation of the plan, the specific steps required of the water master to administer the plan, and requirements for reporting the progress of the plan to the water master; and
- (4) a demonstration, through accurate analysis using analytic tools acceptable to the water master, that the implementation of the plan will:
 - (a) economically and satisfactorily apportion the available water supply among owners of record who have agreed to the alternative administration plan;
 - (b) not impair the administrable water rights of owners of record who are not participating in, or have not agreed to, the alternative administration plan;
 - (c) not be contrary to conservation of water in the State; and
 - (d) not be detrimental to the public welfare of the State.

B. The water master shall not implement an alternative administration plan if:

(1) other owners of record of administrable water rights that may be affected by the alternative administration plan object to its implementation, unless the water master determines that the objection is without merit;

(2) one or more owners of record of the administrable water rights subject to the plan rescinds his agreement in writing; or

(3) the water master cannot adequately administer or supervise the alternative administration plan in a manner that ensures that the plan will:

(a) economically and satisfactorily apportion the available water supply among owners of record who have agreed to the alternative administration plan;

(b) not impair the administrable water rights of owners of record who are not participating in, or have not agreed to, the alternative administration plan;

(c) not be contrary to conservation of water in the State; and

(d) not be detrimental to the public welfare of the State.

C. Periods of time during which non-Pueblo acreage with an appurtenant water right is not irrigated because of the implementation of an alternative administration plan shall not be counted as part of any period of non-use that may support a determination that the water right is no longer eligible for protection under section 4.

D. Nothing in this Section prevents the water master from exercising his authority and duties set forth in Section 19.25.20.101 NMAC.

[19.25.20.123 NMAC - N, 9/12/2017]

19.25.20.124 APPORTIONMENT OF WATER BY ACEQUIAS:

Upon notice to the water master of an agreement between acequias taking water from the same source or river for the apportionment and distribution of water for their respective ditches in accordance with Section 73-2-47 NMSA 1978, the water master may recognize the agreement as a form of voluntary alternative administration under this rule.

[19.25.20.124 NMAC - N, 9/12/2017]

19.25.20.125 ALLOCATION OF WATER BY THE BUREAU OF RECLAMATION, POJOAQUE VALLEY IRRIGATION DISTRICT:

Nothing in this rule shall be construed as an assertion by the state engineer of jurisdiction over the process used by the United States bureau of reclamation, the Pojoaque Valley irrigation district, and the Pueblos to allocate storage water prior to

release from Nambé reservoir to members of the Pojoaque Valley irrigation district and the Pueblos.

[19.25.20.125 NMAC - N, 9/12/2017]

CHAPTER 26: SURFACE WATER

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: ADMINISTRATION

19.26.2.1 ISSUING AGENCY:

Office of the State Engineer.

[19.26.2.1 NMAC - N, 1/31/2005]

19.26.2.2 SCOPE:

The administration of all natural waters flowing in streams and watercourses, and supplemental groundwater, within the limits of the state of New Mexico.

[19.26.2.2 NMAC - N, 1/31/2005]

19.26.2.3 STATUTORY AUTHORITY:

Chapter 72, Articles 1, 2, 5, 6, 7 and 9, NMSA. Section 72-1-1 NMSA provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts. Section 72-9-1 NMSA gives the state engineer authority to regulate reservoirs, canals, pipelines or other works and the rights of the owners thereof. Nothing in these rules shall be construed so as to limit the state engineer's authority to take lawful alternative or additional actions relating to the management of surface water resources.

[19.26.2.3 NMAC - N, 1/31/2005]

19.26.2.4 DURATION:

Permanent.

[19.26.2.4 NMAC - N, 1/31/2005]

19.26.2.5 EFFECTIVE DATE:

January 31, 2005, unless a later date is cited at the end of a section.

[19.26.2.5 NMAC - N, 1/31/2005]

19.26.2.6 OBJECTIVE:

To establish standards and procedures implementing the duties of the state engineer as set forth by statute and further defined by judicial decisions to supervise and administer the appropriation, allocation, and use of surface water and supplemental groundwater of the state.

[19.26.2.6 NMAC - N, 1/31/2005]

19.26.2.7 DEFINITIONS:

Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meaning.

A. Abandonment: The loss of a water right based on the nonuse of water and the intent by the water right owner to permanently relinquish or forsake the right.

B. Acequia: An irrigation ditch managed and maintained by the local community it serves. Acequias and community ditch associations are considered legal subdivisions of the state pursuant to Section 73-2-28 NMSA.

C. Acre-foot: A volume of water sufficient to cover one (1) acre of land one (1) foot deep. One acre-foot is equal to 43,560 cubic feet or 325,851 gallons.

D. Beneficial use: The direct use or storage and use of water by man for a beneficial purpose including, but not limited to, agricultural, municipal, commercial, industrial, domestic, livestock, fish and wildlife, and recreational uses. Beneficial use shall be the basis, the measure, and the limit of a water right.

E. Certificate of construction: A document issued by the state engineer which recognizes that construction of the works has been in accordance with the permit.

F. Community ditch: An irrigation ditch managed and maintained by the local community it serves. Acequias and community ditch associations are considered legal subdivisions of the state pursuant to Section 73-2-28 NMSA.

G. Consumptive irrigation requirement (CIR): The quantity of irrigation water, expressed as a depth or volume, exclusive of effective rainfall, that is consumptively used by plants or is evaporated from the soil surface during one calendar year. The consumptive irrigation requirement (CIR) may be numerically determined by subtracting effective rainfall from the consumptive use.

H. Consumptive use: The quantity of water consumed during the application of water to beneficial use. The quantity of water beneficially consumed depends on the requirements of a particular enterprise and how it applies and consumes the water. The authorized diversion of water that is not beneficially consumed in the course of water use is not part of the allowable consumptive use allocation of the water right. The consumptive use of water by a crop (evapotranspiration) does not include depletions such as evaporation from canals, ditches or irrigated fields during surface application, transpiration by vegetation along ditches, evaporation or leakage from irrigation water pipes, evaporation of sprinkler spray and drift losses, and evaporation of runoff and seepage from irrigated fields.

I. Dam: A man-made barrier constructed across a watercourse or off-channel for the purpose of storage, control, or diversion of water.

J. Effective rainfall: The average rainfall during the growing period of a crop that becomes available to help meet the consumptive use of water by the crop.

K. Duty of water (farm delivery requirement): The average quantity of water that is delivered on an annual basis to the farm headgate or is diverted from a source of water that originates on the farm itself - such as a well or spring - to satisfy the consumptive irrigation requirement of crops grown on a farm. In practice, the farm delivery requirement is estimated by dividing the crop irrigation requirement by the irrigation efficiency.

L. Forty-year planning entity: A municipality, county, state university, member-owned community water system, special water users' association, or public utility supplying water to a municipality or county which is allowed a water use planning period of not to exceed forty years pursuant to Section 72-1-9 NMSA.

M. Headgate: A mechanism in a dam or ditch that controls the flow of water through the outlet.

N. Hearing: An administrative proceeding on an order entered by the state engineer, or the filing of an application, protest, aggrievance or other pleading, in which parties may present evidence according to the rules and procedures contained in 19.25.2 NMAC.

O. Historical supply: The average quantity of water historically available from a specific source at the point of diversion to meet the farm delivery requirement. Historical supply is expressed as a percentage of the total farm delivery requirement.

P. Impoundment: Any man made or modified structure or diversion works intended for the retention or detention of water, including but not limited to livestock water tanks, sumps, spring boxes, subsurface excavations, metal tanks, ponds and dams.

Q. Infiltration gallery: Constructed works laid in, adjacent to, or below a streambed or spring source that intercepts surface water.

R. Irrigation efficiency: The portion of the duty of water, expressed as a percentage, consumed to meet the crop irrigation requirement.

S. License: A document issued by the state engineer after final proof of application of water to beneficial use has been filed and inspection has been completed that confirms the extent of diversion and beneficial use of water made in conformance with permit conditions.

T. Livestock: All domestic or domesticated animals that are used or raised on a farm or ranch, including exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae. Livestock does not include canine or feline animals.

U. Livestock water impoundment: Any impoundment used exclusively for watering livestock.

V. Perennial stream: A stream or reach of a stream that flows continuously throughout the year. Under extreme conditions such as severe drought some streams considered perennial may not contain water.

W. Permit: A document issued by the state engineer that authorizes the diversion of water from a specific point of diversion, for a particular beneficial use, and at a particular place of use, in accordance with the conditions of approval. A permit allows the permittee to develop a water right through the application of water to beneficial use, in conformance with the permit's conditions of approval. A permit in itself does not constitute a water right.

X. Point of diversion: The location of constructed works where water is diverted from a stream, watercourse, or well.

Y. Project diversion requirement or off-farm diversion requirement: When the source of water does not originate on the farm, the project diversion requirement or off-farm diversion requirement is the average quantity of water that is diverted from an off-farm source to satisfy the farm delivery requirement for one calendar year.

Z. Proof of application of water to beneficial use: A document filed with the state engineer by a permittee demonstrating the actual beneficial use to which water has been applied under a permit.

AA. Rate of diversion: The instantaneous measurement of water being taken from a stream, watercourse, or well.

BB. Spring: A site where surface water flows freely from the ground under natural conditions. The flow at land surface may be perennial or intermittent in nature.

CC. Stream system: The surface waters of a river or stream and all groundwater hydrologically connected to those surface waters.

DD. Surface water: Water found in any watercourse including impoundments, ponds, lakes, reservoirs, springs, streams and rivers or flows obtained from an infiltration gallery.

EE. Water right: The legal right to appropriate water for a specific beneficial use. The elements of a water right generally include owner, point of diversion, place of use, purpose of use, priority date, amount of water, periods of use, and any other element necessary to describe the right. A permitted or declared right is considered to be a valid water right only to the extent water has been legally placed to beneficial use.

FF. Watercourse: Any river, creek, arroyo, canyon, draw or wash, or any other channel having definite banks and bed with visible evidence of the flow of water.

[19.26.2.7 NMAC - N, 1/31/2005]

19.26.2.8 DECLARATION OF A WATER RIGHT DEVELOPED PRIOR TO MARCH 19, 1907:

All water rights established by beneficial use in New Mexico prior to March 19, 1907, were recognized and confirmed by the state constitution at the time of its adoption. Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source may file a declaration on a form prescribed by the state engineer setting forth the history and continuity of the beneficial use to which said water has been applied. A declaration may be accompanied by a map prepared pursuant to 19.26.2.26 NMAC and may be accompanied by deeds, survey plats, affidavits and other evidence tending to substantiate the claim. If such supporting documents are filed with the state engineer, they will be filed together with the declaration. The declaration may be filed by the declarant on his personal information and belief. No declarations will be accepted for filing within any stream system where an adjudication court has entered an order or decree that operates to bar such claims.

A. Form - content: A declaration shall be filed on a form prescribed by the state engineer. The declaration shall include the following information: the name and address of the declarant, the owner of the land on which the water is used, legal descriptions for the point of diversion and the place of use, the purpose of use, quantity of water used, periods of use, the date water was first applied to beneficial use and the continuity thereof, and any other information deemed necessary by the state engineer. The point

of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. The declarant shall sign the declaration before a notary.

B. Amended declaration: An amended declaration may be filed to supplement the evidence substantiating the claim or to correct any clerical errors in the initial declaration. An amended declaration that changes the purpose of use or amount of water, or that is filed after an application affecting the declared water right has been filed, will only be accepted for filing if substantial and specific documentation supporting the change(s) is filed with the amended declaration. The state engineer will not accept an amended declaration after an application affecting the declared rights has been acted upon by the state engineer in accordance with Subsections F and H of 19.26.2.12 NMAC or 19.25.2 NMAC. An amended declaration may be accompanied by deeds, survey plats, affidavits and other evidence to further substantiate the claim.

C. Filing fee: A fee of \$10 must accompany a declaration, with or without attachments. An amended declaration requires a fee of \$25 with or without attachments. After a declaration has been accepted for filing, submission of any other document associated with the declaration, which becomes a part of the permanent water right record, requires a fee of \$5.00.

D. Action of the state engineer: Upon receipt of a declaration or amended declaration a preliminary investigation may be performed by the state engineer. If this preliminary investigation reveals deficiencies in the declaration or amended declaration, the declaration may be returned to the declarant. If the declaration is accepted for filing by the state engineer, the acceptance does not constitute validation of the right claimed. The declaration may be recorded by the declarant in the office of the county clerk of the county wherein the diversion works are located.

[19.26.2.8 NMAC - N, 1/31/2005]

19.26.2.9 NOTICE OF INTENTION TO FILE APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER:

A notice of intention to file an application for permit to appropriate surface water may be filed for the purpose of establishing priority of application. The application shall be prepared and filed within one year of the date of filing of the notice. A notice of intention to file an application for permit to appropriate surface water, automatically expires at the end of one year if an application as described in the notice of intention is not filed.

A. Form - content: A notice of intention to file application for permit to appropriate surface water shall be filed on a form prescribed by the state engineer. A notice of intention shall include the following information: the name and address of the applicant, the use to which the water will be applied, the amount of water required for the proposed use, legal descriptions for the point of diversion and the place of use, the method of conveyance, and the annual water use schedule. The point of diversion shall

be described using latitude and longitude or the New Mexico state plane coordinate system. If a notice lacks any of this information, it may be returned for completion.

B. Filing fee: A fee of \$25 must accompany the notice of intention to file an application.

C. Rejection of notice of intention: When the state engineer is of the opinion that there is no unappropriated surface water available, the notice of intention shall be rejected or refused.

[19.26.2.9 NMAC - N, 1/31/2005]

19.26.2.10 APPLICATION FOR PERMIT TO APPROPRIATE SURFACE WATER:

Any appropriation of surface water initiated on or after March 19, 1907 requires a valid permit issued by the state engineer. Any person, firm, corporation, public or private, or any other entity intending to appropriate surface water shall file an application on a form prescribed by the state engineer. Except where a notice of intention is filed, the date of filing of an application for permit to appropriate establishes the priority of application. Application maps (see 19.26.2.25 NMAC), preliminary surveys, design data and additional information shall be included with an application to provide all essential facts relating to the request.

A. Form - content: An application to appropriate surface water shall be filed on a form prescribed by the state engineer. The application shall include the following information: the name and address of the applicant, the proposed use, the annual diversion of water requested for the proposed use, legal descriptions of the point of diversion and the place of use, the method of conveyance, the annual diversion schedule, and other information the state engineer may deem necessary. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system.

B. Filing fee: An application to appropriate surface water shall be accompanied with filing fees as follows:

(1) \$25 for a rate of diversion amount not to exceed five (5) cubic feet of water per second;

(2) \$25 plus \$5 for each additional cubic foot per second over five (5) cubic feet per second, unless the appropriation is for power generation purposes and the amount of water diverted is returned to the river bed in substantially undiminished quantity, in which case, the filing fee shall be \$25 plus \$1 for each additional cubic foot per second required;

(3) \$10 for each one thousand (1000) acre-feet, or fraction thereof, of storage capacity if the request is primarily for storage of excess and flood water;

(4) For a canal or other water conduit, \$25 where the capacity does not exceed fifty (50) cubic feet of water per second, and \$10 for each additional fifty (50) cubic feet per second or fraction thereof.

(5) Additional required fees for examining plans and specifications for dams and for inspection of dam sites are described in 19.25.12 NMAC.

[19.26.2.10 NMAC - N, 1/31/2005]

19.26.2.11 CHANGES TO DECLARED, PERMITTED, LICENSED OR ADJUDICATED RIGHTS:

Any change in point of diversion, place of use, or purpose of use of declared, permitted, licensed, or adjudicated surface water rights may be made only upon issuance of a permit by the state engineer. The owner of record of a water right must be the applicant or co-applicant on an application. An access agreement shall accompany an application if the applicant is not the owner of the land on which a new point of diversion is proposed.

A. Application for permit to change point of diversion: A permit from the state engineer is required to change any point of diversion. A point of diversion may be changed within a stream system without losing the priority of the right if such change can be made without detriment to existing surface water rights or impairment to existing ground water rights, and is not contrary to the conservation of water within the state nor detrimental to the public welfare of the state.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply for the move-from point of diversion, the source of water supply for the move-to point of diversion, the priority date of the water right, the diversion amount, the consumptive use amount, the purpose of use, the reason for change, the legal description of the place of use, the location of the present point of diversion, the location of proposed point of diversion, and other information the state engineer deems necessary. The locations of the move-from and move-to points of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. An application for a change in point of diversion of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

(2) **Filing fee:** A fee of \$100 must accompany each application.

B. Application for permit to change place and/or purpose of use: A permit from the state engineer is required to change the place and/or purpose of use of all or any part of a water right. If the applicant is not the landowner, written consent by the owner of the land upon which water rights are appurtenant must accompany the application.

Water rights may be transferred within a stream system without losing the priority of the right if such change can be made without detriment to existing surface water rights or impairment to existing ground water rights, and is not contrary to the conservation of water within the state nor detrimental to the public welfare of the state. For applications proposing to change the purpose of use, only the consumptive use established and available at the move-from location may be considered for transfer to the new purpose of use. In the context of permits and declarations, only that amount of water that has been legally placed to actual beneficial use may be considered for a change in place and or purpose of use.

(1) Form - content: The owner of record of a water right shall file an application on a form prescribed by the state engineer. The application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply, the priority date of the water right, the location of the point(s) of diversion, the present diversion amount, the present consumptive use amount, the present purpose of use, the reason for change, the legal description of the present place of use, the proposed diversion amount, the proposed consumptive use amount, the proposed purpose of use, the legal description of the proposed place of use and other information the state engineer deems necessary. The point of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. An application for a change in place and/or purpose of use of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

(2) Filing fee: A fee of \$100 must accompany each application.

(3) Appurtenance: No irrigation right shall be assigned or transferred apart from the land, and title to land may not be transferred apart from appurtenant water rights, except in the manner specifically provided in Sections 72-1-2, 72-5-22, and 72-5-23 NMSA.

C. Application for permit to drill and use a well to supplement a surface water right: Within declared underground water basins an application for a permit from the state engineer is required to drill a well and use the groundwater to supplement any part of a surface water right. Surface water rights may be supplemented with groundwater provided that groundwater is available for appropriation and such change can be made without impairment to existing water rights, is not contrary to conservation of water within the state, and is not detrimental to the public welfare of the state. In the context of declared, permitted, licensed, or adjudicated surface water rights, only that amount of water that has been historically and legally placed to beneficial use from the surface source may be supplemented with groundwater. In no event shall the combined diversion from the surface source and supplemental well exceed the historical supply. Upon approval of a supplemental well, the state engineer shall require metering and reporting of diversions from both sources.

(1) **Form - content:** The owner of record of a water right shall file an application on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of surface water supply, the priority date of the surface water right, the location of the surface water point of diversion, the diversion amount, the consumptive use amount, the purpose of use, the legal description of the place of use, the reason for the supplemental well, the location of the proposed well, and other information the state engineer deems necessary. The proposed supplemental well shall be described using latitude and longitude or the New Mexico state plane coordinate system. If an application lacks any of this information, it may be returned to the applicant for completion.

(2) **Filing fee:** A fee of \$100 must accompany an application.

(3) **Emergency supplemental wells:** Emergency authorization to drill and use a well to supplement a primary surface water rights is not authorized in statute and will not be considered.

D. Emergency change in point of diversion, storage or use of an existing water right: Written authorization from the state engineer is required for an emergency change in point of diversion, storage, or use of water. Emergency authorization may be requested upon the filing of an application and an affidavit showing that an emergency exists in which the delay caused by awaiting publication or hearing would result in crop loss or other serious economic loss. The state engineer may grant the authorization if he determines, after preliminary review, that no foreseeable detriment will occur to existing water rights of other ownership. Within thirty (30) days of an authorization granted by the state engineer, if notice of the application has not already been published, the applicant shall publish the notice in accordance with 19.26.2.12 NMAC. The emergency authorization shall continue in effect as conditioned in the emergency authorization or until the state engineer enters a final decision on the application, whichever occurs first. The emergency authorization will be revoked upon violation of any condition of the emergency authorization. Issuance of the authorization does not obligate favorable consideration by the state engineer on the pending application. A request for an emergency change in the point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch shall include the documentary evidence required by Subsection F of 19.26.2.11 NMAC.

E. Return flow credit: Surface water return flow is that percentage of the total diversion of surface water that has been applied to beneficial use pursuant to a water right or permit and returned to the same surface water stream from which it was appropriated. In no instance may a return flow credit allow an increase in the authorized consumptive use amount, impair existing water rights, be contrary to the conservation of water within the state, or be detrimental to the public welfare of the state. A permit from the state engineer is required to receive return flow credit. An application for return flow shall be accompanied by a return flow plan. Upon review of a return flow application and plan, the state engineer may request additional information, correction, clarification,

modification, or other revision as deemed necessary. The permittee has the final burden of demonstrating return flow. The state engineer may approve an application for return flow if the permitted, licensed, or adjudicated consumptive use amount is not increased, the return flow does not violate any applicable standards, regulations, or permits promulgated pursuant to the New Mexico Water Quality Act, or the federal Clean Water Act, and the requirements of 19.26.2.12 NMAC have been satisfied.

(1) Form - content: An application shall be filed on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file numbers, the source of water supply, the priority date of the water right, the location of point of diversion, the authorized diversion amount, the authorized consumptive use amount, the purpose of use, the legal description of the place of use, the proposed diversion amount, the location of the return flow back to the source, the measurement technique employed to quantify the total diversion, the measurement technique employed to quantify the return flow, proof of any applicable New Mexico environment department or other discharge permits, and other information the state engineer deems necessary. The location of the point of diversion and the location of return flow back to the source shall be described using latitude and longitude or the New Mexico state plane coordinate system.

(2) Filing fee: A fee of \$100 must accompany an application.

(3) Return flow plan: The permittee shall demonstrate any return flow claimed by submitting a return flow plan acceptable to the state engineer. The actual timing and amount of return flows shall be demonstrated by acceptable field measurement. The plan shall describe the hydrologic conditions and must substantiate the return flow sought by a method acceptable to the state engineer.

(4) Monitoring, reporting and continuing jurisdiction: All approved permits for return flow credit shall require monitoring and annual reporting. The state engineer shall retain jurisdiction over all return flow credit permits and may revise return flow credits as deemed appropriate. The amount of return flow credit may be administered on a year-to-year basis. Return flow credits shall not accrue and may not be carried over to the following year. In the event of changes in established patterns of water use, appropriately revised return flow plans may be required in order to receive continued consideration for return flow credit.

F. Additional application requirements for water rights associated with acequias or community ditches: In addition to the requirements of Subsections A, B, C, and D of 19.26.2.11 NMAC, an application for a change, including an emergency change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 and Sections 73-3-1 through 73-3-11 NMSA, shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA. The documentary evidence shall include a copy of the applicant's written request to the commissioners of the acequia or community ditch for approval of the proposed change,

together with the evidence that the request was delivered to the commissioners by certified mail; and one of the following:

(1) documentary evidence provided by the commissioners of the acequia or community ditch showing that the applicant has complied with all applicable requirements duly adopted by the acequia or community ditch pursuant to Sections 73-2-21 or 73-3-4.1 NMSA; or

(2) an affidavit provided by the commissioners of the acequia or community ditch stating that the acequia or community ditch has not adopted any requirements pursuant to Sections 73-2-21 or 73-3-4.1 NMSA; or

(3) an affidavit provided by the applicant stating that the acequia failed to make a decision in response to the applicant's written request for approval of the proposed change within one hundred and twenty (120) days after the applicant mailed the request to the commissioners by certified mail.

G. Additional changes requiring permit: Any other change requiring a permit from the state engineer not specifically covered by this section shall conform generally to this section and the rules and regulations of the office of the state engineer.

[19.26.2.11 NMAC - N, 1/31/2005]

19.26.2.12 APPLICATION PROCESSING:

This section describes the process in which applications filed pursuant to 19.26.2.10 or 19.26.2.11 NMAC will be processed.

A. Return of application: The state engineer may return an application to the applicant, with a statement of corrections required, if the application is found to be faulty or incomplete. If the application is returned to the state engineer with the necessary information within sixty (60) days from the date the application is returned by the state engineer, the original filing date of the application shall be retained.

B. Rejection of application: When, after preliminary review of the information provided by the applicant, the state engineer is of the opinion that there is no unappropriated surface water available, or that the approval of the application would be contrary to the conservation of water within the state or detrimental to the public welfare of the state, or that the applicant has not complied with the applicable requirements of Section 72-5-24.1 NMSA, then the application shall be rejected. The state engineer shall decline to order the publication of notice of any such application.

C. Publication: After receipt of an acceptable application, the state engineer will issue a notice for publication to the applicant. The notice issued by the state engineer shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation - as prescribed by the state engineer - for every county affected. The

notice will also be placed on the state engineer web-site (www.ose.state.nm.us). Only notices issued by the state engineer pursuant to Section 72-5-4 or Section 72-12-3 NMSA shall be valid. Prior to publication, the applicant shall ensure that the notice provides all essential facts pertaining to the application, including the location of the point(s) of diversion, the amount and timing of the diversion of water, the place of use, and the purpose for which the water is to be used. The applicant shall ensure the accuracy of publication of the notice in the newspaper. The responsibility for publication and all expenses associated with publication or republication shall be borne by the applicant. An affidavit of the publication shall be filed with the state engineer within sixty (60) days of the notice being issued to the applicant by the state engineer. Failure to file an affidavit of publication within the stated time shall result in the filing date of the application being postponed to the date the last affidavit is filed.

D. Amended notice and republication: If publication of the notice is defective, the state engineer may order republication. If an amendment is made to an application after publication of the original notice that changes the location of the point of diversion, requests a larger diversion amount or a larger consumptive use of water or changes the place or purpose of use of the water, the state engineer shall issue an amended notice and require the publication of the amended notice. Any republication cost or cost to publish an amended notice shall be paid by the applicant. An amended notice shall be published in accordance with the requirements of Subsection C of 19.26.2.12 NMAC.

E. Protest to application: Any person, firm, corporation or other entity objecting that the granting of the application will impair the objector's water rights shall have standing to file objections or protests. Any person, firm, corporation or other entity objecting that granting of the application will be contrary to the conservation of water within the state or detrimental to the public welfare of the state and showing that the objector will be substantially and specifically affected by the granting of the application shall have standing to file objections or protests. Pursuant to Section 72-5-5.1 NMSA, standing shall be afforded for those asserting legitimate concerns involving public welfare and conservation of water in a manner which avoids unduly burdening the administrative and judicial process. All objections and protests shall set forth the grounds for asserting standing. All objections or protests failing to meet the above criteria for standing will not be recognized as valid protests. The state of New Mexico or any of its branches, agencies, and political subdivisions shall have standing to file objections or protests. The state engineer will mail one copy of the objections or protests to the applicant.

(1) Filing deadline: All objections and protests must be filed with the state engineer not later than ten (10) calendar days after the date of the last publication of the notice. If the final day for filing a protest falls on a weekend or a state of New Mexico recognized holiday, protests received on the next business day shall be deemed timely. All objections or protests filed after the ten-day period will not be recognized as valid protests.

(2) Filing an objection or protest by facsimile: Objections or protests may be filed via facsimile no later than 5:00 p.m. (mountain time) of the tenth calendar day after the date of last publication of notice, provided the original objections or protests are mailed and postmarked within twenty-four (24) hours after transmission of the facsimile. If the original objections or protests are not mailed and postmarked within twenty-four (24) hours of transmission, the protest will be deemed untimely, and will not be recognized by the state engineer as a valid protest.

(3) Hearing before the state engineer: The state engineer encourages the parties to resolve the objection or protest. If the applicant and protestant cannot reach agreement by which the protest can be withdrawn, the matter shall proceed to hearing as described in 19.25.2 and 19.25.4 NMAC, unless the state engineer determines that the application should be denied, in which case the state engineer may deny the application prior to holding a hearing.

F. Action of the state engineer - protested application:

(1) Denial of application: The state engineer may deny a protested application, prior to or after holding a hearing, if the state engineer determined one or more of the following:

- (a)** No water right exists.
- (b)** Granting the application would be detrimental to or impair existing water rights.
- (c)** Granting the application would be contrary to the conservation of water within the state.
- (d)** Granting the application would be detrimental to the public welfare of the state.
- (e)** For a new appropriation, available information indicates that there is no unappropriated surface water.

(2) Permits - conditions of approval: The state engineer may approve a protested application after holding a hearing and may impose reasonable conditions of approval.

G. Withdrawal of application: An applicant may request in writing that an application be withdrawn. A withdrawn application is not subject to reinstatement, although the applicant may refile the application or a similar application at a later date. A copy of the withdrawn application remains part of the public record. A protested application may not be withdrawn and refiled for the purpose of removing a standing protest. When a protested application is withdrawn and the same or similar application is filed within one calendar year of the withdrawal date, the state engineer will attempt to

notify the previous protestant(s) of the refiled application. The withdrawal of an application that is currently in the hearing process before the state engineer may only be withdrawn pursuant to 19.25.2 NMAC.

H. Action of the state engineer - unprotested application: After receipt of an affidavit of publication for an application to which no timely protest was received or remains, the state engineer will act on the application.

(1) Denial of application: The state engineer shall deny an application if the state engineer makes any of the five determinations listed in Paragraph 1 of Subsection F of 19.26.2.12 NMAC.

(2) Permits - conditions of approval: The state engineer may approve an application and may impose reasonable conditions of approval including measurement at the point of diversion. The state engineer retains jurisdiction of all permits.

I. Request to set aside decision for reconsideration or hearing: Upon receipt of notice from the state engineer of the decision on an application, if the permittee is aggrieved by any of the conditions of approval, the permittee may within thirty (30) calendar days of such receipt request in writing that the decision be set aside for the purpose of reconsideration or hearing. The state engineer may issue an order setting aside all or part of his decision for the purpose of reconsideration or hearing. That part of the permit which is set aside shall revert to application status and may not be exercised.

(1) State engineer order to set aside decision for the purpose of reconsideration: At the request of the permittee, the state engineer may issue an order setting aside all or part of his decision for the purpose of reconsideration. If additional information is to be submitted for reconsideration, the order shall specify the time allowed for submission. Failure to submit information within the specified time shall result in reinstatement of the original decision. Upon receipt of notice from the state engineer of the decision on a reconsideration of an application, if the permittee is aggrieved by the decision, the permittee may within thirty (30) calendar days of such receipt request in writing that the decision be set aside for the purpose of hearing in accordance with 19.25.2 and 19.25.4 NMAC.

(2) State engineer order to set aside decision for the purpose of hearing: At the request of the permittee, the state engineer shall issue an order setting aside all or part of his decision for the purpose of hearing. After the state engineer issues an order setting aside all or part of his decision for the purpose of hearing in accordance with 19.25.2 and 19.25.4 NMAC.

[19.26.2.12 NMAC - N, 1/31/2005]

19.26.2.13 PERMITS:

Upon state engineer approval an application becomes a permit. A permit allows the permittee to place water to beneficial use in accordance with the permit conditions of approval.

A. Construction of works and proof of completion: No works for the storage, diversion, or carriage of water may be constructed or substantially modified except in accordance with the permit conditions of approval. Any such construction or modification must be supervised by a professional engineer, registered in the state of New Mexico, unless the state engineer in his discretion expressly waives this requirement. On or before the date set in the permit for the completion of works, the permittee shall notify the state engineer that work has been completed by filing with the state engineer proof of completion of works.

(1) Form - content: The permittee shall submit proof of completion of works on a form prescribed by the state engineer. The form shall include the following information: the name and address of the permittee, the pertinent state engineer file number(s), the source of water supply, the name of the stream system, the location of point of diversion, a description of the constructed works - including diversion dams, storage dams, main canals, headgates, pipelines, flumes, reservoirs, and laterals, the date the construction of works was completed, a description of rights-of-way, and other information the state engineer deems necessary. The point(s) of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If the proof of completion form filed by the permittee lacks any of this information, it may be returned for completion.

(2) Filing fee: A fee of \$25 must accompany a proof of completion of works.

(3) Unsafe or defective construction: Upon submission of a proof of completion of works, the state engineer will order the inspection of the works after notice to the permittee. At any time before or after issuance of a certificate of construction, the state engineer may order the inspection of the works after notice to the permittee. If the state engineer determines after inspection that the works for the storage, diversion, or carriage of water are unsafe or do not comply with the permit conditions of approval, the state engineer may require the permittee to make necessary changes within a reasonable time.

(4) Certificate of construction: Upon completion of the works to the satisfaction of the state engineer, the state engineer will issue a certificate of construction, which shall describe the constructed works, the location of the point(s) of diversion, the capacities of the works for the storage, diversion, or carriage of water, and certify the adequacy of the works for the permitted uses.

B. Proof of application of water to beneficial use: Upon applying water to beneficial use as provided by the permit, on or before the due date set by the permit, the permittee shall file with the state engineer proof of application of water to beneficial use. The beneficial use of water must be in accordance with the permit conditions of

approval. Once a proof of application of water to beneficial use has been filed, the water right shall be limited to the amount of water that has been put to beneficial use, and no further development of the water right may occur.

(1) Form - content: The permittee shall submit proof of application of water to beneficial use on a form prescribed by the state engineer. The form shall include the following information: the name and address of permittee, the pertinent state engineer file number(s), the source of water supply, the name of the stream system, the location of the point(s) of diversion, the location of the place of use, the purpose of use to which the water is being beneficially applied, the annual diversion of water, the method of conveyance, the annual diversion schedule, and other information the state engineer may deem necessary. The point(s) of diversion shall be described using latitude and longitude or the New Mexico state plane coordinate system. If the form filed by the permittee lacks any of this information, it may be returned for completion.

(2) Filing fee: A fee of \$25 must accompany a proof of application of water to beneficial use.

(3) Survey plat: A survey shall be conducted in accordance with the requirements of 19.26.2.26 NMAC of the diversion works and place of use of the water by a surveyor or professional engineer registered in the state of New Mexico. The permittee shall submit a plat of the survey with the proof of beneficial use.

C. Application for extension of time: When a permittee is unable to construct the necessary works or apply water to beneficial use within the time authorized, the permittee may file with the state engineer an application for extension of time. The application shall state all reasons for the request for additional time, describe the works which have been completed, the extent of application of water to beneficial use under the permit at the time of the request, and a plan setting forth the dates when the project will be completed or when the total amount of water to be appropriated under the permit will be applied to beneficial use. The application may be accompanied by affidavits, photographs of works completed, or other information supporting the request. The state engineer may grant an extension of time upon a proper showing of due diligence or reasonable cause for delay, or upon the state engineer finding that it is in the public interest to allow additional time. Financial inability of the permittee to proceed with a project is not a sufficient reason for granting an extension of time. Failure of the permittee to provide a proper showing of due diligence or reasonable cause for delay as described in Section 72-5-28 NMSA, shall result in denial of the extension of time. Denied requests for extension of time may be appealed as provided in Subsection I of 19.26.2.12 NMAC. The water right established shall be limited by that amount of water lawfully applied to beneficial use pursuant to the terms of the permit. Failure to file proof of beneficial use within the time allotted by the state engineer shall result in cancellation of the permit.

(1) Term: An extension of time may be granted for a period not to exceed three (3) years. Except as provided in Subsections F and G of 19.26.2.19 NMAC, no

extensions of time shall be granted which in combination extend the time allowed by the permit beyond ten (10) years from the initial date of approval of the application, unless the state engineer in his discretion expressly waives this limitation pursuant to Section 72-5-14 NMSA. For applications for extension of time for filing proof of completion of works, the state engineer may upon the request of the applicant allow additional time for the completion of works equal to the time during which work was prevented by acts of God, operation of law, or other causes beyond the control of the applicant. For applications for new appropriations pursuant to Subsection G of 19.26.2.19 NMAC, and for application for water rights transferred pursuant to Subsection F of 19.26.2.19 NMAC, no extensions of time shall be granted which in combination extend the time allowed by the permit beyond forty (40) years from the date the application was filed at the office of the state engineer.

(2) Form - content: The permittee shall submit an application for extension of time on a form prescribed by the state engineer. The form shall include the following information: the name and address of the permittee, the pertinent state engineer file number(s), the reason(s) for requesting additional time under which to complete constructed works or apply water to beneficial use, a plan setting forth the dates when the project will be completed or when the total amount of water to be appropriated under the permit will be applied to beneficial use, a description of the works which have been completed and the extent of application of water to beneficial use under the permit at the time of the request, and other information the state engineer may deem necessary. If an application lacks any of this information, it may be returned for completion. The application may be accompanied by affidavits, photographs of works completed, or other information supporting the request.

(3) Filing fee: A fee of \$50 must accompany an application for extension of time.

D. License to appropriate: After notice to the permittee, the state engineer or his designee may perform a field inspection of the permittee's application of water to beneficial use. Upon application of water to beneficial use in accordance with the permit conditions of approval the state engineer will issue a license to appropriate water, which shall define the extent and conditions of use under which the water right has been established. A license to appropriate shall recognize a water right only to the extent water has been applied to beneficial use under the conditions of the permit, and shall not recognize any diversion of water that exceeds the permit conditions of approval. A license may be revoked for failure to comply with the terms of the license.

E. Cancellation of permit: The state engineer may cancel a permit upon failure of a permittee to comply with the permit conditions of approval or any applicable provisions of 19.26.2 NMAC or Chapter 72 NMSA. The state engineer may also cancel a permit upon request from the permittee. Upon final cancellation of a permit, the water subject to the permit reverts to the public.

19.26.2.14 LIVESTOCK WATER IMPOUNDMENTS:

A permit is required to impound surface water for watering livestock. If the proposed impoundment is created by a dam that exceeds ten feet in height measured from the lowest point on the downstream toe to the dam crest, or exceeds ten acre-feet in storage capacity, the applicant shall comply with the applicable dam construction requirements in 19.25.12 NMAC. Watering of livestock does not include the impoundment of surface or groundwater in any amount for fishing, fish propagation, recreation, or aesthetic purposes.

A. Form - content: An application for permit for livestock water impoundment shall be filed on a form prescribed by the state engineer. The application shall include the following information: the name and mailing address of the applicant, owner of land on which the livestock water impoundment will be constructed, proof of permission from land owner (if other than applicant) to construct a livestock water impoundment, name of the livestock water impoundment, location of the livestock water impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, name of the watercourse, maximum depth of the livestock water impoundment, height of dam and height of spillway from the lowest natural ground surface on the downstream side to the dam crest, surface area and storage capacity of the impoundment at lowest spillway elevation, map illustrating location of proposed livestock water impoundment and source of water, type of stock, amount of stock, other sources of water locally available for stock watering, and any other information deemed necessary by the state engineer. If an application lacks any of this information, it may be returned to the applicant for completion.

B. Filing fee: A fee of \$10 must accompany the application for a livestock water impoundment.

C. Return or rejection of an application: After reviewing each application, the state engineer will notify the applicant if any deficiencies are found with the application. The applicant will be given an opportunity to correct any deficiencies noted in the application. All deficiencies noted by the state engineer shall be corrected prior to acceptance and action on the proposed application for livestock water impoundment.

D. Action of the state engineer: The state engineer shall approve an application if, after review, the state engineer is of the opinion that the proposed use qualifies as a livestock water impoundment by meeting the following requirements: the impoundment is not fed by or located on a perennial stream, the impoundment is used for stock watering, and the capacity of impoundment is 10 acre-feet or less. The state engineer may take into account the maximum amount of water required per livestock unit and shall take into account regional and climatic conditions that affect consumption. The state engineer may impose reasonable conditions of approval. An application may be denied if the state engineer is of the opinion that the proposed impoundment does not qualify as a livestock water impoundment. A permit to appropriate water must be obtained pursuant to Section 19.26.2.10 or 19.26.2.11 NMAC if the proposed

impoundment is located on or fed by a perennial stream or if the capacity of the impoundment exceeds 10 acre-feet.

E. Proof of construction: No works may be constructed or modified except in accordance with the permit conditions of approval. Upon completion of a livestock water impoundment, a statement of completion of construction shall be filed with the state engineer on a form prescribed by the state engineer. Said statement of completion shall be filed within one year of approval or the permit shall automatically expire. An expired permit shall not be subject to reinstatement.

F. Declaration of existing livestock water impoundments: Any person, firm or corporation claiming to be the owner of a water right established prior to March 19, 1907, from any surface water source, may file a declaration on a form prescribed by the state engineer pursuant to 19.26.2.8 NMAC. Any person, firm or corporation claiming to be the owner of a livestock water impoundment where the impoundment was created after March 19, 1907 but before May 19, 2004, may file a declaration of existing livestock water impoundment, provided the storage capacity is less than ten acre-feet. The declaration shall set forth the history and continuity of the beneficial use to which said water has been applied. A declaration may be accompanied by a map prepared pursuant to 19.26.2.26 NMAC and may be accompanied by deeds, survey plats, affidavits and other evidence tending to substantiate the claim. If such supporting documents are filed with the state engineer, they will be filed together with the declaration. The declaration may be filed by the declarant on his personal information and belief. No declarations will be accepted for filing within any stream system where an adjudication court has entered an order or decree that operates to bar such claims.

(1) Form - content: A declaration of livestock water impoundment shall be filed on a form prescribed by the state engineer. The declaration shall include the following information: the name and mailing address of the declarant, owner of land on which the livestock water impoundment is located, proof of permission from land owner(if other than declarant) to construct a livestock water impoundment, name of the livestock water impoundment, location of the livestock water impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, name of the watercourse, maximum depth of the livestock water impoundment, height of dam and height of spillway from the lowest natural ground surface on the downstream side to the dam crest, surface area and storage capacity of the impoundment at lowest spillway elevation, map illustrating location of the livestock water impoundment and source of water, type of stock, amount of stock, other sources of water, quantity of water used, the date of construction, the date water was first applied to beneficial use and the continuity thereof, and any other information deemed necessary by the state engineer. The declarant shall sign the declaration before a notary. If a declaration lacks any of this information, it may be returned to the declarant for completion.

(2) Filing fee: A fee of \$10 must accompany the declaration for a livestock water impoundment.

[19.26.2.14 NMAC - N, 1/31/2005]

19.26.2.15 PONDS AND OTHER IMPOUNDMENTS:

A permit is required to capture or store surface water in an impoundment. An application to capture and store surface water shall be filed pursuant to 19.26.2.10 NMAC or 19.26.2.11 NMAC unless the impoundment of water is authorized as a livestock watering impoundment under 19.26.2.14 NMAC. A permit to appropriate water is required for an impoundment created by constructed works, sand and gravel operations, or mining operations, including excavations that fill with water. Dams exceeding 10 feet in height or that can store in excess of 10 acre-feet shall meet the requirements of 19.25.12 NMAC.

A. Form - content: An application for an impoundment shall be filed pursuant to the requirements of 19.26.2.10 NMAC or 19.26.2.11 NMAC. In addition to the information required for an application filed under 19.26.2.10 NMAC or 19.26.2.11 NMAC, an application for a pond or other impoundment shall also include: the name of the proposed impoundment, the location of the impoundment using public land survey system, latitude and longitude, or the New Mexico state plane coordinate system, the maximum depth of the impoundment, the perimeter of the impoundment, the maximum surface area, the estimation of annual evaporative losses, the slope(s) of the interior basin, the outlet conduit size and slope, a table showing the stage, surface area and storage capacity of the impoundment, and the time to empty the impoundment.

B. Flood control: No permit to appropriate water is required for an impoundment when the primary purpose of the impoundment is flood control, provided the outlet drains the impoundment (from the spillway crest) in 96 hours. The water shall not be detained in the impoundment in excess of 96 hours unless the state engineer has issued a waiver to the owner of the impoundment.

[19.26.2.15 NMAC - N, 1/31/2005]

19.26.2.16 [RESERVED]

19.26.2.17 CHANGE OF OWNERSHIP:

In the event of any changes of ownership affecting the title to a declaration, permit, license, or adjudicated water right, the new owner shall file a change of ownership form with the state engineer. The new owner shall file a separate change of ownership for each declaration, permit, license, or adjudicated water right of record filed with the state engineer. Upon acceptance by the state engineer for filing, the new owner shall record a copy of the change of ownership form filed with the state engineer with the clerk of the county in which the declaration, permit, license, or adjudicated water right is located.

A. Form - content: The new owner shall file a change of ownership in duplicate on a form prescribed by the state engineer. A change of ownership shall include the

following information: the name of the owner of record, the name and address of the new owner, the state engineer file number, the diversion amount, the consumptive use amount, the purpose of use, the legal description of the place of use, the priority date(s), and any other information the state engineer deems necessary. The new owner shall sign each form before a notary. If a change of ownership form lacks any of this information, it may be returned for completion.

B. Filing fee: A fee of \$5 must accompany a change of ownership form.

C. Proof of ownership: The new owner shall attach to the change of ownership form a copy of a warranty deed or other instrument of conveyance that has been duly recorded with the clerk of the county in which the declaration, permit, license, or adjudicated water right is located. The warranty deed or other instrument of conveyance shall show the ownership of the declaration, permit, license, or adjudicated water right in the name of the new owner. The state engineer will not accept for filing a change of ownership form that is not accompanied by a recorded instrument of conveyance.

(1) Acceptable instruments of conveyance for the purposes of this section include, but are not limited to, warranty deeds, special warranty deeds, quitclaim deeds, personal representative's deeds, special master's deeds, and tax deeds, where such instruments unconditionally convey present title to the declaration, permit, license, or adjudicated water right.

(2) Real estate installment sales contracts or memoranda of such contracts, mortgages, instruments conveying security interests, or other documents that do not on their face unconditionally convey present title to the declaration, permit, license, or adjudicated water right are not acceptable instruments of conveyance for the purposes of this section.

D. Effect: A change of ownership form filed with the state engineer notifies the state engineer that a change in ownership has been effected by a legal instrument of conveyance. Acceptance of a change of ownership form by the state engineer for filing does not constitute approval by the state engineer of either the validity of the conveyance or the validity of the right conveyed.

E. Appurtenance: Except as otherwise provided by written contract between the owner of the land and the owner of a ditch, reservoir, or other works for the storage or conveyance of water, all surface waters appropriated for irrigation purposes are appurtenant to the land upon which they are used by operation of Sections 72-1-2 and 72-5-23 NMSA. No irrigation water right appurtenant to the land irrigated shall be assigned or conveyed apart from the land unless it is expressly severed from the land in the manner provided by law.

[19.26.2.17 NMAC - N, 1/31/2005]

19.26.2.18 LEASE OF WATER RIGHTS:

An owner of a water right may lease all or any part of their right for a period not to exceed ten (10) years pursuant to Section 72-6-3 NMSA except that a water right may be leased for a period not to exceed forty years by a forty year planning entity as provided in Section 72-1-9 NMSA. Transfers of agricultural water to municipal/industrial use pursuant to Section 73-10-48 NMSA will be covered by rules and regulations promulgated pursuant to the statute. Prior to the use of water pursuant to a lease, if the proposed point of diversion or place or purpose of use differs from that of the owner's water right in any respect, a permit must be obtained from the state engineer for the term of the lease. The procedure for filing an application shall be the same as described in 19.26.2.11 NMAC. The amount of water that an owner/lessor may use during the term of a lease shall be reduced by the amount of water so leased. Upon termination of such a lease, the point of diversion and place and purpose of use subject to the lease shall revert to the owner's original point of diversion and place and purpose of use. Renewal of a lease shall require a new application, unless a longer period has been previously applied for, advertised, and approved by the state engineer.

[19.26.2.18 NMAC - N, 1/31/2005]

19.26.2.19 WATER DEVELOPMENT PLANS:

A forty-year planning entity shall be allowed a water use planning period, not to exceed forty years, to acquire and hold water rights pursuant to Section 72-1-9 NMSA. A water development plan may be filed at any time. If a plan is not already on file, a water development plan shall be filed with an application to appropriate water or transfer a water right where the water right will be held unused or undeveloped pursuant to the plan.

A. Planning period: The water rights of a forty-year planning entity subject to this section shall be based upon the reasonably projected additional needs for water within forty years set out in a water development plan. The implementation of the plan shall not exceed a forty-year period from the date the forty-year planning entity files with the state engineer an application to change the place or purpose of use of a water right pursuant to the plan or an application for a new appropriation pursuant to the plan.

B. Water development plan - content: A water development plan shall include the following information: the name and address of the owner of record of the water rights subject to the plan, a summary of all water rights subject to the plan, the place and purpose of use of the identified water rights, the historical and current water use, the historical and existing population served by the identified water rights, reasonable population projections, implemented water conservation measures, planned water conservation measures, a summary of the per capita water use including a comparison with the per capita water use of other similar forty-year planning entities, reasonably projected additional needs - taking into account the variability of surface water supply and the sustainability of groundwater supply - for water within forty years, and any other information the state engineer deems necessary. If a development plan lacks any of this information, it may be returned to the forty-year planning entity for completion.

C. Filing fee: A fee of \$100 must accompany a water development plan.

D. Return of plan: The state engineer may return the plan to the forty-year planning entity, with a statement of corrections required, if it is found to be faulty or incomplete.

E. Approval of plan: Upon review of the plan, if the state engineer finds the plan to be reasonable, the plan and projected needs of the planning entity will be approved by the state engineer. Notification of the approval shall be given to the planning entity.

F. Water rights held pursuant to plan: For permits for water rights acquired by forty-year planning entities pursuant to a forty-year plan, the state engineer may grant extensions of time which in combination extend the time allowed by the permit up to forty (40) years from the date of the application where:

(1) the planning entity acquires and holds the water right pursuant to a water development plan approved by the state engineer; and

(2) upon acquisition of the water right it files with the state engineer an application to change the place or purpose of use of the water right pursuant to the water development plan; and

(3) the quantity of water associated with the water right, together with the quantity of water associated with the other water rights and permits held pursuant to the plan, does not exceed the reasonably projected additional needs for water within forty years set out in the plan.

G. Permits for new appropriations held pursuant to plan: For permits for new appropriations for forty-year planning entities, the state engineer may grant extensions of time which in combination extend the time allowed by the permit up to forty (40) years from the date of the application where:

(1) the application is filed and the permit will be held pursuant to a water development plan approved by the state engineer; and

(2) the quantity of water authorized in the permit, together with the quantity of water associated with the water rights and other permits held pursuant to the plan, does not exceed the reasonably projected additional needs for water within the forty years set out in the plan.

[19.26.2.19 NMAC - N, 1/31/2005]

19.26.2.20 FORFEITURE AND ABANDONMENT OF A WATER RIGHT:

A water right may be lost for nonuse in two ways. First, the right may be forfeited pursuant to Section 72-5-28 NMSA or Section 72-12-8 NMSA. Alternatively, the right may be abandoned. Abandonment is a judicial doctrine.

A. Forfeiture: All or any part of a water right is subject to forfeiture when a person entitled to the use of water fails to apply water to beneficial use for a period of four or more consecutive years. If the state engineer determines that a water right is subject to forfeiture, the water right owner will be sent a notice and declaration of nonuse by certified mail. If failure to apply water to its associated beneficial use persists for one year after receipt of notice and declaration of nonuse given by the state engineer the water right will be forfeited and the unused water shall revert to the public. The requirement for an issuance of a notice and declaration of nonuse by the state engineer shall not apply to water that has reverted to the public by operation of law prior to June 1, 1965 (see Sections 72-5-28 and 72-12-8 NMSA). Periods of non-use for the following reasons shall not be applied towards the four or more consecutive year period required for a water right to be subject to forfeiture:

(1) Despite the diligent effort on the part of the water right owner, circumstances beyond the control of the water right owner have prevented the application of water to beneficial use.

(2) The state engineer has granted an extension of time in which to apply water to beneficial use.

(3) The water is part of a state engineer approved water development plan (see 19.26.2.19 NMAC).

(4) The water right owner is on active duty in the armed forces of the United States of America.

(5) The water right is acquired and placed in a state engineer approved water conservation program.

(6) The water right is appurtenant to irrigated farm lands which have been placed under the acreage reserve or conservation reserve program provided by the Food Security Act of 1985, P.L. 99-108.

B. Abandonment: Common law abandonment of a water right requires both the nonuse of water by a person entitled to such use and the intent to abandon the right. Whether or not a court would determine that a water right has been abandoned depends on the facts and circumstances in each particular case. The intent to abandon the right may be express or may be inferred from the acts of the water right owner. In making such determination, the state engineer is not adjudicating a right, but merely making a threshold administrative determination of the validity and existence of the underlying water right. Nonuse for an unreasonable period of time establishes a presumption of abandonment and prima facie evidence of the intention to abandon the right. To rebut a presumption of abandonment a person must establish not merely their expressions of desire or hope or intent, but some fact or condition excusing the period of nonuse.

[19.26.2.20 NMAC - N, 1/31/2005]

19.26.2.21-19.26.2.24 [RESERVED]

19.26.2.25 APPLICATION MAPS:

An application for appropriation, change in point of diversion or change in place and/or purpose of use shall require a map delineating the proposal described in the application. The map shall include a description of all lands, point(s) of diversion, place(s) of use, accurate locations of canals and streams, and other relevant features included in the application. In general, maps accepted by the state engineer are: irrigation and conservancy district maps, maps prepared by a licensed professional surveyor or engineer, and state engineer hydrographic survey maps. Plan drawings and maps prepared with the aid of a computer shall be submitted with a copy of the digital data files in a format acceptable to the state engineer.

[19.26.2.25 NMAC - N, 1/31/2005]

19.26.2.26 FORMAT FOR PLAN DRAWINGS, PROOF OF BENEFICIAL USE AND DECLARATION MAPS:

All plan drawings, proof of beneficial use maps, and declaration maps filed with the state engineer shall meet the requirements listed below. Proof of beneficial use maps and declaration maps shall be prepared by either a licensed professional surveyor or licensed professional engineer in the state of New Mexico. Plan drawings and maps prepared with the aid of a computer shall be submitted with a copy of the digital data files in a format acceptable to the state engineer.

A. Map quality: Plan drawings and maps shall be made from actual field or photogrammetric surveys of an accuracy acceptable to the state engineer. Plan drawings and maps shall be prepared with permanent black ink on mylar. All original signatures, dates, and acknowledgments appearing on the sheet(s) shall be in permanent ink. If more than one sheet is required, each shall be numbered in sequence (example: Sheet 1 of 3). Plan drawings and maps shall always be rolled - never folded - for transmittal.

B. Scale and size: Mylar sheets shall be twenty-four (24) inches by thirty-six (36) inches with one (1) inch margins on all sides unless otherwise specified by the state engineer. The scale(s) used on the drawings may vary according to requirements and space available to show all necessary data in detail clearly in feet and decimals. Detailed dimensions of structures, headgates, drops, etc. shall be given in feet and 1/10th of a foot or inches.

C. Map details: The following information is required on declaration and proof of beneficial use maps.

(1) Title sheet: The following title shall be placed on and made a part of the first sheet:

MAP

of the

(name of system: ditch, ditch & reservoir, irrigation, power, etc.)

_____, Applicant/Declarant/Permit Holder

State Engineer File Number(s): _____

Located in _____ County, State of New Mexico.

Scale of Map: 1 inch = _____ feet.

The undersigned,

_____ ,

whose address is: _____ ,

Zip Code _____ , County of _____ , State of _____ .

(2) Location of point of diversion: The location of the point of diversion on the stream, whether supplying water to direct diversion to a ditch or to an off-channel reservoir, shall be identified on the drawings as follows:

The headgate, which is the point of diversion from _____ (river, creek, spring, arroyo) from which the works derive their water supply, is located as follows _____ (latitude) and _____ (longitude) or X = _____ and Y = _____, (New Mexico state plane coordinate system), NAD _____.

(3) Acreage irrigated, to be irrigated, or retired: Acreage irrigated or retired from irrigation shall be clearly indicated on the maps. Cross-hatching the subject area on the location map is preferred. A written description of the location of the acreage, acceptable to the state engineer, shall be provided.

D. Orientation and date: The direction of north and the basis of bearings shall be shown on all maps. The date that field surveys are made or the date of the aerial photography used shall be shown on the maps.

E. Vicinity map: A vicinity map of sufficient scale and size to locate the pertinent area shall be shown on the maps and/or plan drawings.

F. Surveyor's certification and seal: A licensed professional surveyor preparing maps shall place on the first sheet the certificate shown below and the certificate shall be signed. The surveyor's license number and the seal impression shall accompany the certificate.

State of New Mexico)

) ss.

County of _____)

I, _____, hereby certify that I am licensed professional surveyor and that the accompanying maps were prepared by me or under my direction, and that the same are true and correct to the best of my knowledge and belief.

Licensed Professional Surveyor

License Number: _____

Date Submitted: _____

G. Engineer's certification and seal: A licensed professional engineer preparing maps, plan drawings, or specifications shall place on the first sheet of the map or plan drawings and the first page of the specifications the certificate shown below and the certificate shall be signed. The engineer's license number and the seal impression shall accompany the certificate.

State of New Mexico)

) ss.

County of _____)

I, _____, hereby certify that I am a licensed professional engineer, qualified in _____ (agricultural, civil, geological etc.) engineering and that the accompanying _____ (maps, drawings or specifications) were prepared by me or under my direction, and that the same are true and correct to the best of my knowledge and belief.

Licensed Professional Engineer

License Number: _____

Date Submitted: _____

H. Owner's certificate: An owner's certificate shall be placed on the first sheet of the plan drawings and shall be signed by the owner and acknowledged by a notary public.

State of New Mexico _____)

_____) ss.

County of _____)

I, _____, being first duly sworn, upon my oath, state that I have read and examined the accompanying drawings and statements, (consisting of _____ sheets) and know the contents thereof and representations thereon, and all that is shown hereon is done with my free consent and in accordance with my wishes and state that the same are true to the best of my knowledge and belief.

Owner

Subscribed and sworn to before me this _____ day of _____, 20__

Notary Public

My commission expires _____ (SEAL)

If a claimant is a corporation, political subdivision or other governmental entity the following shall be used:

State of New Mexico _____)

_____) ss.

County of _____)

I, _____, being first duly sworn, upon my oath, state that I am the _____ (officer) of _____, a corporation duly organized under the laws of the State of _____, and that the accompanying drawings and

statements, (consisting of . sheets) were made under authority of the Board of Directors of said Corporation, and that, in their behalf, I have read and examined the statements and representations thereon and all that is shown hereon is done with their free consent and in accordance with their wishes and state that the same are true to the best of my knowledge and belief.

Representative, Title

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public

My commission expires _____ (SEAL)

I. State engineer's certificate: A certificate form for the state engineer approval shall be placed on the first sheet of the maps, plan drawings, and the specifications. This certificate is to be signed by the state engineer after all necessary corrections or additions, if any, have been made.

State of New Mexico)

) ss.

County of _____)

I hereby certify that the accompanying _____ (map, plans, specifications) have been duly examined by me and accepted for filing on the _____ day of _____, 20__.

State Engineer

J. Reproduction fees: Copies of maps and plan drawings on record with the state engineer may be purchased at a cost of fifteen dollars (\$15) for each sheet.

[19.26.2.26 NMAC - N, 1/31/2005]

19.26.2.27 LIBERAL CONSTRUCTION:

This part shall be liberally construed to carry out its purpose.

[19.26.2.27 NMAC - N, 1/31/2005]

19.26.2.28 SEVERABILITY:

If any portion of this part is found to be invalid, the remaining portion of this part shall remain in force and not be affected.

[19.26.2.28 NMAC - N, 1/31/2005]

PART 3-9: [RESERVED]

PART 10: PECOS RIVER STREAM SYSTEM

19.26.10.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 8/30/02]

19.26.10.2 SCOPE:

[RESERVED]

[Recompiled 8/30/02]

19.26.10.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 8/30/02]

19.26.10.4 DURATION:

[RESERVED]

[Recompiled 8/30/02]

19.26.10.5 EFFECTIVE DATE:

[RESERVED]

[Recompiled 8/30/02]

19.26.10.6 OBJECTIVE:

[RESERVED]

[Recompiled 8/30/02]

19.26.10.7 DEFINITIONS:

[RESERVED]

[Recompiled 8/30/02]

19.26.10.8 DECLARATION OF LOWER PECOS WATER DISTRICT OF PECOS RIVER STREAM SYSTEM: Order No. 31:

A. WHEREAS the United States district court for the district of New Mexico handed down a decree on May 9, 1933, entitled "The United States of America, plaintiff, vs. Hope community ditch, et al, defendants., no. 712 Equity" defining the rights of the several parties to the use of water along the Pecos river in New Mexico and some of its tributaries, and

B. WHEREAS, on the 6th day of May, 1935, said court relinquished jurisdiction of said cause to the state engineer, and

C. WHEREAS, the district court for the fifth judicial district of the state of New Mexico handed down a decree on June 7, 1931, in cause No. 5144, defining the rights from Pecos river, exclusive of Black river, for the lands below lake Avalon and north of the Texas New Mexico boundary, and

D. WHEREAS, certain water rights along Black river were defined by the district court for the fifth judicial district in cause no. 112, by decree issued January 3, 1912, and by certain court orders related thereto, and

E. WHEREAS, in order to properly distribute the waters of the lower Pecos river in De Baca, Chaves and Eddy counties, New Mexico, the employment of a water master in and for said sub-district of the Pecos river stream system is necessary;

F. NOW, THEREFORE, I. John H. Bliss, duly appointed and qualified state engineer of the state of New Mexico, in accordance with Section 77-301 New Mexico Statutes, 1941 Annotated, do hereby declare the lower Pecos sub-district of the Pecos river system as hereinafter described to be a water district in the state of New Mexico for the purpose of administration and distribution of the waters thereof. The limits of the water district subject to the jurisdiction of the water master are as follows:

- (1) the Pecos river from the mouth of Buffalo creek in township 1 south, range 26 east to the New Mexico-Texas state line,
- (2) Salt creek below the mouth of Cienega del Macho;
- (3) Rio Felix downstream from Hagerman canal;

(4) Rio Penasco downstream from the west line of township 18 south, range 26 east;

(5) the Black river stream system.

G. WITNESS my hand and official seal this 1st day of July 1952, John H. Bliss, State Engineer.

[Recompiled 8/30/02]

19.26.10.9 DECLARATION OF PECOS RIVER WATER DISTRICT OF PECOS RIVER STREAM SYSTEM:

Order No. 55.

A. WHEREAS, the United States district court for the district of New Mexico handed down a decree on May 9, 1933, entitled "The United States of America, plaintiff, vs. Hope community ditch, et al, defendants, No. 712 equity" defining the rights of the several parties to the use of water along the Pecos river in New Mexico and some of its tributaries, and

B. WHEREAS, on the 6th day of May, 1935, said court relinquished jurisdiction of said cause to the state engineer, and

C. WHEREAS, the district court for the fifth judicial district of the state of New Mexico handed down a decree on. June 7, 1931, in cause no. 5144, defining the rights from the Pecos river, exclusive of Black river, for the lands below lake Avalon and north of the Texas-New Mexico boundary, and

D. WHEREAS, certain water rights along Black river were defined by the district court for the fifth judicial district in cause no. 112, by decree issued January 3, 1912, and by certain court orders related thereto, and

E. WHEREAS, in order to properly distribute the waters of the Pecos river in San Miguel, Guadalupe, De Baca, Chaves and Eddy counties, New Mexico, the employment of a water master in and for said sub-district of the Pecos river stream system is necessary, and

F. WHEREAS, on July 1, 1952, the lower Pecos water district was declared by the state engineer, and

G. WHEREAS, it is now found to be necessary to administer a larger area of the Pecos river than has heretofore been administered under the declaration of July 1, 1952;

H. NOW, THEREFORE, I, S. E. Reynolds, duly appointed and qualified state engineer of the state of New Mexico, in accordance with Section 75-3-1, New Mexico Statutes Annotated, 1953, do hereby declare the Pecos river sub-district of the Pecos river system as hereinafter described to be a water district in the state of New Mexico for the purpose of administration and distribution of the waters thereof. The limits of the water district subject to the jurisdiction of the water master are as follows:

- (1) the Pecos river from the mouth of Cow creek in section 24, township 14 north, range 13 east, to the New Mexico-Texas state line;
- (2) the Rio Agua Chiquita stream system and the Santa Rosa swamps;
- (3) Salt creek below the mouth of Cienega del Macho;
- (4) the Rio Hondo and tributaries (including the northern canal system of the Hagerman irrigation company) downstream from the west line of range 24 east.
- (5) Rio Felix, downstream from the Hagerman canal;
- (6) Rio Penasco, downstream from the west line of township 18 south, range 26 east;
- (7) Black river stream system.

I. WITNESS, my hand and official seal, this the 20th day of January 1956, S. E. REYNOLDS, State Engineer.

[Recompiled 8/30/02]

**19.26.10.10 DECLARATION OF PECOS VALLEY SURFACE WATER DISTRICT
PECOS RIVER STREAM SYSTEM:**

Order No. 75.

A. WHEREAS, the United States district court for the district of New Mexico handed down a decree on May 9, 1933, entitled "The United States of America, plaintiff, vs. Hope community ditch, et al, defendants, no. 712 equity" defining the rights of the several parties to the use of water along the Pecos river in New Mexico and some of its tributaries, and

B. WHEREAS, on the 6th day of May, 1935, said court relinquished jurisdiction of said cause to the state engineer, and

C. WHEREAS, the district court for the fifth judicial district of the state of New Mexico handed down a decree on June 7, 1931, in cause no. 5144, defining the rights

from the Pecos river, exclusive of Black river, for the lands below lake Avalon and north of the Texas-New Mexico boundary, and

D. WHEREAS, certain water rights along Black river were defined by the district court for the fifth judicial district in cause no. 112, by decree issued January 3, 1912, and by certain court orders related thereto, and

E. WHEREAS, in order to properly distribute the waters of the Pecos river in Guadalupe, De Baca, Chaves and Eddy counties., New Mexico, the employment of a watermaster in and for said sub-district of the Pecos river stream system is necessary, and

F. WHEREAS, on July 1, 1952, the lower Pecos water district was declared by the state engineer, and

G. WHEREAS, on January 20, 1956, the Pecos river water district was declared by the state engineer, and

H. WHEREAS, it is now found to be necessary for the economical and satisfactory apportionment of water, to administer a smaller area of the Pecos river than has heretofore been administered under the declaration of January 20, 1956;

I. NOW THEREFORE, I, S. E. Reynolds, duly appointed and qualified state engineer of the state of New Mexico, in accordance with Section 75-3-1, New Mexico Statutes Annotated, 1953, do hereby declare the Pecos valley surface water district of the Pecos river stream system as hereinafter described to be a water district in the state of New Mexico to be effective July 1, 1959, for the purpose of administration and distribution of the waters thereof. The limits of the water district subject to the jurisdiction of the watermaster are as follows:

(1) the Pecos river from the south line of the Jose Perea grant (being in section 20, township 9 north, range 21 east, N.M.P.M., as extended into said Jose Perea, grant) to the New Mexico-Texas state line;

(2) the Rio Agua Chiquita stream system, the Rio Agua Negra stream system downstream from U.S. highway 54 in Section 29, township 8 north, range 21 east and the area known as the Santa Rosa swamps;

(3) Salt Creek below the south of Cienega del Macho;

(4) the Rio Hondo and tributaries (including the northern canal system of the Hagerman irrigation company) downstream from the west line of range 24 east;

(5) Rio Felix, downstream from the Hagerman canal;

(6) Rio Penasco downstream from the west line of township 18 south, range 26 east;

(7) Black river stream system.

J. WITNESS my hand and official seal, this the 11th day of May 1959, S. E. Reynolds, State Engineer.

[Recompiled 8/30/02]

**19.26.10.11 DECLARATION OF PECOS VALLEY SURFACE WATER DISTRICT
PECOS RIVER STREAM SYSTEM:**

Order No. 92.

A. WHEREAS, the United States district court for the district of New Mexico handed down a decree on May 9, 1933, entitled "The United States of America, plaintiff, vs. Hope community ditch, et al, defendants, no. 712 Equity" defining the rights of the several parties to the use of water along the Pecos river in New Mexico and some of its tributaries, and

B. WHEREAS, on the 6th day of May, 1935, said court relinquished jurisdiction of said cause to the state engineer, and

C. WHEREAS, the district court for the fifth judicial district of the state of New Mexico handed down a decree on June 7, 1931, in cause No. 5144, defining the rights from the Pecos river, exclusive of Black river, for the lands below lake Avalon and north of the Texas-New Mexico boundary, and

D. WHEREAS, certain water rights along Black river were defined by the district court for the fifth judicial district in cause no. 112, by decree issued January 3, 1912, and by certain court orders related thereto, and

E. WHEREAS, in order to properly distribute the waters of the Pecos river in Guadalupe, De Baca, Chaves and Eddy counties, New Mexico, the employment of a watermaster in and for said sub-district of the Pecos river stream system is necessary, and

F. WHEREAS, on July 1, 1952, the lower Pecos water district was declared by the state engineer, and

G. WHEREAS, on January 20, 1956, the Pecos river water district was declared by the state engineer, and

H. WHEREAS, on May 11, 1959, the Pecos valley surface water district was declared by the state engineer, and

I. WHEREAS, it is now found to be necessary for the economical and satisfactory apportionment of water, to administer a smaller area of the Pecos river than has heretofore been administered under the declaration of May 11, 1959;

J. NOW THEREFORE, I, S. E. Reynolds, duly appointed and qualified state engineer of the state of New Mexico, in accordance with Section 75-3-1, New Mexico Statutes Annotated, 1953, do hereby declare the Pecos valley surface water district of the Pecos river stream system as hereinafter described to be a water district in the state of New Mexico to be effective July 1, 1963, for the purpose of administration and distribution of the waters thereof. The limits of the water district subject to the jurisdiction of the watermaster are as follows:

(1) the Pecos river from the section line dividing sections 19 and 30, township 8 north, range 22 east, N.M.P.M., to the New Mexico-Texas state line;

(2) the Rio Agua Negra stream system downstream from U.S. highway 54 in section 29, township 8 north, range 21 east, to its mouth;

(3) Salt creek below the mouth of Cienega del Macho;

(4) the Rio Hondo and tributaries (including the northern canal system of the Hagerman irrigation company) downstream from the west line of range 24 east;

(5) Rio Felix, downstream from the Hagerman canal;

(6) Rio Penasco, downstream from the west line of township 18 south, range 26 east;

(7) Black river stream system.

K. WITNESS my hand and official seal, this 4th day of June 1963, S. E. Reynolds, State Engineer.

[Recompiled 8/30/02]

PART 11: DECLARATION OF THE GALLINAS RIVER WATER SUB-DISTRICT OF THE PECOS RIVER STREAM SYSTEM

19.26.11.1 ISSUING AGENCY:

Office of State Engineer ("OSE").

[19.26.11.1 NMAC - N, 8/29/03]

19.26.11.2 SCOPE:

This rule applies to all waters of the Gallinas river located in San Miguel and Guadalupe counties, state of New Mexico.

[19.26.11.2 NMAC - N, 8/29/03]

19.26.11.3 STATUTORY AUTHORITY:

A. Section 72-2-8 NMSA (1997 Repl.) authorizes the OSE to develop, adopt, and promulgate all rules necessary to implement and administer the provisions of the Water Code.

B. New Mexico law declares that all natural water flowing in streams and watercourses, whether such be perennial, or torrential, within the limits of the state of New Mexico, belong to the public and are subject to appropriation for beneficial use. NMSA 1978, Section 72-1-1 (1907).

C. The state engineer has a statutory duty to provide general supervision of waters of the state and of the measurement, appropriation, distribution thereof and such other duties as required. NMSA 1978, Section 72-2-1 (1907).

D. The state engineer has the responsibility for appropriation of the state's waters in accordance with the laws of the state. NMSA 1978, Section 72-2-1 (1907); Const. Art. XVI, Section 2.

E. The state engineer is authorized to establish water districts upon any stream system within the state of New Mexico as necessary for the economical and satisfactory apportionment of said waters. NMSA 1978, Section 72-3-1 (1907).

F. The state engineer is authorized to divide a stream system into sub-districts, each of which said sub-district shall be designated by a distinct name. NMSA 1978, Section 72-3-1 (1907).

G. The state engineer is authorized, if in his opinion it is in the interest of public safety or the best interest of water users in a water district, to appoint a water master who shall have immediate charge of the apportionment of waters in his district under the general supervision of the state engineer, and shall so appropriate, regulate and control the waters of such water districts so as to prevent waste. NMSA 1978, Section 72-3-2 (1907).

[19.26.11.3 NMAC - N, 8/29/03]

19.26.11.4 DURATION:

Permanent.

[19.26.11.4 NMAC - N, 8/29/03]

19.26.11.5 EFFECTIVE DATE:

August 29, 2003, unless a later date is cited at the end of a section.

[19.26.11.5 NMAC - N, 8/29/03]

19.26.11.6 OBJECTIVE:

The objective of this rule is to declare the Gallinas River Water Sub-District of the Pecos River Stream System and to appoint a water master who will have immediate charge of such apportionment of such waters of the Gallinas river.

[19.26.11.6 NMAC - N, 8/29/03]

19.26.11.7 DEFINITIONS:

[RESERVED]

[19.26.11.7 NMAC - N, 8/29/03]

19.26.11.8 FINDINGS OF FACT:

A. The United States district court for the district of New Mexico handed down a decree on May 9, 1933 entitled "The United States of America, Plaintiff, vs. Hope Community Ditch, et al., Defendants, No. 712 Equity," defining the rights of several parties to the use of water along the Pecos river in New Mexico and some of its tributaries, among which is the Gallinas river.

B. On May 6, 1935, said court relinquished jurisdiction of said case to the state engineer.

C. In order to properly apportion the waters of the Gallinas river in San Miguel and Guadalupe counties, New Mexico, the establishment of a water sub-district for those waters and the appointment of a water master in and for said water sub-district of the Pecos river water district is necessary.

D. The amount of water flowing in the Gallinas river is finite and varies year to year based on annual spring run-off, which is dependent on annual precipitation.

E. The city of Las Vegas, numerous acequia associations ("acequias"), Gallinas canal storage and irrigation company, and Storrie project water user's association ("Storrie project") are all water users of the Gallinas river.

F. Adjudication of water rights along the Gallinas river has not been completed.

G. Recent droughts in the state of New Mexico have created a water shortage crisis in the Pecos river stream system, including the Gallinas river.

H. The shortage of water on the Gallinas river is a problem affecting the citizens of San Miguel and Guadalupe counties.

I. By letter dated March 19, 2003, Storrie project requested that the state engineer administer the water in the Gallinas river.

J. By letter facsimiled May 19, 2003, several acequias requested that the state engineer administer the water in the Gallinas river.

K. On January 20, 1956, the Pecos river water district was declared by the state engineer.

L. Creation of a water sub-district and appointment of a water master for the Gallinas river is needed to ensure public safety and that the interests of each water user are protected so that they receive the water to which they are entitled.

[19.26.11.8 NMAC - N, 8/29/03]

19.26.11.9 CONCLUSIONS OF LAW:

A. Water sub-district creation and appointment of water master

(1) The state engineer concludes that in the interest of public safety and in the interest of water users, the GALLINAS RIVER WATER SUB-DISTRICT should be formed and a water master appointed on a permanent basis, so as to administer the waters of the Gallinas river, a tributary of the Pecos river stream system, in accordance with New Mexico law.

(2) The GALLINAS RIVER WATER SUB-DISTRICT water master shall have immediate charge of the apportionment of waters in the water sub-district under the general supervision of the state engineer, and shall appropriate, regulate and control the waters of the water sub-district so as to prevent waste.

B. Administration of affected water rights

(1) The state engineer concludes that the immediate administration of water rights on the Gallinas river is necessary for the protection of the public, protection of prior water rights, and the prevention of waste.

(2) The state engineer concludes that the water master of the water sub-district created by this rule shall apportion the waters of the sub-district in accordance with the guidelines, existing or future regulations, manuals, directions, and supervision provided by the state engineer.

(3) Additional instructions to the water master for the apportionment of water within the sub-district will be based upon available data, models, (including water master manual models), surveys and the state engineer's best professional judgment.

(4) The state engineer concludes that the water sub-district created by this rule shall include the following organizational features:

(a) The appointment of a single water master for the GALLINAS RIVER WATER SUB-DISTRICT.

(b) The water master shall be a direct employee of the OSE and shall receive compensation in an amount to be determined by the state engineer. The water master shall also be compensated for all actual and necessary expenses incurred in performing the duties of water master.

(c) After appointment of the water master, the state engineer shall prepare a budget of estimated amount required to pay the compensation and expenses of the water master to the end of the current fiscal year, and shall certify the same to the board of county commissioners of San Miguel and Guadalupe counties, wherein the duties of the water master are to be performed. The budget shall specify the distribution of the amounts to be charged against and allotted to each water user or ditch owner, and which respective amounts shall be based upon the quantity of water received or to be received by each in proportion to the total quantities of water delivered or to be delivered under the water rights of all. The salary and expenses of the water master will be paid monthly by the board of county commissioners in accordance with the requirements of NMSA, 1978, Section 72-3-4 (1907).

[19.26.11.9 NMAC - N, 8/29/03]

CHAPTER 27: UNDERGROUND WATER

PART 1: GENERAL PROVISIONS

19.27.1.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.1.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.1.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978 Compilation.

[Recompiled 12/31/01]

19.27.1.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.1.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.1.6 OBJECTIVE:

This rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.1.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.1.8 DECLARATION OF EXISTING WATER RIGHTS; INITIATION OF WATER RIGHTS: DECLARATIONS, AFFIDAVITS - FILING:

If declarations of existing water rights are filed as permitted by Section 75-11-5, [72-12-5 NMSA 1978] they shall be prepared in triplicate on forms furnished by the state engineer and shall be accompanied by the proper filing fee (Article 6-1) [now 19.25.5.8 NMAC]. Declarations may also be accompanied by affidavits of persons having personal knowledge of the history of the works or by other evidence tending to substantiate the claims and by copies of well logs, if available. If such supporting documents are filed in the state engineer office, they will be filed together with the declaration.

[SE-66-1 Article 1-1, Recompiled 12/31/01]

19.27.1.9 APPLICATIONS TO APPROPRIATE - PRIORITY:

Where the well is to be drilled within the boundaries of a declared underground water basin (Article 7) [now 19.27 NMAC] application to appropriate shall be filed in triplicate on forms provided by the state engineer accompanied by the proper filing fee (Article 6-1) [now 19.25.5.8 NMAC]. The date of receipt of an application by the state engineer or his authorized representative shall be endorsed thereon. The date of filing establishes the original priority date of any application, subject to the acceptance of the application and the issuance of a permit by the state engineer and the timely application of water to beneficial use.

[SE-66-1 Article 1-2, Recompiled 12/31/01]

19.27.1.10 AMOUNT OF WATER; AMENDMENT; ADVERTISEMENT:

The application and permit limit the nature and extent of the water right. A permit may be granted for an amount less than that asked for in the application. In any event the annual amount of the appropriation permitted under one application will be limited to the annual amount that can reasonably be expected to be produced and applied to beneficial use from a single well constructed at the point, in the manner, and for the purpose set forth in the application.

[SE-66-1 Article 1-3, Recompiled 12/31/01]

19.27.1.11 FORM OF APPLICATION; CORRECTIONS:

Before acceptance by the state engineer, applications tendered must conform to the requirements of the statutes and rules and regulations of the state engineer. The description of the well location shall be to the nearest forty (40) acre subdivision, unless otherwise prescribed by the state engineer. Applications which are defective as to form or fail to comply with the rules and regulations shall be returned promptly to the applicant with a statement of the changes required. If the changes are made and the application refiled with the state engineer within thirty (30) days after the applicant has been notified of the changes required, the application shall be processed with a priority date the same as the original filing date. When a corrected application is filed after the time allowed, it shall be treated in all respects as an original application received on the date of its refiling.

[SE-66-1 Article 1-4, Recompiled 12/31/01]

19.27.1.12 PUBLICATION:

Upon receipt of an acceptable application the state engineer shall prepare and issue a notice for publication and shall send it to the applicant with instructions that it be published weekly for three consecutive weeks in a newspaper of general circulation within the county in which the well is to be drilled. Cost of publication shall be borne by the applicant who shall also see that the newspaper's affidavit of publication is filed with the state engineer within sixty (60) days from date of issuance of the notice for

publication. If the application is for a new appropriation, failure to file affidavit of publication within the time allowed shall cause postponement of the priority date of the application to the date of receipt of such proof in proper form. In the case of any other type of application, failure to file proofs within the time allowed shall cause the application to be cancelled. The issuance of a notice for publication does not in any way indicate favorable action on the application by the state engineer.

[SE-66-1 Article 1-5, Recompiled 12/31/01]

19.27.1.13 RE-ADVERTISEMENTS - EXPENSES:

The completeness and accuracy of the notice for publication is the responsibility of the applicant. If there are substantive errors in the published notice, it shall be re-advertised at the expense of the applicant.

[SE-66-1 Article 1-6, Recompiled 12/31/01]

19.27.1.14 PROTEST - FILING, ANSWER:

Any person deeming that the granting of an application would be detrimental to his rights may protest in writing the proposal set forth in the application. The protest shall set forth reasons why the application should not be approved and must be filed in triplicate with the state engineer not later than ten (10) days after the date of the last publication of the notice referred to in Article 1-5 [now 19.27.1.12 NMAC]. The state engineer shall mail one copy of the protest to the applicant. The applicant may file with the state engineer, in triplicate, answers to such protests. The state engineer shall furnish all protestants with a copy thereof by mail.

[SE-66-1 Article 1-7, Recompiled 12/31/01]

19.27.1.15 HEARINGS:

In the event an application is protested, hearings shall be conducted pursuant to the provisions of Article 3 [now 19.25.4 NMAC] of these rules and regulations.

[SE-66-1 Article 1-8, Recompiled 12/31/01]

19.27.1.16 CANCELLATION:

Upon failure of the applicant to comply with the provisions of the permit within the time specified in such permit or to secure an extension of time within which to do so, the state engineer shall cancel the permit.

[SE-66-1 Article 1-9, Recompiled 12/31/01]

19.27.1.17 CONSTRUCTION OF WELL:

The well shall be constructed in full compliance with the terms of the permit and the rules and regulations of the state engineer.

[SE-66-1 Article 1-10, Recompiled 12/31/01]

19.27.1.18 TRANSPORTATION:

In the case of any ground water right initiated after September 6, 1912, the water may not be transported in earthen ditches more than one and one half (1 1/2) miles or in open ditches or flumes lined with concrete or other impervious material more than two (2) miles from the well which is the source of supply.

[SE-66-1 Article 1-11, Recompiled 12/31/01]

19.27.1.19 STORAGE:

Water from artesian or shallow ground water sources may be stored in reservoirs or ponds to facilitate and improve irrigation practices. The capacity of such reservoirs shall be so limited that they will store the continuous flow of a well producing more than three hundred (300) gallons of water per minute for no more than forty-eight (48) hours and the flow of a well producing three hundred (300) gallons of water per minute or less for no more than ninety-six (96) hours.

[SE-66-1 Article 1-12, Recompiled 12/31/01]

19.27.1.20 REQUIREMENTS AFTER COMPLETION OF WELL:

As soon as practicable after completing the well and the application of water to the intended use pursuant to the permit, the applicant shall have prepared and file a "final inspection and report" in triplicate on forms provided by the state engineer. The final report shall be accompanied by a plat prepared in accordance with Article 5 [now 19.25.3 NMAC]. The final inspection and report shall be prepared by a registered professional engineer and land surveyor or by a registered land surveyor as specified by the state engineer.

[SE-66-1 Article 1-13, Recompiled 12/31/01]

19.27.1.21 CERTIFICATE AND LICENSE:

Upon receipt of "final inspection and report" together with attachments thereto required by Article 1-13 [now 19.27.1.20 NMAC], the state engineer shall issue a "certificate and license to appropriate."

[SE-66-1 Article 1-14, Recompiled 12/31/01]

19.27.1.22 APPLICATIONS NOT REQUIRING PUBLICATION AND NOTICE - DOMESTIC AND LIVESTOCK USE - AMOUNT:

Section 75-11-1 [72-12-1 NMSA 1978] excepts applications for water for certain purposes from the requirement for publication of notice. The state engineer shall permit use under such applications for domestic, stock watering, drinking and sanitary purposes, and the irrigation of not to exceed one (1) acre of trees, lawn and non-commercial garden in an amount not to exceed three (3) acre-feet per annum, subject to limitation imposed by the courts. Applications for wells for such purposes shall be prepared and filed in triplicate on forms provided by the state engineer. Compliance with the provisions of Article 4 [now 19.27.4 NMAC] is required in the completion of such wells.

[SE-66-1 Article 1-15, Recompiled 12/31/01]

19.27.1.23 RETENTION OF OLD WELL FOR DOMESTIC USE - REQUIREMENTS:

If water rights have been transferred from a well but the owner thereof desires to retain the well for the purposes of Article 1-15 [now 19.27.1.22 NMAC], an application must be filed as required by that article. Prior to approval, the state engineer shall determine whether the subject well can be retained in use without causing waste.

[SE-66-1 Article 1-16, Recompiled 12/31/01]

19.27.1.24 CHANGE OF WELL LOCATION AND PLACE AND/OR PURPOSE OF USE; SUPPLEMENTAL WELLS; EXTENSIONS OF TIME; PREREQUISITES FOR DRILLING; DEEPENING AND REPAIRING:

A. Change of location of well: The owner of a water right within a declared underground water basin cannot change the location of his well without the approval of the state engineer except as otherwise provided in Section 75-11-23 [72-12-23 NMSA 1978].

B. Replacement well within one hundred feet of original well: The owner of a water right may drill and use a replacement well within one hundred (100) feet of the original well prior to application, publication, and hearing, if:

(1) The well is drilled in the same, and only the same, underground source; and

(2) The appropriation is of the same amount of water allowed by his water right in the original well; and

(3) An emergency situation exists which would result in serious economic loss if application, publication and hearing were required; and

(4) The owner notifies the state engineer office of these facts and of the location of the proposed well by registered letter prior to drilling; provided he files application for a permit within thirty (30) days after drilling begins.

(5) The owners of other water rights claiming injury by the drilling of a replacement well under these circumstances may not enjoin the drilling of such well or the use of the water from the well but are limited to an action at law to recover damages and to their right to protest the granting of a permit.

C. Replacement well over one hundred feet from original well: The owner of a water right may drill and use a replacement well over one hundred (100) feet from his original well upon making application without waiting for the completion of publication and hearing, if:

(1) The well is drilled in the same and only the same underground source; and

(2) The appropriation is of the same amount of water allowed by his water right in the original well; and

(3) An emergency situation exists which would result in serious economic loss if publication and hearing were required; and

(4) The state engineer after preliminary investigation finds that the change does not impair existing water rights and grants him a permit authorizing the drilling and use of the replacement well prior to publication and hearing;

(5) When preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a replacement well may impair existing rights then no permit shall be issued until after publication and hearing.

[SE-66-1 Article 2-1, Recompiled 12/31/01]

19.27.1.25 CHANGE OF PLACE AND/OR PURPOSE OF USE:

The owner of a water right within a declared underground water basin cannot change the place or purpose of use of the right without the approval of the state engineer. Such approval will be granted only after proper application is made and the state engineer determines that the proposed move would not impair existing water rights.

[SE-66-1 Article 2-2, Recompiled 12/31/01]

19.27.1.26 FORM OF APPLICATION:

Application to change the place or purpose of use and an application to change the location of a well may be combined in one application. Applications must be submitted to the state engineer in triplicate with the fee set out in Article 6 [now 19.25.5 NMAC].

[SE-66-1 Article 2-3, Recompiled 12/31/01]

19.27.1.27 SUPPLEMENTAL WELL:

The owner of a right to appropriate underground water may make application to drill a well to supplement his supply up to the amount of his existing right. Such application shall be filed on forms provided by the state engineer.

A. Supplemental well - emergency conditions: The owner of a water right may drill and use a supplemental well upon making application but prior to publication and hearing, if (Section 75-11-25) [72-12-24 NMSA 1978]:

- (1) The well is drilled in the same, and only the same, underground source; and
- (2) The supplemental well does not increase the appropriation of water to an amount above the existing water rights; and
- (3) An emergency situation exists which would result in serious economic loss if publication and hearing were required; and
- (4) The state engineer after preliminary investigation advises that the supplemental well does not impair existing water rights and grants him a permit authorizing the drilling and use of the supplemental well prior to publication and hearing.

B. If the preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a supplemental well may impair existing rights then no permit shall be issued until after publication and hearing.

[SE-66-1 Article 2-4, Recompiled 12/31/01]

19.27.1.28 DESCRIPTION OF WELL LOCATION AND PLACE OF USE:

The legal description of both the present and the proposed well location must be set out in an application. Well description shall be to the nearest forty (40) acre subdivision, unless otherwise prescribed by the state engineer. If the use is for irrigation, the lands from which water rights are transferred and the lands to which water rights are transferred shall be described by legal subdivision in the application. Where the use is for other than irrigation, the place of use shall be described by legal subdivision.

[SE-66-1 Article 2-5, Recompiled 12/31/01]

19.27.1.29 DECLARATION PRIOR TO CHANGE:

A right not of record in the state engineer office must first be declared before an application to move it or change its use can be considered (Article 1-1) [now 19.27.1.8 NMAC]. Such declarations shall be accompanied by maps showing well locations and place of use and conforming with requirements of Article 5 [now 19.25.3 NMAC].

[SE-66-1 Article 2-6, Recompiled 12/31/01]

19.27.1.30 PUBLICATION; HEARING PROCEDURE:

The applicant must publish notice of the application the same as if it were an application to appropriate (Article 1-5) [now 19.27.1.12 NMAC]. Protest and hearing procedures are the same as for an application to appropriate (Article 1-7 and 1-8) [now 19.27.1.14 NMAC and 19.27.1.15 NMAC].

[SE-66-1 Article 2-7, Recompiled 12/31/01]

19.27.1.31 PERMIT - GRANTING OF, LIMITATIONS, CANCELLATION:

When the state engineer determines that the proposed change will not impair the existing rights of others, a permit shall be granted. The permit may be subject to limitations and failure of the applicant to comply with the limitations may result in cancellation of the permit.

[SE-66-1 Article 2-8, Recompiled 12/31/01]

19.27.1.32 REQUIREMENTS AFTER COMPLETION OF WELL:

As soon as practicable after completing a supplemental or replacement well, the permittee shall file "proof of completion of well" in triplicate on forms provided by the state engineer.

[SE-66-1 Article 2-9, Recompiled 12/31/01]

19.27.1.33 REQUIREMENT FOR LICENSE FOR CHANGE OF PLACE AND/OR PURPOSE OF USE:

The requirements for a license for change of place or purpose of use are the same as for a new appropriation (Article 1) [now 19.27.1 NMAC]. Provided that, with respect to irrigation rights, if only a portion of an irrigation right is transferred for the irrigation of other lands, then both the lands from which water rights are transferred and the lands to which water rights are transferred must be surveyed and maps prepared showing these lands. If the portion of an irrigation right moved is transferred to purposes other than irrigation, only the move-from area need be mapped. Such maps shall be included in the final inspection and report.

[SE-66-1 Article 2-10, Recompiled 12/31/01]

19.27.1.34 LICENSE - WHEN ISSUED:

When all the required documents have been filed, the license to appropriate water for the new place or purpose of use shall be issued. No license will be issued where only a change of location of well (replacement well) or supplemental well is involved.

[SE-66-1 Article 2-11, Recompiled 12/31/01]

19.27.1.35 MOVE-FROM AREA - TERMINATION OF WATER USAGE:

When a permit to change the place of use is granted, use of water at the move-from location shall immediately cease unless otherwise specified in the permit.

[SE-66-1 Article 2-12, Recompiled 12/31/01]

19.27.1.36 WELL PLUGGING:

Wells from which all water rights have been removed shall be plugged in accordance with Article 4-14 and 4-19.1 [now 19.27.4.21 NMAC and 19.27.4.26 NMAC].

[SE-66-1 Article 2-13, Recompiled 12/31/01]

19.27.1.37 DISCREPANCIES BETWEEN LANDS PERMITTED AND LANDS IRRIGATED:

The state engineer will not require application for change of place of use of underground waters when the description of the land actually irrigated varies slightly from the description shown on the original application.

[SE-66-1 Article 2-14, Recompiled 12/31/01]

19.27.1.38 APPLICATIONS FOR EXTENSIONS OF TIME:

Applications for extensions of time permitted by Section 75-11-8 [72-12-8 NMSA 1978] shall be filed in triplicate, accompanied by the proper filing fee and shall state the reasons why additional time is required. Such applications shall fully describe the well and work already completed, the lands irrigated or the extent to which water has otherwise been placed to beneficial use and shall be accompanied by a plan setting forth dates when the well will be completed and equipped and the water applied to use under the permit. Financial inability to proceed shall not be deemed sufficient reason for granting extensions of time.

[SE-66-1 Article 2-15, Recompiled 12/31/01]

19.27.1.39 PREREQUISITES OF DRILLING, DEEPENING, REPAIRING:

A licensed well driller may drill, deepen, repair or clean a well within a declared underground basin only when the owner of such well has a valid permit from the state engineer for the work to be performed; or when the laws have been met which cover emergency well drilling (Article 4-8) [now 19.27.4.15 NMAC].

[SE-66-1 Article 2-16, Recompiled 12/31/01]

PART 2-3: [RESERVED]

PART 4: WELL DRILLER LICENSING; CONSTRUCTION, REPAIR AND PLUGGING OF WELLS

19.27.4.1 ISSUING AGENCY:

Office of the State Engineer.

[19.27.4.1 NMAC - Rp, 19.27.4.1 NMAC, 6/30/2017]

19.27.4.2 SCOPE:

These regulations apply to well driller licensing, drill rig supervisor registration, and well drilling within the state of New Mexico. These rules do not apply to:

- A.** work on pumping equipment;
- B.** oil wells;
- C.** gas wells;
- D.** cathodic protection wells;
- E.** geothermal resources, as defined in the Geothermal Resources Act, currently at Sections 19-13-1 to -28 NMSA 1978 (1967, as amended through 2013);
- F.** construction boreholes and soil boreholes that encounter water and are less than thirty feet; or
- G.** mine drill holes that do not encounter water.

[19.27.4.2 NMAC - Rp, 19.27.4.2 NMAC, 6/30/2017]

19.27.4.3 STATUTORY AUTHORITY:

Section 72-12-1 NMSA provides that the water of underground streams, channels, artesian basins, reservoirs, or lakes having reasonably ascertainable boundaries are declared to be public waters which belong to the public and are subject to appropriation for beneficial use. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by the state engineer. Section 72-12-12 NMSA states that it shall be unlawful for any person, firm, or corporation to drill or to begin the drilling of a well for water from an underground source without a valid, existing license for the drilling of such wells issued by the state engineer of New Mexico. Section 72-12-13 NMSA states any person desiring to engage in the drilling of one or more wells for underground water within the boundaries of any underground source shall file an application with the state engineer for a well driller's license. Sections 72-12-14 through 72-12-17 NMSA further detail requirements for well drillers in New Mexico. Sections 72-12-25 through 72-12-28 NMSA provide requirements for deep wells in non-potable aquifers. Sections 72-13-1 through 72-13-12 NMSA detail the requirements for the drilling of artesian wells.

[19.27.4.3 NMAC - Rp, 19.27.4.3 NMAC, 6/30/2017]

19.27.4.4 DURATION:

Permanent.

[19.27.4.4 NMAC - Rp, 19.27.4.4 NMAC, 6/30/2017]

19.27.4.5 EFFECTIVE DATE:

June 30, 2017, unless a later date is cited at the end of a section.

[19.27.4.5 NMAC - Rp, 19.27.4.5 NMAC, 6/30/2017]

19.27.4.6 OBJECTIVE:

To establish requirements for well drilling in order to ensure wells are designed, drilled, constructed, repaired and plugged in a safe manner.

[19.27.4.6 NMAC - Rp, 19.27.4.6 NMAC, 6/30/2017]

19.27.4.7 DEFINITIONS:

Unless defined below or in a specific section of these rules, all other words used herein shall be given their customary and accepted meaning.

A. Aquifer: A geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield significant quantities of water to wells.

B. Artesian well: A well that penetrates a saturated hydrogeologic unit and allows underground water to rise or move appreciably into another hydrogeologic unit, or allows underground water to rise to freely flow at the ground surface. For regulatory purposes, the determination of whether a well or borehole is artesian shall be made by the state engineer, taking into consideration the potential for loss of water at the ground surface or into another hydrogeologic unit.

C. Drill rig: Any power-driven percussion, rotary, boring, coring, digging, jetting, or augering machine used in the construction of a well or borehole.

D. Drill rig supervisor: A drill rig operator working under the direct supervision of a well driller, to whom the well driller assigns responsible charge of regulated well drilling activities using equipment that is under the direct control of the well driller, and who is registered with the office of the state engineer to perform such responsibilities.

E. Drilling: See definition for well drilling.

F. Ground source heat pump: A heat pump that uses the earth itself as a heat source and heat sink. It is coupled to the ground by means of a closed-loop heat exchanger (ground coil) installed horizontally or vertically underground. Also termed on-site geo-exchange heat pump and earth - or ground - coupled heat pump.

G. Hydrogeologic unit: Any soil or rock unit or zone which by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of groundwater.

H. Inter-aquifer exchange: The movement of groundwater that flows appreciably between hydrogeologic units.

I. Mine drill hole: A borehole to explore for or delineate deposits or accumulations of ore, mineral, or rock resources.

J. Repair: Changing some part of an existing well by deepening, hydrofracturing, re-casing, perforating, re-perforating, installing packers or seals, and any other material change in the existing well design or construction. Material changes include but are not limited to casing installation or modification including casing extensions, installation or modification of liner pipe, reaming or under reaming of the borehole, pitless unit installation on an artesian well that flows (or capable of flowing) at ground surface, or any other work requiring a permit from the state engineer to repair and deepen the well.

K. Well: A borehole, cased, uncased or screened, or other hydraulic structure that is drilled, driven, or dug, vertically, horizontally, or at an angle, that penetrates, is intended to penetrate, or otherwise affects the water stored in a saturated hydrogeologic unit. The intended use may be: water supply; monitoring water levels or water quality; exploratory purposes; water remediation; injection of water, both into saturated and

unsaturated zones; dewatering purposes; ground source heat pump purposes, or for other purposes.

L. Well driller: A person subject to the licensing requirements of 72-12-12 through 72-12-17 NMSA 1978 and 19.27.4 NMAC.

M. Well drilling, well drilling activities: The activities associated with the drilling of a well, including, but not limited to, the construction, drilling, completion, repair, deepening, cleaning, and plugging of a well.

[19.27.4.7 NMAC - Rp, 19.27.4.7 NMAC, 6/30/2017]

19.27.4.8 WELL DRILLER'S LICENSE REQUIRED:

Any person who engages in well drilling activities shall obtain a well driller's license issued by the state engineer (except, under New Mexico state law, a well driller's license is not required for driven wells that do not require the use of a drill rig and which have an outside casing diameter of two and three-eighths ($2\frac{3}{8}$) inches or less). A person found engaged in the business of well drilling within the state of New Mexico without a license can be prosecuted in accordance with New Mexico statutes.

[19.27.4.8 NMAC - Rp, 19.27.4.8 NMAC, 6/30/2017]

19.27.4.9 [RESERVED]

19.27.4.10 [RESERVED]

19.27.4.11 [RESERVED]

19.27.4.12 WELL DRILLER REQUIREMENTS:

A. Bond requirements: A well driller shall have a bond in the penal sum of five thousand dollars (\$5,000) on a form acceptable to the state engineer. The surety backing the bond shall be acceptable to the state engineer. A well driller's license shall be valid only so long as the bond remains in effect. The bond shall:

- (1) be conditioned upon proper compliance with state law and the rules and regulations of the state engineer;
- (2) be effective for the period of time for which the well driller's license is issued;
- (3) stipulate the obligee as the "office of the state engineer"; and
- (4) not be represented to the public as a performance bond.

B. Insurance requirements: A well driller shall have general liability insurance in the minimum amount of three hundred thousand dollars (\$300,000) and appropriate insurance under the Workers' Compensation Act. Proof of insurance may be in the name of the well driller or in the name of the company for which the well driller is employed or doing business as (DBA). That insurance must be maintained continuously if the well driller is for hire.

C. National ground water association exams requirements: Required national ground water association exams shall consist of the general drilling exam and the appropriate specialized drilling exam(s) developed and administered by the national ground water association. A well driller engaging in the well drilling activities listed below shall have passed the corresponding national ground water association exams within five years prior to applying for a well driller license.

Well Drilling Activity	National Ground Water Association Exam*
Constructing wells by drilling using the cable tool method	General drilling exam and cable tool drilling exam
Constructing wells by drilling using the air rotary method	General drilling exam and air rotary drilling exam
Constructing wells by drilling using the mud rotary method	General drilling exam and mud rotary drilling exam
Constructing wells by drilling using the reverse circulation method	General drilling exam and reverse circulation drilling exam
Constructing wells using the jetting and driving methods	General drilling exam and jetting and driving wells exam
Constructing wells by augering or constructing monitoring wells	General drilling exam and augering and monitoring exam
All other well drilling activities	General drilling exam

*The state engineer shall make the final determination of the test(s) necessary should a question arise regarding applicability of available test(s) to specialized drilling method(s) of well construction.

D. New Mexico code exam requirements: A well driller shall have obtained a minimum score of seventy percent on the New Mexico code exam prepared and furnished by the state engineer or his authorized representative and self- administered by the applicant.

(1) Exam fee: No fees or advanced scheduling forms are required for the New Mexico code exam.

(2) Test content: The New Mexico code exam may include questions on the following subjects:

(a) New Mexico water law as it pertains to well driller licensing, well drilling and construction, and the administration of underground water, and

(b) the rules and regulations of the state engineer pertaining to well driller licensing, well drilling and construction, and the administration of underground water.

(3) **Re-examination:** An applicant who fails to obtain the minimum passing score on the exam may retake the exam.

(a) No fees or advanced scheduling forms are required to retake the New Mexico code exam.

(b) Any applicant found cheating on the exam, as determined by the state engineer, will not be permitted to reapply to take the exam for a period of one year.

E. Experience requirements: A well driller shall have at least two years of relevant, on-site experience working under the supervision of a well driller while exhibiting a due regard for the interest of the state in the protection of its public waters.

F. Drill rig requirements: A well driller shall continuously maintain with the state engineer a description of each drill rig the well driller owns or controls. The well driller's license number and the name of the well drilling company shall be clearly displayed on each drill rig.

G. Drill rig supervisor requirements: A well driller may allow a drill rig supervisor to provide onsite supervision of well drilling activities. The well driller is responsible for the actions of each drill rig supervisor while supervising well drilling activities.

[19.27.4.12 NMAC - Rp, 19.27.4.12 NMAC, 6/30/2017]

19.27.4.13 [RESERVED]

19.27.4.14 [RESERVED]

19.27.4.15 WELL DRILLER'S LICENSE APPLICATION AND REVIEW:

If the state engineer finds that an applicant has fulfilled the requirements for licensure, the state engineer shall issue a well driller's license and a well driller's identification card to the applicant.

A. Application - form and content: A well driller's license application shall be completed on a form prescribed by the state engineer. The application shall include:

- (1) proof of required bonds;
- (2) proof of required insurances;

- (3) documentation that applicant has passed the required exams listed in Subsection C of 19.27.4.12 NMAC;
- (4) the completed New Mexico code exam;
- (5) documentation of prior well drilling experience;
- (6) three letters of reference (one shall be from a well driller, or a state's licensing authority, attesting to the applicant's well drilling ability);
- (7) a separate form prescribed by the state engineer with a description and side-view photograph of each drill rig the applicant owns or controls;
- (8) registration forms and letters of reference and listing the name of each drill rig supervisor that the applicant plans to supervise; and
- (9) other information required by the state engineer.

B. Filing fee: A fee of fifty dollars (\$50) is required to accompany a well driller's license application.

C. Well driller's license duration: A well driller's license issued by the state engineer will be valid for a period of two years.

D. Well driller's license conditions: A well driller's license shall set forth which well drilling activities the well driller may engage in, corresponding to the table in Subsection C of 19.27.4.12 NMAC, and the conditions under which the well driller shall operate well drilling activities within the state of New Mexico.

E. Well driller's identification card: A well driller's identification card shall be made available for inspection upon request whenever a well driller is conducting well drilling activities.

[19.27.4.15 NMAC - Rp, 19.27.4.15 NMAC, 6/30/2017]

19.27.4.16 WELL DRILLER'S LICENSE AMENDMENT:

The well driller's license amendment application shall be filed with the state engineer to provide notification of any change to information provided for the current well driller's license or to request to engage in additional well drilling activities. A well driller shall notify the state engineer within 10 days of any change to the current well driller's license.

A. Application - form and content: A well driller's license amendment application shall be completed on a form prescribed by the state engineer. The application shall include:

- (1) any changes in address or any other contact information;
- (2) any changes to business or corporation name;
- (3) any change in current drill rig supervisors;
- (4) any change in current ownership or control of a drill rig;
- (5) documentation of passing the required exams listed in Subsection C of 19.27.4.12 NMAC, corresponding to the additional well drilling activities; and
- (6) other information required by the state engineer.

B. Filing fee: No fee is required to accompany a well driller's license amendment application.

C. Effect of amendment: An amendment to a well driller's license does not extend the original two year licensure period as set forth in Subsection D of 19.27.4.15 NMAC.

[19.27.4.16 NMAC - Rp, 19.27.4.16 NMAC, 6/30/2017]

19.27.4.17 [RESERVED]

[19.27.4.17 NMAC - Rp, 19.27.4.17 NMAC, 6/30/2017]

19.27.4.18 [RESERVED]

[19.27.4.18 NMAC - Rp, 19.27.4.18 NMAC, 6/30/2017]

19.27.4.19 WELL DRILLER'S LICENSE EXPIRATION:

A well driller's license shall expire on the date set out on the well driller's license. A well driller shall file a well driller's license renewal application in accordance with 19.27.4.20 NMAC at least 10 days prior to the expiration date. If a well driller fails to file a well driller's license renewal application prior to the expiration date, the well driller's license shall automatically expire. A well driller allowing their well driller's license to expire must apply for a new well driller's license in accordance with the requirements of 19.27.4.12 NMAC. A well driller failing to renew a well driller license by the expiration date due to circumstances beyond their control may apply for an extension of time in accordance with 19.27.4.37 NMAC, if the state engineer finds the request to be reasonable and just. The state engineer may impose additional conditions of approval.

[19.27.4.19 NMAC - Rp, 19.27.4.19 NMAC, 6/30/2017]

19.27.4.20 WELL DRILLER'S LICENSE RENEWAL:

A well driller's license renewal application shall be filed with the state engineer at least 10 days prior to the expiration date.

A. Application - form and content: A well driller's license renewal application shall be completed on a form prescribed by the state engineer. The application shall include:

- (1) proof of required bonds;
- (2) proof of required insurances;
- (3) a list of drill rig supervisors that the well driller supervises;
- (4) evidence of meeting the continuing education requirements of both the well driller and all drill rig supervisors; and
- (5) other information required by the state engineer.

B. Filing fee: A fee of fifty dollars (\$50) is required to accompany the well driller's license renewal application.

C. Continuing education requirements: During each two year licensing period, a well driller shall complete a minimum of eight continuing education hours approved by the state engineer. The continuing education hours shall relate to well drilling. At least two hours of the continuing education shall be specific to regulatory requirements regarding well drilling in the state of New Mexico. The state engineer will publish a list of approved continuing education courses for the current calendar year on the state engineer's website.

D. Incomplete application: If the well driller's license renewal application is deemed incomplete or lacks documentation required by the state engineer, the well driller will be notified in writing to submit missing information. The state engineer will allow 30 days to submit the missing information.

E. Renewal discretion: The state engineer will consider any complaints, reprimands, or compliance orders related to the previous two year license period when reviewing a well driller's license renewal application. Approval will be at the state engineer's discretion and shall set forth the conditions under which the well driller shall operate well drilling activities within the state of New Mexico.

[19.27.4.20 NMAC - Rp, 19.27.4.20 NMAC, 6/30/2017]

19.27.4.21 REPRIMANDS, SUSPENSION OR REVOCATION OF WELL DRILLER'S LICENSE:

The state engineer may issue a written reprimand, a compliance order issued pursuant to Section 72-2-18 NMSA, or, after notice and hearing held pursuant to 19.25.2 NMAC, suspend or revoke a well driller's license if it is found that a well driller:

- A. made a material misstatement of fact in an application for license;
- B. failed to submit or submitted an incomplete well record or well log;
- C. made a material misstatement of fact in a well record or well log;
- D. drilled a well in any declared underground water basin without a state engineer permit;
- E. violated the conditions of the state engineer permit under which the well was being drilled;
- F. violated the conditions of a well driller's license;
- G. failed to be present or ensure the presence of a drill rig supervisor at the drilling site during well drilling activities;
- H. violated the rules and regulations of the state engineer;
- I. failed to assure the protection of the public safety, health, welfare, and property in the well construction process; or
- J. for other cause as determined by the state engineer.

[19.27.4.21 NMAC - Rp, 19.27.4.21 NMAC, 6/30/2017]

19.27.4.22 WELL DRILLER'S LICENSE REINSTATEMENT AFTER REVOCATION:

A well driller with a revoked license is prohibited from engaging in well drilling activities, unless working under the supervision of a licensed well driller. License revocation may also result in the forfeiture of the well driller bond as set forth in Subsection A of 19.27.4.12 NMAC. After the revocation period has run, a well driller may apply for a new well driller's license pursuant to 19.27.4.15 NMAC.

[19.27.4.22 NMAC - N, 19.27.4.22 NMAC, 6/30/2017]

19.27.4.23 [RESERVED]

[19.27.4.23 NMAC - Rp, 19.27.4.23 NMAC, 6/30/2017]

19.27.4.24 [RESERVED]

[19.27.4.24 NMAC - Rp, 19.27.4.24 NMAC, 6/30/2017]

19.27.4.25 APPLICATION FOR REGISTRATION AS A DRILL RIG SUPERVISOR:

A drill rig supervisor may provide onsite supervision of well drilling activities. A drill rig supervisor shall work under the direction of a well driller. The well driller is responsible for the actions of each drill rig supervisor that they direct to provide onsite supervision of well drilling activities. An applicant for registration as a drill rig supervisor shall meet the following requirements.

A. Qualified applicant: A qualified applicant for registration as a drill rig supervisor shall:

- (1) have at least two years of relevant, on-site experience working under the supervision of a well driller;
- (2) be at least 18 years of age; and
- (3) have passed the New Mexico code exam.

B. Application - form and content: An application for registration as a drill rig supervisor shall be completed on a form prescribed by the state engineer. The application shall include the name, physical and mailing addresses, and phone number of the applicant, a letter of reference from the well driller for whom the supervisor will work, or a state's licensing authority, attesting to applicant's well drilling ability, the license number and contact information of the well driller the applicant plans to work for, if known, documentation of prior well drilling experience, the completed New Mexico code exam, and other information required by the state engineer.

C. Filing fee: No fee is required to accompany the application.

[19.27.4.25 NMAC - Rp, 19.27.4.25 NMAC, 6/30/2017]

19.27.4.26 APPLICATION REVIEW AND REGISTRATION REQUIREMENTS FOR DRILL RIG SUPERVISOR:

If the state engineer finds that the applicant has fulfilled the requirements for registration as set forth in 19.27.4.25 NMAC, the state engineer shall register the applicant as a drill rig supervisor. The registration shall set forth the conditions under which the drill rig supervisor may provide onsite supervision of well drilling activities within the state of New Mexico.

A. Registration duration: A registration issued by the state engineer will be valid for a period of two years.

B. Identification card: The state engineer will issue a drill rig supervisor identification card with the registration showing the same date upon which the well driller's license expires. Each drill rig supervisor, when providing onsite supervision of well drilling activities within the state of New Mexico shall have their identification card available for inspection upon request.

[19.27.4.26 NMAC - Rp, 19.27.4.26 NMAC, 6/30/2017]

19.27.4.27 RENEWAL OF DRILL RIG SUPERVISOR REGISTRATION:

A drill rig supervisor may retain their registration by request on the well driller's license renewal application for whom they are registered.

A. Application - form and content: The application shall be the well driller's license renewal application that includes all drill rig supervisors employed by the well driller, evidence of meeting the continuing education requirements, and other information required by the state engineer.

B. Continuing education requirements: During each two year registration period, a drill rig supervisor shall complete a minimum of eight continuing education hours approved by the state engineer. The continuing education hours shall relate to well drilling. At least two hours of the continuing education shall be specific to regulatory requirements regarding well drilling in the state of New Mexico. The drill rig supervisor shall submit proofs of completion of their completed classes for the well driller to submit upon the renewal of the license in accordance with 19.27.4.19 NMAC.

[19.27.4.27 NMAC - Rp, 19.27.4.27 NMAC, 6/30/2017]

19.27.4.28 [RESERVED]

[19.27.4.28 NMAC - Rp, 19.27.4.28 NMAC, 6/30/2017]

19.27.4.29 WELL DRILLING - GENERAL REQUIREMENTS:

All wells shall be constructed in such a manner as to prevent contamination from entering the well or subsurface, to prevent commingling or inter-aquifer exchange of groundwater, to prevent loss of hydraulic head between hydrogeologic units, and to prevent unintended flood waters or surface water from entering the well and contaminating the aquifer. All well plugging shall be accomplished through filling or sealing the well in such a manner as to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water. A well driller shall ensure that the appropriate permits, approval, or emergency authorization has been granted by the state engineer prior to the well drilling activities, or ensure that the state engineer has been properly notified in accordance with 72-12-22 NMSA 1978. While conducting well drilling activities, the well driller shall have a copy of the approved permit and plan of operations on site and available for inspection upon request. A well

driller shall ensure that well drilling activities are conducted in accordance with the appropriate sections of 19.27.4.30 NMAC through 19.27.4.33 NMAC, and the following requirements:

A. On-site supervision of well drilling: A well driller or drill rig supervisor shall be present at the drilling site during well drilling activities.

B. Materials: Materials and processes used in well drilling shall conform to industry standards acceptable to the state engineer. Acceptable standards include, but are not limited to, standards developed by the national ground water association (NGWA), the American water works association (AWWA), the American standard for testing materials (ASTM), the American petroleum institute (API), the American national standards institute (ANSI), and the national sanitation foundation (NSF). The state engineer shall make the final determination of applicability of standards if any of the acceptable standards are different from one another. Materials used in well construction shall be in new or good condition. No materials or substances shall be introduced during the drilling process that may cause water contamination or contamination to the subsurface. Drilling fluids, additives, sealants, treatment chemicals, and materials as applicable must be designated for potable water well use and be NSF/ANSI standard 60 certified.

C. Cleaning of drilling equipment: All equipment used in the borehole shall be maintained in a clean and sanitary condition to prevent contamination and to protect the public health. When drilling multiple boreholes on the same site in areas of known or presumed contamination, the equipment will be sanitized between boreholes.

D. Well setbacks: All wells shall be set back a minimum of 50 feet from an existing well of other ownership, unless a variance has been granted by the state engineer. All wells shall be set back from potential sources of contamination such as, but not limited to, septic tanks and sewage leach fields, cemeteries, livestock lagoons and sewage lines, in accordance with applicable federal, state, or local requirements.

E. Requirement to cover or cap well during construction stoppage: During construction stoppage, a well shall be securely covered or capped unless a well driller or drill rig supervisor is on-site tending to the well and takes all steps to protect public welfare.

F. Casing height: The top of the completed well casing shall extend a minimum of 18 inches above the ground and appropriate steps shall be taken to prevent damage to well casings.

G. Flush mount completion: Flush mount completions, such as monitor wells located within traffic areas or in areas where security risks call for discreet completion, shall be completed in a manner that appropriately seals against entry of foreign material and fluids, and with the well casing extending above bottom of the monitoring well vault, and with a monitoring well vault that incorporates a securely fastened lid designed to withstand traffic.

H. Subsurface vault: If a well is completed within a subsurface vault, the casing shall extend a minimum of 18 inches above the floor of the subsurface vault, and be appropriately sealed against entry of foreign materials and fluids.

I. Surface completion: Surface well completions shall be completed in a manner that appropriately seals against entry of foreign material and fluids.

J. Annular space: The annular space between borehole and casing or between casings shall be dimensioned and sealed in accordance with 19.27.4.30 through 19.27.4.33 NMAC. At well completion, the top of any annular space shall be sealed, or fitted with an appropriate cover, preventing entry of foreign materials and fluids and disallowing the upward escape of groundwater.

K. Requirement to cover or cap completed wells and for measurement ports: A permanent well cap or cover shall be securely affixed to the well casing upon completion, unless an installed pump assembly provides secure coverage of or a secure cover for the wellhead. All wellheads shall have a securable opening of at least a 1/2" diameter that allows convenient access for water level measurement. An artesian well that flows (or capable of flowing) at ground surface shall be equipped with a valve to which a pressure gauge may be connected for hydrostatic pressure measurement.

L. Wellhead venting: Vents installed in the wellhead shall be protected against the entrance of foreign materials or fluids by installation of down-turned and screened fittings. All other openings in wellheads shall be sealed to prevent entrance of foreign material and flood waters.

M. Well identification tag: Any well constructed to divert water shall be tagged with a well identification tag in plain view. For above-grade wells, the well identification tag shall be affixed to the exterior of the well casing or cap using an aluminum or stainless steel band or other method approved by the state engineer. For wells finished below-grade, the well identification tag shall be clearly placed inside the well vault next to the well riser or on the first exposed discharge pipe from the well. The state engineer will provide a well identification tag when a permit is issued. The permit holder is responsible for maintaining the well identification tag and replacing missing, damaged, or illegible well identification tags with a duplicate well identification tag.

N. Well record: The well driller shall keep a record of each well drilling activity as the work progresses.

(1) Time for filing: The well driller shall file a complete well record with the state engineer and the permit holder no later than 30 days after completion of the drilling project or well repair.

(2) Form - content: The well record shall be on a form prescribed by the state engineer and shall include the name and address of the permittee, the well driller's name and license number, the state engineer file number, the name of each drill rig

supervisor that supervised well drilling activities, the location of the well (reported in latitude and longitude using a global positioning system (gps) receiver capable of five meters accuracy), the date when drilling or other work began, the date when drilling or other work concluded, the depth of the well, the depth to water first encountered, the depth to water upon completion of the well (measured by a method approved by the state engineer), the estimated well yield, the method used to estimate well yield, the size and type of casing, the location of perforations, the location of the annular seal, the location of centralizers, the intervals and types of all annular fill and sealant material, and any other information required by the state engineer. The well record shall include a completed lithologic log. The lithologic log shall include detailed information on the depth, thickness, and lithology of all strata penetrated, including whether each stratum was water bearing.

(3) Forms - Incomplete: Well records deemed incomplete by the state engineer may be returned to the well driller for proper completion and shall be refiled within 30 days of the date of notification.

O. Lithologic samples: When requested by the state engineer, the well driller shall furnish lithologic samples ("drill cuttings") of the hydrogeologic units penetrated during drilling operations. The method of sampling, interval of sampling, and the quantities required will be specified by the state engineer.

P. Removal of drilling materials:

(1) In constructing a well, the well driller shall take all reasonable precautions to protect the producing aquifer from final retention of drilling solids, including cuttings, drilling mud, and drilling fluid additives. Prior to setting of filter pack, or upon completion of well, the well driller shall to the extent possible remove additives and drilling solids introduced into or accumulated in the wellbore during well drilling.

(2) Drilling fluids and cuttings shall be contained on the drilling site or on property under the control of the well owner, and not be allowed to migrate or be discharged off that property except for authorized disposal. Drilling fluids and cuttings shall not be discharged into any waters of the state.

Q. Repair of existing wells:

(1) If a well that is to be repaired or deepened is not in conformance with these rules, the application for permit shall describe the methods and materials by which the well will be brought into conformance with these rules. In the absence of a well log for the existing well it must be demonstrated to the satisfaction of the state engineer that the well is in conformance.

(2) If an inner casing is installed to prevent leakage of undesirable water into a well, the annular space between the casings shall be completely sealed by packers,

casing swedging, pressure grouting or other methods which will prevent the movement of water between the casings.

[19.27.4.29 NMAC - Rp, 19.27.4.29 NMAC, 6/30/2017]

19.27.4.30 WELL DRILLING - NON-ARTESIAN (UNCONFINED) WELL REQUIREMENTS:

A well driller shall ensure that the well drilling activities associated with the drilling of non-artesian wells are made in accordance with 19.27.4.29 NMAC and the following requirements:

A. Annular seal: All wells shall be constructed to prevent contaminants from entering the borehole from the ground surface by sealing the annular space around the outermost casing. If surface casing (outer casing) is used then there must be a seal between the surface casing and the production casing at the ground surface. When necessary, annular seals will be required to prevent inter-aquifer exchange of water, to prevent the loss of hydraulic head between hydrogeologic zones, and to prevent the flow of contaminated or low quality water. Sealing operations shall be made with an office of the state engineer approved sealant. Casings shall be centralized within the interval to be sealed so grout or sealing materials may be placed evenly around the casing.

(1) Annular space: The diameter of the borehole in which the annular seal is to be placed shall be at least four inches greater than the outside diameter of the outermost casing. The diameter of the borehole in which the annular seal is to be placed may be reduced to three inches greater than the outside diameter of the outermost casing if pressure grouting from the bottom up is used for grout placement and the well casing is centralized in the borehole. If surface casing is used, the inside diameter of the surface casing shall be at least three inches greater than the outside diameter of the production casing.

(2) Annular seal completed to ground surface: Annular seals shall extend from ground surface to at least 20 feet below ground surface.

(a) If a well is completed less than 20 feet below ground surface, the seal shall be placed from ground surface to the bottom of the blank casing used. However, if a monitoring well is completed less than 20 feet below ground surface, the seal shall be placed for the maximum length practical in order that the well is constructed to prevent contamination, to prevent inter-aquifer exchange of water, to prevent flood waters from contaminating the aquifer, and to prevent infiltration of surface water.

(b) The annular seal shall extend to ground surface unless a pitless adapter is installed. For wells completed with a pitless adapter, the top of the seal shall extend to one foot below the pitless adapter connection.

(c) All sealing materials placed deeper than 20 feet below ground surface shall be placed by tremie pipe or by pressure-grouting through the well casing and up the annulus.

(d) If in the event the water level in the annular space is less than 20 feet from surface, all sealing material shall be filled from the bottom upwards to ground surface using a tremie pipe. Time release bentonite pellets maybe used without a tremie pipe where standing water is above 20 feet.

(3) Annular seals to prevent inter-aquifer exchange of water or loss of hydraulic head between hydrogeologic units: Sufficient annular seal shall be placed to prevent inter-aquifer exchange of water and to prevent loss of hydraulic head between hydrogeologic units. Sufficient annular seal shall be placed to prevent loss of hydraulic head through the well annulus, through perforated or screened casing, or through an open bore interval.

(4) Annular seals to prevent the contamination of potable water: Wells which encounter non-potable, contaminated, or polluted water at any depth shall have the well annulus sealed and the well properly screened to prevent the commingling of the undesirable water with any potable or uncontaminated water. The use of salt-tolerant sealing materials may be required by the state engineer in wells that encounter highly mineralized water.

(5) Annular seal requirements for community water supply wells: Community water supply wells shall also be completed with annular seals in accordance with other regulatory agencies' applicable ordinances or rules. Well drillers may be subject to other applicable federal, state, or local regulations.

B. Well casing: The well casing shall have sufficient wall thickness to withstand formation and hydrostatic pressures placed on the casing during installation, well development, and well use.

C. Well plugging: A non-artesian well that is a permanently discontinued well or a well in a state of disrepair, a failed well drilling attempt, an improperly constructed or completed well, or a replaced well with a permit condition to plug shall be plugged. A well plugging plan of operations shall be approved by the state engineer prior to plugging unless the well is a replaced well with a permit condition to plug. The state engineer may require that the plugging process be witnessed by an authorized representative.

(1) Methods and materials: To plug a well, the entire well shall be filled from the bottom upwards to ground surface using a tremie pipe. The bottom of the tremie shall remain submerged in the sealant throughout the entire sealing process; other placement methods may be acceptable and approved by the state engineer. The well shall be plugged with an office of the state engineer approved sealant for use in the plugging of non-artesian wells. Wells that do not encounter a water bearing stratum

shall at a minimum be plugged by filling the well with drill cuttings or clean native fill to within 10 feet of ground surface and by plugging the remaining 10 feet of the well to ground surface with a plug of the office of the state engineer approved sealant.

(2) Contamination indicated: Wells encountering contaminated water or soil may require coordination between the office of the state engineer and the New Mexico environment department (or other authorized agency or department) prior to the plugging of the well. Specialty plugging materials and plugging methods may be required.

(3) Plugging record: A well driller shall keep a record of each plugging activity as the work progresses. The well driller shall file a complete plugging record with the state engineer and the permit holder no later than 30 days after completion of the plugging. The plugging record shall be on a form prescribed by the state engineer and shall include the name and address of the well owner, the well driller's name and license number, the name of each drill rig supervisor that supervised the well plugging, the state engineer file number for the well, the location of the well (reported in latitude and longitude using a global positioning system (gps) receiver capable of five meters accuracy), the date when plugging began, the date when plugging concluded, the plugging material(s) used, the interval in which each plugging material was installed, the amount of plugging material installed, the depth of the well, the size and type of casing, the location of perforations, and any other information required by the state engineer.

[19.27.4.30 NMAC - Rp, 19.27.4.30 NMAC, 6/30/2017]

19.27.4.31 WELL DRILLING – ARTESIAN (CONFINED) WELL REQUIREMENTS:

Artesian wells shall be constructed such that groundwater does not move appreciably between hydrogeologic units nor flow uncontrolled to the ground surface. For regulatory purposes, the final determination of whether a well is artesian shall be based upon evaluations made by the state engineer. A well driller shall ensure that well drilling activities associated with the drilling of artesian wells are made in accordance with 19.27.4.29 NMAC and the following requirements:

A. Plan of operations: Before conducting any well drilling activities for an artesian well, prior approval from the owner of the land upon which the well drilling activity is planned must be granted, the permittee, well owner, or the owner's agent or attorney, shall provide a plan of operations describing the proposed work on a form prescribed by the state engineer, and the plan of operations shall be approved by the state engineer. The plan of operations shall provide information on the well design and materials to be used in the well construction, including the cementing and testing procedures. If the materials or cementing and testing procedures are not provided for in these rules and regulations, then the plan of operations must provide documentation to support their use. The plan of operations shall be signed by a well driller. Well drilling activities of an artesian well shall be conducted in accordance with the plan of operations as approved and conditioned by the state engineer. While conducting well drilling activities the well

driller shall have a copy of the approved permit and plan of operations on site and available for inspection upon request.

B. Construction inspection: The casing, cementing, plugging, and testing of an artesian well shall be witnessed by an authorized representative of the state engineer. Alternatives to onsite witnessing may be utilized at the discretion of the state engineer.

C. Artesian wells - no prior knowledge of artesian condition: In the course of drilling a well, if a previously unidentified artesian stratum is encountered, the state engineer shall be immediately notified that an artesian stratum was encountered, any flowing groundwater to ground surface shall be controlled immediately, and a plan of operations shall be submitted for approval in accordance with Subsection A of 19.27.4.31 NMAC.

D. Casing and coupling material requirements: Casing and coupling material used in the construction of an artesian well shall meet specifications approved by the state engineer prior to well drilling. The casing for artesian wells shall be inspected by an authorized representative of the state engineer prior to well construction.

E. Casing installation requirements: The casing shall be centralized in the borehole throughout the casing string hole and centered at the top so grout may be evenly placed around the casing. A commercially made float shoe shall be installed on the lowermost joint of the casing to be landed unless an alternate method for cementing has been approved by the state engineer. The casing shall be un-perforated and the well shall be designed in a manner to prevent the commingling of water from the artesian stratum with water in an overlying or underlying hydrogeologic unit. All threaded casing joints must be tightened to manufacturer's designated torque specifications during installation. Casing shall be set at or near the base of the confining formation or the top of the artesian stratum.

F. Annular space: The diameter of the borehole in which the seal shall be placed shall be at least four inches greater than the outside diameter of the casing set to include the coupling diameter. If pressure grouting from the bottom up is used for sealant placement then the diameter of the borehole in which the seal shall be placed may be reduced to three inches greater than the outside diameter of the casing set. If surface casing is used, the inside diameter of the surface casing shall be at least three inches greater than the outside diameter of the production casing including the diameter of the coupling on the casing.

G. Annular space sealing requirements: The annular seal shall consist of an office of the state engineer approved sealant. The seal shall originate at or near the base of the confining unit and shall be continuously placed to ground surface. The sealing process shall be witnessed by an authorized representative of the state engineer. When necessary, sufficient annular seal shall be placed to prevent inter-aquifer exchange of water and to prevent loss of hydraulic head between hydrogeologic units.

H. Annular space - seal placement: The office of the state engineer approved sealant shall be placed in the annular space by one of the following methods:

(1) Tremie method: The office of the state engineer approved sealant shall be pumped using a tremie pipe to fill the annular space of the well from the bottom of the seal to ground surface. Flow of undiluted sealant out of the top of the annular space shall be established with the tremie pipe suspended in the annulus. The lower end of the tremie shall remain immersed in the sealant for the duration of pumping. The tremie pipe may be gradually removed as sealant level in the annulus rises.

(2) Pressure grout method: The office of the state engineer approved sealant shall be pumped down the inside of the casing, through the float shoe, and up the annular space until undiluted sealant circulates out of the annulus at ground surface. Excess sealant will be displaced out of the casing from behind by pumping an industry approved drillable plug in front of the drilling fluid until it has bumped up sufficiently at the float shoe. The fluid volume pumped into the casing to displace the sealant shall equal the inside volume of the casing string itself to assure total displacement. Should undiluted sealant not be displaced out the top of the annulus in a continuous pressure grouting operation, the sealing job may be completed by the use of the tremie method. If the tremie method is employed, then a tremie pipe shall be suspended in the annulus to the approximate level of the competent sealing material. The office of the state engineer approved sealant shall be pumped to fill the annular space of the well from the top of the competent sealing material to ground surface.

I. Sealing off formations: The compressive strength of office of the state engineer approved sealant shall be 500 psi or more before well drilling is resumed. Cement must be allowed to set a minimum of 48 hours before well drilling is resumed. Shorter set times may be requested if approved alternate sealants or accelerants are used. Sealing off of the formations shall be checked by a method acceptable to the state engineer. In the case of remediation of artesian boreholes, the compressive strength of office of the state engineer approved sealant shall be 1,000 psi or more before artesian head is shut-in at the wellhead.

J. Repair requirements: When an artesian well is in need of repair, the permittee, well owner, or the owner's agent or attorney with prior approval from the owner of the land upon which the well is located, shall provide a plan of operations to the state engineer for approval. The plan of operations shall be prepared in accordance with Subsection A of 19.27.4.31 NMAC. When required in the approved plan of operations, before repairs are made to an artesian well, the well shall first be inspected by an authorized representative of the state engineer to determine if the condition of the well is such that it may be repaired. When a leak in the casing is found and the casing and well are otherwise in good condition, the state engineer may allow the well to be repaired. A packer or bridge plug may be required to complete necessary well repairs. The use of a lead packer is prohibited. An inspection shall be made at the completion of the work to determine if the repair is satisfactory. During an inspection, the well shall be open to allow for the entrance of equipment for testing and inspection.

K. Plugging requirements: An artesian well that is a permanently discontinued well or a well in a state of disrepair, a failed well drilling attempt, or an improperly constructed or completed well shall be plugged. In accordance with Subsection A of 19.27.4.31 NMAC, a well plugging plan of operations shall be approved by the state engineer prior to plugging. The well shall be plugged from the bottom upwards with an office of the state engineer approved sealant. The well plugging shall be witnessed by an authorized representative of the state engineer.

(1) Contamination indicated: Wells encountering contaminated water or soil may require coordination between the office of the state engineer and the New Mexico environment department (or other authorized agency or department) prior to the plugging of the well. Specialty plugging materials and plugging methods may be required.

(2) Plugging record: A well driller shall keep a record of each plugging activity as the work progresses. A plugging record shall be filed in accordance with Paragraph (3) of Subsection C of 19.27.4.30 NMAC.

[19.27.4.31 NMAC - Rp, 19.27.4.31 NMAC, 6/30/2017]

19.27.4.32 [RESERVED]

[19.27.4.32 NMAC - Rp, 19.27.4.32 NMAC, 6/30/2017]

19.27.4.33 WELL DRILLING REQUIREMENTS FOR DEEP WELLS IN NON-POTABLE AQUIFERS:

Deep non-potable wells are wells administered under Article 12, Chapter 72-12-25 through Chapter 72-12-28 NMSA, and are defined as wells drilled or recompleted into an aquifer, the top of which aquifer is at a depth of 2500 feet or more below the ground surface at any location at which a well is drilled and which aquifer contains only non-potable water. Non-potable water means water containing greater than or equal to 1,000 part per million (or milligrams per liter) total dissolved solids ($TDS \geq 1,000 \text{ mg/L}$). A well driller shall ensure that well drilling activities associated with the drilling of deep non-potable wells are made in accordance with 19.27.4.29 NMAC and 19.27.4.31 NMAC and the following:

A. Deep non-potable well plan of operations: Before conducting the drilling of a deep non-potable well, a deep non-potable well plan of operations describing the proposed work shall be provided on a form prescribed by the state engineer. The deep non-potable well plan of operations shall provide information on the well design and materials to be used in the well construction, including the cementing and testing procedures, and any other pertinent data required by the state engineer. If the materials or cementing and testing procedures are not provided for in these rules and regulations, then the deep non-potable well plan of operations must provide documentation to support their use. The deep non-potable well plan of operations shall be signed by the

well driller conducting the well drilling activities. A deep non-potable well plan of operations must be approved by the state engineer before the drilling of any deep non-potable well. Drilling of a deep non-potable well shall be conducted in accordance with the deep non-potable well plan of operations as approved and conditioned by the state engineer. While conducting well drilling activities the well driller shall have a copy of the approved permit and deep non-potable well plan of operations on site and available for inspection upon request.

B. Longevity of casing: The deep non-potable well plan of operations required under subsection A must provide information that supports the longevity of the selected casing in response to potentially corrosive salt concentrations. Deep non-potable wells must use centralizers and H-55, J-55 grade casing equivalent or better.

C. Annular seals to prevent the contamination of potable water: Wells where non-potable, contaminated, or polluted water is anticipated or encountered at any depth shall have the well annulus sealed and the well properly screened to prevent the commingling of the undesirable water with any potable or uncontaminated water. The use of salt-tolerant sealing materials may be required by the state engineer in wells where highly mineralized water is anticipated or encountered.

D. Well schematic: The deep non-potable well plan of operations required under subsection A must provide a well schematic illustrating proposed construction depths, dimensions, materials, and methods as well as the target aquifer, stratigraphy and hydrogeology to be encountered during drilling.

E. Sealing off formations: Cement must be allowed to set a minimum of 48 hours before well drilling is resumed. Shorter set times may be requested if approved alternate sealants or accelerants are used. If shorter set times are requested, documentation shall be provided in the deep non-potable well plan of operations substantiating the appropriate cement curing time to meet the compressive strengths necessary, consistent with anticipated shut-in pressures. Shorter set times shall not be permitted unless prior approval is granted by the state engineer. Sealing off of the formations shall be checked by a method acceptable to the state engineer.

F. Cementing service reports: The well driller shall provide any cementing service reports with the submission of the well log within 30 days. The state engineer may require preliminary information as it becomes available.

G. Cement bond logging: The well driller shall provide the results of any cement bond logging conducted with the submission of the well log within 30 days. The state engineer may require results of cement bond logging within 24 hours of completion.

H. Mud logging and Geophysical logging: The well driller shall provide any mud logging and geophysical logging reports created with the submission of the well log within 30 days. The state engineer may require results of geophysical logging within 24

hours of completion. The state engineer may require periodic mud logging or lithologic logging during the course of the project.

I. Drill cuttings or core: The well driller shall submit copies of the well record and geophysical logs, and representative samples of drill cuttings or core collected during drilling of any deep non-potable well to the New Mexico bureau of geology and mineral resources for archiving in the bureau's library of subsurface data.

J. Specialized Drilling Equipment: The deep non-potable well plan of operations required under Subsection A of 19.27.4.33 NMAC must contain a request from the well driller to use of any specialized drilling equipment for the well construction. Specialized drilling equipment may not be used for well construction unless prior approval is granted by the state engineer.

[19.27.4.33 NMAC - N, 19.27.4.33 NMAC, 6/30/2017]

19.27.4.34 [RESERVED]

[19.27.4.34 NMAC - Rp, 19.27.4.34 NMAC, 6/30/2017]

19.27.4.35 [RESERVED]

[19.27.4.35 NMAC - Rp, 19.27.4.35 NMAC, 6/30/2017]

19.27.4.36 REQUIREMENTS FOR MINE DRILL HOLES THAT PENETRATE A WATER-BEARING STRATUM:

Any person, firm, or corporation drilling a mine drill hole that penetrates a water-bearing stratum, whether confined or unconfined, shall immediately notify the state engineer by filing an application for permit to drill an exploratory well. The person, firm, or corporation shall file a well plugging plan of operations in accordance with Subsection C of 19.27.4.30 NMAC or Subsection K of 19.27.4.31 NMAC concurrently with the application for permit. Upon the state engineer's approval of the well plugging plan of operations, the person, firm, or corporation shall have the mine drill hole plugged within the timeframe stated on the conditions of approval.

[19.27.4.36 NMAC - Rp, 19.27.4.36 NMAC, 6/30/2017]

19.27.4.37 REQUEST FOR VARIANCE:

The rules in 19.27.4.29, 19.27.4.30, 19.27.4.31 and 19.27.4.33 NMAC are not intended to cover every situation encountered during well drilling. Hydrogeologic conditions vary across the state, and may warrant the need to deviate from the rules contained in 19.27.4.29, 19.27.4.30, 19.27.4.31, or 19.27.4.33 NMAC. A request for a variance to a rule in this part shall be submitted in writing. The request shall contain a detailed justification that demonstrates that such a variance is necessary to preclude

unreasonable hardship, or that application of a rule in this part would not be practicable. The state engineer may grant the variance if the state engineer finds the request to be reasonable and just. The state engineer shall respond in writing to the request for variance and, if the variance is granted, the state engineer may impose conditions of approval.

[19.27.4.37 NMAC - Rp, 19.27.4.37 NMAC, 6/30/2017]

19.27.4.38 LIBERAL CONSTRUCTION:

This part shall be liberally construed to carry out its purpose.

[19.27.4.38 NMAC - Rp, 19.27.4.38 NMAC, 6/30/2017]

19.27.4.39 SEVERABILITY:

If any section, paragraph, sentence, clause, word or provision of this rule shall be held invalid, the invalidity of such section, paragraph, sentence, clause, word or provision shall not affect any of the remaining provisions of this rule.

[19.27.4.39 NMAC - Rp, 19.27.4.39 NMAC, 6/30/2017]

PART 5: THE USE OF PUBLIC UNDERGROUND WATERS FOR HOUSEHOLD OR OTHER DOMESTIC USE IN ACCORDANCE WITH SECTION 72-12-1.1 NMSA

19.27.5.1 ISSUING AGENCY:

State Engineer.

[19.27.5.1 NMAC - N, 8-15-2006]

19.27.5.2 SCOPE:

The requirements for the use of public underground waters in accordance with Section 72-12-1.1 NMSA.

[19.27.5.2 NMAC - N, 8-15-2006]

19.27.5.3 STATUTORY AUTHORITY:

Section 72-12-1 NMSA provides that the water of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, is declared to belong to the public and to be subject to appropriation for beneficial use. Section 72-12-1 NMSA further provides for the limited use of relatively small amounts of public underground waters in the irrigation of not to exceed one acre of noncommercial

trees, lawn or garden, and for household or other domestic use. Section 72-12-1.1 NMSA sets out the requirements for the filing of applications and the issuance of permits for the use of public underground waters for the irrigation of not to exceed one acre of noncommercial trees, lawn or garden, and for household or other domestic use. Section 72-2-8 NMSA gives the state engineer authority to adopt regulations to implement and enforce any provision of any law administered by him.

[19.27.5.3 NMAC - N, 8-15-2006]

19.27.5.4 DURATION:

Permanent.

[19.27.5.4 NMAC - N, 8-15-2006]

19.27.5.5 EFFECTIVE DATE:

August 15, 2006, unless a later date is cited at the end of a section.

[19.27.5.5 NMAC - N, 8-15-2006]

19.27.5.6 OBJECTIVE:

To update the existing regulations and establish new regulations for the use of public underground waters for household or other domestic use in accordance with Section 72-12-1.1 NMSA.

[19.27.5.6 NMAC - N, 8-15-2006]

19.27.5.7 DEFINITIONS:

Unless defined below or in a specific section of these regulations, all other words used herein shall be given their customary and accepted meaning.

A. 72-12-1.1 domestic well permit: A permit issued for domestic use in accordance with Section 72-12-1.1 NMSA or its predecessor statutes. Included in this definition are 72-12-1.1 domestic well permits that have been adjudicated.

B. 72-12-1.1 domestic well: The point of diversion authorized under a 72-12-1.1 domestic well permit.

C. Administrative guidelines: A compilation of policies and procedures intended to provide guidance to office of the state engineer personnel for processing pending and future water rights applications in a specifically defined geographic area. The administrative guidelines shall not limit the state engineer's authority to take alternative or additional actions relating to the management of the water resources of the

specifically defined geographic area as provided by New Mexico statutes, orders of the court, or the written rules and regulations of the state engineer.

D. Association: A water users association established under the Sanitary Projects Act (Section 3-29-2(B) NMSA).

E. Consumptive use: The quantity of water consumed during the application of water to beneficial use. The quantity of water beneficially consumed depends on the requirements of a particular enterprise and how it applies and consumes the water. The authorized diversion of water that is not beneficially consumed in the course of water use is not part of the allowable consumptive use allocation of the water right. The consumptive use of water by a crop (evapotranspiration) does not include depletions such as evaporation from canals, ditches or irrigated fields during surface application, transpiration by vegetation along ditches, evaporation or leakage from irrigation water pipes, evaporation of sprinkler spray and drift losses, and evaporation of runoff and seepage from irrigated fields.

F. Domestic use: The use of water for household purposes or for the irrigation of not to exceed one acre of noncommercial trees, lawn, garden, or landscaping. Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility are included in this definition. This definition does not include the use of underground water from a well used primarily for livestock watering as provided for under Section 72-12-1.2 NMSA.

G. Domestic well management area: A bounded area overlying a stream-connected aquifer, specifically described by section, township and range, or by other land survey descriptions, that requires special water resource protection as determined by the state engineer.

H. Household: A single-family residence including outbuildings such as guesthouses, barns, and sheds.

I. Hydrologic unit: A physically definable, continuous and interconnected surface water or groundwater system. A hydrologic unit may consist of an aquifer, a group of interconnected aquifers, and any hydrologically connected springs, streams, rivers, lakes or other surface water bodies.

J. Infrastructure capacity area: An area defined by an association, based on factors determining the capacity to provide water, including, but not limited to, the location of existing lines, adequacy of existing infrastructure, the availability of water and water rights, and as reviewed by and then filed with the state engineer.

[19.27.5.7 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.8 FEE SCHEDULE:

An application for permit shall be accompanied by one of the following filing fees:

- A. \$125 for an application for a 72-12-1.1 domestic well permit.
- B. \$75 for an application for permit for replacement 72-12-1.1 domestic well.
- C. \$125 for an application for permit for supplemental 72-12-1.1 domestic well.
- D. \$75 for an application for permit to repair or deepen a 72-12-1.1 domestic well.
- E. \$75 for an application for permit to amend the type of domestic use authorized under a 72-12-1.1 domestic well permit.
- F. \$200 for an application for permit to transfer a valid, existing water right into a 72-12-1.1 domestic well permit pursuant to 19.27.5.10 NMAC.

[19.27.5.8 NMAC - N, 8-15-2006]

19.27.5.9 APPLICATION FOR A 72-12-1.1 DOMESTIC WELL PERMIT:

The following requirements apply to applications filed for 72-12-1.1 domestic well permits. In addition to the requirements listed in this section and part, the drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restrictive limitations imposed by a court, or by lawful municipal or county ordinance.

A. Form - content: An application for a 72-12-1.1 domestic well permit shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and mailing address of the applicant, the type of domestic use being applied for, the number of households to be served, the location of the proposed well, the name of the owner of the land on which the well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the well, the outside diameter of the well casing, and other information the state engineer deems necessary. The state engineer may require an application to be accompanied by a deed or purchase contract and plat of survey on file with the appropriate county.

B. Well location: The well location shall be described using universal transverse mercator (NAD 83), latitude and longitude, or the New Mexico state plane coordinate system. In addition, the well location shall be described by the lot and block number of the lot where the well is to be located (if applicable). An application to drill a well on land owned by another person, the state of New Mexico, the federal government, or another entity shall be accompanied by written consent of the landowner.

C. Multiple use well: A 72-12-1.1 domestic well permit may be conditioned to allow the diversion of water from an existing well previously permitted for livestock, irrigation, or any other beneficial purpose of use other than domestic use. The diversion of water

from a multiple use well made pursuant to a 72-12-1.1 domestic well permit shall be separately metered.

D. Amount of water: The drilling of a 72-12-1.1 domestic well and the amount and uses of water permitted are subject to such additional or more restrictive limitations imposed by a court, or by lawful municipal or county ordinance. The maximum permitted diversion of water from a 72-12-1.1 domestic well that is not subject to additional or more restrictive limitations shall be as follows:

(1) Single household: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall be 1.0 acre-foot per annum, except in hydrologic units where applicant can demonstrate to the satisfaction of the state engineer that the combined diversion from domestic wells will not impair existing water rights, then the maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve one household shall be 3.0 acre-foot per annum.

(2) Multiple households: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 1.0 acre-foot per annum per household served. The maximum combined diversion from a 72-12-1.1 domestic well serving three or more households shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 1.0 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of 72-12-1.1 domestic well permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or the irrigation of crops grown for commercial sale.

(4) Transfer of a valid, existing water right into a 72-12-1.1 domestic well permit: The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with Sections 72-5-23, 72-5-24, 72-12-3, and 72-12-7 NMSA, as applicable, for the purpose of increasing the permitted diversion from the 72-12-1.1 domestic well.

E. Multiple 72-12-1.1 domestic well permits on a legal lot of record: An application for a new 72-12-1.1 domestic well permit where the proposed point of

diversion is to be located on the same legal lot of record as an operational 72-12-1.1 domestic well shall be treated as an application for a supplemental well pursuant to Subsection B of 19.27.5.11 NMAC. A legal lot of record is a parcel of land that is created in a manner consistent with the zoning and planning laws in place at the time the parcel is created.

F. 72-12-1.1 domestic well permit to accompany a house or other dwelling constructed for sale: A person or other entity planning to construct and sell a house or other dwelling may apply for a 72-12-1.1 domestic well permit to provide water to the dwelling. The permit holder may use water under a 72-12-1.1 domestic well permit for activities directly related to the construction of the dwelling only if the 72-12-1.1 domestic well permit is specifically conditioned to allow such use of water from the well. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. At any one time, a person or other entity may not hold more than ten 72-12-1.1 domestic well permits for a well to accompany a house or other dwelling constructed for sale. If a person or other entity holds ten or more such 72-12-1.1 domestic well permits, additional 72-12-1.1 domestic well permits will be issued as written notices are filed on existing permits that reduce the number of such permits held by the person or entity to less than ten.

[19.27.5.9 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.10 [RESERVED]

[19.27.5.10 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.11 OTHER 72-12-1.1 DOMESTIC WELL PERMIT APPLICATIONS:

Other 72-12-1.1 domestic well permit applications may be made only as specifically provided for in this section. Permit applications made in accordance with this section require an existing 72-12-1.1 domestic well permit in good standing. Applications shall be prepared on a form prescribed by the state engineer and the applicant shall be the owner of record of the 72-12-1.1 domestic well permit. The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC. The publication of a legal notice is not required for a permit application made in accordance with Subsection A, B, C, or D of this section. A permit issued pursuant to Subsections A, B, or C of this section for an existing 72-12-1.1 domestic well permit in good standing will not affect the maximum authorized diversion amount from the 72-12-1.1 domestic well. No change may be made to the point of diversion, place of use, or purpose of use authorized under a 72-12-1.1 domestic well permit except as provided for in Subsection E of this section.

A. Application for permit to replace a 72-12-1.1 domestic well: A permit from the state engineer is required to drill a replacement 72-12-1.1 domestic well. The state engineer shall require the well being replaced to be plugged or capped in accordance with the regulations of the office of the state engineer. The replacement well shall be permitted by the state engineer to serve the same authorized legal lot(s) of record and to serve the same type of domestic use as the 72-12-1.1 domestic well being replaced. An application shall include the file number of the well to be replaced, the name and mailing address of the applicant, the type of domestic use, the location of the existing well, the proposed location of the replacement well, the name of the owner of the land on which the replacement well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the replacement well, the outside diameter of the replacement well casing, the reason for replacing the well, and other information the state engineer deems necessary. The state engineer may require a meter on a replacement 72-12-1.1 domestic well as a condition of the new permit.

B. Application for permit for supplemental 72-12-1.1 domestic well: A permit from the state engineer is required to drill a supplemental 72-12-1.1 domestic well. The total combined diversion from the 72-12-1.1 domestic well and the supplemental well shall not exceed the maximum diversion amount authorized under the 72-12-1.1 domestic well permit. An application shall include the name and mailing address of the applicant, the type of domestic use, the state engineer file number, the location of the existing well, the authorized maximum diversion amount of the domestic well to be supplemented, the existing capacity of the well to be supplemented, the proposed location of the supplemental well, the name of the owner of the land on which the supplemental well is to be drilled, the name and license number of the well driller (if known), the proposed depth of the supplemental well, the outside diameter of the supplemental well casing, and other information the state engineer deems necessary. The state engineer shall require the installation of a meter on both the supplemental well and the 72-12-1.1 domestic well being supplemented as a condition of the new permit.

C. Application for permit to repair or deepen a 72-12-1.1 domestic well: A permit from the state engineer is required to repair or deepen a 72-12-1.1 domestic well. A permit to repair a 72-12-1.1 domestic well is required for any type of repair work involving the use of a drill rig. A permit is not required for work on pumping equipment. An application shall include the state engineer file number of the 72-12-1.1 domestic well to be deepened or repaired, the name and mailing address of the permit holder, the location of the well, the name and license number of the well driller (if known), a description of the work to be performed, the proposed depth (if the application is for deepening the well), and other information the state engineer deems necessary. The state engineer may require a meter on a 72-12-1.1 domestic well to be repaired or deepened as a condition of the new permit.

D. Application for permit to amend the type of domestic use of a 72-12-1.1 domestic well permit: A permit from the state engineer is required to amend the type of domestic use between single household, multiple household, or drinking and sanitary

uses that are incidental to the operations of a governmental, commercial, or non-profit facility. An application shall include the state engineer file number of the 72-12-1.1 domestic well permit, the name and mailing address of the applicant, the current authorized type of domestic use, the proposed type of domestic use, and other information deemed necessary by the state engineer. The state engineer may require a meter on a 72-12-1.1 domestic well as a condition of the new permit when the type of domestic use is changed.

E. Change in point of diversion or alternate point of diversion: The point of diversion of a permitted, declared, or adjudicated 72-12-1.1 domestic well may be changed only:

(1) pursuant to a water rights settlement approved by the state engineer and a court, for those wells drilled prior to a date specified and in a manner specifically authorized by the settlement, where such settlement requires the plugging of each 72-12-1.1 domestic well for which the point of diversion is changed and prohibits the drilling of new 72-12-1.1 domestic wells within the specifically described exclusive service area; or

(2) pursuant to 72-12-7 NMSA by an owner of a 72-12-1.1 domestic well located within the infrastructure capacity area of an association, to change the point of diversion into a well owned and operated by an association in accordance with the following provisions:

(a) the change in point of diversion shall be made upon application to the state engineer and upon a showing that the change will not impair existing rights and will not be contrary to conservation of water within the state and will not be detrimental to the public welfare of the state; the application may be granted only after notice and opportunity for hearing are provided as prescribed by Subsection D of Section 72-12-3 NMSA;

(b) an association that allows the point of diversion of a domestic well to be changed to that of an association's well shall file with the state engineer at the time of application a map depicting the boundaries of the association's infrastructure capacity area and updated maps of any expansion of the boundaries of the association's infrastructure capacity area, if not already on file;

(c) only domestic wells located within the boundaries of the infrastructure capacity area of the association that were permitted prior to the time the association files its infrastructure capacity area boundaries or an update of those boundaries with the state engineer may have their points of diversion changed to the association's point of diversion;

(d) once the association files its infrastructure capacity area map or updated map with the state engineer, the state engineer shall issue permits only for new domestic wells to be located on property from which no domestic well point of diversion

has been previously changed; exceptions will be considered only if necessitated by public health, safety and welfare concerns;

(e) an association shall be listed as co-applicant on the application.

[19.27.5.11 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.12 CHANGE OF OWNERSHIP:

In the event of any change of ownership of a 72-12-1.1 domestic well permit the new owner shall file a change of ownership form with the state engineer in accordance with Section 72-1-2.1 NMSA. If the new owner fails to file a change of ownership in a timely manner the state engineer may cancel the 72-12-1.1 domestic well permit. The state engineer may provide written notice to a new owner of a 72-12-1.1 domestic well permit of the requirement to file change of ownership.

[19.27.5.12 NMAC - N, 8-15-2006]

19.27.5.13 ACTION OF THE STATE ENGINEER:

The state engineer shall act on all applications that are properly filed.

A. Rejection of application: The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area where a restriction on the use of water or the drilling of new wells has been imposed by a court. The state engineer may reject an application for a 72-12-1.1 domestic well permit when the proposed 72-12-1.1 domestic well is to be located in an area of water quality concern where a prohibition on or a recommendation against the drilling of new wells has been established by a government entity.

B. Approval of application - conditions of approval: The state engineer may set forth conditions of approval for a 72-12-1.1 domestic well permit, which may include any of the following:

(1) The casing shall not exceed 7 inches outside diameter except under specific conditions in which reasons satisfactory to the state engineer are shown.

(2) The well shall be set back a minimum of 50 feet from any existing well of other ownership.

(3) If artesian water is encountered, all rules and regulations pertaining to the drilling and casing of artesian wells shall be complied with except under specific conditions in which reasons satisfactory to the state engineer are shown.

(4) The well shall be constructed by a driller licensed in the state of New Mexico. A licensed driller shall not be required for the construction of a driven well when the outside diameter of the casing does not exceed two and three-eighths ($2\frac{3}{8}$) inches.

(5) Pursuant to Section 72-8-1 NMSA, the permittee shall allow the state engineer and his representatives entry upon private property for the performance of their respective duties, including access to the well for meter reading and water level measurement.

(6) The drilling of the well and amount and uses of water permitted are subject to such limitations as may be imposed by the courts or by lawful municipal and county ordinances which are more restrictive than the conditions of this permit and applicable state engineer regulations.

(7) This permit authorizes the drilling of a well to accompany a house or other dwelling being constructed for sale. Water may only be diverted for activities directly related to the construction of the dwelling that the well will serve. Upon sale of the house or dwelling, the permit holder shall provide the new owner notice in writing of the requirement to file a change of ownership with the state engineer for the 72-12-1.1 domestic well permit. A copy of the notice shall be filed at the office of the state engineer along with a copy of the deed or other instrument of conveyance which conveyed the land upon which the 72-12-1.1 domestic well is located. This condition shall automatically expire when the office of the state engineer accepts a change of ownership for filing in the name of the new owner intending to divert water from the well. No water may be diverted from the 72-12-1.1 domestic well by the new owner until a change of ownership has been recorded at the office of the state engineer.

(8) The permit holder shall ensure that a well record has been filed with the state engineer no later than twenty days after the completion of the well drilling.

(9) Any diversion of water made in excess of the authorized maximum diversion amount in any calendar year shall be repaid with twice the amount of the over-diversion during the following calendar year. Repayment shall be made by either: (a) reducing the diversion during the following calendar year from the 72-12-1.1 domestic well that is the source of the over-diversion; or (b) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year. The plan for the proposed repayment shall be on a form prescribed by the state engineer.

(10) The permit is subject to cancellation for non-compliance with the conditions of approval or if otherwise not exercised in accordance with the terms of the permit.

(11) The right to divert water under this permit is subject to curtailment by priority administration as implemented by the state engineer or a court.

(12) A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit.

C. Metering requirements: When a metering device is required by the state engineer on a 72-12-1.1 domestic well, the totalizing meter shall be installed before the first branch of the discharge line from the well. The meter installation shall be in accordance with the specifications adopted by the state engineer. The holder of the 72-12-1.1 domestic well permit shall file a meter installation and inspection report with the office of the state engineer, documenting the make, model, serial number, date of installation, and initial reading of the meter prior to diversion of water. Pumping records for the 3 proceeding calendar months shall be submitted to the appropriate state engineer district office on or before the 10th of January, April, July, and October of each year unless a different reporting period has been established in the conditions of approval of the permit.

(1) The state engineer shall require a meter on each new 72-12-1.1 domestic well permitted:

- (a)** within a domestic well management area;
- (b)** when a metering requirement is imposed by the courts;
- (c)** for drinking and sanitary domestic use that is incidental to the operations of a governmental, commercial, or non-profit facility;
- (d)** for multiple households domestic use;
- (e)** as a supplemental 72-12-1.1 well; the 72-12-1.1 domestic well being supplemented shall also require a meter; and
- (f)** as a multiple use well such that the diversion of water for domestic use is separately metered.

(2) The state engineer may require a meter on a new 72-12-1.1 domestic well:

- (a)** permitted for single household domestic use;
- (b)** permitted to accompany a residence or other dwelling constructed for sale;
- (c)** as a condition of a permit to repair or deepen a 72-12-1.1 domestic well;
- (d)** as a condition of a permit to amend the type of domestic use of a 72-12-1.1 domestic well permit; or

(e) as a condition of a permit to transfer a valid, existing water right to a 72-12-1.1 domestic well permit in accordance with subsection E of 19.27.5.14 NMAC.

D. Well setbacks: All new 72-12-1.1 domestic wells shall be set back a minimum of 50 feet from an existing well of other ownership unless a variance has been granted by the state engineer. The state engineer may grant a variance for a replacement well or to allow for maximum spacing of the well from a source of groundwater contamination. All 72-12-1.1 domestic wells shall be set back from potential sources of contamination in accordance with the rules and regulations of the New Mexico environment department.

E. Well identification tag: The state engineer may require that a 72-12-1.1 domestic well be tagged with a well identification tag. If a well tag is required, the tag shall be affixed in plain view and the permit holder shall be responsible for maintaining the well identification tag.

F. Permit expiration: Each 72-12-1.1 domestic well permit shall be conditioned by the state engineer to require the 72-12-1.1 domestic well be completed and a well record be filed with the state engineer within one year of the date of issuance of the permit. A 72-12-1.1 domestic well permit shall automatically expire unless the well is completed and the well record is filed with the state engineer within one year of the date of issuance of the permit. No extension of time shall be granted by the state engineer, and if a 72-12-1.1 domestic well permit expires, a new permit shall be obtained and the appropriate fee paid.

G. Well record: The well driller shall keep a record of each well drilled as the work progresses. The well driller shall file a complete well record with the state engineer and the permit holder no later than twenty (20) days after completion of the well drilling. A well log shall be filed for each hole drilled, including a drill hole that does not encounter water. It is the responsibility of the permit holder to ensure that the well record for the 72-12-1.1 domestic well has been properly filed with the state engineer.

[19.27.5.13 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.14 DOMESTIC WELL MANAGEMENT AREA:

As hydrologic conditions require, the state engineer may declare all or part of a stream connected aquifer as a domestic well management area to prevent impairment to valid, existing surface water rights. The additional protection of mined aquifers is managed by the state engineer through the declaration of a critical management area and the development of administrative guidelines for the critical management area.

A. Administrative guidelines: The state engineer shall develop administrative guidelines for each declared domestic well management area. The administrative guidelines will be based on the hydrologic conditions of the domestic well management area and the valid, existing water rights located therein. The administrative guidelines shall set forth the maximum diversion amounts and other additional restrictions that will

be conditioned on new 72-12-1.1 domestic well permits issued within the management area. Administrative guidelines for a domestic well management area and accompanying maps shall be available at each district office of the state engineer. The administrative guidelines shall also be posted on the office of the state engineer website (www.ose.state.nm.us).

B. Declaration of domestic well management area: The state engineer shall hold a public meeting within the geographic area of a proposed domestic well management area before he declares the area and adopts the administrative guidelines. Notice of the public meeting and a copy of the draft administrative guidelines for the domestic well management area shall be posted at the appropriate district office a minimum of 30 days prior to the date of the meeting. Notice of the public meeting and of the draft administrative guidelines will be published in a newspaper of general circulation in the area being declared once a week for three consecutive weeks, with final publication occurring not less than 10 days before the date of the public meeting. Persons who are or may be affected by the proposed declaration of the domestic well management area may appear and comment. Written public comments on the proposed domestic well management area and the administrative guidelines shall be filed with the office of the state engineer on or before the date of the public meeting. The additional restrictions and maximum diversion amounts established for new 72-12-1.1 domestic well permits in the draft administrative guidelines shall be adopted by the state engineer on an interim basis. The interim period shall start on the day the draft administrative guidelines are posted for public inspection and shall end on the day the state engineer adopts the administrative guidelines or otherwise signs an order canceling the interim period. Any changes made to the administrative guidelines during the interim period, including a change in the geographic area of a domestic well management area, shall be applied retroactively to each new 72-12-1.1 domestic well permit issued within the domestic well management area during the interim period.

C. Amount of water: Except as otherwise provided or restricted in Paragraph (2) of Subsection C, and Subsections D and E of this section, the maximum diversion of water from a new 72-12-1.1 domestic well within a domestic well management area shall not exceed 0.25 acre-foot per annum. The state engineer may establish a maximum diversion amount for a new 72-12-1.1 domestic well in a domestic well management area that is less than 0.25 acre-foot per annum.

(1) Single household: The maximum permitted diversion of water from a new 72-12-1.1 domestic well permitted to serve one household shall not exceed 0.25 acre-foot per annum.

(2) Multiple household: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted to serve more than one household shall not exceed 0.25 acre-foot per annum per household served. The maximum combined diversion from such a 72-12-1.1 domestic well shall not exceed 3.0 acre-feet per annum. For a 72-12-1.1 domestic well serving multiple households, the permit holder shall file documentation with the state engineer listing the number of households being served by

the well, the owner's contact information for each household being served, and a description of the legal lot of record for each household being served. A copy of a well share agreement may be filed to support the claim that the 72-12-1.1 domestic well is serving more than one household.

(3) Drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility: The maximum permitted diversion of water from a 72-12-1.1 domestic well permitted for drinking and sanitary uses that are incidental to the operations of a governmental, commercial, or non-profit facility shall not exceed 0.25 acre-foot per annum. The state engineer shall not issue a permit for this use unless the applicant demonstrates that no alternative water supply is reasonably accessible or available. Water may not be used under this type of permit for any commercial use such as the manufacture of a product, car wash, water bottling, concrete batching, or irrigation of crops grown for commercial sale.

D. Transfer of a valid, existing water right to a 72-12-1.1 domestic well permit: The applicant for a new 72-12-1.1 domestic well permit or the holder of an existing 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit in accordance with Subsection E of 19.27.5.14 NMAC. Only a valid, existing, consumptive use water right located within the domestic well management area may be transferred.

E. Application for permit to transfer a valid, existing water right into a 72-12-1.1 domestic well permit - maximum diversion of water from the 72-12-1.1 domestic well not to exceed one acre-foot per annum: The applicant for or the owner of a 72-12-1.1 domestic well permit may apply to transfer a valid, existing consumptive use water right into the 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed one acre-foot per annum. The water right to be transferred shall be from the same hydrologic unit that will be impacted by the diversion of water from the 72-12-1.1 domestic well. The determination of whether a proposed transfer of a water right is occurring within the same hydrologic unit shall be made by the office of the state engineer. For a 72-12-1.1 domestic well permit located within a domestic well management area or other geographic area specifically defined in a state engineer order or administrative guidelines, only a valid, existing consumptive use water right located within the domestic well management area or other specifically defined geographic area may be transferred.

(1) Form - content: Applications shall be prepared on a form prescribed by the state engineer. An application shall include the following information: the name and address of applicant, the pertinent state engineer file number(s), the source of water supply for the move-from point of diversion, the source of water supply for the move-to point of diversion, the priority date of the water right, the diversion amount to be retired, the consumptive use amount to be transferred, the move-from purpose of use, the legal description of the move-from place of use, the location of the move-from point of diversion, the location of move-to point of diversion, and other information the state

engineer deems necessary. An application for a change in point of diversion or place or purpose of use of a water right into or out of an acequia or community ditch subject to Sections 73-2-1 through 73-2-68 NMSA or Sections 73-3-1 through 73-3-11 NMSA shall include the documentary evidence of the applicant's compliance with the requirements of Section 72-5-24.1 NMSA.

(2) Well location: The description of the well location shall be made in accordance with Subsection B of 19.27.5.9 NMAC.

(3) Transfer process: Consistent with the issuance of a 72-12-1.1 domestic well permit pursuant to Section 72-12-1.1 NMSA, public notice is not required nor protest allowed for an application for permit to transfer a valid, existing consumptive use water right into a 72-12-1.1 domestic well permit for the purpose of increasing the maximum diversion of underground water up to an amount of water not to exceed one acre-foot per annum. However, with such transfer applications, documentation shall be provided by the applicant, pursuant to Section 72-5-24.1 NMSA. In all other respects, the application for such a transfer shall be processed in a manner consistent with Section 72-12-3 NMSA and no change may be made to the point of diversion, place of use, or purpose of use authorized under such a permit except as provided for in Subsection E of 19.27.5.11 NMAC.

[19.27.5.14 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.15 ENFORCEMENT:

The holder of a 72-12-1.1 domestic well permit is subject to possible fines and remedial action including cancellation of the permit for any failure to comply with the terms and conditions of the 72-12-1.1 domestic well permit or any applicable provision of 19.27.5 NMAC or Chapter 72 NMSA.

A. Diversion of water in excess of the authorized maximum diversion amount:

The holder of a 72-12-1.1 domestic well permit who diverts water in excess of the authorized maximum diversion amount in any calendar year shall repay twice the amount of the over-diversion during the following calendar year. Repayment shall be made by either:

(1) reducing diversions during the following calendar year from the 72-12-1.1 domestic well that is the source of the over-diversion; or

(2) acquiring or leasing a valid, existing consumptive use water right in an amount equal to the repayment amount and submitting to the state engineer for his approval a plan for the proposed repayment during the following calendar year on a form prescribed by the state engineer; such repayment water shall be derived from either:

(a) reduction of the consumptive use associated with the actual average historic use of a valid, existing water right with an irrigation purpose of use, by fallowing of a specific tract of land that has been consistently historically irrigated; or

(b) reduction of the diversion and associated historical average consumptive use of a valid water right with a purpose of use other than irrigation.

B. Active water resource management: In any water district or subdistrict declared by the state engineer in accordance with Section 72-3-2 NMSA, and for which district or subdistrict the state engineer has adopted final district specific regulations in accordance with 19.25.13.10 and 19.25.13.23 NMAC, the water master shall have authority to curtail out-of-priority outdoor domestic uses consistent with the district or subdistrict specific rules.

C. Cancellation of permit: The state engineer may cancel a 72-12-1.1 domestic well permit upon failure of a permit holder to comply with any permit condition of approval or any applicable provision of 19.27.5 NMAC or Chapter 72 NMSA. The state engineer may cancel a 72-12-1.1 domestic well permit and proceed with enforcement action if a permit holder diverts water in excess of the authorized maximum amount and fails to repay the over-diversion in a time and manner acceptable to the state engineer.

[19.27.5.15 NMAC - N, 8-15-2006; A, 10-31-2011]

19.27.5.16 APPEAL PROCESS:

In accordance with Section 72-2-16 NMSA, if, without holding a hearing, the state engineer enters a decision, any person aggrieved by the decision is entitled to a hearing, if a request for a hearing is made in writing within thirty days of receipt of notice of the decision from the state engineer. Hearings shall be held before the state engineer or his appointed examiner pursuant to 19.25.2 NMAC. No appeal shall be taken to the district court until the state engineer has held a hearing and entered his decision in the hearing.

[19.27.5.16 NMAC - N, 8-15-2006]

19.27.5.17 LIBERAL CONSTRUCTION:

This part shall be liberally construed to carry out its purpose.

[19.27.5.17 NMAC - N, 8-15-2006]

19.27.5.18 SEVERABILITY:

If any portion of 19.27.5 NMAC is found to be invalid, the remaining portion of 19.27.5 NMAC shall remain in force and not be affected.

[19.27.5.18 NMAC - N, 8-15-2006]

PART 6-22: [RESERVED]

PART 23: ANIMAS UNDERGROUND WATER BASIN

19.27.23.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.23.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.23.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.23.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.23.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.23.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.23.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.23.8 ANIMAS BASIN:

A. The lands included within the Animas basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
24 S.	19 W.	5 thru 8, 17 thru 20, 29 thru 32	May 5, 1948
24 S.	20 W.	All	May 5, 1948
25 S.	19 W.	5 thru 8, 17 thru 20, 29 thru 32	May 5, 1948
25 S.	20 W.	All	May 5, 1948
26 S.	18 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 23, 1956
26 S.	19 W.	5 thru 8, 17 thru 20, 29 thru 32	May 5, 1948
26 S.	19 W.	1 thru 4, 9 thru 16, 21 thru 28, 33 thru 36	Feb. 23, 1956
26 S.	20 W.	All	May 5, 1948
26 S.	21 W.	1, 12, 13, 24, 25, 36	May 5, 1948
27 S.	18 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 23, 1956

27 S.	19 W.	3 thru 10, 15 thru 22, 27 thru 34	May 5, 1948
27 S.	19 W.	1, 2, 11 thru 14, 23 thru 26, 35, 36	Feb. 23, 1956
27 S.	20 W.	1 thru 18, 24, 25, 36	May 5, 1948
27 S.	20 W.	19 thru 23, 26 thru 35	Feb. 23, 1956
28 S.	19 W.	3 thru 10	May 5, 1948
28 S.	19 W.	1, 2, 11 thru 36	Feb. 23, 1956
28 S.	20 W.	1,12	May 5, 1948
28 S.	20 W.	2, 11, 13, 14, 23 thru 26, 35, 36	Feb. 23, 1956
29 S.	19 W.	All	Feb. 23, 1956
29 S.	20 W.	1, 2, 11 thru 14, 23 thru 26, 35, 36	Feb. 23, 1956
30 S.	19 W.	All	Feb. 23, 1956
30 S.	20 W.	1, 2, 11 thru 14, 23 thru 26, 35, 36	Feb. 23, 1956

B. [TOWNSHIP AND RANGE MAP: See 7-2.1 Animas Basin, [PDF File 19.027.0023-Animas.](#)]

[SE 66-1, Article 7-2; Recompiled 12/31/01]

PART 24: BLUEWATER BASIN

19.27.24.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.24.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.24.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.24.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.24.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.24.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.24.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.24.8 BLUEWATER BASIN:

A. Lands included by the extension of May 14, 1976, are as follows: Beginning at the northeast corner of Section 4, Township 9 North, Range 9 West, a point on the existing boundary of the Bluewater Underground Water Basin; thence south along section lines to the southeast corner of Section 33, Township 9 North, Range 9 West; thence east along township line to the northeast corner of Section 4, Township 8 North, Range 9 West; thence south along section lines to the southeast corner of Section 16, Township 8 North, Range 9 West; thence west along section lines to the intersection of the south section line of Section 15, Township 8 North, Range 13 West, with the Continental Divide; thence northerly along the Continental Divide to the intersection of the east line of Section 2, Township 15 North, Range 11 West; thence south along section lines to the northwest corner of Section 24, Township 15 North, Range 11 West; thence east along section line to the northeast corner of said Section 24; thence south along range line to the southeast corner of said Section 24; thence east along section lines to the northeast corner of Section 25, Township 15 North, Range 10 West; thence south along range line to the southeast corner of said Section 25; thence east along section lines to the northeast corner of Section 33, Township 15 North, Range 9 West; thence south along section lines to the northwest corner of Section 15, Township 14 North, Range 9 West; thence east along section lines to the northeast corner of Section 13, Township 14 North, Range 9 West; thence south along range line to the northwest corner of Section 31, Township 14 North, Range 8 West; thence east along section line to the northeast corner of said Section 31; thence south along section line to the southeast corner of said Section 31; thence east along township line to northeast corner of Section 5, Township 13 North, Range 8 West; thence south along section line to the southeast corner of said Section 5; thence east along section lines to the intersection of the north line of Section 11, Township 13 North, Range 8 West with the west boundary of the Bartolome Fernandez Grant; thence south along said Grant boundary to southwest corner of said Grant; thence east along said Grant boundary to the intersection with the east line of Section 7, Township 13 North, Range 7 West; thence south along section lines to the northwest corner of Section 29, Township 13 North, Range 7 West; thence east along section line to the northeast corner of said Section 29; thence south along section lines to the southeast corner of Section 32, Township 13 North, Range 7 West; thence east along township line to the northeast corner of Section 5, Township 12 North, Range 7 West; thence south along section lines to the southeast corner of Section 20, Township 12 North, Range 7 West; thence west along section line to the southwest corner of said Section 20; thence south along section line to the southeast corner of Section 30, Township 12 North, Range 7 West; thence west along section line to the southwest corner of said Section 30; thence south along range line to the southeast corner of Section 36, Township 12 North, Range 8 west; thence west along township line to the northeast corner of Section 4, Township 11 North, Range 8 West; thence south along section line to the southeast corner of said Section 4; thence west along section lines to the northeast corner of Section 7, Township 11 North, Range 8 West; thence south along section line to the southeast corner of said Section 7; thence west along section lines to the northeast corner of Section 14, Township 11 North, Range 9 West; thence south along section lines to the southeast corner of Section 11, Township 10 North, Range 9 West, a point on the existing boundary of the Bluewater Underground Water Basin; thence along the previously declared basin

boundary, northerly to the northwest corner of Section 4, Township 12 North, Range 9 West; thence west along existing boundary to the northeast corner of Section 1, Township 12 North, Range 12 West; thence southerly along existing boundary to the southeast corner of Section 36, Township 9 North, Range 11 West; thence east along existing boundary to the southwest corner of Section 33, Township 9 North, Range 9 West, and thence north along existing boundary to the point of beginning, being the northeast corner of Section 4, Township 9 North, Range 9 West.

B. [TOWNSHIP AND RANGE MAP: See 7-3.1 Bluewater Basin, [PDF File 19.027.0024.8-Bluewater.](#)]

[SE 66-1, Article 7-3; Recompiled 12/31/01]

PART 25: CANADIAN RIVER BASIN

19.27.25.1 ISSUING AGENCY:

Office of the State Engineer.

[Recompiled 12/31/01]

19.27.25.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.25.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.25.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.25.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.25.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.25.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.25.8 CANADIAN RIVER BASIN:

A. The lands declared within the Canadian River Basin on May 8, 1973, are as follows: Beginning at the point where the New Mexico-Colorado State line intersects the topographic drainage boundary between the Rio Grande and the Canadian River at the Taos County-Colfax County line, a point on the existing boundary of the Rio Grande Underground Water Basin; thence east along said State line to its intersection with the east topographic drainage boundary of the Canadian River on the north line of Section 21, Township 32 North, Range 25 East, N.M.P.M., near state line mile corner 68; thence southerly along the east topographic drainage boundary of the Canadian River to the point common to the Carrizo Creek drainage boundary and the Ute Creek drainage boundary near the NE corner of Section 16, Township 27 North, Range 26 East; thence south along section line to the SE corner of said Section 16; thence west along section lines to the SE corner of Section 13, Township 27 North, Range 25 East; thence south along range line to the SE corner of Section 1, Township 17 North, Range 25 East; thence west along section lines to the SE corner of Section 4, Township 17 North, Range 23 East; thence south along section lines to the SE corner of Section 16, Township 17 North, Range 23 East; thence west along section lines to the SW corner of Section 18, Township 17 North, Range 23 East; thence south along range line to the SE corner of Section 24, Township 17 North, Range 22 East; thence west along section lines to the SE corner of Section 22, Township 17 North, Range 22 East; thence south along section line to the SE corner of Section 27, Township 17 North, Range 22 East; thence west along section line to the SW corner of said Section 27; thence south along section line to the SE corner of Section 33, Township 17 North, Range 22 East; thence west along township line to the SW corner of Section 32, Township 17 North, Range 21 East, a point on the Mora Grant boundary; thence north along said grant boundary to its intersection with Latitude 35 degrees 40' North; thence west along Latitude 35 degrees 40' North to its intersection with Longitude 105 degrees 00' West, a point on the existing boundary of the Upper Pecos Underground Water Basin; thence west along Latitude 35 40' North and the Upper Pecos Underground Water Basin boundary to its intersection with Longitude 105 degrees 10' West, a point approximately 3 1/2 miles east of Storrie Lake Dam; thence north along Longitude 105 degrees 10' West and the Upper Pecos

Underground Water Basin boundary to its intersection with the topographic drainage boundary between the Pecos River and the Canadian River in the vicinity of Latitude 35 degrees 44' North; thence northwesterly along said drainage boundary and the Upper Pecos Underground Water Basin boundary to its intersection with the topographic drainage boundary of the Rio Grande in the vicinity of Latitude 35 degrees 59' 03" North, Longitude 105 degrees 33' 25" West, a point on the Mora County-Rio Arriba County line; thence northerly along the west topographic drainage boundary of the Canadian River and the west lines of Mora and Colfax counties to the point of beginning.

B. [TOWNSHIP AND RANGE MAP: See 7-26.1 and 2 Canadian River Basin, [PDF file 19.027.0025.8 Canadian.](#)]

[SE 66-1, Article 7-26; Recompiled 12/31/01]

PART 26: CAPITAN UNDERGROUND WATER BASIN

19.27.26.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.26.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.26.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.26.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.26.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.26.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.26.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.26.8 CAPITAN BASIN:

A. The lands declared within the Capitan Basin on September 28, 1965, are as follows:

TOWNSHIP	RANGE	SECTIONS
18 S.	29 E.	19 thru 36
18 S.	30 E.	19 thru 36
18 S.	31 E.	All
18 S.	32 E.	All
18 S.	33 E.	3 thru 11, 13 thru 36
18 S.	34 E.	29 thru 32
19 S.	28 E.	All
19 S.	29 E.	All
19 S.	30 E.	All
19 S.	31 E.	All
19 S.	32 E.	All
19 S.	33 E.	All

19 S.	34 E.	4 thru 9, 15 thru 36
20 S.	28 E.	All
20 S.	29 E.	All
20 S.	30 E.	All
20 S.	31 E.	All
20 S.	32 E.	All
20 S.	33 E.	All
20 S.	34 E.	All
21 S.	28 E.	All
21 S.	29 E.	1 thru 6
21 S.	30 E.	1 thru 6
21 S.	31 E.	1 thru 15
21 S.	32 E.	1 thru 18, 22 thru 27, 34 thru 36
21 S.	33 E.	All
21 S.	34 E.	All
21 S.	35 E.	All
21 S.	36 E.	All
21 S.	37 E.	All
21 S.	38 E.	All**
22 S.	33 E.	1 thru 18, 22 thru 27, 34 thru 36
22 S.	34 E.	All

22 S.	35 E.	All
22 S.	36 E.	All
22 S.	37 E.	All
22 S.	38 E.	All**
23 S.	34 E.	1 thru 18, 22 thru 27, 34 thru 36
23 S.	35 E.	All
23 S.	36 E.	All
23 S.	37 E.	All
23 S.	38 E.	All**
24 S.	35 E.	All
24 S.	36 E.	All
24 S.	37 E.	All
24 S.	38 E.	All**
25 S.	35 E.	1 thru 3, 10 thru 15
25 S.	36 E.	All
25 S.	37 E.	All
25 S.	38 E.	All**
26 S.	36 E.	1 thru 6, N 1/2 7, N 1/2 8, N 1/2 9, NW 1/4 & E 1/2 10, 11 thru 14, E 1/2 15, E 1/2 22, 23 thru 26, E 1/2 27, E 1/2 34*, 35*, 36*

26 S.	37 E.	1 thru 30, 31 thru 36*
26 S.	38 E.	All**

*Fractional Sections. **All townships involving Range 38 East are fractional townships.

B. [TOWNSHIP AND RANGE MAP: See 7-4.1 Capitan Basin, [PDF File 19.027.0026.8-Capitan.](#)]

[SE 66-1, Article 7-4; Recompiled 12/31/01]

PART 27: CARLSBAD UNDERGROUND WATER BASIN

19.27.27.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.27.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.27.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.27.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.27.5 EFFECTIVE DATE:

November 1, 1966.

[Recompiled 12/31/01]

19.27.27.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.27.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.27.8 CARLSBAD UNDERGROUND WATER BASIN:

A. The lands included within the Carlsbad Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
20 S.	26 E.	25 thru 36	Oct. 16, 1947
20 S.	27 E.	25 thru 36	Oct. 16, 1947
21 S.	24 E.	1 thru 3, 10 thru 15, 19 thru 36	March 19, 1958
21 S.	25 E.	1 thru 18	Oct. 16, 1947
21 S.	25 E.	19 thru 36	March 19, 1958
21 S.	26 E.	All	Oct. 16, 1947
21 S.	27 E.	All	Oct. 16, 1947
21 S.	29 E.	7 thru 36	June 4, 1975
21 S.	30 E.	7 thru 36	June 4, 1975
21 S.	31 E.	16 thru 36	June 4, 1975
21 S.	32 E.	19 thru 21, 28 thru 33	June 4, 1975
22 S.	24 E.	All	March 19, 1958
22 S.	25 E.	All	March 19, 1958

22 S.	26 E.	All	Oct. 16, 1947
22 S.	27 E.	All	Oct. 16, 1947
22 S.	28 E.	All	Oct. 16, 1947
22 S.	29 E.	All	June 4, 1975
22 S.	30 E.	All	June 4, 1975
22 S.	31 E.	All	June 4, 1975
22 S.	32 E.	All	June 4, 1975
23 S.	23 E.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Oct. 2, 1964
23 S.	24 E.	All	March 19, 1958
23 S.	25 E.	All	March 19, 1958
23 S.	26 E.	All	Oct. 16, 1947
23 S.	27 E.	All	Oct. 16, 1947
23 S.	28 E.	All	Oct. 16, 1947
23 S.	29 E.	1, 2, 11 thru 14, 23 thru 26, 35, 36	June 4, 1975
23 S.	29 E.	3 thru 10, 15 thru 22, 27 thru 34	Oct. 16, 1947
23 S.	30 E.	All	June 4, 1975
23 S.	31 E.	All	June 4, 1975
23 S.	32 E.	All	June 4, 1975
24 S.	23 E.	All	Oct. 2, 1964
24 S.	24 E.	All	March 19, 1958

24 S.	25 E.	1 thru 24, 27 thru 33 & the W 1/2 & NW 1/4 NE 1/4 of Section 34	March 19, 1958
24 S.	25 E.	25, 26, E 1/2 34 except NW 1/4 NE 1/4, 35, 36	Oct. 21, 1952
24 S.	26 E.	All	Oct. 16, 1947
24 S.	27 E.	All	Oct. 16, 1947
24 S.	28 E.	All	Oct. 16, 1947
24 S.	29 E.	1, 2, 11 thru 14, 23, 24	June 4, 1975
24 S.	29 E.	3 thru 10, 15 thru 22, 27 thru 34	Oct. 16, 1947
24 S.	29 E.	25, 26, 35, 36	May 7, 1964
24 S.	30 E.	1 thru 24	June 4, 1975
24 S.	30 E.	25 thru 36	May 7, 1964
24 S.	31 E.	1 thru 30, 33 thru 36	June 4, 1975
24 S.	31 E.	31, 32	May 7, 1964
24 S.	32 E.	All	June 4, 1975
25 S.	22 E.	22 thru 27, 34 thru 36	March 19, 1958
25 S.	22 E.	1 thru 3, 10 thru 15, 19 thru 21, 28 thru 33	Oct. 2, 1964
25 S.	23 E.	1 thru 33	March 19, 1958
25 S.	23 E.	34 thru 36	Oct. 21, 1952
25 S.	24 E.	1 thru 10, W 1/2 11,	

		W 1/2 14, 15 thru 18	March 19, 1958
25 S.	24 E.	E 1/2 11, 12, 13, E 1/2 14, 19 thru 36	Oct. 21, 1952
25 S.	25 E.	1 thru 4, 7 thru 33	Oct. 21, 1952
25 S.	25 E.	5, 6	March 19, 1958
25 S.	25 E.	34 thru 36	May 7, 1964
25 S.	26 E.	2 thru 10, 16 thru 20	Oct. 21, 1952
25 S.	26 E.	1, 11 thru 15, 21 thru 36	May 7, 1964
25 S.	27 E.	All	May 7, 1964
25 S.	28 E.	All	May 7, 1964
25 S.	29 E.	All	May 7, 1964
25 S.	30 E.	All	May 7, 1964
25 S.	31 E.	1 thru 3, 11 thru 14, 24, 25	June 4, 1975
25 S.	31 E.	4 thru 10, 15 thru 23, 26 thru 36	May 7, 1964
26 S.	21 E.	1 thru 4, 9 thru 16, 21 thru 28, 33 thru 36	Oct. 2, 1964
26 S.	22 E.	E 1/2 SW 1/4 & SE 1/4 1, E 3/4 12, E 3/4 13, 23 thru 28, 33 thru 36	Oct 21, 1952
26 S.	22 E.	N 1/2 & W 1/2 SW 1/4 1, 2 thru 11, W 1/2, W 1/2	

		12, W 1/2 W 1/2 13, 14	
		thru 22, 29 thru 32	March 19, 1958
26 S.	23 E.	1 thru 5, E 1/2 & SW 1/4	
		6, 7 thru 36	Oct. 21, 1952
26 S.	23 E.	NW 1/4 6	March 19, 1958
26 S.	24 E.	1 thru 12, 14 thru 22,	
		28 thru 33	Oct. 21, 1952
26 S.	24 E.	13, 23 thru 27, 34	
		thru 36	May 7, 1964
26 S.	25 E.	5 thru 7	Oct. 21, 1952
26 S.	25 E.	1 thru 4, 8 thru 36	May 7, 1964
26 S.	26 E.	All	May 7, 1964
26 S.	27 E.	All	May 7, 1964
26 S.	28 E.	All	May 7, 1964
26 S.	29 E.	All	May 7, 1964
26 S.	30 E.	All	May 7, 1964
26 S.	31 E.	All	May 7, 1964

B. [TOWNSHIP AND RANGE MAP: See 7-5.1 Carlsbad Underground Water Basin, [PDF file 19.027.027.8-Carlsbad.](#)]

[SE 66-1, Article 7-5; Recompiled 12/31/01]

PART 28: CHAVEZ AND EDDY COUNTIES UNDERGROUND WATER BASIN [WILL BE AVAILABLE SOON]

PART 29: CURRY COUNTY UNDERGROUND WATER BASIN

19.27.29.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.29.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.29.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.29.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.29.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.29.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.29.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.29.8 CURRY COUNTY BASIN:

A. The land declared within the Curry County Basin on August 31, 1989, are as follows: Beginning at the southeast corner of Section 15, Township 1 North, Range 37 East, a point on the New Mexico-Texas state line as well as on the Curry-Roosevelt county line; thence west along section lines to the southwest corner of Section 18, Township 1 North, Range 34 East, a point on Curry-Roosevelt county line; thence north along range line to the northwest corner of Section 6, Township 1 North, Range 34 East; thence west along township line to the southwest corner of Section 31, Township 2 North, Range 31 East, a point on the Curry-Roosevelt county line; thence north along range line to the northwest corner of Section 6, Township 4 North, Range 31 East, a point on the Curry-Roosevelt-Quay county line; thence east along township line to the northwest corner of Section 4, Township 4 North, Range 31. East, a point on the Curry-Quay county line; thence north along range line to the northwest corner of Section 6, Township 5 North, Range 31 East, a point on the Curry-Quay county line; thence east along township line to the northwest corner of Section 6, Township 5 North, Range 33 East, a point on the Curry-Quay county line; thence north along range line to the northwest corner of Section 6, Township 6 North, Range 33 East, a point on the Curry-Quay county line; thence east along township line to the northwest corner of Section 6, Township 6 North, Range 34 East, a point on the Curry-Quay county line; thence north along range line to the northwest corner of Section 6, Township 7 North, Range 34 East, a point on the Curry-Quay county line; thence east along township line to the northwest corner of Section 6, Township 7 North, Range 35 East a point on the Curry-Quay county line; thence north along range line to the northwest corner of Section 6, Township 8 North, Range 35 East, a point on the Curry-Quay county line; thence east along township line to the northeast corner of Section 5, Township 8 North, Range 37 East, a point on the New Mexico-Texas state line; thence south along the New Mexico-Texas state line to the the point of beginning.

B. [TOWNSHIP AND RANGE MAP: See 7-7.1 Curry County Underground Water Basin, [PDF File 19.027.0029.8-Curry.](#)]

[SE 66-1, Article 7-7; Recompiled 12/31/01]

PART 30: ESTANCIA BASIN

19.27.30.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.30.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.30.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.30.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.30.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.30.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.30.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.30.8 ESTANCIA BASIN:

A. The lands declared within the Estancia Basin on January 31, 1950, are as follows: Beginning at the northeast corner of Township 11 North, Range 10 East; thence westerly along township line to the northwest corner of Township 11 North, Range 8 East; thence southerly along range line to the southwest corner of said township; thence westerly along township line to the northwest corner of Township 10 North, Range 7 East; thence southerly along range line to the southwest corner of Township 9 North, Range 7 East; thence westerly along township line to the northwest corner of Township 8 North, Range 7 East; thence southerly along range line and range line as projected across the Chilili Grant to the northeast corner of Township 6 North, Range 6 East; thence westerly along township line to the northwest corner of Section 5, of said township; thence southerly along section line to the southwest corner of Section 32 of

said township; thence westerly along township line to the northwest corner of Section 1, Township 5 North, Range 5 East; thence southerly along section line to the southwest corner of Section 36 of said township; thence westerly along township line to the northwest corner of Section 1, Township 4 North, Range 5 East; thence southerly along section line to the southwest corner of Section 24 of said township; thence easterly along section line to the northwest corner of Section 29, Township 4 North, Range 6 East; thence southerly along section line to the southwest corner of Section 32 of said township; thence easterly along township line to the northwest corner of Township 3 North, Range 9 East; thence southerly along range line to the southwest corner of Section 7 of said township; thence easterly along section line to the northwest corner of Section 13 of said township; thence southerly along section line to the southwest corner of said Section 13; thence easterly along section line to the southeast corner of said Section 13; thence southerly along range line to the southwest corner of Township 3 North, Range 10 East; thence easterly along township line to the northwest corner of Section 4, Township 2 North, Range 10 East; thence southerly along section line to the southwest corner of Section 9 of said township; thence easterly along section line to the northwest corner of Section 13 of said township; thence southerly along section line to the southwest corner of Section 24 of said township; thence easterly along section line to the northwest corner of Section 29, Township 2 North, Range 11 East; thence southerly along section line to the southwest corner of Section 32 of said township; thence easterly along township line to the southeast corner of said township; thence northerly along range line to the northeast corner of Township 4 North, Range 11 East; thence easterly along township line to the southeast corner of Township 5 North, Range 11 East; thence northerly along range line to the northeast corner of Township 7 North, Range 11 East; thence westerly along township line to the southeast corner of Township 8 North, Range 10 East; thence northerly along range line to the point of beginning.

B. The lands included by the extension of March 28, 1975, are as follows:

(1) Beginning at the southeast corner of Section 32, Township 12 North, Range 10 East, a point common to the presently declared boundaries of the Estancia Underground Water Basin and the Rio Grande Underground Water Basin; thence north along section line to its intersection with the topographical drainage boundary between the Estancia Valley and the Rio Grande on the east line of Section 32, Township 12 North, Range 10 East; thence westerly along said topographical drainage boundary to its intersection with the east boundary of the Sandia Underground Water Basin also being the Bernalillo-Santa Fe county line, within the San Pedro Grant; thence south along the Bernalillo-Santa Fe county line to the southwest corner of Section 31, Township 11 North, Range 7 East, a point on the presently-declared Estancia Underground Water Basin boundary; thence easterly along existing basin boundary to the point of beginning.

(2) Beginning at the northeast corner of Section 24, Township 10 North, Range 6 East, a point common to the presently declared boundaries of the Estancia Underground Water Basin and the Sandia Underground Water Basin; thence west

along section lines to the northwest corner of Section 23, Township 10 North, Range 6 East; thence south along section line to the southwest corner of said Section 23; thence west along section line to the northwest corner of Section 27, Township 10 North, Range 6 East; thence south along section line to the southwest corner of said Section 27; thence west along section line to the northwest corner of Section 33, Township 10 North, Range 6 East; thence south along section lines to the southwest corner of Section 33, Township 9 North, Range 6 East; thence west along township line to the northwest corner of Section 4, Township 8 North, Range 6 East; thence south along section line to its intersection with the north boundary of the Isleta Indian Reservation, being on the west line of said Section 4; thence southwesterly along said reservation boundary to its intersection with the west line of Section 23, Township 7 North, Range 5 East; thence south along section lines to the northeast corner of Section 3, Township 6 North, Range 5 East; thence west along township line to the northwest corner of said Section 3; thence south along section lines to the southwest corner of Section 15, Township 6 North, Range 5 East; thence east along section line to the southeast corner of said Section 15; thence south along section lines to the northeast corner of Section 10, Township 5 North, Range 5 East; thence west along section lines to the northwest corner of Section 9, Township 5 North, Range 5 East; thence south along section lines to the southwest corner of Section 33, Township 5 North, Range 5 East; thence west along township line to the northwest corner of Section 4, Township 4 North, Range 5 East; thence south along section line to the southwest corner of said Section 4; thence east along section lines to the northwest corner of Section 11, Township 4 North, Range 5 East; thence south along section line to the southwest corner of said Section 11; thence east along section line to the southeast corner of said Section 11, a point on the presently-declared boundary of the Estancia Underground Water Basin; thence northerly along the existing basin boundary to the point of beginning.

C. ESTANCIA BASIN - SPECIAL PROVISION: Because of the low quality of the upper or first water, all permits granted in the following described areas shall have as a condition of approval that this water be cased off in such manner that it cannot commingle with other waters found in this basin: East 1/2 of Township 5 North, Range 9 East; E 1/2 of Township 6 North, Range 9 East; E 1/2 of Township 7 North, Range 9 East; E 1/2 of Township 8 North, Range 9 East; all of Townships 5, 6, 7 and 8 North, Range 10 East. An exception may be made if additional water samples at the drilling site indicate the upper water to be acceptable for irrigation purposes. The State Engineer's representative will determine the necessary casing program to protect the known fresh waters.

D. [TOWNSHIP AND RANGE MAP: See 7-6.2 Estancia Basin, [PDF file No. 19.027.0030.8-Estancia.](#)]

[SE 66-1, Article 7-6 and 7-6.1; Recompiled 12/31/01]

PART 31: FORT SUMNER BASIN

19.27.31.1 ISSUING AGENCY:

Office of the State Engineer.

[Recompiled 12/31/01]

19.27.31.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.31.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.31.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.31.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.31.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.31.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.31.8 FORT SUMNER BASIN:

A. The lands included within the Fort Sumner Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
7 N.	22 E.	All	Oct. 21, 1970
7 N.	23 E.	All	Oct. 21, 1970
7 N.	24 E.	All	Oct. 21, 1970
7 N.	25 E.	All	Oct. 21, 1970
7 N.	26 E.	3 thru 10, 15 thru 22, 27 thru 34	Oct. 21, 1970
6 N.	22 E.	1 thru 3, 11 thru 14	Oct. 21, 1970
6 N.	23 E.	All	Oct. 21, 1970
6 N.	24 E.	All	Oct. 21, 1970
6 N.	25 E.	All	Oct. 21, 1970
6 N.	26 E.	3 thru 36	Oct. 21, 1970
6 N.	27 E.	19, 20, 29 thru 34	Oct. 21, 1970
5 N.	23 E.	1 thru 5, 10 thru 13, 24	Oct. 21, 1970
5 N.	24 E.	1 thru 30, 32 thru 36	Oct. 21, 1970
5 N.	25 E.	All	Oct. 21, 1970
5 N.	26 E.	All	Oct. 21, 1970
5 N.	27 E.	2 thru 11, 14 thru 23, 26 thru 35	Oct. 21, 1970
4 N.	24 E.	1 thru 3, 9 thru	

		12, 14 thru 16, 21	
		thru 28, 33 thru 36	May 7, 1964
4 N.	24 E.	13	Oct. 21, 1970
4 N.	25 E.	19 thru 22, 25, 27	
		thru 36	May 7, 1964
4 N.	25 E.	1 thru 18, 23, 24,	
		26	Oct. 21, 1970
4 N.	26 E.	All	Oct. 21, 1970
4 N.	27 E.	1 thru 12, 14 thru	
		22, 27 thru 34	Oct. 21, 1970
4 N.	28 E.	6	Oct. 21, 1970
3 N.	25 E.	1 thru 4, 10 thru	
		14, 23 thru 25, 36	May 7, 1964
3 N.	26 E.	7, 17 thru 22, 25	
		thru 36	May 7, 1964
3 N.	26 E.	1 thru 6, 8 thru	
		16, 23, 24	Oct. 21, 1970
3 N.	27 E.	3 thru 10, 13 thru	
		36	Oct. 21, 1970
3 N.	28 E.	13 thru 36	Oct. 21, 1970
3 N.	29 E.	13 thru 36	Oct. 21, 1970
2 N.	25 E.	1, 12, 13, 24, 25,	
		36	May 7, 1964

2 N.	26 E.	All	May 7, 1964
2 N.	27 E.	All	Oct. 21, 1970
2 N.	28 E.	All	Oct. 21, 1970
2 N.	29 E.	All	Oct. 21, 1970
1 N.	25 E.	1, 12, 13, 24, 25, 36	May 7, 1964
1 N.	26 E.	1 thru 23, 26 thru 35	May 7, 1964
1 N.	27 E.	1 thru 12	Oct. 21, 1970
1 N.	28 E.	1 thru 12	Oct. 21, 1970
1 N.	29 E.	1 thru 12	Oct. 21, 1970
1 S.	25 E.	1, 12, 13, 23 thru 27, 33 thru 36	May 7, 1964
1 S.	26 E.	3 thru 10, 17 thru 20, 30	May 7, 1964
2 S.	25 E.	2 thru 4, 9 thru 11, 14, 15, 20 thru 23, 27 thru 29, 32 thru 34	May 7, 1964
3 S.	25 E.	3 thru 5, 8 thru 10, 15 thru 17, 20 thru 22, 27 thru 29, 32 thru 36	May 7, 1964

4 S.	25 E.	1 thru 4, 11 thru 14, 23 thru 26, 35, 36	May 7, 1964
4 S.	26 E .	19, 30, 31	May 7, 1964
5 S.	25 E.	1, 2, 10 thru 15, 22 thru 27, 34, 35	May 7, 1964
6 S.	26 E.	3 thru 5, 8 thru 10, 15 thru 17, 20, 21, 28, 29, 32, 33	

B. The corrected boundaries of the extension of the Ft. Sumner Underground Water Basin as originally intended by special order No. 148 are as follows: May 7, 1964 (corrections are underlined): Beginning at the southeast corner of Section 31, Township (T) 6 South (S), Range (R) 26 East (E), New Mexico Principal Meridian (N.M. P.M.) , a point on the existing west boundary of the Ft. Sumner Underground Water Basin; thence west along township line to the southwest corner of said Section 31; thence north along range line to the northwest corner of Section 6, T 6 S, R 26 E, N.M.P.M.; thence west along township line to the southwest corner of Section 32, T 5 S, R 23 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 6, T 5 S, R 23 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 1, T 5 S, R 22 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 1; thence west along township line to the southwest corner of Section 34, T 4 S, R 22 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 21, T 3 S, R 22 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 21; thence north along section lines to the southeast corner of Section 8, T 3 S, R 22 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 7, T 3 S, R 22 E, N.M.P.M.; thence north along range line to the southeast corner of Section 13, T 2 S, R 21 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 14, T 2 S, R 21 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 15, T 1 S, R 21 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 16, T 1 S, R 21 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 20, T 1 North (N), R 21 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 23, T 1 N, R 20 E, N.M.P.M.; thence north along section line to the northwest corner of said section 23; thence west along section lines to the southwest corner of Section 16, T 1 N, R 20 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 16; thence west along section lines to the southwest corner of Section 7, T 1 N, R 20 E, N.M.P.M., a point on the De Baca-Lincoln county line; thence north along range

line and said county line to the northwest corner of said Section 7; thence west along section line to the southwest corner of Section 1, T 1 N, R 19 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 23, T 2 N, R 19 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 22, T 2 N, R 19 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 16, T 3 N, R 19 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 15, T 3 N, R 18 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 33, T 4 N, R 18 E, N.M.P.M.; thence west along township line to the southwest corner of Section 31, T 4 N, R 17 E, N.M.P.M.; thence north along range line to the northwest corner of said Section 31; thence west along section lines to the southwest corner of Section 28, T 4 N, R 16 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 5, T 3 N, R 16 E, N.M.P.M.; thence west along section lines to the northeast corner of Section 7, T 3 N, R 15 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 7; thence west along section lines to the southwest corner of Section 10, T 3 N, R 14 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 10; thence west along section lines to the southwest corner of Section 6, T 3 N, R 14 E, N.M.P.M.; thence north along range line to the northwest corner of said Section 6; thence west along township line to the southwest corner of Section 31, T 4 N, R 13 E, N.M.P.M.; thence north along range line to the northwest corner of said Section 31; thence west along section lines to the southwest corner of Section 28, T 4 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 17, T 5 N, R 12 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 16, T 5 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 3, T 5 N, R 12 E, N.M.P.M.; thence east along township line to the northeast corner of Section 3, T 5 N, R 13 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 10, T 5 N, R 13 E, N.M.P.M.; thence east along section lines to the southwest corner of Section 7, T 5 N, R 15 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 7; thence east along section line to the northeast corner of said Section 7; thence north along section line to the northwest corner of Section 5, T 5 N, R 15 E, N.M.P.M.; thence east along township line to the northeast corner of said Section 5; thence north along section line to the northwest corner of Section 33, T 6 N, R 15 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 33; thence north along section line to the northwest corner of Section 27, T 6 N, R 15 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 27; thence north along section line to the northwest corner of Section 23, T 6 N, R 15 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 23; thence north along section line to the northwest corner of Section 13, T 6 N, R 15 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 13, T 6 N, R 21 E, N.M.P.M.; thence north along range line to the northwest corner of Section 6, T 6 N, R 22 E, N.M.P.M., a point on the existing Ft. Sumner Underground Water Basin boundary; thence north along range line to the northeast corner of Section 1, T 7 N, R 21 E, N.M.P.M., a point of intersection of the boundaries of the existing Ft. Sumner and Upper Pecos Underground Water Basins; thence east along said existing Ft. Sumner and Upper Pecos Underground Water Basin boundary to the southwest corner of Section 34, T 8 N, R 22 E, N.M.P.M.; thence north along section lines to the northwest

corner of Section 3, T 9 N, R 22 E, N.M.P.M. ; thence east along township line to the northeast corner of said Section 3; thence north along projected section lines to the northwest corner of projected Section 23, T 10 N, R 22 E, within the Preston Beck Grant; thence east along projected section lines to the northeast corner of projected Section 24, T 10 N, R 22 E, within the Preston Beck Grant; thence south along projected section lines to the southeast corner of projected Section 36, T 10 N, R 22 E, within the Preston Beck Grant; thence east along township line to the northeast corner of Section 2, T 9 N, R 23 E, N.M.P.M.; thence south along section line to the northwest corner of Section 24, T 9 N, R 23 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 24; thence south along range line to the northwest corner of Section 31, T 9 N, R 24 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 31; thence south along section lines to the southeast corner of Section 6, T 8 N, R 24 E, N.M.P.M.; thence east along section lines to the southwest corner of Section 2, T 8 N, R 24 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 2; thence east along township line to the southwest corner of Section 35, T 9 N, R 24 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 35; thence east along section lines to the northwest corner of Section 35, T 9 N, R 26 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 23, T 9 N, R 26 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 21, T 9 N, R 27 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 21; thence east along section line to the northeast corner of Section 27, T 9 N, R 27 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 34, T 9 N, R 27 E, N.M.P.M.; thence west along township line to the northeast corner of Section 3, T 8 N, R 27 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 27, T 8 N, R 27 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 29, T 8 N, R 28 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 32, T 8 N, R 28 E, N.M.P.M.; thence east along township line to the northeast corner of Section 2, T 7 N, R 28 E, N.M.P.M.; thence south along section lines to the northwest corner of Section 13, T 7 N, R 28 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 18, T 7 N, R 30 E, N.M.P.M.; thence south along section line to the southeast corner of Section 19, T 7 N, R 30 E, N.M.P.M.; thence east along section line to the northeast corner of Section 29, T 7 N, R 30 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 32, T 7 N, R 30 E, N.M.P.M.; thence east along township line to the northeast corner of Section 3, T 6 N, R 30 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 10, T 6 N, R 30 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 13, T 6 N, R 30 E, N.M.P.M.; thence south along range line to the southeast corner of said Section 13; thence east along section lines to the northeast corner of Section 20, T 6 N, R 31 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 20; thence east along section line to the northeast corner of Section 28, T 6 N, R 31 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 28; thence east along section line to the northeast corner of Section 34, T 6 N, R 31 E, N.M.P.M.; thence South along section line to the southeast corner of said Section 34, a point on the Quay-Curry county line and the existing boundary of the Curry County Underground Water Basin; thence west along

township line and said Curry County underground water Basin boundary to the northeast corner of Section 1, T 5 N, R 30 E, N.M.P.M.; thence south along range line and said Curry County Underground Water Basin boundary to the southeast corner of Section 36, T 5 N, R 30 E, N.M.P.M.; thence west along township line to the northeast corner of Section 1, T 4 N, R 30 E, N.M.P.M.; thence south along range line to the southeast corner of Section 12, T 3 N, R 30 E, N.M.P.M.; thence west along section line to the southwest corner of said section 12; thence south along section line to the southeast corner of Section 14, T 3 N, R 30 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 14; thence south along section lines to the southeast corner of Section 34, T 2 N, R 30 E, N.M. P.M. , a point on the existing Portales Underground Water Basin boundary; thence west along township line and said Portales Underground Water Basin boundary to the southwest corner of Section 31, T 2 N, R 30 E, N.M.P.M., said point being at the intersection of the boundaries of the existing Portales and Ft. Sumner Underground Water Basins; thence south along said existing Portales and Ft. Sumner Underground Water Basin boundaries to the northeast corner of Section 13, T 1 N, R 29 E, N.M.P.M.; thence south along range line, and said existing boundary of the Portales underground water Basin to the southeast corner of Section 36, T 1 N, R 29 E, N.M.P.M.; thence east along township line to the northeast corner of Section 1, T 1 S, R 29 E, N.M.P.M.; thence south along range line to the northwest corner of Section 18, T 1 S, R 30 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 18; thence south along section lines to the northwest corner of Section 5, T 2 S, R 30 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 5; thence south along section lines to the northwest corner of Section 16, T 2 S, R 30 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 16; thence south along section lines to southeast corner of Section 28, T 2 S, R 30 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 28; thence south along section lines to the northwest corner of Section 16, T 3 S, R 30 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 16; thence south along section line to the northwest corner of Section 22, T 3 S, R 30 E, N.M.P.M.; thence east along section lines to the northeast corner of said Section 22; thence south along section lines to the southeast corner of Section 10, T 4 S, R 30 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 10; thence south along section lines to the southeast corner of Section 21, T 4 S, R 30 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 19, T 4 S, R 30 E, N.M.P.M., a point on the Roosevelt-Chaves county line; thence south along range line and said county line to the southeast corner of Section 36, T 4 S, R 29 E, N.M.P.M.; thence west along township line to the southwest corner of Section 34, T 4 S, R 28 E, N.M.P.M.; thence north along section lines to the southwest corner of Section 22, T 4 S, R 28 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 20, T 4 S, R 27 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 31, T 5 S, R 27 E, N.M.P.M.; thence west along township line to the northeast corner of Section 3, T 6 S, R 27 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 3, T 7 S, R 27 E, N.M. P.M. ; thence west along section lines to the southwest corner of Section 4, T 7 S, R 27 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 4; thence west along township line to the southwest corner of

Section 34, T 6 S, R 26 E, N.M.P.M., and point of intersection of the boundaries of the existing Ft. Sumner and Roswell Underground Water Basins; thence west along the existing Ft. Sumner and Roswell Underground Water Basin boundary to the point of beginning.

C. [TOWNSHIP AND RANGE MAP: See 7-7.1 Fort Sumner Basin, PDF File No. 19.027.31.8-Ft Sumner.]

[SE 66-1, Article 7-7; Recompiled 12/31/01]

PART 32: GALLINAS RIVER WATER DISTRICT [RESERVED]

PART 33: GALLUP UNDERGROUND WATER BASIN

19.27.33.1 ISSUING AGENCY:

Office of the State Engineer.

[Recompiled 12/31/01]

19.27.33.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.33.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.33.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.33.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.33.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.33.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.33.8 GALLUP UNDERGROUND WATER BASIN:

A. The lands declared within the Gallup Underground Water Basin on March 5, 1980, are as follows: Beginning at the point of intersection of the New Mexico-Arizona state line and the McKinley-San Juan county line; thence east along the McKinley-San Juan county line approximately 4.2 miles to a point on the west drainage boundary of Bowl Creek, part of the Puerco River stream system; thence northerly and northeasterly along the drainage boundary of Bowl Creek to a point common to the topographic drainage of the San Juan River stream system and Bowl Creek, part of the Puerco River stream system, which is a point on the presently-declared San Juan Underground Water Basin boundary; thence southerly along the topographic drainage boundary between the San Juan River stream system and the Puerco River stream system, which is the boundary of the presently-declared San Juan Underground Water Basin, passing near Tohatchi Lookout, along said drainage boundary across Manuelito Plateau, continuing along said drainage boundary, through Dalton Pass in Section 4, Township 16 North, Range 14 West, N.M.P.M., to the point common to the topographic drainage boundary of the San Juan River stream system, the Puerco River stream system and the Rio Grande stream system, in the southeast quarter of Section 25, Township 16 North, Range 13 West, N.M.P.M.; thence southwesterly along the continental divide, which is the boundary of the presently-declared Bluewater Underground Water Basin, to a point common to the topographic drainage boundary of the Rio Grande stream system, the Rio Nutria stream system, and the Puerco River stream system in the northeast quarter of Section 23, Township 13 North, Range 15 West, N.M.P.M.; thence northwesterly along the topographic drainage boundary between the Puerco River stream system and the Rio Nutria stream system, passing along McKenzie Ridge, passing through the northeast quarter of Section 3, Township 13 North, Range 16 West, N.M.P.M.; thence westerly and southwesterly along the topographic drainage boundary between the Puerco River stream system and the Rio Nutria stream system, to a point common to the topographic drainage boundary of the Puerco River stream system, the Rio Nutria stream system and the Whitewater Arroyo stream system in the northeast quarter of Section 12, Township 13 North, Range 17 West, N.M.P.M.; thence westerly and southwesterly along the topographic drainage boundary between the Puerco River stream system and Whitewater Arroyo stream system, passing through Township 13 North, Ranges 17 through 19 West, Township 12 North, Ranges 19 through 21 West, to

the point of intersection of the New Mexico-Arizona state line and said drainage boundary in the south half of Section 15, Township 12 North, Range 21 West, N.M.P.M., near milepost 120; thence north along the New Mexico-Arizona state line to the point of beginning.

B. The boundaries of the extension of the Gallup Underground Water Basin, Special Order No. 151-A are described as follows: Beginning at the point of intersection of the New Mexico-Arizona state line and the topographic drainage boundary between the Rio Puerco stream system and Whitewater Arroyo stream system, which is a point on the boundary of the presently-declared Gallup Underground Water Basin, in the south half of Section 15, Township 12 North, Range 21 West, NMPM; thence easterly and northeasterly along said topographic drainage boundary, which is the boundary of the presently-declared Gallup Underground Water Basin, passing through Township 12 North, Ranges 21 through 19 West and passing through Township 13 North, Ranges 19 through 17 West to a point common to the topographic drainage boundary of the Rio Puerco, Rio Nutria and Whitewater stream systems; thence easterly and northeasterly along the topographic drainage boundary between the Puerco River stream system and the Rio Nutria stream system and the southern boundary of the Gallup Underground Water Basin passing through the northeast quarter of Section 3, Township 13 North, Range 16 West, NMPM; thence southeasterly passing along McKenzie Ridge to a point common to the topographic drainage boundary of the Rio Grande, Rio Puerco and the Rio Nutria stream systems, which is a point on the presently declared Bluewater Underground Water Basin and the Continental Divide in the northeast quarter of Section 23, Township 13 North, Range 15 West, NMPM; thence southeasterly along the Continental Divide and the topographic drainage boundary of the Rio Grande and Zuni River stream systems passing along the crest of the Zuni Mountains to a point near the west line of Section 14, Township 9 North, Range 12 West, NMPM; thence southwesterly along the Continental Divide to the point common of the Bluewater Underground Water Basin and the Rio Grande Underground Water Basin and the Continental Divide located on the south section line of Section 15, Township 8 North, Range 13 West; thence southwesterly along the Continental Divide, which is the existing west boundary of the Rio Grande Underground Water Basin to the southwest corner of Section 31, Township 5 North, Range 15 West, NMPM; thence southeasterly along the Continental Divide to its intersection with the west line of Section 7, Township 1 North, Range 11 West, NMPM; thence southwesterly along the Continental Divide to its intersection with the east line of Section 22, Township 3 South, Range 15 West, a point on the existing Gila-San Francisco Underground Water Basin; thence north along the existing boundary of the Gila-San Francisco Underground Water Basin to the northwest corner of Section 23, Township 3 South, Range 15 West, thence west along section lines to the southwest corner of Section 13, Township 3 South, Range 16 West; thence north along section line to the northwest corner of said Section 13; thence west along section line to the southwest corner of Section 11, Township 3 South, Range 16 West; thence north along section line to the northwest corner of said Section 11; thence west along section lines to the southwest corner of Section 5, Township 3 South, Range 16 West; thence south along section line to the southeast corner of Section 7, Township 3 South, Range 16 West; thence west along section line to the southwest corner of said

Section 7; thence north along section line to the northwest corner of said Section 7; thence west along section lines to the southwest corner of Section 4, Township 3 South, Range 17 West; thence south along section line to the southeast corner of Section 8, Township 3 South, Range 17 West; thence west along section line to the southwest corner of said Section 8; thence north along section lines to the southwest corner of Section 32, Township 2 South, Range 17 West; thence west along township line to the southwest corner of Section 34, Township 2 South, Range 18 West; thence south along section lines to the southeast corner of Section 9, Township 3 South, Range 18 West; thence west along section line to the southwest corner of said Section 9; thence south along section line to the southeast corner of Section 17, Township 3 South, Range 18 West; thence west along section lines to the southwest corner of Section 17, Township 3 South, Range 19 West; thence south along section line to the southeast corner of Section 19, Township 3 South, Range 19 West; thence west along section lines to the southwest corner of Section 21, Township 3 South, Range 20 West; thence south along section line to the southeast corner of Section 29, Township 3 South, Range 20 West; thence west along section lines to the southwest corner of Section 25, Township 3 South, Range 21 West; thence south along section line to the southwest corner of Section 36, Township 3 South, Range 21 West; thence west along section lines to the southwest corner of Section 33, Township 3 South, Range 21 West a point at the intersection of the existing boundary of the Gila-San Francisco Underground Water Basin and the New Mexico-Arizona state line; thence north along the New Mexico-Arizona state line to the point of beginning.

C. [TOWNSHIP AND RANGE MAP: See 7-28.1 Gallup Underground Water Basin, [PDF File 19.27.33.8-Gallup.](#)]

[SE 66-1, Article 7-28; Recompiled 12/31/01]

PART 34: GILA-SAN FRANCISCO BASIN

19.27.34.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.34.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.34.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.34.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.34.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.34.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.34.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.34.8 GILA-SAN FRANCISCO BASIN:

A. The lands included within the Gila-San Francisco Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
3 S.	15 W.	19 thru 22, 27 thru 33	Feb. 14, 1963
3 S.	16 W.	8 thru 10, 14 thru 36	Feb. 14, 1963
3 S.	17 W.	6, 7, 9 thru 36	Feb. 14, 1963
3 S.	18 W.	1 thru 3, 10 thru 16, Feb. 14, 1963	
		19 thru 36	
3 S.	19 W.	20 thru 36	Feb. 14, 1963

3 S.	20 W.	25 thru 28, 31 thru 36	Feb. 14, 1963
3 S	21 W.	36	Feb. 14, 1963
4 S.	15 W.	4 thru 9, 16 thru 21	Feb. 14, 1963
		28 thru 33	
4 S.	16 W.	All	Feb. 14, 1963
4 S.	17 W.	1 thru 18	Feb. 14, 1963
4 S.	17 W.	19 thru 36	Oct. 20, 1960
4 S.	18 W.	All	Oct. 20, 1960
4 S.	19 W.	All	Oct. 20, 1960
4 S.	20 W.	All	Oct. 20, 1960
4 S.	21 W.	All	Oct. 20, 1960
5 S.	15 W.	4 thru 8, 18, 19,	Feb. 14, 1963
		29 thru 32	
5 S.	16 W.	All	Oct. 20, 1960
5 S.	17 W.	All	Oct. 20, 1960
5 S.	18 W.	All	Oct. 20, 1960
5 S.	19 W.	All	Oct. 20, 1960
5 S.	20 W.	All	Oct. 20, 1960
5 S.	21 W.	All	Oct. 20, 1960
6 S.	11 W.	33 thru 35	Feb. 14, 1963
6 S.	15 W.	6	Feb. 14, 1963
6 S.	16 W.	*1 thru 10, 14	
		thru 22, 27 thru	

		36 (projected)	Feb. 14, 1963
6 S.	17 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Feb. 14, 1963
6 S.	17 W.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 20, 1960
6 S.	18 W.	All	Oct. 20, 1960
6 S.	19 W.	All	Oct. 20, 1960
6 S.	20 W.	All	Oct. 20, 1960
6 S.	21 W.	All	Oct. 20, 1960
7 S.	9 W.	17 thru 19, 29 thru 32	Feb.14, 1963
7 S.	10 W.	2, 3, 7 thru 36	Feb. 14, 1963
7 S	11 W.	1 thru 17, 20 thru 36	Feb. 14, 1963
7 S.	12 W.	25 thru 36	Feb. 14, 1963
7 S.	13 W.	25 thru 28	Feb. 14, 1963
7 S.	13 W.	31 thru 36	Oct. 20, 1960
7 S.	14 W.	36	Feb. 14, 1963
7 S.	16 W.	*1 thru 11, 15 thru 21, 27 thru 36 (projected)	Feb. 14, 1963
7 S.	17 W.	All	Feb. 14, 1963
7 S	18 W.	All	Oct. 20, 1960

7 S.	19 W.	All	Oct. 20, 1960
7 S.	20 W.	All	Oct. 20, 1960
7 S.	21 W.	*1 thru 18	
		(projected)	Oct. 20, 1960
7 S.	21 W.	*19 thru 18	
		(projected)	Feb. 14, 1963
8 S.	9 W.	6, 18 thru 20,	
		29 thru 31	Feb. 14, 1963
8 S.	10 W.	All	Oct. 20, 1960
8 S.	11 W.	All	Oct. 20, 1960
8 S.	12 W.	All	Oct. 20, 1960
8 S.	13 W.	All	Oct. 20, 1960
8 S.	14 W.	1, 2, 11 thru 14	Oct. 20, 1960
8 S.	14 W.	3, 9, 10, 15 thru	
		36	Feb. 14, 1963
8 S.	15 W.	6, 7, 23 thru 27,	
		31, 32	Feb. 14, 1963
8 S.	15 W.	33 thru 36	Oct. 20, 1960
8 S.	16 W.	1 thru 12, 14 thru	
		22, 28 thru 36	Feb.14, 1963
8 S.	17 W.	1 thru 3, 10 thru	
		15, 22 thru 27, 34	
		thru 36	Feb.14, 1963

8 S.	17 W.	4 thru 9, 16 thru 21, 28 thru 33	Oct.20, 1960
8 S.	18 W.	1 thru 18	Oct. 20, 1960
8 S.	18 W.	19 thru 36	Feb. 14, 1963
8 S.	19 W.	All	Oct. 20, 1960
8 S.	20 W.	All	Oct. 20, 1960
8 S.	21 W.	All	Feb. 14, 1963
9 S.	9 W.	6, 7, 18	Feb. 14, 1963
9 S.	10 W.	1 thru 3, 10 thru 15, 22 thru 24, 26, 27, 34, 35	Feb. 14, 1963
9 S.	10 W.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 20, 1960
9 S.	11 W.	All	Oct. 20, 1960
9 S.	12 W.	All	Oct. 20, 1960
9 S.	13 W.	All	Oct. 20, 1960
9 S.	14 W.	All	Oct. 20, 1960
9 S.	15 W.	I thru 4, 9 thru 16, 19 thru 36	Oct. 20, 1960
9 S.	15 W.	5 thru 8, 17, 18	Feb. 14, 1963
9 S.	16 W.	1 thru 18	Feb. 14, 1963
9 S.	16 W.	19 thru 36	Oct. 20, 1960
9 S.	17 W.	*1 thru 21, 28 thru	

		33 (projected)	Feb. 14, 1963
9 S.	17 W.	*22 thru 27, 34 thru	
		36 (projected)	Oct. 20, 1960
9 S.	18 W.	All	Feb. 14, 1963
9 S.	19 W.	All	Feb. 14, 1963
9 S.	20 W.	All	Oct. 20, 1960
9 S.	21 W.	All	Feb. 14, 1963
10 S.	10 W.	3 thru 10, 16 thru	
		22, 27 thru 35	Feb. 14, 1963
10 S.	11 W.	All	Feb. 14, 1963
10 S.	12 W.	All	Oct. 20, 1960
10 S.	13 W.	All	Feb. 14, 1963
10 S.	14 W.	All	Feb. 14, 1963
10 S.	15 W.	*1 thru 18	
		(projected)	Oct. 20, 1960
10 S.	15 W.	*19 thru 36	
		(projected)	Feb. 14, 1963
10 S.	16 W.	*1 thru 18	
		(projected)	Oct. 20, 1960
10 S.	16 W.	*19 thru 36	
		(projected)	Feb. 14, 1963
10 S.	17 W.	All	Feb. 14, 1963
10 S.	18 W.	All	Feb. 14, 1963

10 S.	19 W.	All	Oct. 20, 1960
10 S.	20 W.	All	Oct. 20, 1960
10 S.	21 W.	*1, 12, 13, 24,25, 36 (projected)	Oct. 20, 1960
10 S.	21 W.	*2 thru 11, 14 thru 23, 26 thru 35 (projected)	Feb. 14, 1963
11 S.	9 W.	*6, 7, 18, 31 (projected)	Feb. 14, 1963
11 S.	10 W.	All	Feb. 14, 1963
11 S.	11 W.	All	Feb. 14, 1963
11 S.	12 W.	All	Oct. 20, 1960
11 S.	13 W.	1 thru 33	Feb. 14, 1963
11 S.	13 W.	34 thru 36	Oct. 20, 1960
11 S.	14 W.	All	Feb. 14, 1963
11 S.	15 W.	All	Feb. 14, 1963
11 S.	16 W.	All	Feb. 14, 1963
11 S.	17 W.	All	Feb. 14, 1963
11 S.	18 W.	All	Feb. 14, 1963
11 S.	19 W.	1 thru 19, 30, 31	Oct. 20, 1960
11 S.	19 W.	20 thru 29, 32 thru 36	Feb. 14, 1963
11 S.	20 W.	All	Oct. 20, 1960

11 S.	21 W.	All	Feb. 14, 1963
12 S.	9 W.	6, 7, 18, 19	Feb. 14, 1963
12 S.	10 W.	*1 thru 35	
		(projected)	Feb. 14, 1963
12 S.	11 W.	All	Feb. 14, 1963
12 S.	12 W.	1 thru 18, 22 thru	
		27, 34 thru 36	Oct. 20, 1960
12 S.	12 W.	19 thru 21, 28 thru	
		33	Feb. 14, 1963
12 S.	13 W.	1 thru 3, 10 thru	
		15, 19 thru 36	Oct. 20, 1960
12 S.	13 W.	4 thru 9, 16 thru 18	Feb. 14, 1963
12 S.	14 W.	*1 thru 21, 28 thru	
		33 (projected)	Feb. 14, 1963
12 S.	14 W.	22 thru 27, 34 thru	
		36	Oct. 20, 1960
12 S.	15 W.	All	Feb. 14, 1963
12 S.	16 W.	All	Feb. 14, 1963
12 S.	17 W.	All	Feb. 14, 1963
12 S.	18 W.	All	Feb. 14, 1963
12 S.	19 W.	1 thru 30	Feb. 14, 1963
12 S.	19 W.	31 thru 36	Oct. 20, 1960
12 S.	20 W.	All	Oct. 20, 1960

12 S.	21 W.	All	Feb. 14, 1963
13 S.	10 W.	*2 thru 23, 26 thru	
		33 (projected)	Feb. 14, 1963
13 S.	11 W.	1 thru 3, 10 thru	
		15, 19 thru 36	Feb. 14, 1963
13 S.	11 W.	4 thru 9, 16 thru	
		18	Oct. 20, 1960
13 S.	12 W.	1, 12, 13	Oct. 20, 1960
13 S.	12 W.	2 thru 11, 14 thru	
		36	Feb. 14, 1963
13 S.	13 W.	1 thru 12, 16 thru	
		21, 28 thru 33	Oct. 20, 1960
13 S.	13 W.	13 thru 15, 22 thru	
		27, 34 thru 36	Feb. 14, 1963
13 S.	14 W.	All	Feb. 14, 1963
13 S.	15 W.	All	Feb. 14, 1963
13 S.	16 W.	All	Feb. 14, 1963
13 S.	17 W.	All	Feb. 14, 1963
13 S.	18 W.	1 thru 18	Feb. 14, 1963
13 S.	18 W.	19 thru 36	Oct. 20, 1960
13 S.	19 W.	All	Oct. 20, 1960
13 S.	20 W.	All	Oct. 20, 1960
13 S.	21 W.	1 thru 18	Feb. 14, 1963

13 S.	21 W.	19 thru 36	Oct. 20, 1960
14 S.	10 W.	*5, 6 (projected)	Feb. 14, 1963
14 S.	11 W.	1 thru 12, 15 thru	
		22, 28 thru 32	Feb. 14, 1963
14 S.	12 W.	All	Feb. 14, 1963
14 S.	13 W.	1 thru 3, 10 thru	
		15	Feb. 14, 1963
14 S.	13 W.	4 thru 9, 16 thru	
		36	Oct. 20, 1960
14 S.	14 W.	All	Feb. 14, 1963
14 S.	15 W.	All	Feb. 14, 1963
14 S.	16 W.	*1 thru 18	
		(projected)	Feb. 14, 1963
14 S.	16 W.	*19 thru 36	
		(projected)	Oct. 20, 1960
14 S.	17 W.	1 thru 18	Feb. 14, 1963
14 S.	17 W.	19 thru 36	Oct. 20, 1960
14 S.	18 W.	All	Oct. 20, 1960
14 S.	19 W.	All	Oct. 20, 1960
14 S.	20 W.	All	Oct. 20, 1960
14 S.	20 W.	1 thru 18	Oct. 20, 1960
14 S.	20 W.	19 thru 36	Feb. 14, 1963
14 S.	21 W.	All	Oct. 20, 1960

15 S.	11 W.	5 thru 7	Feb. 14, 1963
15 S.	12 W.	1, 2, 11 thru 14, 23, 27 thru 32	Feb. 14, 1963
15 S.	12 W.	3 thru 10, 15 thru 22	Oct. 20, 1960
15 S.	13 W.	*1 thru 21, 28 thru 33 (projected)	Oct. 20, 1960
15 S.	13 W.	*22 thru 27, 34 thru 36 (projected)	Feb. 14, 1963
15 S.	14 W.	All	Feb. 14, 1963
15 S.	15 W.	*1 thru 18, 22 thru 27, 34 thru 36 (projected)	Feb. 14, 1963
15 S.	15 W.	19 thru 21, 28 thru 33	Oct. 20, 1960
15 S.	16 W.	1 thru 3, 10 thru 15	Feb. 14, 1963
15 S.	16 W.	4 thru 9, 16 thru 36	Oct. 20, 1960
15 S.	17 W.	All	Oct. 20, 1960
15 S.	18 W.	All	Oct. 20, 1960
15 S.	19 W.	All	Feb. 14, 1963
15 S.	20 W.	All	Feb. 14, 1963

15 S	21 W.	All	Oct. 20, 1960
16 S.	12 W.	5 thru 8	Feb. 14, 1963
16 S.	13 W.	1 thru 3, 10 thru 15, 21 thru 23, 27, 28, 32	Feb. 14, 1963
16 S.	13 W.	4 thru 9, 16 thru 20, 29 thru 31	Oct. 20, 1960
16 S.	14 W.	All	Oct. 20, 1960
16 S.	15 W.	All	Oct. 20, 1960
16 S.	16 W.	All	Oct. 20, 1960
16 S.	17 W.	All	Oct. 20, 1960
16 S.	18 W.	All	Feb. 14, 1963
16 S.	19 W.	All	Feb. 14, 1963
16 S.	20 W.	All	Feb. 14, 1963
16 S.	21 W.	All	Feb. 14, 1963
17 S.	13 W.	N 1/2 6	Oct. 20, 1960
17 S.	13 W.	S 1/2 6	Feb. 14, 1963
17 S.	14 W.	1 thru 3, 7 thru 9, 30, 31	Feb. 14, 1963
17 S.	14 W.	4 thru 6	Oct. 20, 1960
17 S.	15 W.	All	Feb. 14, 1963
17 S.	16 W.	All	Oct. 20, 1960
17 S.	17 W.	All	Oct. 20, 1960

17 S.	18 W.	All	Feb. 14, 1963
17 S.	19 W.	All	Feb. 14, 1963
17 S.	20 W.	All	Feb. 14, 1963
17 S.	21 W.	All	Feb. 14, 1963
18 S.	14 W.	6, 7, 18	Feb. 14, 1963
18 S.	15 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Feb. 14, 1963
18 S.	15 W.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 20, 1960
18 S.	16 W.	*1 thru 18, 22 thru 27, 34 thru 36 (projected)	Oct. 20, 1960
18 S.	16 W.	*19 thru 21, 28 thru 33 (projected)	Feb. 14, 1963
18 S.	17 W.	1 thru 18	Oct. 20, 1960
18 S.	17 W.	19 thru 36	Feb. 14, 1963
18 S.	18 W.	1 thru 10, 15 thru 18	Feb. 14, 1963
18 S.	18 W.	11 thru 14, 19 thru 36	Oct. 20, 1960
18 S.	19 W.	1 thru 23, 27 thru 32	Feb. 14, 1963
18 S.	19 W.	24 thru 26, 33 thru 36	Oct. 20, 1960

18 S.	20 W.	All	Feb. 14, 1963
18 S.	21 W.	1 thru 30, 35, 36	Feb. 14, 1963
19 S.	15 W.	1, 12, 23, 27, 33	Feb. 14, 1963
19 S.	15 W.	2 thru 11, 13 thru 22, 28 thru 32	Oct. 20, 1960
19 S.	16 W.	1 thru 32, 35, 36	Feb. 14, 1963
19 S.	17 W.	All	Feb. 14, 1963
19 S.	18 W.	1 thru 3, 10 thru 36	Feb. 14, 1963
19 S.	18 W.	4 thru 9	Oct. 20, 1960
19 S.	19 W.	1 thru 4, 7 thru 12, 14 thru 21, 30	Oct. 20, 1960
19 S.	19 W.	5, 6, 13, 22 thru 29, 31 thru 36	Feb. 14, 1963
19 S.	20 W.	1 thru 6, 8 thru 12, 19, 28 thru 36	Feb. 14, 1963
19 S.	20 W.	13 thru 16, 22 thru 27	Oct. 20, 1960
19 S.	21 W.	9, 14 thru 36	Feb. 14, 1963
20 S.	15 W.	5, 6	Feb. 14, 1963
20 S.	16 W.	1	Feb. 14, 1963
20 S.	17 W.	1 thru 11	Feb. 14, 1963
20 S.	18 W.	1 thru 18	Feb. 14, 1963

20 S.	19 W.	1 thru 9, 12, 18	Feb. 14, 1963
20 S.	20 W.	1 thru 21, 29 thru	
		31	Feb. 14, 1963
20 S.	21 W.	All	Feb. 14, 1963
21 S.	21 W.	1 thru 12, 15 thru	
		21, 29 thru 31	Feb. 14, 1963

*Projected sections are based on meridian and parallel projections of surveyed townships.

B. [TOWNSHIP AND RANGE MAP: See 7-8.1 and 2 Gila-San Francisco Basin, [PDF file 19.027.0034.8Gila-SanFran.](#)]

[SE 66-1, Article 7-8; Recompiled 12/31/01]

PART 35: [RESERVED]

PART 36: HONDO BASIN

19.27.36.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.36.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.36.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.36.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.36.5 EFFECTIVE DATE:

November 1, 1966

19.27.36.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.36.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.36.8 HONDO BASIN:

A. The lands included within the Hondo Basin are as follows:

TOWNSHIP	RANGE	SECTION	DATE DECLARED
9 S.	13 E.	1 thru 3, 10 thru 15, 20 thru 36	9/5/69
9 S.	14 E.	All	9/5/69
9 S.	15 E.	All	9/1/53
9 S.	16 E.	All	9/1/53
10 S.	13 E.	All	9/5/69
10 S.	14 E.	All	9/5/69
10 S.	15 E.	All	9/1/53
10 S.	16 E.	All	9/1/53

10 S.	17 E.	All	9/1/53
11 S.	13 E.	All	9/1/53
11 S.	14 E.	All	9/1/53
11 S.	15 E.	All	9/1/53
11 S.	16 E.	All	9/1/53
11 S.	17 E.	All	9/1/53
11 S.	18 E.	All	9/1/53
11 S.	19 E.	All	9/1/53
11 S.	20 E.	4 thru 9, 16 thru 21, 28 thru 33	9/1/53
12 S.	18 E.	1 thru 3, 10 thru 15	9/1/53
12 S.	19 E.	1 thru 18	9/1/53

The lands included by the extension of December 28, 1984, are as follows: Beginning at the northeast corner of Section 1, Township 12 South, Range 16 East, a point on the existing boundary of the Hondo and Roswell Underground Water Basins; thence south along the existing boundary of the Roswell Underground Water Basin to the southeast corner of said Section 1; thence west along section line to the southwest corner of said Section 1; thence south along section line to the southeast corner of Section 11, Township 12 South, Range 16 East; thence west along section lines to the southwest corner of Section 10, Township 12 South, Range 16 East; thence north along section line to the northwest corner of said Section 10; thence west along section line to the southwest corner of Section 4, Township 12 South, Range 16 East; thence north along section line to the northwest corner of said Section 4, a point on the existing boundary of the Hondo Underground Water basin; thence west along the existing boundary of the Hondo Underground Water Basin to the northeast corner of Section 2, Township 12 South, Range 15 East; thence south along section lines to the southeast corner of Section 11, Township 12 South, Range 15 East; thence west along section line to the southwest corner of said Section 11; thence south along section lines to the southeast corner of Section 22, Township 12 South, Range 15 East; thence west along section lines to the southwest corner of Section 19, Township 12 South, Range 15 East; thence

north along range line to the northeast corner of Section 24, Township 12 South, Range 14 East; thence west along section lines to the northwest corner of Section 22, Township 12 South, Range 14 East; thence south along section line to the southeast corner of Section 21, Township 12 South, Range 14 East; thence west along section line to the southwest corner of said Section 21; thence south along section line to the southeast corner of Section 29, Township 12 South, Range 14 East; thence west along section line to the southwest corner of said Section 29; thence south along section line to the southeast corner of Section 31, Township 12 South, Range 14 East; thence west along township line to the northeast corner of Section 1, Township 13 South, Range 13 East; thence south along range line to the southeast corner of Section 24, Township 13 South, Range 13 East; thence west along section lines to the southwest corner of Section 23, Township 13 South, Range 13 East; thence north along section line to intersection with the drainage divide between the Tularosa Basin and the Pecos River Stream System, a point on the existing boundary of the Tularosa Underground Water Basin; thence northerly along the existing Tularosa Underground Water Basin boundary to intersection with the north line of Section 2, Township 8 South, Range 13 East; thence east along township line to the northeast corner of Section 5, Township 8 South, Range 14 East; thence south along section line to the southeast corner of said Section 5; thence east along section lines to the northeast corner of Section 9, Township 8 South, Range 15 East; thence south along section line to the southeast corner of said Section 9; thence east along section line to the northeast corner of Section 15, Township 8 South, Range 15 East; thence south along section line to intersection with the north drainage divide of the Hondo Stream System; thence easterly along said north drainage divide through Padilla Point and Pierce Canyon Pass to the intersection of the east drainage boundary of a tributary to Chavez Canyon, thence southerly along the east drainage boundary of Chavez Canyon to intersection with the north line of Section 6, Township 9 South, Range 17 East; thence east along section line to the northeast corner of said Section 6; thence south along section lines to the southeast corner of Section 30, Township 9 South, Range 17 East; thence east along section lines to the southeast corner of Section 28, Township 9 South, Range 17 East; thence due south to intersection with the existing boundary of the Hondo Underground Water Basin; thence east and south along the existing basin boundary to the southwest corner of Section 18, Township 10 South, Range 18 East; thence east along section lines to the southeast corner of Section 17, Township 10 South, Range 18 East; thence south along section lines to the southeast corner of Section 32, Township 10 South, Range 18 East, a point on the existing boundary of the Hondo Underground Water Basin; thence east, south, westerly along the existing basin boundary to the point of beginning.

B. The corrected boundaries of the extension of the Hondo Underground Water Basin as originally intended by Special Order No. 144 are as follows (corrections are underlined): Beginning at the northeast corner of Section 12, Township (T) (12) South (S) , Range (R) 16 East (E) , New Mexico Principal Meridian (N.M.P.M.), point on the boundary of the existing Hondo and Roswell Underground Water Basins; thence westerly along the south boundary of the existing Hondo Underground Water Basin to the southwest corner of Section 19, T 13 S, R 14 E, N.M.P.M.; thence south along section lines to the southwest corner of Section 31, T 13 S, R 14 E, N.M.P.M.; thence

east along section line to the northwest corner of Section 5, T 14 S, R 14 E, N.M.P.M.; thence south along section line to the southwest corner of said section 5; thence east along section line to the northwest corner of Section 9, T 14 S, R 14 E, N.M.P.M.; thence south along section line to the southwest corner of said Section 9; thence east along section lines to the southeast corner of Section 10, T 14 S, R 15 E, N.M.P.M.; thence north along section line to the east quarter corner of said Section 10; thence east to the east quarter corner of Section 10, T 14 S, R 16 E, N.M.P.M. ; thence north along section line to the northeast corner of said Section 10; thence east along section lines to the southeast corner of Section 1, T 14 S, R 16 E, a point on the west boundary of the existing Roswell Underground Water Basin; thence north along range line and said west boundary of the Roswell Underground Water Basin to the point of beginning.

C. [TOWNSHIP AND RANGE MAP: See 7-9.1 Hondo Underground Water Basin, [PDF file 19.027.0036.8-Hondo.](#)]

[SE 66-1, Article 7-9; Recompiled 12/31/01]

PART 37: HOT SPRINGS ARTESIAN BASIN

19.27.37.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.37.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.37.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.37.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.37.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.37.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.37.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.37.8 HOT SPRINGS ARTESIAN BASIN:

A. The lands declared within the Hot Springs Artesian Basin on April 15, 1935, are as follows:

TOWNSHIP	RANGE	SECTIONS
13 S.	4 W.	27 thru 34
13 S.	5 W.	25 thru 28, 33 thru 36
14 S.	4 W.	Portions of 4, 5, 6, 7, 17, 18, 19, 20, 29, 30, 31 and 32 North and West of Rio Grande
14 S.	5 W.	1 thru 5, NE 1/4 of 6, E 1/2 and NW 1/4 of 8, 9 thru 15, N 1/2 of 16, NE 1/4 of 22, 23 thru 25, NE 1/4 of 26, NE 1/4 of 36

B. The lands included by the extension of September 17, 1982, are as follows:

Beginning at the intersection of the southern surface drainage boundary of Palomas Creek with the east line of the northwest quarter of Section 22, T-14-S, R-5-W, N.M.P.M., a point on the existing boundary of the Hot Springs Underground Water Basin; thence westerly along the southern surface drainage boundary of Palomas Creek, passing through the Salado Mountains near the northwest corner of Township-14-South, Range-6-West, and the northeast corner of Township-14-South, Range-7-West, through South Salado Peak in Sections 6 and 7, T-14-S, R-7-W, Indian Peak in Section 4, T-14-S, R-8-W, Lake Mountain in Section 34, T-13-S, R-9-W and along Spud Patch Ridge in projected* Township 13 South, Range 9 West to its intersection with the surface drainage boundary between the Rio Grande and the Mimbres River, a point approximately one mile south of Reeds Peak on the Grant-Sierra County line and the existing boundary of the Mimbres Underground Water Basin; thence northerly along the existing boundary of the Mimbres Underground Water Basin to its intersection with the existing boundary of the Gila-San Francisco Underground Water Basin at a point approximately one-half mile south of Reeds Peak in projected* Section 26, T-13-S, R-10-W; thence northerly along the existing boundary of the Gila-San Francisco Underground Water Basin to the northwest corner of projected* Section 17, T-12-S, R-9-W, a point on the existing boundary of the Rio Grande Underground Water Basin; thence easterly along the existing boundary of the Rio Grande Underground Water Basin to the southeast corner of Section 24, T-13-S, R-5-W, a point on the existing boundary of the Hot Springs Underground Water Basin; thence west along the existing boundary of the Hot Springs Underground Water Basin to the southwest corner of Section 21, T-13-S, R-5-W, south to the southeast corner of Section 32, T-13-S, R-5-W, west to the south quarter corner of Section 31, T-13-S, R-5-W, and southeasterly along said basin boundary to the point of beginning.

*Projected Sections and townships are based on meridian and parallel projections of surveyed townships.

C. [TOWNSHIP AND RANGE MAP: See 7-10.1 Hot Springs Underground Water Basin, [PDF file 19.027.0037.8-HotSprings.](#)]

[SE 66-1, Article 7-10; Recompiled 12/31/01]

PART 38: HUECO UNDERGROUND WATER BASIN

19.27.38.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.38.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.38.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.38.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.38.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.38.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.38.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.38.8 HUECO UNDERGROUND WATER BASIN:

A. The lands declared within the Hueco Underground Water Basin on September 12, 1980, are as follows: Beginning at a point on the New Mexico-Texas state boundary at which the west line of Section 35, Township 26 South, Range 4 East intersects said boundary; thence northerly along the west line of Section 35, Township 26 South, Range 4 East to its northwest corner; thence westerly along the south line of Section 27, Township 26 South, Range 4 East to its southwest corner; thence northerly along the west lines of Sections 27, 22 and 15, Township 26 South, Range 4 East to the

northwest corner of said Section 15; thence westerly along the south line of Section 9, Township 26 South, Range 4 East to its southwest corner; thence northerly along the west lines of Sections 9 and 4, Township 26 South, Range 4 East and Sections 33 and 28, Township 25 South, Range 4 East to the northwest corner of said Section 28; thence westerly along the south line of Section 20, Township 25 South, Range 4 East to its southwest corner; thence northerly along the west lines of Sections 20, 17, 8 and 5, Township 25 South, Range 4 East to the northwest corner of said Section 5; thence easterly along the north line of Section 5, Township 25 South, Range 4 East to its northeast corner; thence northerly along the west lines of Sections 33, 28, 21, 16 and 9, Township 24 South, Range 4 East to the northwest corner of said Section 9; thence westerly along the south line of Section 5, Township 24 South, Range 4 East to its southwest corner; thence northerly along the west lines of Section 5, Township 24 South, Range 4 East and Section 32, Township 23 South, Range 4 East to the northwest corner of said Section 32; thence easterly along the north lines of Sections 32 and 33, Township 23 South, Range 4 East to the northeast corner of said Section 33; thence northerly along the west line of Section 27, Township 23 South, Range 4 East to its northwest corner; thence easterly along the north lines of Sections 27, 26 and 25, Township 23 South, Range 4 East to the northeast corner of said Section 25; thence northerly along the west line of Section 19, Township 23 South, Range 5 East to its northwest corner; thence easterly along the north lines of Sections 19, 20, 21, 22, 23 and 24, Township 23 South, Range 5 East to the northeast corner of said Section 24; thence northerly along the west line of Section 18, Township 23 South, Range 6 East to its northwest corner; thence easterly along the north lines of Sections 18, 17, 16, 15, 14 and 13, Township 23 South, Range 6 East to the northeast corner of said Section 13; thence southerly along the east line of Section 13, Township 23 South, Range 6 East to the northwest corner of Section 18, Township 23 South, Range 7 East; thence easterly along the north line of Section 18, Township 23 South, Range 7 East to its northeast corner; thence southerly along the east lines of Sections 18, 19 and 30, Township 23 South, Range 7 East to the southeast corner of said Section 30; thence westerly along the south line of Section 30, Township 23 South, Range 7 East to its southwest corner; thence southerly along the east lines of Section 36, Township 23 South, Range 6 East and Section 1, Township 24 South, Range 6 East to the southeast corner of said Section 1; thence westerly along the south line of Section 1, Township 24 South, Range 6 East to its southwest corner; thence southerly along the east line of Section 11, Township 24 South, Range 6 East to its southeast corner; thence westerly along the south line of Section 11, Township 24 South, Range 6 East to its southwest corner; thence southerly along the east line of Section 15, Township 24 South, Range 6 East to its southeast corner; thence westerly along the south line of Section 15, Township 24 South, Range 6 East to its southwest corner; thence southerly along the east line of Section 21, Township 24 South, Range 6 East to its southeast corner; thence westerly along the south lines of Sections 21, 20 and 19, Township 24 South, Range 6 East to the southwest corner of said Section 19; thence southerly along the east lines of Sections 25 and 36, Township 24 South, Range 5 East, Sections 1, 12, 13, 24, 25 and 36, Township 25 South, Range 5 East and Sections 1, 12, 13, 24 and 25, Township 26 South, Range 5 East to the northwest corner of Section 30, Township 26 South, Range 6 East; thence easterly along the north lines of Sections 30, 29, 28 and 27, Township 26

South, Range 6 East to the northeast corner of said Section 27; thence southerly along the east lines of Sections 27 and 34, Township 26 South, Range 6 East to the intersection of the east line of said Section 34 with the New Mexico-Texas State boundary; thence westerly along the New Mexico-Texas State boundary to its intersection with the west line of Section 35, Township 26 South, Range 4 East, being the place and point of beginning.

B. [TOWNSHIP AND RANGE MAP: See 7-30.1 Hueco Basin [PDF file 19.027.0038.8-Hueco.](#)]

[SE 66-1, Article 7-30; Recompiled 12/31/01]

PART 39: JAL UNDERGROUND WATER BASIN

19.27.39.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.39.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.39.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.39.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.39.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.39.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.39.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.39.8 JAL BASIN:

A. The lands declared within the Jal Basin on November 24, 1961, are as follows:

TOWNSHIP	RANGE	SECTIONS
26 S.	35 E.	SE 1/4 12, E 1/2 13, E 1/2 24,
26 S.	36 E.	S 1/2 7, S 1/2 8, S 1/2 9, SW 1/4 10, W 1/2 15, All 16 thru 21, W 1/2 22, W 1/2 27, All 28 & 29, N 1/2 & SE 1/4 30, N 1/2 NE 1/4 & Lots 4 & 5 of 31, N 1/2 N 1/2 & Lots 1 thru 4 of 32, N 1/2 N 1/2 & Lots 1 thru

4 of 33,

N 1/2 NW 1/4 & Lots 3 & 4

of 34

B. [TOWNSHIP AND RANGE MAP: See 7-11.1 Jal Basin, [PDF File 19.027.0039.8-Jal.](#)]

[SE 66-1, Article 7-11; Recompiled 12/31/01]

PART 40: LEA COUNTY BASIN

This rules was filed as State Engineer Rule 66-1, Article 7-12.

19.27.40.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.40.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.40.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.40.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.40.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.40.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.40.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.40.8 LEA COUNTY BASIN:

A. The lands included within the Lea County Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
11 S.	31 E.	1, 2, 11 thru 15, 21 thru 28, 34 thru 36	Oct. 1, 1952
11 S.	32 E.	All	Oct. 1, 1952
11 S.	33 E.	All	Aug. 21, 1931
11 S.	34 E.	4 thru 9, 16 thru 36	Aug. 21, 1931
12 S.	31 E.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Oct. 1, 1952
12 S.	32 E.	All	Oct. 1, 1952
12 S.	33 E.	4 thru 9, 16 thru 36	Oct. 1, 1952

12 S.	33 E.	1 thru 3, 10 thru 15	Aug. 21, 1931
12 S.	34 E.	All	Aug. 21, 1931
12 S.	35 E.	All	Aug. 21, 1931
12 S.	36 E.	All	Aug. 21, 1931
12 S.	37 E.	All	Aug. 21, 1931
12 S.	38 E.	All	Aug. 21, 1931
13 S.	31 E.	1, 2, 11 thru 14, 23 thru 26, 35, 36	Oct. 1, 1952
13 S.	32 E.	All	Oct. 1, 1952
13 S.	33 E.	All	Oct. 1, 1952
13 S.	34 E.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 1, 1952
13 S.	34 E.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Aug. 21, 1931
13 S.	35 E.	All	Aug. 21, 1931
13 S.	36 E.	All	Aug. 21, 1931
13 S.	37 E.	All	Aug. 21, 1931
13 S.	38 E.	All	Aug. 21, 1931
14 S.	31 E.	1, 2, 11 thru 14, 22 thru 27, 34 thru 36	Oct. 1, 1952

14 S.	32 E.	All	Oct. 1, 1952
14 S.	33 E.	All	Oct. 1, 1952
14 S.	34 E.	All	Oct. 1, 1952
14 S.	35 E.	All	Aug. 21, 1931
14 S.	36 E.	All	Aug. 21, 1931
14 S.	37 E.	All	Aug. 21, 1931
14 S.	38 E.	All	Aug. 21, 1931
15 S.	31 E.	1 thru 5, 8 thru 17, 20 thru 29, 32 thru 36	Oct. 1, 1952
15 S.	32 E.	All	Oct. 1, 1952
15 S.	33 E.	All	Oct. 1, 1952
15 S.	34 E.	All	Oct. 1, 1952
15 S.	35 E.	All	Aug. 21, 1931
15 S.	36 E.	All	Aug. 21, 1931
15 S.	37 E.	All	Aug. 21, 1931
15 S.	38 E.	All	Aug. 21, 1931
16 S.	31 E.	1, 2, 11 thru 14, 23, 24	Oct. 1, 1952
16 S.	32 E.	1 thru 30, 33 thru 36	Oct. 1, 1952
16 S.	33 E.	All	Oct. 1, 1952
16 S.	34 E.	All	Oct. 1, 1952

16 S.	35 E.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 1, 1952
16 S.	35 E.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Aug. 21, 1931
16 S.	36 E.	All	Aug. 21, 1931
16 S.	37 E.	All	Aug. 21, 1931
16 S.	38 E.	All	Aug. 21, 1931
16 S.	39 E.	All	Aug. 21, 1931
17 S.	32 E.	1 thru 3, 12	Oct. 1, 1952
17 S.	33 E.	1 thru 18, 20 thru 28, 34 thru 36	Oct. 1, 1952
17 S.	34 E.	All	Oct. 1, 1952
17 S.	35 E.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 1, 1952
17 S.	35 E.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Aug. 21, 1931
17 S.	36 E.	All	Aug. 21, 1931
17 S.	37 E.	All	Aug. 21, 1931
17 S.	38 E.	All	Aug. 21, 1931
17 S.	39 E.	All	Aug. 21, 1931
18 S.	33 E.	1, 2, 12	Oct. 1, 1952

18 S.	34 E.	1 thru 28, 33 thru 36	Oct. 1, 1952
18 S.	35 E.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 1, 1952
18 S.	35 E.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Aug. 21, 1931
18 S.	36 E.	All	Aug. 21, 1931
18 S.	37 E.	All	Aug. 21, 1931
18 S.	38 E.	All	Aug. 21, 1931
18 S.	39 E.	All	Aug. 21, 1931
19 S.	34 E.	1 thru 3, 10 thru 14	Oct. 1, 1952
19 S.	35 E.	All	Aug. 21, 1931
19 S.	36 E.	All	Aug. 21, 1931
19 S.	37 E.	All	Aug. 21, 1931
19 S.	38 E.	All	Aug. 21, 1931
19 S.	39 E.	All	Aug. 21, 1931
20 S.	35 E.	4 thru 9, 16 thru 36	Oct. 1, 1952
20 S.	35 E.	1 thru 3, 10 thru 15	Aug. 21, 1931
20 S.	36 E.	1 thru 18	Aug. 21, 1931

20 S.	36 E.	19 thru 36	Oct. 1, 1952
20 S.	37 E.	1 thru 18	Aug. 21, 1931
20 S.	37 E.	19 thru 36	Oct. 1, 1952
20 S.	38 E.	All	Oct. 1, 1952
20 S.	39 E.	All	Oct. 1, 1952

B. [TOWNSHIP AND RANGE MAP: See 7-12.1 Lea County Basin, [PDF file No. 19.027.0040.8-Lea.](#)]

[SE 66-1, Article 7-12; Recompiled 12/31/01]

PART 41: LORDSBURG VALLEY BASIN

19.27.41.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.41.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.41.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.41.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.41.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.41.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.41.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.41.8 LORDSBURG VALLEY BASIN:

A. The lands declared within the Lordsburg Valley Basin on November 18, 1960, are as follows:

TOWNSHIP	RANGE	SECTIONS
22 S.	17 W.	19 thru 36
22 S.	18 W.	All
22 S.	19 W.	All
23 S.	16 W.	All
23 S.	17 W.	All
23 S.	18 W.	1 thru 6, 9 thru 16, 22 thru 27, 34 thru 36
24 S.	16 W.	All
24 S.	17 W.	All
24 S.	18 W.	1 thru 3, 10 thru 15, 22 thru 27,

34 thru 36

25 S. 16 W. All

25 S. 17 W. 1 thru 18

B. [TOWNSHIP AND RANGE MAP: See 7-13.1 Lordsburg Valley Basin, PDF file 19.027.0041.8-Lordsburg.]

[SE 66-1, Article 7-13; Recompiled 12/31/01]

PART 42: LUNA AND GRANT COUNTIES [RESERVED]

PART 43: MIMBRES BASIN

19.27.43.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.43.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.43.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.43.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.43.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.43.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.43.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.43.8 MIMBRES BASIN:

A. The lands included within the Mimbres Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
13 S.	10 W.	34', 35"	Feb. 3, 1970
14 S.	10 W.	2", 3', 4', 7' thru 10', 11", 14", 15', thru 23', 24", 26", 27' thru 34', 35"	Feb. 3, 1970
14 S.	11 W.	13, 14, 23 thru 27, 33 thru 36	Feb. 3, 1970
15 S.	10 W.	2", 3' thru 11', 15' thru 23', 26' thru 36'	Feb. 3, 1970
15 S.	11 W.	1 thru 4, 8 thru 36	Feb. 3, 1970
15 S.	12 W.	24 thru 26, 33 thru 36	Feb. 3, 1970
16 S.	9 W.	4", 5", 6' thru 8', 9", 16", 17' thru 20', 29'	

		thru 32'	Feb. 3, 1970
16 S.	10 W.	All	Feb. 3, 1970
16 S.	11 W.	All	Feb. 3, 1970
16 S.	12 W.	1 thru 4, 9 thru 36	Feb. 3, 1970
16 S.	13 W.	24 thru 26, 33 thru 36	Feb. 3, 1970
17 S.	9 W.	5' thru 9', 15' thru 22', 27' thru 34'	Feb. 3, 1970
17 S.	10 W.	All	Feb. 3, 1970
17 S.	11 W.	All	Feb. 3, 1970
17 S.	12 W.	All	Feb. 3, 1970
17 S.	13 W.	1 thru 5, 7 thru 36	Feb. 3, 1970
17 S.	14 W.	10 thru 29, 32 thru 36	Feb. 3, 1970
18 S.	8 W.	6 thru 8, 16 thru 22, 26 thru 36	June 16, 1972
18 S.	9 W.	1", 2' thru 4', 5 thru 8, 9' thru 11', 12", 13", 14' thru 16', 17 thru 23, 24+, 25+, 26 thru 35, 36+	Feb. 3, 1970
18 S.	9 W.	1"', 12"', 13"', 24++, 25++, 36++	June 16, 1972
18 S.	10 W.	All	Feb. 3, 1970
18 S.	11 W.	All	Feb. 3, 1970

18 S.	12 W.	All	Feb. 3, 1970
18 S.	13 W.	All	Feb. 3, 1970
18 S.	14 W.	1 thru 5, 8 thru 17, 19 thru 36	Feb. 3, 1970
19 S.	6 W.	28 thru 34	June 16, 1972
19 S.	7 W.	7, 17 thru 36	June 16, 1972
19 S.	7 1/2 W.	12, 13, 24, 25, 36	June 16, 1972
19 S.	8 W.	All	June 16, 1972
19 S.	9 W.	2 thru 11, 14 thru 22, 23+, 26+, 27 thru 35	Feb. 3, 1970
19 S.	9 W.	1, 12, 13, 23++, 24, 25, 26++, 36	June 16, 1972
19 S.	10 W.	All	Feb. 3, 1970
19 S.	11 W.	All	Feb. 3, 1970
19 S.	12 W.	All	Feb. 3, 1970
19 S.	13 W.	All	Feb. 3, 1970
19 S.	14 W.	All	Feb. 3, 1970
19 S.	15 W.	24 thru 26, 34 thru 36	Feb. 3, 1970
20 S.	6 W.	3 thru 10, W 1/2 15,16 thru 21, 28 thru 34	June 16, 1972
20 S.	7 W.	All	June 16, 1972
20 S.	8 W.	All	June 16, 1972
20 S.	9 W.	2 thru 11, 14 thru 23,	

		26 thru 35	Feb. 3, 1970
20 S.	9 W.	1, 12, 13, 24, 25, 36	June 16, 1972
20 S.	10 W.	5 thru 7, 18, 19, 30, 31	July 29, 1931
20 S.	10 W.	1 thru 4, 8 thru 17,	
		20 thru 29, 32 thru 36	Feb. 3, 1970
20 S.	11 W.	12, 13, 24, 25, 36	July 29, 1931
20 S.	11 W.	1 thru 11, 14 thru 23,	
		26 thru 35	Feb. 3, 1970
20 S.	12 W.	All	Feb. 3, 1970
20 S.	13 W.	All	Feb. 3, 1970
20 S.	14 W.	All	Feb. 3, 1970
20 S.	15 W.	1 thru 4, 8 thru 17, 20	
		thru 29, 33 thru 36	Feb. 3, 1970
21 S.	3 W.	27 thru 36	June 16, 1972
21 S.	4 W.	25, 26, 35, 36	June 16, 1972
21 S.	6 W.	4 thru 9, 16 thru 22,	
		27 thru 34	June 16, 1972
21 S.	7 W.	31	Feb. 3, 1970
21 S.	7 W.	1 thru 30, 32 thru 36	June 16, 1972
21 S.	8 W.	7 thru 10, 15 thru 23,	
		25 thru 36	Feb. 3, 1970
21 S.	8 W.	1 thru 6, 11 thru 14, 24	June 16, 1972
21 S.	9 W.	2 thru 36	Feb. 3, 1970

21 S.	9 W.	1	June 16, 1972
21 S.	10 W.	6, 7, 18, 19, 28 thru 33	July 29, 1931
21 S.	10 W.	1 thru 5, 8 thru 17, 20 thru 27, 34 thru 36	Feb. 23, 1956
21 S.	11 W.	All	July 29, 1931
21 S.	12 W.	All	Feb. 3, 1970
21 S.	13 W.	All	Feb. 3, 1970
21 S.	14 W.	1 thru 30, 32 thru 36	Feb. 3, 1970
21 S.	15 W.	1 thru 4, 10 thru 13	Feb. 3, 1970
22 S.	3 W.	All	June 16, 1972
22 S.	4 W.	1 thru 4, 9 thru 17 19 thru 36	June 16, 1972
22 S.	5 W.	36	June 16, 1972
22 S.	6 W.	3 thru 11, 14 thru 23, 26 thru 35	June 16, 1972
22 S.	7 W.	6 thru 8, 17 thru 20, 29 thru 32	Feb. 3, 1970
22 S.	7 W.	1 thru 5, 9 thru 16 21 thru 28, 33 thru 36	June 16, 1972
22 S.	8 W.	17 thru 20, 29 thru 36	June 3, 1960
22 S.	8 W.	1 thru 16, 21 thru 28	Feb. 3, 1970
22 S.	9 W.	5 thru 8, 13 thru 36	June 3, 1960
22 S.	9 W.	1 thru 4, 9 thru 12	Feb. 3, 1970

22 S.	10 W.	4 thru 9, 16 thru 22, 25 thru 36	July 29, 1931
22 S.	10 W.	1 thru 3, 10 thru 15, 23, 24	Feb. 23, 1956
22 S.	11 W.	1 thru 18, 21 thru 28, 33 thru 36	July 29, 1931
22 S.	11 W.	19, 20, 29 thru 32	Feb. 23, 1956
22 S.	12 W.	All	Feb. 3, 1970
22 S.	13 W.	All	Feb. 3, 1970
22 S.	14 W.	1 thru 3, 11 thru 13	Feb. 3, 1970
23 S.	2 W.	4 thru 9, 16 thru 21, 28 thru 33	June 16, 1972
23 S.	3 W.	All	June 16, 1972
23 S.	4 W.	All	June 16, 1972
23 S.	5 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 23, 1956
23 S.	5 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	June 16, 1972
23 S.	6 W.	All	July 29, 1931
23 S.	7 W.	All	July 29, 1931
23 S.	8 W.	All	July 29, 1931
23 S.	9 W.	All	July 29, 1931
23 S.	10 W.	All	July 29, 1931

23 S.	11 W.	1, 2, 11 thru 14	July 29, 1931
23 S.	11 W.	3 thru 10, 15 thru 36	April 13, 1942
23 S.	12 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	April 13, 1942
23 S.	12 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 3, 1970
23 S.	13 W.	1 thru 5, 8 thru 17, 20 thru 29, 32 thru 36	Feb. 3, 1970
24 S.	2 W.	4 thru 8, 18, 19	June 16, 1972
24 S.	3 W.	All	June 16, 1972
24 S.	4 W.	All	June 16, 1972
24 S.	5 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 23, 1956
24 S.	5 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	June 16, 1972
24 S.	6 W.	All	July 29, 1931
24 S.	7 W.	1 thru 6, 8 thru 16, 22 thru 27, 34 thru 36	July 29, 1931
24 S.	7 W.	17, 21, 28, 33	Feb. 23, 1956
24 S.	7 W.	7, 18 thru 20, 29 thru 32	Feb. 3, 1970
24 S.	8 W.	1 thru 11, 14 thru 23, 28 thru 33	July 29, 1931

24 S.	8 W.	12, 13, 24 thru 27, 34 thru 36	Feb. 23, 1956
24 S.	9 W.	All	July 29, 1931
24 S.	10 W.	All	July 29, 1931
24 S.	11 W.	All	April 13, 1942
24 S.	12 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	June 3, 1960
24 S.	12 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 3, 1970
24 S.	13 W.	1 thru 5, 8 thru 17, 20 thru 29, 32 thru 36	Feb. 3, 1970
25 S.	3 W.	3 thru 9, 16 thru 21, 29 thru 31	June 16, 1972
25 S.	4 W.	All	June 16, 1972
25 S.	5 W.	All	June 16, 1972
25 S.	6 W.	6*, 7*, 18*, 19*, 30*, 31*	July 29, 1931
25 S.	6 W.	1* thru 5*, 8* thru 17*, 20* thru 29*, 32* thru 36*	April 7, 1942
25 S.	7 W.	1*, 2*, 11* thru 14*, 23* thru 26*, 35*, 36*	July 29, 1931
25 S.	7 W.	3 thru 10, 15 thru 22,	

		27 thru 34	Feb. 3, 1970
25 S.	8 W.	5 thru 8, 18, 19, 30, 31	July 29, 1931
25 S.	8 W.	3, 4, 9, 10, 15 thru 17, 20 thru 22, 27 thru 29, 32 thru 34	Feb. 23, 1956
25 S.	8 W.	1, 2, 11 thru 14, 23 thru 26, 35, 36	Feb. 3, 1970
25 S.	9 W.	All	July 29, 1931
25 S.	10 W.	All	July 29, 1931
25 S.	11 W.	All	June 3, 1960
25 S.	12 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	June 3, 1960
25 S.	12 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 3, 1970
25 S.	13 W.	1 thru 5, 8 thru 17, 20 thru 29, 32 thru 36	Feb. 3, 1970
26 S.	3 W.	6, 7, 18, 19, 29 thru 32	June 16, 1972
26 S.	4 W.	All	June 16, 1972
26 S.	5 W.	All	June 16, 1972
26 S.	6 W.	6*, 7*, 18*, 19*, 30*, 31*	July 29, 1931
26 S.	6 W.	1* thru 5*, 8* thru 17*, 20* thru 29*, 32* thru	

		36*	April 7, 1942
26 S.	7 W.	1*, 2*, 11* thru 14*, 23* thru 26*, 35*, 36*	July 29, 1931
26 S.	7 W.	3 thru 10, 15 thru 22, 27 thru 34	Feb. 3, 1970
26 S.	8 W.	19, 30 thru 32	July 29, 1931
26 S.	8 W.	4 thru 9, 16 thru 18, 20, 21, 28, 29, 33	Feb. 23, 1956
26 S.	8 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Feb. 3, 1970
26 S.	9 W.	All	July 29, 1931
26 S.	10 W.	All	July 29, 1931
26 S.	11 W.	All	June 3, 1960
26 S.	12 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	June 3, 1960
26 S.	12 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 3, 1970
26 S.	13 W.	1 thru 5, 9 thru 16, 21 thru 28, 33 thru 36	Feb. 3, 1970
27 S.	3 W.	6	June 16, 1972
27 S.	4 W.	1 thru 12, 14 thru 23, 25 thru 35	June 16, 1972
27 S.	5 W.	5 thru 8, 17 thru 20,	

		29 thru 32	Feb. 24, 1969
27 S.	5 W.	1 thru 4, 9 thru 16,	
		21 thru 28, 33 thru 36	June 16, 1972
27 S.	6 W.	All	Feb. 24, 1969
27 S.	7 W.	19 thru 21, 28 thru 33	July 29, 1931
27 S.	7 W.	22 thru 27, 34 thru 36	Feb. 23, 1956
27 S.	7 W.	1 thru 3, E 1/2 4, 9	
		thru 16	Feb. 24, 1969
27 S.	7 W.	W 1/2 4, 5 thru 8, 17,	
		18	Feb. 3, 1970
27 S.	8 W.	4 thru 9, 15 thru 17,	
		20 thru 29, 32 thru 36	July 29, 1931
27 S.	8 W.	18, 19, 30, 31	Feb. 23, 1956
27 S.	8 W.	1 thru 3, 10 thru 14	Feb. 3, 1970
27 S.	9 W.	1 thru 12	July 29, 1931
27 S.	9 W.	13 thru 18	Feb. 23, 1956
27 S.	9 W.	19 thru 36	Feb. 3, 1970
27 S.	10 W.	1 thru 3, 10 thru 12	July 29, 1931
27 S.	10 W.	4, 9, 13 thru 16	Feb. 23, 1956
27 S.	10 W.	5 thru 8, 17 thru 36	Feb. 3, 1970
27 S.	11 W.	All	Feb. 3, 1970
27 S.	12 W.	1 thru 29, 33 thru 36	Feb. 3, 1970
27 S.	13 W.	1 thru 4, 9 thru 14	Feb. 3, 1970

28 S.	4 W.	2 thru 11, 15 thru 22, 27 thru 34	June 16, 1972
28 S.	5 W.	SW 1/4 4, 5 thru 8, W 1/2 9, N 1/2 and SW 1/4 17, 18, 19, W 1/2 30, W 1/2 31	Feb. 24, 1969
28 S.	5 W.	1 thru 3, E 1/2 & NW 1/4 4, E 1/2 9, 10 thru 16, SE 1/4 17, 20 thru 29, E 1/2 30, E 1/2 31, 32 thru 36	June 16, 1972
28 S.	6 W.	All	Feb. 24, 1969
28 S.	7 W.	4 thru 9, 16 thru 21, 28 thru 33	July 29, 1931
28 S.	7 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	Feb. 23, 1956
28 S.	8 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36	July 29, 1931
28 S.	8 W.	4 thru 9, 16 thru 21, 28 thru 33	Feb. 23, 1956
28 S.	9 W.	All	Feb. 3, 1970
28 S.	10 W.	All	Feb. 3, 1970
28 S.	11 W.	1 thru 30, 32 thru 36	Feb. 3, 1970

28 S.	12 W.	1, 2, 11 thru 14, 23 thru 25	Feb. 3, 1970
29 S.	4 W.	N 1/2 5, 6	June 16, 1972
29 S.	5 W.	W 1/2 6	Feb. 24, 1969
29 S.	5 W.	1 thru 5, E 1/2 6, 7 thru 12, 13# thru 18#	June 16, 1972
29 S.	6 W.	1 thru 11, N 1/2 and SW 1/4 12, 14# thru 18#	Feb. 24, 1969
29 S.	6 W.	SE 1/4 12, 13#	June 16, 1972
29 S.	7 W.	1 thru 12, 13# thru 18#	July 29, 1931
29 S.	8 W.	1 thru 3, 10 thru 12, 13# thru 15#	July 29, 1931
29 S.	8 W.	4 thru 9, 16# thru 18#	Feb. 23, 1956
29 S.	9 W.	1, 12, 13#	Feb. 23, 1956
29 S.	9 W.	2 thru 11, 14# thru 18#	Feb. 3, 1970
29 S.	10 W.	1 thru 12, 13# thru 18#	Feb. 3, 1970
29 S.	11 W.	1 thru 3, 11, 12, 13#, 14#	Feb. 3, 1970

' Projected sections are based on meridian and parallel projections of surveyed townships.

" Only that part of projected section in Grant County.

"" Only that part of projected section in Sierra County.

+ Only that part of surveyed section in Grant County.

++ Only that part of surveyed section in Sierra County.

Fractional sections to Republic of Mexico boundary.

B. [TOWNSHIP AND RANGE MAP: See 7-14.2 Mimbres Basin, [PDF file 19.027.0043.8-Mimbres.](#)]

[SE 66-1, Article 7-14; Recompiled 12/31/01]

PART 44: NUTT-HOCKETT BASIN

19.27.44.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.44.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.44.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.44.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.44.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.44.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.44.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.44.8 NUTT-HOCKETT BASIN:

A. The lands included within the Nutt-Hockett Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
19 S.	4 W.	19, 20, 28 thru 34	Aug. 31, 1965
19 S.	5 W.	20 thru 29	Aug. 31, 1965
19 S.	5 W.	32 thru 36	Aug. 11, 1961
20 S.	4 W.	6, 7 & 18	Aug. 11, 1961
20 S.	4 W.	3 thru 5, 8, 9, 16, 17, 19, 20, 30	Aug. 31, 1965
20 S.	5 W.	1 thru 5, 7 thru 36	Aug. 11, 1961
20 S.	6 W.	13, 14, 23 thru 26, 35 & 36	Aug. 11, 1961
21 S.	5 W.	All	Aug. 11, 1961
21 S.	6 W.	1, 12 & 13	Aug. 11, 1961
22 S.	5 W.	1 thru 5, 8 thru 12, 14 thru 17	Aug. 11, 1961

B. [TOWNSHIP AND RANGE MAP: See 7-15.1 Nutt-Hockett Basin [PDF file 19.027.044.8-NuttHockett.](#)]

[SE 66-1, Article 7-15; Recompiled 12/31/01]

PART 45: UPPER PECOS BASIN

19.27.45.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.45.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.45.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.45.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.45.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.45.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.45.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.45.8 UPPER PECOS BASIN:

A. The lands declared within the Upper Pecos Basin on February 24, 1972, are as follows: Beginning at the southeast corner of Section 12, Township 7 North, Range 21 East (a point on the western boundary of the declared Fort Sumner Underground Water Basin boundary); thence west along section lines to the southwest corner of Section 7, Township 7 North, Range 16 East, a point on the Guadalupe county-Torrance county line; thence north along range line and the Guadalupe county line to the southwest corner of Section 31, Township 11 North, Range 16 East; thence west along township line to the southwest corner of Section 31, Township 11 North, Range 15 East; thence north along range line to the northwest corner of Section 6, Township 11 North, Range 15 East; thence west along township line to the southwest corner of Section 31, Township 12 North, Range 14 East; thence north along range line to the northwest corner of Section 6, Township 12 North, Range 14 East; thence west along township line to the southwest corner of Section 34, Township 13 North, Range 13 East; thence north along section lines to the northwest corner of Section 3, Township 13 North, Range 13 East; thence west along township line to its intersection with the drainage boundary between the Pecos River and the Rio Grande on the south line of Section 33, Township 14 North, Range 12 East (a point on the eastern boundary of the Rio Grande Underground Water Basin); thence northerly along said drainage boundary and said eastern boundary of the Rio Grande Underground Water Basin, passing through Glorieta Baldy, Penitente Peak, Santa Fe Baldy, and Pecos Baldy Peak to Truchas Peak (near Latitude 35 degrees 57' 45" North, Longitude 105 degrees 38' 40" West, X=112,000, Y=1,808,200 N. M. Grid System East Zone), a point on the Mora county-Arriba county line; thence northeasterly along said county line passing through North Truchas Peak and Chimayosos Peak, to its intersection with the drainage boundary between the Pecos River and the Canadian River (near Latitude 35 degrees 59' 03" North, Longitude 105 degrees 33' 25" West, X=137,950, Y=1,815,600 N. M. Grid System East Zone); thence southeasterly along said drainage boundary passing through Cebolla Station (U. S. Coast and Geodetic Survey Triangulation Point), Spring Mountain, Lone Pine Mesa, Hermit Peak and Pyro Station (U. S. Coast and Geodetic Survey Triangulation Point), to its intersection with Longitude 105 degrees 10' West; thence south along Longitude 105 degrees 10' West to its intersection with Latitude 35 degrees 40' North; thence east along Latitude 35 degrees 40' North to its intersection with Longitude 105 degrees 00' West; thence south along Longitude 105 degrees 00' West to its intersection with the north boundary of the Antonio Ortiz Grant; thence east along said grant boundary to its intersection with Longitude 104 degrees 53' West; thence south along Longitude 104 degrees 53' West to its intersection with Latitude 35 degrees 20' North; thence east along Latitude 35 degrees 20' North to its intersection with Longitude 104 degrees 50' West; thence south along Longitude 104 degrees 50' West to its intersection with the Guadalupe county-San Miguel county line; thence east along said county line to its intersection with Longitude 104 degrees 35' West; thence south along Longitude 104 degrees 35' West to its intersection with the south boundary of the Preston Beck Grant, a point on the north line of Section 2, Township 9 North, Range 22 East; thence west along said grant line to the northeast corner of Section 4, Township 9 North, Range 22 East; thence south along section lines to the southeast corner of Section 33, Township 8 North, Range 22 East, a point on the northern boundary of the Fort Sumner Underground Water Basin; thence west along township

line to the southeast corner of Section 36, Township 8 North, Range 21 East; thence south along range line to the southeast corner of Section 12, Township 7 North, Range 21 East, the point of beginning

B. The corrected boundaries of the extension of the Upper Pecos Underground Water Basin as originally intended by Special Order 149 are as follows: Beginning at the northeast corner of Section 13, Township (T) 7 North (N) , Range (R) 21 East (E) , New Mexico Principal Meridian (N.M.P.M.); thence south along range line to the southeast corner of Section 12, T 6 N, R 21 E, N.M.P.M.; thence west along section lines to the northeast corner of Section 14, T 6 N, R 15 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 14; thence west along section line to the southwest corner of said Section 14; thence south along section line to the southeast corner of Section 22, T 6 N, R 15 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 22; thence south along section line to the southeast corner of Section 28, T 6 N, R 15 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 28; thence south along section line to the southeast corner of Section 32, T 6 N, R 15 E, N.M.P.M.; thence west along township line to the southwest corner of said Section 32; thence south along section line to the southeast corner of Section 6, T 5 N, R 15 E, N.M. P.M.; thence west along section line to the southwest corner of said Section 6; thence south along range line to the southeast corner of Section 12, T 5 N, R 14 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 11, T 5 N, R 13 E, N.M.P.M.; thence north along section lines to the southwest corner of Section 35, T 6 N, R 13 E, N.M.P.M.; thence west along township line to the southwest corner of Section 34, T 6 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 22, T 7 N, R 12 E, N.M.P.M.; thence west along section line to the southwest corner of Section 16, T 7 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 4, T 7 N, R 12 E, N.M.P.M.; thence west along township line to the southwest corner of Section 31, T 8 N, R 12 E, N.M.P.M.; thence north along range line to the northwest corner of Section 18, T 8 N, R 12 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 18; thence north along section lines to the northwest corner of Section 5- -T 8 N, R 12 E. N.M.P.M.; thence east along township line to the southwest corner of Section 32, T 9 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 20, T 9 N, R 12 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 20; thence north along section lines to the northwest corner of Section 21, T 10 N, R 12 E, N.M.P.M.; thence east along section lines to the northwest corner of Section 24, T 10 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 12, T 10 N, R 12 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 3, T 10 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 15, T 11 N, R 12 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 7, T 11 N, R 12 E, N.M.P.M., a point on the San Miguel-Santa Fe county line; thence north along range line and said county line to the northwest corner of Section 6, T 11 N, R 12 E, N.M.P.M.; thence west along township line to the southwest corner of Section 34, T 12 N, R 11 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 27, T 12 N, R 11 E, N.M.P.M.; thence west along section line to the

intersection of the northerly line of Section 28, T 12 N, R 11 E, N.M.P.M., and the drainage boundary between the Rio Grande and Pecos River stream system; thence northeast along said drainage boundary to a point where said drainage boundary intersects the north line of Section 3, T 13 N, R 12 E, N.M.P.M., a point on the south boundary of the existing Upper Pecos Underground Water Basin; thence south and east along said boundary of the existing Upper Pecos Underground Water Basin to the point of beginning.

C. [TOWNSHIP AND RANGE MAP: See 7-25.1 Upper Pecos Basin, [PDF file No. 19.027.0045.8-UpperPecos.](#)]

[SE 66-1, Article 7-25; Recompiled 12/31/01]

PART 46: PENASCO BASIN

19.27.46.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.46.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.46.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.46.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.46.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.46.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.46.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.46.8 PENASCO BASIN:

A. The lands included within the Penasco Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
15 S.	12 E.	E 1/2 25, 36	March 29, 1974
15 S.	13 E.	19 thru 36	March 29, 1974
15 S.	14 E.	19 thru 36	March 29, 1974
15 S.	15 E.	19 thru 36	March 29, 1974
15 S.	16 E.	19 thru 36	March 29, 1974
16 S.	11 E.	24, 25, E 1/2 35, 36	March 29, 1974
16 S.	12 E.	1, 2, 11 thru 14, 23 thru 26, 35, 36	Sept. 1, 1953
16 S.	12 E.	3 thru 5, SE 1/4 6, 7 thru 10, 15 thru 22, 27 thru 34	March 29, 1974
16 S.	13 E.	All	Sept. 1, 1953

16 S.	14 E.	All	Sept. 1, 1953
16 S.	15 E.	All	Sept. 1, 1953
16 S.	16 E.	All	Sept. 1, 1953
16 S.	17 E.	4 thru 9, 16 thru 36	Sept. 1, 1953
16 S.	18 E.	19, 20, 29 thru 32	Sept. 1, 1953
17 S.	11 E.	1, 2, 11 thru 14, SE 1/4 15, 23 thru 26, NE 1/4 27, NE 1/4 35, 36	March 29, 1974
17 S.	12 E.	1, 2, 11 thru 14, 23 thru 26, 35, 36	Sept. 1, 1953
17 S.	12 E.	3 thru 10, 15 thru 22, 27 thru 34	March 29, 1974
17 S.	13 E.	All	Sept. 1, 1953
17 S.	14 E.	All	Sept. 1, 1953
17 S.	15 E.	All	Sept. 1, 1953
17 S.	16 E.	All	Sept. 1, 1953
17 S.	17 E.	All	Sept. 1, 1953
17 S.	18 E.	5 thru 8, 17 thru 20, 29 thru 32	Sept. 1, 1953
18 S.	11 E.	NE 1/4 1	March 29, 1974
18 S.	12 E.	1 thru 6, 9 thru 16, NE 1/4 21, 22 thru 27, N 1/2 35	March 29, 1974

18 S.	13 E.	All	March 29, 1974
18 S.	14 E.	1 thru 31, N 1/2 32, N 1/2 34, 35, 36	March 29, 1974
18 S.	15 E.	All	March 29, 1974
18 S.	16 E.	1 thru 34	March 29, 1974
18 S.	17 E.	1 thru 19, N 1/2 20	March 29, 1974
18 S.	18 E.	5 thru 8, N 1/2 18	March 29, 1974
19 S.	13 E.	NW 1/4 1, N 1/2 2, 3 thru 5, 8, 9, W 1/2 10, N 1/2 16, NE 1/4 17	March 29, 1974

B. [TOWNSHIP AND RANGE MAP: See 7-16.1 Penasco Basin [PDF file 19.027.046.8-Penasco.](#)]

[SE 66-1, Article 7-16; Recompiled 12/31/01]

PART 47: PORTALES BASIN

19.27.47.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.47.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.47.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.47.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.47.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.47.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.47.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.47.8 PORTALES BASIN:

The lands included within the Portales Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
1 N.	30 E.	1 thru 18, 24, 25	July 18, 1955
1 N.	31 E.	1 thru 30, 33 thru 36	July 18, 1955
1 N.	32 E.	19 thru 22, 25 thru 36	May 1, 1950
1 N.	32 E.	1 thru 18, 23, 24	July 18, 1955
1 N.	33 E.	29 thru 32	May 1, 1950
1 N.	33 E.	1 thru 28, 33 thru 36	July 18, 1955
1 N.	34 E.	19 thru 36	July 18, 1955

1 N.	35 E.	19 thru 36	July 18, 1955
1 N.	36 E.	19 thru 36	July 18, 1955
1 N.	37 E.	19 thru 22, 27 thru 34	July 18, 1955
1 S.	31 E.	1 thru 3, 12	July 18, 1955
1 S.	32 E.	1 thru 3, 10 thru 15	May 1, 1950
1 S.	32 E.	4 thru 9, 16 thru 18, 22 thru 26, 35, 36	July 18, 1955
1 S.	33 E.	All	May 1, 1950
1 S.	34 E.	6 thru 36	May 1, 1950
1 S.	34 E.	1 thru 5	July 18, 1955
1 S.	35 E.	16 thru 21, 25 thru 36	May 1, 1950
1 S.	35 E.	1 thru 15, 22 thru 24	July 18, 1955
1 S.	36 E.	All	July 18, 1955
1 S.	37 E.	All	July 18, 1955
2 S.	32 E.	1, 2, 10 thru 15, 21 thru 28, 33 thru 36	July 18, 1955
2 S.	33 E.	All	July 18, 1955
2 S.	34 E.	1 thru 18	May 1, 1950
2 S.	34 E.	19 thru 36	July 18, 1955
2 S.	35 E.	All	May 1, 1950
2 S.	36 E.	All	May 1, 1950
2 S.	37 E.	All	May 1, 1950
3 S.	34 E.	1 thru 12	July 18, 1955

3 S.	35 E.	1 thru 12	July 18, 1955
3 S.	36 E.	1 thru 12	July 18, 1955
3 S.	37 E.	3 thru 10	July 18, 1955

B. [TOWNSHIP AND RANGE MAP: See 7-18.1 Portales Basin, [PDF file No. 19.027.0047.8-Portales.](#)]

[SE 66-1, Article 7-18; Recompiled 12/31/01]

PART 48: LOWER RIO GRANDE UNDERGROUND WATER BASIN

19.27.48.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.48.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.48.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.48.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.48.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.48.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.48.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.49.8 LOWER RIO GRANDE UNDERGROUND WATER BASIN:

A. The lands declared within the Lower Rio Grande Underground Water Basin on September 11, 1980, are as follows: Beginning at a point described as boundary monument number 8 on the United States of America and the Republic of Mexico boundary; thence westerly along said United States of America-Republic of Mexico boundary to its intersection with the west line of Section 18, Township 29 South, Range 1 West; thence northerly along the west lines of Sections 18, 7 and 6, Township 29 South, Range 1 West, and Section 31, Township 28 South, Range 1 West to the northwest corner of said Section 31; thence westerly along the south line of Section 25, Township 28 South, Range 2 West to its southwest corner; thence northerly along the west lines of Sections 25, 24 and 13, Township 28 South, Range 2 West to the northwest corner of said Section 13; thence westerly along the south line of Section 11, Township 28 South, Range 2 West to its southwest corner; thence northerly along the west lines of Sections 11 and 2, Township 28 South, Range 2 West and Sections 35 and 26, Township 27 South, Range 2 West to the northwest corner of said Section 26; thence westerly along the south lines of Sections 22, 21, 20 and 19, Township 27 South, Range 2 West, Sections 24, 23, 22, 21, 20 and 19, Township 27 South, Range 3 West, and Section 24, Township 27 South, Range 4 West to the southwest corner of Section 24, Township 27 South, Range 4 West; thence northerly along the west lines of Sections 24 and 13, Township 27 South, Range 4 West to the northwest corner of said Section 13; thence easterly along the north line of Section 13, Township 27 South, Range 4 West to its northeast corner; thence northerly along the west line of Section 7, Township 27 South, Range 3 West to its northwest corner; thence easterly along the north line of Section 7, Township 27 south, Range 3 West to its northeast corner; thence northerly along the west line of Section 5, Township 27 South, Range 3 West to its northwest corner; thence easterly along the north line of Section 5, Township 27 South, Range 3 West to its northeast corner; thence northerly along the west lines of Sections 33 and 28, Township 26 South, Range 3 West to the northwest corner of said Section 28; thence westerly along the south line of Section 20, Township 26 South, Range 3 West to its southwest corner; thence northerly along the west lines of Sections 20, 17, 8 and 5, Township 26 South, Range 3 West to the northwest corner of said Section 5; thence westerly along the southern line of Section 32, Township 25 South, Range 3 West to its southwest corner; thence northerly along the west line of Section

32, Township 25 South, Range 3 West to its northwest corner; thence easterly along the north line of Section 32, Township 25 South, Range 3 West to its northeast corner; thence northerly along the west line of Section 28, Township 25 South, Range 3 West to its northwest corner; thence easterly along the north line of Section 28, Township 25 South, Range 3 West to its northeast corner; thence northerly along the west lines of Sections 22, 15 and 10, Township 25 South, Range 3 West to the northwest corner of said Section 10; thence easterly along the north line of Section 10, Township 25 South, Range 3 West to its northeast corner; thence northerly along the west line of Section 2, Township 25 South, Range 3 West to its northwest corner; thence easterly along the north lines of Sections 2 and 1, Township 25 South, Range 3 West to the northeast corner of said Section 1; thence northerly along the west lines of Sections 31 and 30, Township 24 South, Range 2 West to the northwest corner of said Section 30; thence easterly along the north line of Section 30, Township 24 South, Range 2 West to its northeast corner; thence northerly along the west lines of Sections 20 and 17, Township 24 South, Range 2 West to the northwest corner of said Section 17; thence easterly along the north line of Section 17, Township 24 South, Range 2 West to its northeast corner; thence northerly along the west line of Section 9, Township 24 South, Range 2 West to its northwest corner; thence easterly along the north line of Section 9, Township 24 South, Range 2 West to its northeast corner; thence northerly along the west lines of Section 3, Township 24 South, Range 2 West and Sections 34, 27, 22, 15, 10 and 3, Township 23 South, Range 2 West to the northwest corner of Section 3, Township 23 South, Range 2 West; thence westerly along the south lines of Sections 33, 32 and 31, Township 22 South, Range 2 West to the southwest corner of said Section 31; thence northerly along the west lines of Sections 31, 30, 19 and 18, Township 22 South, Range 2 West to the northwest corner of said Section 18; thence easterly along the north lines of Sections 18, 17, 16 and 15, Township 22 South, Range 2 West to the northeast corner of said Section 15; thence northerly along the west lines of Sections 11 and 2, Township 22 South, Range 2 West, and Sections 35, 26, 23, 14, 11 and 2, Township 21 South, Range 2 West to the northwest corner of Section 2, Township 21 South, Range 2 West; thence easterly along the north lines of Sections 2 and 1, Township 21 South, Range 2 West, to the southwest corner of Section 31, Township 20 South, Range 1 West; thence northerly along the west lines of Sections 31 and 30, Township 20 South, Range 1 West to the northwest corner of said Section 30; thence easterly along the north line of Section 30, Township 20 South, Range 1 West to its northeast corner; thence northerly along the west line of Section 20, Township 20 South, Range 1 West to its northwest corner; thence easterly along the north lines of Sections 20, 21, 22, 23 and 24, Township 20 South, Range 1 West, Sections 19, 20, 21, 22, 23 and 24, Township 20 South, Range 1 East, Sections 19, 20, 21, 22, 23 and 24, Township 20 South, Range 2 East and Sections 19, 20, 21, 22, 23 and 24, Township 20 South, Range 3 East to the northeast corner of Section 24, Township 20 South, Range 3 East; thence northerly along the west line of Section 19, Township 20 South, Range 4 East to its northwest corner; thence easterly along the north lines of Sections 19 and 20, Township 20 South, Range 4 East to the northeast corner of said Section 20; thence southerly along the east lines of Sections 20, 29 and 32, Township 20 South, Range 4 East, to the southeast corner of said Section 32; thence westerly along the south line of Section 32, Township 20 South, Range 4 East to the northeast corner of Section 5, Township 21

South, Range 4 East; thence southerly along the east lines of Sections 5, 8, 17 and 20, Township 21 South, Range 4 East, to the southeast corner of said Section 20; thence westerly along the south line of Section 20, Township 21 South, Range 4 East to the southwest corner of said Section 20; thence southerly along the east lines of Sections 30 and 31, Township 21 South, Range 4 East, to the southeast corner of said Section 31; thence easterly along the north line of Section 6, Township 22 South, Range 4 East to its northeast corner; thence southerly along the east line of Section 6, Township 22 South, Range 4 East to its southeast corner; thence westerly along the south line of Section 6, Township 22 South, Range 4 East to its southwest corner; thence southerly along the east lines of Sections 12, 13, 24 and 25, Township 22 South, Range 3 East to the southeast corner of said Section 25; thence easterly along the north line of Section 31, Township 22 South, Range 4 East to its northeast corner; thence southerly along the east lines of Section 31, Township 22 South, Range 4 East, Sections 6, 7, 18, 19, 30 and 31, Township 23 South, Range 4 East and Section 6, Township 24 South, Range 4 East to the southeast corner of Section 6, Township 24 South, Range 4 East; thence easterly along the north line of Section 8, Township 24 South, Range 4 East to its northeast corner; thence southerly along the east lines of Sections 8, 17, 20, 29 and 32, Township 24 South, Range 4 East to the southeast corner of said Section 32; thence westerly along the south line of Section 32, Township 24 South, Range 4 East to its southwest corner; thence southerly along the east lines of Sections 6, 7, 18 and 19, Township 25 South, Range 4 East, to the southeast corner of said Section 19; thence easterly along the north line of Section 29, Township 25 South, Range 4 East to its northeast corner; thence southerly along the east lines of Sections 29 and 32, Township 25 South, Range 4 East, and Sections 5 and 8, Township 26 South, Range 4 East to the southeast corner of said Section 8; thence easterly along the north line of Section 16, Township 26 South, Range 4 East to its northeast corner; thence southerly along the east lines of Sections 16, 21 and 28, Township 26 South, Range 4 East to the southeast corner of said Section 28; thence easterly along the north line of Section 34, Township 26 South, Range 4 East to its northeast corner; thence southerly along the east line of Section 34, Township 26 South, Range 4 East to its intersection with the New Mexico-Texas State boundary; thence westerly and southerly along the New Mexico-Texas State boundary to a point which is the intersection of the New Mexico, Texas and Republic of Mexico boundaries being further described as boundary monument number 1; thence westerly along the United States of America-Republic of Mexico boundary to a point described as boundary monument number 8, being the place and point of beginning.

B. The lands included by the extension of September 17, 1982, are as follows: Beginning at the southwest corner of Section 7, T-22-S, R-2-W, N.M.P.M., a point on the existing boundaries of the Lower Rio Grande and the Mimbres Underground Water Basins; thence north and west along the existing boundary of the Mimbres Underground Water Basin to the intersection of said boundary with the west surface drainage boundary of Silva Canyon on the south line of Section 22, T-21-S, R-3-W; thence from the existing boundary of the Mimbres Underground Water Basin northwesterly along the western surface drainage boundary of the Rio Grande passing through Magdalena Peak in Section 8, T-21-S, R-3-W, Sugarloaf Peak in Section 7, T-21-S, R-3-W, Big

White Gap in Section 31, T-20-S, R-3-W, and Little White Gap in Section 30, T-20-S, R-3-W, to its intersection with the west line of Section 15, T-20-S, R-4-W, a point on the existing boundary of the Nutt-Hockett Underground Water Basin; thence northerly along the existing boundary of the Nutt-Hockett Underground Water Basin to the northwest corner of Section 21, T-19-S, R-4-W and west to the southwest corner of Section 17, T-19-S, R-5-W; thence west from the existing boundary of the Nutt-Hockett Underground Water Basin along section lines to the northeast corner of Section 22, T-19-S, R-6-W; thence south along section lines to the southeast corner of Section 27, T-19-S, R-6-W, a point on the existing boundary of the Mimbres Underground Water Basin; thence north and west along the existing boundary of the Mimbres Underground Water Basin to Hillsboro Peak; a point on the existing boundary on the Las Animas Creek Underground Water Basin; thence northeasterly along the existing boundary of the Las Animas Creek Underground Water Basin to Granite Peak; thence southeasterly along said boundary to the intersection of the south line of the N 1/2, of Section 36, T-15-S, R-5-W, with the western boundary of Caballo Reservoir established at contour 4204 feet above mean sea level; thence northerly along the eastern boundary of the Las Animas Creek Underground Water Basin to the intersection of said contour 4204 with the north line of said Section 36; thence northwesterly along the existing boundary of the Las Animas Creek Underground Water Basin to its intersection with the west surface drainage boundary of the Rio Grande, the Grant-Sierra county line and the existing boundary of the Mimbres Underground Water Basin in projected* Section 24, T-14-S, R-10-W, near Mimbres Lake; thence northerly along county line and the existing boundary of the Mimbres Underground Water Basin to its intersection with the south surface drainage boundary of Palomas Creek, a point on the existing boundary of the Hot Springs Underground Water Basin near the section line between projected* Sections 35 and 36, T-13-S, R-10-W; thence southeasterly along the existing boundary of the Hot Springs Underground Water Basin to the Rio Grande in Section 32, T-14-S, R-4-W; thence northeasterly along the existing boundary of the Hot Springs Underground Water Basin to its intersection with the boundary of Rio Grande Underground Water Basin at the intersection of the north line of Section 3, T-14-S, R-4-W, with the west line of the Pedro Armendariz Grant; thence south and east along the existing boundary of the Rio Grande Underground Water Basin to the northeast corner of Section 10, T-15-S, R-3-W and north and east to the northeast corner of Section 28, T-13-S, R-2-E, a point on the existing boundary of the Tularosa Underground Water Basin; thence southerly along the existing boundary of the Tularosa Underground Water Basin to the southeast corner of Section 17, T-20-S, R-4-E, a point on the existing boundary of the Lower Rio Grande Underground Water Basin; thence west and south along the existing boundary of the Lower Rio Grande Underground Water Basin to the point of beginning.

*Projected sections are based on meridian and parallel projections or surveyed townships.

C. [TOWNSHIP AND RANGE MAP: See 7-29.1 Lower Rio Grande Underground Water Basin, [PDF file No. 19.027.0048.8-LowRioGrande.](#)]

[SE 66-1, Article 7-29; Recompiled 12/31/01]

PART 49: RIO GRANDE BASIN

19.27.49.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.49.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.49.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.49.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.49.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.49.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.49.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.49.8 RIO GRANDE BASIN:

A. The lands declared within the Rio Grande Basin on November 29, 1956, are as follows: Beginning at a point where the New Mexico-Colorado state line intersects Longitude 105 degrees 30' West; thence south along Longitude 105 degrees 30' West to its intersection with Latitude 36 degrees 54' North; thence west along Latitude 36 degrees 54' North to its intersection with Longitude 105 degrees 33' West; thence south along Longitude 105 degrees 33' West to its intersection with the Carson National Forest Boundary; thence south along the Carson National Forest Boundary to the southeast corner of Section 33, Township 30 North, Range 13 East; thence west along section line to the southeast corner of Section 32, Township 30 North, Range 13 East; thence south along section lines to the southeast corner of Section 20, Township 29 North, Range 13 East; thence southwest along the Carson National Forest Boundary to the northeast corner of Section 6, Township 28 North, Range 13 East; thence south along section lines to the southeast corner of Section 30, Township 28 North, Range 13 East; thence west along section line to the southwest corner of Section 30, Township 28 North, Range 13 East; thence south along range line to its intersection with the north boundary of the Arroyo Hondo Grant; thence northeast along the north boundary of the Arroyo Hondo Grant to the northeast corner of said Grant; thence south along the east boundary of the Arroyo Hondo Grant to its intersection with the Carson National Forest Boundary; thence south and east along the Carson National Forest Boundary to its intersection with Longitude 105 degrees 30' West; thence south along Longitude 105 degrees 30' West to its intersection with Latitude 36 degrees 20' North; thence west along Latitude 36 degrees 20' North to its intersection with the west boundary of the Cristobal De La Serna Grant; thence southwest along the west boundary of the Cristobal De La Serna Grant to its intersection with the north section line of Section 32, Township 24 North, Range 12 East; thence west along section lines to the southeast corner of Section 27, Township 24 North, Range 11 East; thence south along section line to the southeast corner of Section 34, Township 24 North, Range 11 East; thence west along township line to the southeast corner of Section 32, Township 24 North, Range 11 East; thence south along section line to the southeast corner of Section 5, Township 23 North, Range 11 East; thence west along section line to the southeast corner of Section 6, Township 23 North, Range 11 East; thence south along section line to the southeast corner of Section 7, Township 23 North, Range 11 East; thence west along section line to the southeast corner of Section 12, Township 23 North, Range 10 East; thence south along range line to its intersection with the north boundary of the Sebastian Martin Grant; thence west along the north boundary of the Sebastian Martin Grant to its intersection with Longitude 105 degrees 56' West; thence south along Longitude 105 degrees 56' west to its intersection with the north boundary of Township 21 North, Range 9 East; thence east along township line to the northeast corner of Section 1, Township 21 North, Range 9 East; thence south along range line to the northeast corner of Section 25, Township 21 North, Range 9 East; thence east along section lines to the intersection with the west boundary of the Nuestra Senora Del Rosario San Fernando Santiago Grant; thence south along the west boundary of the Nuestra Senora Del Rosario San Fernando Santiago Grant to the northeast corner of Section 4, Township 20 North, Range 10 East; thence south along section lines to the

intersection with the north boundary of the Santo Domingo De Cundiyo Grant; thence northeast along the boundary of the Santo Domingo De Cundiyo Grant to the northeast corner of said Grant; thence south along the boundary of the Santo Domingo De Cundiyo Grant to the southeast corner of said Grant; thence northwest along the boundary of the Santo Domingo De Cundiyo Grant to its intersection with the east section line of Section 28, Township 20 North, Range 10 East; thence south along section lines to the southeast corner of Section 33, Township 19 North, Range 10 East; thence west along section line to the northeast corner of Section 5, Township 18 North, Range 10 East; thence south along section lines to the intersection with the north boundary of the Juan De Gabaldon Grant; thence south to a point being the intersection of the east section line of Section 5, Township 17 North, Range 10 East and the south boundary of the Juan De Gabaldon Grant; thence south along section lines to the northeast corner of the City of Santa Fe Grant; thence south along the east boundary of the City of Santa Fe Grant to the southeast corner of said Grant; thence west along the south boundary of the City of Santa Fe Grant to its intersection with the west boundary of Sebastian De Vargas Grant; thence south along the west boundary of the Sebastian De Vargas Grant to its intersection with the south boundary of Township 16 North, Range 9 East; thence west along township line to the southeast corner of Section 32, Township 16 North, Range 9 East; thence south along section lines to the southeast corner of section 32, Township 15 North, Range 9 East; thence west along township line to the northeast corner of Section 4, Township 14 North, Range 6 East; thence south along section lines to the southeast corner of Section 16, Township 14 North, Range 6 East; thence west along section lines to the southwest corner of Section 18, Township 14 North, Range 6 East; thence south along range line to the southeast corner of Section 12, Township 13 North, Range 5 East; thence west along section line to its intersection with the north boundary of the Town of Tejon Grant; thence west along the north boundary of the Town of Tejon Grant to the northwest corner of said Grant; thence south along the west boundary of the Town of Tejon Grant to its intersection with the north boundary of the San Antonio De Las Huertas Grant; thence west along the north boundary of the San Antonio De Las Huertas Grant to the northwest corner of said Grant; thence south along the west boundary of the San Antonio De Las Huertas Grant to its intersection with the south boundary of Township 13 North, Range 5 East; thence west along township line to the northeast corner of Section 1, Township 12 North, Range 4 East; thence south along range line to the southeast corner of section 36, Township 12 North, Range 4 East; thence west along township line to the northeast corner of Section 2, Township 11 North, Range 4 East; thence south along section lines to the intersection with the north boundary of the Elena Gallegos Grant; thence east along the north boundary of the Elena Gallegos Grant to the northeast corner of said Grant; thence south along the east boundary of the Elena Gallegos Grant to the southeast corner of said Grant; thence west along the south boundary of the Elena Gallegos Grant to its intersection with the east boundary of Township 11 North, Range 4 East; thence south along range line to its intersection with the boundary of Valencia and Torrance Counties; thence south along the boundary between Valencia and Torrance Counties to its intersection with the south boundary of the Lo De Padilla Grant; thence west along the south boundary of the Lo De Padilla Grant to the northeast corner of Section 29, Township 7 North, Range 4 East; thence

south along section lines to the intersection with the northern boundary of the Tome Claim; thence west along the northern boundary of the Tome Claim to its intersection with Longitude 106 degrees 35' West; thence south along Longitude 106 degrees 35' West to its intersection with the south boundary of the Tome Claim; thence west along the south boundary of the Tome Claim to its intersection with Longitude 106 degrees 37' West; thence south along Longitude 106 degrees 37' West to its intersection with Latitude 34 degrees 20' North; thence west along Latitude 34 degrees 20' North to its intersection with Longitude 106 degrees 45' West; thence south along Longitude 106 degrees 45' West to its intersection with the south boundary of Township 1 South, Range 2 East; thence west along township line to the northeast corner of Section 1, Township 2 South, Range 1 East; thence south along range line to its intersection with the north boundary of the Bosque Del Apache Migratory Waterfowl Refuge; thence east along the north boundary of the Bosque Del Apache Migratory Waterfowl Refuge to the northeast corner of said Refuge; thence southwest along the east and south boundary of the Bosque Del Apache Migratory Waterfowl Refuge to the intersection with the east boundary of the Pedro Armendariz Grant No. 33; thence southeast along the east boundary of the Pedro Armendariz Grant No. 33 to its intersection with Latitude 33 degrees 40' North; thence west along Latitude 33 degrees 40' North to its intersection with Longitude 106 degrees 56' West; thence south along Longitude 106 degrees 56' West to its intersection with Latitude 33 degrees 35' North; thence west along Latitude 33 degrees 35' North to its intersection with Longitude 107 degrees 00' West; thence south along Longitude 107 degrees 00' West to its intersection with the boundary of Socorro and Sierra Counties; thence west along the boundary between Socorro and Sierra Counties to the west bank of the Rio Grande; thence south along the west bank of the Rio Grande to its intersection with the east section line of Section 34, Township 13 South, Range 4 West; thence north along section lines to the southeast corner of Section 22, Township 13 South, Range 4 West; thence west along section lines to the southwest corner of Section 19, Township 13 South, Range 4 West; thence north along range line to the northwest corner of Section 6, Township 11 South, Range 4 West; thence east along township line to the southwest corner of Section 34, Township 10 South, Range 4 West; thence north along section lines to the northwest corner of Section 3, Township 9 South, Range 4 West; thence east along township line to the southwest corner of Section 31, Township 8 South, Range 3 West; thence north along range line to the northwest corner of Section 19, Township 8 South, Range 3 West; thence east along section lines to the northwest corner of Section 22, Township 8 South, Range 3 West; thence north along section lines to the northwest corner of Section 3, Township 8 South, Range 3 West; thence east along township line to the southwest corner of section 36, Township 7 South, Range 3 west; thence north along section lines to the intersection with Latitude 33 degrees 45' North; thence east along Latitude 33 degrees 45' North to its intersection with Longitude 107 degrees 00' West; thence north along Longitude 107 degrees 00' West to its intersection with the north boundary of the Pedro Armendariz Grant No. 34; thence east along the north boundary of the Pedro Armendariz Grant No. 34 to its intersection with the west boundary of Township 5 South, Range 1 West; thence north along range line to its intersection with the south boundary of the Sevilleta Grant; thence west along the south boundary of the Sevilleta Grant to its intersection with Longitude 107 degrees 00' West; thence north

along Longitude 107 degrees 00' West to the north boundary of the Sevilleta Grant; thence east along the north boundary of the Sevilleta Grant to the west boundary of Township 2 North, Range 1 West; thence north along range line to the southeast corner of Section 36, Township 6 North, Range 2 West; thence west along township line to the southwest corner of Section 34, Township 6 North, Range 2 West; thence north along section lines to the southwest corner of Section 34, Township 7 North, Range 2 West; thence west along township line to the southwest corner of Section 35, Township 7 North, Range 3 West; thence north along section line to its intersection with the boundary of the Antonio Sedillo Grant; thence north along the west boundary of the Antonio Sedillo Grant to the northwest corner of said Grant; thence east along the north boundary of the Antonio Sedillo Grant to its intersection with the west boundary of Township 9 North, Range 1 West; thence north along range line to its intersection with the south boundary of the Bernabe M. Montano Grant; thence east along the south boundary of the Bernabe M. Montano Grant to the southeast corner of said Grant; thence north along the east boundary of the Bernabe M. Montano Grant to its intersection with the north boundary of Township 11 North, Range 1 West; thence east along township line to the southwest corner of Section 31, Township 12 North, Range 1 East; thence north along range line to the northwest corner of Section 6, Township 12 North, Range 1 East; thence east along township line to its intersection with the west boundary of the Town of Alameda Grant; thence north along the west boundary of the Town of Alameda Grant to the northwest corner of said Grant; thence east along the north boundary of the Town of Alameda Grant to its intersection with the west boundary of Township 13 North, Range 2 East; thence north along range line to the northwest corner of Section 6, Township 13 North, Range 2 East; thence east along township line to the southwest corner of Section 31, Township 14 North, Range 3 East; thence north along range line to the northwest corner of Section 6, Township 14 North, Range 3 East; thence east along township line to the southwest corner of Section 31, Township 15 North, Range 5 East; thence north along range line to the northwest corner of Section 19, Township 16 North, Range 5 East; thence east along section lines to the intersection with the west boundary of the Pueblo Cochiti Grant; thence north along the west boundary of the Pueblo Cochiti Grant to the northwest corner of said Grant; thence east along the north boundary of the Pueblo Cochiti Grant to its intersection with the west boundary of Township 17 North, Range 6 East; thence north to the southwest corner of the Bandelier National Monument; thence north along the Santa Fe National Forest Boundary to its intersection with the west boundary of Township 19 North, Range 6 East; thence north along range line to its intersection with the Santa Fe National Forest Boundary; thence northeast along the Santa Fe National Forest Boundary to its intersection with Longitude 106 degrees 15' West; thence north along Longitude 106 degrees 15' West to its intersection with Latitude 36 degrees 10' North; thence west along Latitude 36 degrees 10' North to its intersection with the west boundary of the Juan Jose Lobato Grant; thence north along the west boundary of the Juan Jose Lobato Grant to its intersection with Latitude 36 degrees 15' North; thence east along Latitude 36 degrees 15' North to its intersection with Longitude 106 degrees 15' West; thence north along Longitude 106 degrees 15' West to its intersection with the north boundary of the Juan Jose Lobato Grant; thence east along the north boundary of the Juan Jose Lobato Grant to the northeast corner of said Grant; thence south along the east

boundary of the Juan Jose Lobato Grant to its intersection with the north boundary of Township 24 North, Range 7 East; thence east along township line to its intersection with the east bank of the Rio Grande; thence north along the east bank of the Rio Grande to its intersection with the New Mexico-Colorado State Line; thence east along the New Mexico-Colorado State Line to its intersection with Longitude 105 degrees 30' West being the point of beginning.

B. The lands included by the extension of May 4, 1965, are as follows: Beginning at the intersection of the west boundary of the Carson National Forest and Latitude 36 degrees 43' North; thence east along Latitude 36 degrees 43' North to its intersection with Longitude 105 degrees 25' 30" West; thence south along Longitude 105 degrees 25' 30" West to its intersection with Latitude 36 degrees 42' North; thence west along Latitude 36 degrees 42' North to its intersection with Longitude 105 degrees 27' West; thence south along Longitude 105 degrees 27' West to its intersection with Latitude 36 degrees 40' North; thence west along Latitude 36 degrees 40' North to its intersection with Longitude 105 degrees 30' West; thence south along Longitude 105 degrees 30' West to its intersection with Latitude 36 degrees 38' North; thence west along Latitude 36 degrees 38' north to its intersection with Longitude 105 degrees 32' West; thence north along Longitude 105 degrees 32' West to its intersection with Latitude 36 degrees 40' North; thence west along Latitude 36 degrees 40' North to its intersection with the east line of Section 18, Township 28 North, Range 13 East (a point on the eastern boundary of the presently declared basin); thence northerly along the eastern boundary of the presently described basin to the point of beginning.

C. The lands included by the extension of May 4, 1966, are as follows: Beginning at the northeast corner of the presently declared basin which is at a point where the New Mexico - Colorado State Line intersects Longitude 105 degrees 30' West; thence east along the state line to its intersection with the east boundary of the Sangre de Cristo Grant; thence south and west along the Sangre de Cristo Grant boundary to its intersection with Longitude 105 degrees 25' 30" West; thence south along Longitude 105 degrees 25' 30" West to its intersection with the boundary of the presently declared basin; thence west and north along the eastern boundary of the presently described basin to the point of beginning.

D. The lands included by the extension of June 8, 1967, are as follows: Beginning at the northeast corner of Section 24, T. 21 N., R. 9 E., on the east boundary of the presently declared basin; thence east along section lines to the intersection of the north line of Section 21, T. 21 N., R. 10 E., with the topographic boundary of the Santa Cruz River drainage; thence southeasterly along said topographic boundary to its intersection with the topographic divide between the Rio Grande drainage and the Pecos River drainage; thence southwesterly along said divide (passing through Truchas Peak, Pecos Baldy Peak and Santa Fe Baldy) to Penitente Peak; thence southwesterly along the topographic boundary of the Pojoaque River drainage to its intersection with the east boundary of Section 9, T. 17 N., R. 10 E.; thence south along section lines to the southeast corner of Section 16, T. 17 N., R. 10 E.; thence west along section lines to its

intersection with the east boundary of the presently declared basin; thence northerly along the existing basin boundary to the point of beginning.

E. The lands included by the extension of June 10, 1968 are as follows: Beginning at the northeast corner of Section 25, Township 7 North, Range 4 East, on the east boundary of the presently declared basin; thence southerly along the east boundary line of Valencia County to its intersection with the east boundary of the Casa Colorado Grant being on the north line of Section 6, Township 3 North, Range 5 East; thence southerly along the east boundary of the Casa Colorado Grant to its intersection with the west line of Section 30, Township 3 North, Range 5 East; thence south along range line to the southeast corner of Section 1, Township 2 North, Range 4 East; thence west along section lines to its intersection with the east boundary of the Sevilleta Grant; thence southerly along the east boundary of the Sevilleta Grant to its intersection with the east line of Section 36, Township 1 South, Range 2 East; thence south along range line to the southeast corner of Section 36, Township 5 South, Range 2 East; thence west along township line to its intersection with the east boundary of the Bosque del Apache National Wildlife Refuge, also being the east boundary of the presently declared basin; thence northerly along the existing basin boundary to the point of beginning.

F. The lands included by the extension of January 26, 1970 are as follows:

(1) Beginning at the point of intersection of the topographic boundary of the Rio Chama drainage with the west section line of Section 6, Township 20 North, Range 6 East, the presently existing boundary of the Rio Grande Underground Water Basin; thence westerly along said topographic boundary, passing through Tschicoma Mountain in Section 34, Township 21 North, Range 5 East; Cerro Pelon in Section 26, Township 21 North, Range 3 East; U. S. Geological Survey VABM 9598 "Brown" in Section 19, Township 21 North, Range 3 East to Cerro Jarocito in Section 10, Township 21 North, Range 2 East; thence northwesterly along the topographic boundary of the Rio Chama drainage in Township 21 North, Ranges 2 East and 1 East, Township 22 North, Ranges 1 East and 1 West and Township 23 North, Range 1 West to its intersection with the Continental Divide in Section 21, Township 23 North, Range 1 West; thence northerly along the Continental Divide to the intersection of the topographic boundary of Canoncito de las Yeguas (tributary to Rio Gallina) and Stinking Lake (Burford Lake) drainages in Section 5, Township 26 North, Range 1 West; thence easterly along the topographic boundary of the Rio Chama drainage below El Vado Dam to El Vado Dam; thence easterly along the topographic boundary of the Rio Chama drainage below El Vado Dam to the intersection of the topographic boundary of Rio Nutrias and Rio Vallecitos drainages in the Tierra Amarilla Grant (near Section 36, Township 28 North, Range 5 East); thence northerly along the topographic boundary of Rio Vallecitos drainage to the topographic boundary of Rio Tusas drainage in the vicinity of Section 13, Township 29 North, Range 6 East and Jawbone Mountain; thence northeasterly along the topographic boundary of Rio Tusas drainage to Broke Off mountain in the vicinity of Section 35, Township 30 North, Range 7 East; thence southeasterly along the topographic boundary of Rio Tusas drainage passing along Tusas Ridge in Townships 29 and 28 North, Range 8 East and Townships 28 and 27 North, Range 9 East; along

Comanche Rim in Township 27 North, Range 9 East and in Townships 26 and 25 North, Ranges 9 and 10 East; through Cerro Mojino in Section 7, Township 25 North, Range 10 East to the intersection with the north line of Section 5, Township 24 North, Range 10 East, being the boundary of the presently declared Rio Grande Underground Water Basin; thence southwesterly along the presently existing boundary to the point of beginning.

(2) Beginning at the point of intersection of the north topographic boundary of Rio de Truchas drainage with Longitude 105 degrees 56' West, the presently existing boundary of the Rio Grande Underground Water Basin in the vicinity of Township 22 North, Range 9 East projected into the Sebastian Martin Grant; thence southeasterly along the north topographic boundary of Rio de Truchas drainage to its intersection with the existing boundary of the Rio Grande Underground Water Basin, being the topographic boundary of the Santa Cruz River drainage in Township 20 North, Range 12 East (projected); thence northwesterly along the existing basin boundary to the point of beginning.

(3) Beginning at the point of intersection of the topographic boundary of the Rio Hondo drainage with the presently declared basin boundary in the vicinity of the northeast corner of the Arroyo Hondo Grant and Lobo Peak; thence easterly and southeasterly along said topographic boundary passing through Bull-of-the-Woods Mountain, Frazer Mountain, Mount Walter and Wheeler Peak to its intersection with the topographic boundary of Rio Pueblo de Taos drainage; thence southeasterly along the topographic boundary of Rio Pueblo de Taos drainage passing through Simpson Peak, Old Mike Peak, Red Dome and Taos Cone to its intersection with the Taos County line; thence southerly along the Taos County line passing through Apache Peak, Palo Flechado Pass on U. S. Highway 64 in Section 10, Township 25 North, Range 15 East; Osha Pass in Section 3, Township 24 North, Range 15 East; Osha Mountain and Cuchillo de Fernando to Cerro Vista; thence southwesterly along the topographic boundary of the Rio Grande del Rancho drainage, tributary to Rio Pueblo de Taos, passing through Cerro Olla, Cerro del Oso, and Gallegos Peak in the vicinity of Section 35, Township 23 North, Range 13 East; thence northwesterly along the topographic boundary of the Rio Pueblo de Taos drainage to its intersection with the boundary of the presently declared basin in the vicinity of Section 29, Township 24 North, Range 12 East; thence northeasterly along the existing basin boundary to the point of beginning.

G. The lands included by the extension of November 16, 1970 are as follows:

(1) Beginning at the intersection of the topographic boundary of Canoncito de las Yeguas (tributary to Rio Gallina) and Stinking Lake (Burford Lake) drainages with the Continental Divide in Section 5, Township 26 North, Range 1 West, the presently existing boundary of the Rio Grande Underground Water Basin; thence northerly along the Continental Divide to its intersection with the New Mexico-Colorado state line; thence east along state line to its intersection with the eastern drainage boundary of Wolf Creek (tributary to Rio Chama); thence southeasterly along the Rio Cbama drainage boundary to its intersection with the existing basin boundary in Section 12,

Township 29 North, Range 6 East; thence southwesterly along existing basin boundary to the point of beginning.

(2) Beginning at the intersection of the south boundary of the Sangre de Cristo Grant with longitude 105 degrees 25' 30" West, the presently, existing boundary of the Rio Grande Underground Water Basin; thence easterly along the Sangre de Cristo Grant line to its intersection with the Taos-Colfax county line (also the west line of the Maxwell Grant); thence southerly along the Taos-Colfax county line to its intersection with the existing Rio Grande Underground Water Basin line at Taos Cone; thence northerly along the existing basin boundary to the point of beginning.

H. The lands included by the extension of December 31, 1970, are as follows: Beginning on the drainage boundary between the Rio Grande and the Pecos River at the intersection of the drainage boundary between Rio Nambe and the Santa Fe River in the vicinity of Penitente Peak, the presently existing boundary of the Rio Grande Underground Water Basin; thence southerly along the drainage boundary between the Rio Grande and the Pecos River, passing through Glorieta Baldy in Section 5, Township 16 North, Range 11 East, to its intersection with the north line of Section 28, Township 12 North, Range 11 East; thence east along the section line to the northeast corner of said Section 28; thence south along section lines to the southeast corner of Section 33, Township 12 North, Range 11 East; thence west along the township line to the southwest corner of Section 33, Township 12 North, Range 10 East; thence north along section line to its intersection with the Rio Grande drainage boundary; thence westerly along the Rio Grande drainage boundary to its intersection with the east line of the Sandia Underground Water Basin, also being the Bernalillo-Santa Fe County line; thence north along the Bernalillo-Santa Fe County line to the southeast corner of Sandoval County and west along the Bernalillo-Sandoval County line to its intersection with the west line of the San Pedro Grant, also being on the existing Sandia Underground Water Basin boundary; thence southerly along the Sandia Underground Water Basin boundary to its intersection with the southern drainage boundary of San Pedro Creek, tributary to Tonque Arroyo, near the northwest corner of Section 14, Township 11 North, Range 5 East; thence northwesterly along said drainage boundary to the southern drainage boundary of Las Huertas Creek; thence along said Las Huertas Creek drainage boundary to its intersection with the Bernalillo-Sandoval County line; thence along the Bernalillo-Sandoval County line to the southeast corner of Section 36, Township 12 North, Range 4 East on the existing boundary of the Rio Grande Underground Water Basin; thence northerly and easterly to the point of beginning.

I. The lands included by the extension of December 22, 1971 are as follows:

(1) Beginning at the southwest corner of Section 18, Township 13 South, Range 4 West, a point on the presently existing boundary of the Rio Grande Underground Water Basin; thence west along section line to the southwest corner of Section 13, Township 13 South, Range 5 West; thence north along section line to the northwest corner of said Section 13; thence west along section lines to the southwest corner of Section 10, Township 13 South, Range 5 West; thence north along section

line to the northwest corner of said Section 10; thence west along section line to the southwest corner of Section 4, Township 13 South, Range 5 West; thence north along section lines to the northwest corner of Section 33, Township 12 South, Range 5 West; thence west along section lines to the southwest corner of Section 26, Township 12 South, Range 6 West; thence north along section line to the northwest corner of said Section 26; thence west along section lines to the northeast corner of Section 27, Township 12 South, Range 7 West; thence south along section line to the southeast corner of said Section 27; thence west along section lines to the northeast corner of Section 35, Township 12 South, Range 8 West; thence south along section line to the east quarter corner of said Section 35; thence west to the west quarter corner of Section 34, Township 12 South, Range 8 West; thence north along section line to the northwest corner of said Section 34; thence west along section line to the southwest corner of Section 28, Township 12 South, Range 8 West, a point on the present east boundary of the Gila National Forest; thence north along section lines to the northwest corner of Section 21, Township 12 South, Range 8 West; thence west along section line to the southwest corner of Section 17, Township 12 South, Range 8 West; thence north along section lines to the northwest corner of Section 5, Township 11 South, Range 8 West; thence west along section line to the southwest corner of Section 31, Township 10 South, Range 8 West; thence north along range line to the northwest corner of Section 6, Township 10 South, Range 8 West, a point on the Catron County, Sierra County and Socorro County line; thence west along section line to the southwest corner of Section 36, Township 9 South, Range 9 West; thence north along section lines to the northwest corner of Section 24, Township 7 South, Range 9 West, the northeast corner of the Gila National Forest; thence east along section line to the northeast corner of said Section 24, a point on the Catron County-Socorro County line; thence north along range line and said county line to the northwest corner of Section 6, Township 6 South, Range 8 West, a point on the First Standard Parallel South of the New Mexico Public Land Survey; thence east along said Standard Parallel to the southwest corner of Section 34, Township 5 South, Range 5 West; thence north along section lines to the northwest corner of Section 3, Township 5 South, Range 5 West; thence east along township line to the northwest corner of Section 6, Township 5 South, Range 1 West, a point on the presently declared basin boundary; thence southerly along the existing basin boundary to the point of beginning.

(2) Beginning at the northeast corner of Section 5, Township 6 South, Range 2 East, a point on the presently existing basin boundary; thence south along section lines to the southeast corner of Section 32, Township 9 South, Range 2 East, a point on the Sierra county - Socorro county line; thence west along the Township line and said County line to the intersection with the present basin boundary at longitude 107 degrees 00' west; thence northerly along the existing basin boundary to the point of beginning.

(3) Beginning at the point of intersection of the east line of Section 34, Township 13 South, Range 4 West and the west bank of the Rio Grande on the west boundary of the Pedro Armendariz Grant No. 33, a point on the presently existing boundary; thence south along the west boundary of said grant to the southwest corner

of said grant; thence east along said grant boundary to its intersection with the drainage boundary between the Rio Grande and the Jornada del Muerto on the north line of Section 2, Township 14 South, Range 3 west; thence northerly along said drainage boundary; progressing to the ridge crest of the Fra Cristobal Range, and proceeding along said ridge crest, passing through Massacre Gap, Red Gap and Fra Cristobal Mountain, to its intersection with the Sierra County-Socorro County line approximately 1 1/2 miles east of the east bank of the Rio Grande, a point on the existing basin boundary; thence southerly along the existing basin boundary to the point of beginning.

J. The lands included by the extension of September 7, 1973, are as follows:

(1) Beginning at the intersection of the New Mexico-Colorado State Line and the east bank of the Rio Grande, a point on the presently declared Rio Grande Underground Water Basin boundary; thence southerly along the existing basin boundary to the intersection of the east bank of the Rio Grande with the north line of Township 24 North; thence west along said township line, being the presently declared basin boundary, to its intersection with Comanche Rim on the north line of Section 5, Township 24 North, Range 10 East; thence northwesterly along the existing basin boundary to its intersection with the New Mexico-Colorado State Line, a point on the eastern drainage boundary of Wolf Creek (tributary to Rio Chama); thence east along the New Mexico-Colorado State Line to the point of beginning.

(2) Beginning at Cerro Vista Peak, a point on the eastern topographic drainage boundary of the Rio Grande, the common boundary of the Rio Grande and Canadian River Underground Water Basins, and the Mora County-Taos County line; thence southerly along said topographic drainage boundary and the Canadian River Underground Water Basin boundary, passing through Cerro Picacho, to the point on the common boundary of the topographic drainages of the Rio Grande, the Canadian River and the Pecos River in the vicinity of Latitude 35 degrees 59' 03" North, Longitude 105 degrees 33' 25" West; thence westerly along the topographic drainage boundary of the Rio Grande and the presently declared Upper Pecos Underground Water Basin boundary to North Truchas Peak, a point on the presently declared Rio Grande Underground Water Basin boundary; thence northwesterly along said boundary to the intersection of Longitude 105 degrees 56' West with the north boundary of the Sebastian Martin Grant; thence northeasterly along the presently declared basin boundary to its intersection with the southwestern topographic drainage boundary of the Rio Pueblo de Taos in the vicinity of Section 29, Township 24 North, Range 12 East; thence southeasterly along said drainage boundary and presently declared basin boundary to Cerro del Oso; thence northeasterly along the presently declared basin boundary to Cerro Vista Peak, the point of beginning.

(3) Beginning at the southwest corner of Section 21, Township 12 South, Range 8 West, a point on the presently declared Rio Grande Underground Water Basin boundary; thence west along section lines to the southwest corner of Section 19, Township 12 South, Range 8 West; thence north along section line to the northwest corner of said Section 19; thence west along section lines to the southwest corner of

Section 14, Township 12 South, Range 9 West; thence north along section line to the northwest corner of said Section 14; thence west along section lines to the southwest corner of Section 8, Township 12 South, Range 9 West; thence north along section lines to the southeast corner of Section 30, Township 11 South, Range 9 West*; thence west along section line to the southwest corner of said Section 30; thence north along range line to the northwest corner of Section 19, Township 11 South, Range 9 West*; thence east along section line to the northeast corner of said Section 19; thence north along section lines to the northwest corner of Section 5, Township 11 South, Range 9 West; thence west along township line to the southwest corner of Section 36, Township 10 South, Range 10 West; thence north along section line to the northwest corner of said Section 36; thence west along section line to the southwest corner of Section 26, Township 10 South, Range 10 West; thence north along section lines to the southeast corner of Section 15, Township 10 South, Range 10 West; thence west along section line to the southwest corner of said Section 15; thence north along section line to the northwest corner of said Section 15; thence east along section line to the northeast corner of said Section 15; thence north along section lines to the northwest corner of Section 2, Township 10 South, Range 10 West; thence east along township line to the southwest corner of Section 36, Township 9 South, Range 10 West; thence north along section lines to the northwest corner of Section 25, Township 9 South, Range 10 West; thence east along section line to the northeast corner of said Section 25; thence north along range line to the northwest corner of Section 19, Township 9 South, Range 9 West; thence east along section line to the northeast corner of said Section 19; thence north along section lines to the northwest corner of Section 32, Township 8 South, Range 9 West; thence east along section line to the northeast corner of said Section 32; thence north along section lines to the southeast corner of Section 17, Township 8 South, Range 9 West; thence west along section line to the southwest corner of said Section 17; thence north along section line to the southeast corner of Section 7, Township 8 South, Range 9 West; thence west along section line to the southwest corner of said Section 7; thence north along section line to the northwest corner of said Section 7; thence east along section line to the northeast corner of said Section 7; thence north along section line to the northwest corner of Section 5, Township 8 South, Range 9 West; thence east along township line to the northeast corner of said Section 5; thence north along section lines to the southeast corner of Section 20, Township 7 South, Range 9 West; thence west along section line to the southwest corner of said Section 20; thence north along section line to the northwest corner of said Section 20; thence east along section line to the northeast corner of said Section 20; thence north along section line to the northwest corner of Section 16, Township 7 South, Range 9 West; thence east along section line to the northeast corner of said Section 16; thence north along section line to the northwest corner of Section 10, Township 7 South, Range 9 West; thence east along section lines to the south quarter corner of Section 1, Township 7 South, Range 9 West; thence north to the north quarter corner of said Section 1; thence west along township line to the south quarter corner of Section 35, Township 6 South, Range 9 West; thence north to the north quarter corner of Section 26, Township 6 South, Range 9 West; thence east along section line to the northeast corner of said Section 26; thence north along section lines to the northwest corner of Section 13, Township 6 South, Range 9 West; thence east along section line to the

northeast corner of said Section 13, a point on the presently declared Rio Grande Underground Water Basin boundary; thence southerly along the presently declared basin boundary to the point of beginning.

*Projected sections are based on meridian and parallel projections of surveyed townships.

(4) Beginning at the intersection of the Bernalillo County-Valencia County line with the north boundary of the Antonio Sedillo Grant, a point on the presently declared Rio Grande Underground Water Basin boundary near the southeast corner of Section 1, Township 9 North, Range 3 West; thence northwesterly along the Bernalillo County-Valencia County line to the south line of Sandoval County; thence northwesterly along the Sandoval County-Valencia County line to the northeast corner of Valencia County; thence west along the Sandoval County-Valencia County line to the southeast corner of McKinley County; thence north along the McKinley County-Sandoval County line to the north east corner of McKinley County at the northwest corner of Section 6, Township 20 North, Range 4 West; thence east along township line to the southwest corner of Section 31, Township 21 North, Range 4 West; thence north along range line to its intersection with the Continental Divide on the west line of Section 7, Township 21 North, Range 4 West; thence northeasterly along the Continental Divide to its intersection with the southwestern drainage boundary of the Rio Chama in Section 21, Township 23 North, Range 1 West, a point on the presently declared Rio Grande Underground Water Basin boundary; thence southeasterly along the south drainage boundary of the Rio Chama, being the presently declared basin boundary, to the west line of Section 6, Township 20 North, Range 6 East; thence southerly along the presently declared basin boundary to the intersection with the north boundary of the Pueblo de Cochiti Grant; thence southwesterly along the presently declared basin boundary to the point of beginning.

K. The lands included by the extension of May 14, 1976, are as follows:

(1) Beginning at the southeast corner of Section 8, Township 7 South, Range 9 West, a point common to the existing boundaries of the Rio Grande Underground Water Basin and the Gila-San Francisco Underground Water Basin; thence westerly along the existing boundary of the Gila-San Francisco Underground Water Basin at or near the Continental Divide to the southwest corner of Section 27, Township 8 South, Range 16 West; thence northerly along the existing boundary of the Gila-San Francisco Underground Water Basin at or near the Continental Divide to the southwest corner of Section 23, Township 3 South, Range 15 West; thence north along section line to the intersection of the west line of said Section 23 with the Continental Divide; thence northerly along the Continental Divide to the intersection with the north line of Section 22, Township 8 North, Range 13 West; thence east along section lines to the southwest corner of Section 15, Township 8 North, Range 9 West; thence north along section lines to the northwest corner of Section 3, Township 8 North, Range 9 West; thence west along township line to the southwest corner of Section 34, Township 9 North, Range 9 West; thence north along section lines to the northwest corner of Section 3, Township 9

North, Range 9 West, a point on the existing boundary of the Bluewater Underground Water Basin; thence northerly along the existing boundary of the Bluewater Underground Water Basin to the southwest corner of Section 12, Township 10 North, Range 9 West; thence north along section lines to the northwest corner of Section 13, Township 11 North, Range 9 West; thence east along section lines to the southwest corner of Section 8, Township 11 North, Range 8 West; thence north along section line to the northwest corner of said Section 8; thence east along section lines to the southwest corner of Section 3, Township 11 North, Range 8 West; thence north along section line to the northwest corner of said Section 3; thence east along township line to the southwest corner of Section 31, Township 12 North, Range 7 West; thence north along range line to the northwest corner of said Section 31; thence east along section line to the northeast corner of said Section 31; thence north along section line to the northwest corner of Section 29, Township 12 North, Range 7 West; thence east along section line to the northeast corner of said Section 29; thence north along section lines to the northwest corner of Section 4, Township 12 North, Range 7 West; thence west along township line to the southwest corner of Section 33, Township 13 North, Range 7 West; thence north along section lines to the southeast corner of Section 20, Township 13 North, Range 7 West; thence west along section line to the southwest corner of said Section 20; thence north along section lines to the intersection of the west line of Section 8, Township 13 North, Range 7 West, with the southern boundary of the Bartolome Fernandez Grant; thence west along the southern boundary of said Grant to the southwest corner of said Grant; thence north along the western boundary of said Grant to the intersection with the south line of Section 2, Township 13 North, Range 8 West; thence west along section lines to the southwest corner of Section 4, Township 13 North, Range 8 West; thence north along section line to the northwest corner of said Section 4; thence west along township line to the southwest corner of Section 32, Township 14 North, Range 8 West; thence north along section line to the northwest corner of said Section 32; thence west along section line to the southwest corner of Section 30, Township 14 North, Range 8 West; thence north along range line to the southeast corner of Section 12, Township 14 North, Range 9 West; thence west along section lines to the southwest corner of Section 10, Township 14 North, Range 9 West; thence north along section lines to the northwest corner of Section 34, Township 15 North, Range 9 West; thence west along section lines to the southwest corner of Section 30, Township 15 North, Range 9 West; thence north along range line to the southeast corner of Section 24, Township 15 North, Range 10 West; thence west along section lines to the southwest corner of Section 19, Township 15 North, Range 10 West; thence north along range line to the southeast corner of Section 13, Township 15 North, Range 11 West; thence west along section line to the southwest corner of said Section 13; thence north along section lines to the intersection of the west line of Section 1, Township 15 North, Range 11 West with the Continental Divide; thence northeasterly along the Continental Divide to the intersection with the east line of Section 12, Township 21 North, Range 5 West, a point on the existing boundary of the Rio Grande Underground Water Basin; thence southerly along the existing boundary of the Rio Grande Underground Water Basin to the point of beginning.

(2) Beginning at the northwest corner of Section 14, Township 11 North, Range 5 East, a point on the existing boundary of the Sandia Underground Water Basin; thence southerly along the existing boundary of the Sandia Underground Water Basin to the southeast corner of Section 16, Township 10 North, Range 5 East; thence east along the existing boundary of the Sandia Underground Water Basin to the northeast corner of Section 22, Township 10 North, Range 6 East, a point common to the boundaries of the Sandia Underground Water Basin and the Estancia Underground Water Basin; thence southerly along the existing boundary of the Estancia Underground Water Basin to the southeast corner of Section 31, Township 4 North, Range 6 East; thence east along the existing boundary of the Estancia Underground Water Basin to the northeast corner of Section 5, Township 3 North, Range 7 East; thence south along section lines to the southeast corner of Section 32, Township 3 North, Range 7 East; thence west along township line to the northeast corner of Section 1, Township 2 North, Range 6 East; thence south along range line to the southeast corner of Section 36, Township 2 North, Range 6 East; thence west along township line to the northeast corner of Section 2, Township 1 North, Range 5 East; thence South along section lines to the southeast corner of Section 11, Township 1 North, Range 5 East; thence west along section line to the southwest corner of said Section 11; thence south along section line to the southeast corner of Section 15, Township 1 North, Range 5 East; thence west along section line to the southwest corner of said Section 15, being a point on the Socorro-Torrance county line; thence south along section and county line to the southeast corner of Section 21, Township 1 North, Range 5 East; thence west along section lines to the southwest corner of Section 20, Township 1 North, Range 5 East; thence north along section line to the northwest corner of said Section 20; thence west along section lines to the northeast corner of Section 21, Township 1 North Range 4 East; thence south along section lines to the southeast corner of Section 33, Township 1 North, Range 4 East; thence west along township line to the northeast corner of Section 5, Township 1 South, Range 4 East; thence south along section lines to the southeast corner of Section 20, Township 1 South, Range 4 East; thence west along section lines to the northeast corner of Section 25, Township 1 South, Range 3 East; thence south along range line to the southeast corner of Section 36, Township 1 South, Range 3 East; thence west along township line to the northeast corner of Section 4, Township 2 South, Range 3 East; thence south along section lines to the southeast corner of Section 21, Township 2 South, Range 3 East; thence west along section lines to the southwest corner of Section 19, Township 2 South, Range 3 East, a point on the existing boundary of the Rio Grande Underground Water Basin; thence northerly along the existing boundary of the Rio Grande Underground Water Basin to the southwest corner of Section 36, Township 12 North, Range 4 East and thence southeasterly along existing boundary to the point of intersection of the north section line of Section 14, Township 11 North, Range 5 East with the southern topographical drainage boundary of San Pedro Creek, tributary to Tonque Arroyo of the Rio Grande Stream System, being a point common to the existing boundaries of the Rio Grande Underground Water Basin and the Sandia Underground Water Basin; thence west along section line to the point of beginning at the northwest corner of said Section 14.

L. The lands included by the extension of December 23, 1980, are as follows: Beginning at the northwest corner of Section 31, Township 2 North, Range 7 East, at a point on the presently existing boundary of the Rio Grande Underground Water Basin; thence east along section lines to the northeast corner of Section 32, Township 2 North, Range 7 East; thence south along section lines to the southeast corner of Section 5, Township 1 North, Range 7 East; thence east along section line to the northeast corner of Section 9, Township 1 North, Range 7 East; thence south along section lines to the southeast corner of Section 16, Township 1 North, Range 7 East; thence east along section lines to the northeast corner of Section 23, Township 1 North, Range 7 East; thence south along section lines to the southeast corner of Section 35, Township 1 North, Range 7 East; thence west along township line to the northeast corner of Section 2, Township 1 South, Range 7 East; thence south along section lines to the southeast corner of Section 14, Township 2 South, Range 7 East; thence east along section line to the northeast corner of Section 24, Township 2 South, Range 7 East; thence south along range line to the southeast corner of Section 12, Township 3 South, Range 7 East; thence west along section line to the southwest corner of said Section 12; thence south along section lines to the southeast corner of Section 14, Township 4 South, Range 7 East; thence west along section line to the southwest corner of said Section 14; thence south along section lines to the southeast corner of Section 34, Township 4 South, Range 7 East; thence west along township line to the southwest corner of said Section 34; thence south along section lines to the southeast corner of Section 9, Township 5 South, Range 7 East; thence west along section line to the southwest corner of said Section 9; thence south along section line to the southeast corner of Section 17, Township 5 South, Range 7 East; thence west along section lines to the southwest corner of Section 18, Township 5 South, Range 7 East; thence south along range line to the southeast corner of Section 36, Township 5 South, Range 6 East; thence East along township line to the northeast corner of Section 6, Township 6 South, Range 7 East; thence south along section lines to the southeast corner of Section 18, Township 6 South, Range 7 East; thence west along section lines to the southwest corner of Section 13, Township 6 South, Range 6 East; thence south along section lines to the southeast corner of Section 35, Township 6 South, Range 6 East; thence west along township line to the southwest corner of Section 31, Township 6 South, Range 6 East; thence south along range line to the southeast corner of Section 36, Township 7 South, Range 5 East; thence west along township line to the northeast corner of Section 2, Township 8 South, Range 5 East; thence south along section lines to the southeast corner of Section 14, Township 8 South, Range 5 East; thence west along section lines to the southwest corner of Section 15, Township 8 South, Range 5 East; thence south along section lines to the southeast corner of Section 33, Township 8 South, Range 5 East; thence east along township line to the northeast corner of Section 4, Township 9 South, Range 5 East; thence south along section line to the southeast corner of said Section 4; thence west along section line to the southwest corner of said Section 4; thence south along section line to the southeast corner of Section 8, Township 9 South, Range 5 East; thence west along section lines to the southwest corner of Section 7, Township 9 South, Range 5 East; thence south along range line to the southeast corner of Section 25, Township 9 South, Range 4 East; thence west along section lines to the southwest corner of Section 26, Township 9 South, Range 4 East; thence south along

section lines to the southeast corner of Section 27, Township 10 South, Range 4 East; thence west along section lines to the southwest corner of Section 28, Township 10 South, Range 4 East; thence south along section line to the southeast corner of Section 32, Township 10 South, Range 4 East; thence west along township line to the northeast corner of Section 1, Township 11 South, Range 4 East; thence south along range line to the southeast corner of Section 24, Township 11 South, Range 4 East; thence west along section line to the southwest corner of said Section 24; thence south along section lines to the southeast corner of Section 35, Township 11 South, Range 4 East; thence west along township line to the southwest corner of Section 32, Township 11 South, Range 4 East; thence south along section lines to the southeast corner of Section 7, Township 12 South, Range 4 East; thence west along section line to the southwest corner of said Section 7; thence south along range line to the southeast corner of Section 12, Township 12 South, Range 3 East; thence west along section lines to the southwest corner of Section 11, Township 12 South, Range 3 East; thence south along range line to the southeast corner of Section 12, Township 12 South, Range 2 East; thence west along section line to the southwest corner of said Section 12; thence south along section lines to the southeast corner of Section 23, Township 12 South, Range 2 East; thence west along section line to the southwest corner of said Section 23; thence south along section line to the southeast corner of Section 27, Township 12 South, Range 2 East; thence west along section line to the southwest corner of said Section 27; thence south along section lines to the southeast corner of Section 21, Township 13 South, Range 2 East; thence west along section lines to the southwest corner of Section 24, Township 13 South, Range 1 West; thence south along section line to the southeast corner of Section 26, Township 13 South, Range 1 West; thence west along section lines to the southwest corner of Section 28, Township 13 South, Range 1 West; thence south along section lines to the southeast corner of Section 17, Township 14 South, Range 1 West; thence west along section lines to the southwest corner of Section 13, Township 14 South, Range 3 West; thence south along section line to the southeast corner of Section 23, Township 14 South, Range 3 West; thence west along section lines to the southwest corner of said Section 23; thence south along section lines to the southeast corner of Section 3, Township 15 South, Range 3 West; thence west along section lines to the southwest corner of Section 4, Township 15 South, Range 3 West; thence north along section lines to the northwest corner of Section 16, Township 14 South, Range 3 West; thence west along section line to the southwest corner of Section 8, Township 14 South, Range 3 West; thence north along section lines to the intersection of the west line of Section 5, Township 14 South, Range 3 West with the southern boundary of the Pedro Armendaris Grant #33, a point along the existing Rio Grande Underground Water Basin boundary; thence easterly and northerly along said existing basin boundary to the point of beginning.

M. [TOWNSHIP AND RANGE MAPS: See 7-19 Rio Grande Basin and 7-19.11 Rio Grande Basin, PDF files [19.027.0049.8A-RioGrande](#) and [19.027.0049.8B-RioGrande](#).]

[SE 66-1, Article 7- 19; Recompiled 12/31/01]

PART 50: ROSWELL UNDERGROUND WATER BASIN

19.27.50.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.50.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.50.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.50.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.50.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.50.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.50.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.50.8 ROSWELL UNDERGROUND WATER BASIN:

A. The corrected boundaries of the extension of the Roswell Underground Water Basin as originally intended by special order No. 147 are as follows: (corrections are underlined). Beginning at a point on the south section line of Section 35, Township (T) 7 South (S), Range (R) 13 East (E), New Mexico Principal Meridian (N.M.P.M.), a point on the boundary of the existing Hondo and Tularosa Underground Water Basins, and a point on the drainage divide between the Tularosa Basin and the Pecos River stream system; thence northerly along the east boundary of the existing Tularosa Underground Water Basin to the southwest corner of Section 23, T 1 S, R 11 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 14, T 1 S, R 11 E, N.M.P.M.; thence west along section line to the southwest corner of Section 10, T 1 S, R 11 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 9, T 1 North (N), R 11 E, N.M.P.M.; thence west along section line to the south quarter corner of said Section 9; thence north to the north quarter corner of said Section 9; thence west along section line to the southwest corner of Section 4, T 1 N, R 11 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 4, a point on the south boundary of the Estancia Underground Water Basin; thence east along section lines to the north quarter corner of Section 6, T 1 N, R 12 E, N.M.P.M.; thence north to the north quarter corner of Section 31, T 2 N, R 12 E, N.M.P.M.; thence east along section line to the northwest corner of Section 32, T 2 N, R 12 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 32, T 3 N, R 12 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 32; thence north along section lines to the northwest corner of Section 33, T 4 N, R 12 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 36, T 4 N, R 12 E, N.M.P.M.; thence south along range line to the northwest corner of Section 6, T 3 N, R 13 E, N.M.P.M.; thence east along township line to the northeast corner of Section 1, T 3 N, R 13 E, N.M.P.M.; thence south along range line to the southeast corner of said Section 1; thence east along section lines to the northeast corner of Section 9, T 3 N, R 14 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 9; thence east along section lines to the southwest corner of Section 8, T 3 N, R 15 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 8; thence east along section lines to the northwest corner of Section 9, T 3 N, R 16 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 33, T 4 N, R 16 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 36, T 4 N, R 16 E, N.M.P.M.; thence south along range line to the southeast corner of said Section 36; thence east along township line to the northeast corner of Section 4, T 3 N, R 18 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 21, T 3 N, R 18 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 21, T 3 N, R 19 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 28, T 2 N, R 19 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 26, T 2 N, R 19 E, N.M.P.M.; thence south along section lines to the northwest corner of Section 12, T 1 N, R 19 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 12; thence south along range line to the northeast corner of Section 13, T 1 N, R 19 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 17, T 1 N, R 20 E, N.M.P.M.; thence south along section line to the northeast corner of Section 20, T 1 N, R 20 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 22, T 1 N, R 20 E, N.M.P.M.;

thence south along section line to the northeast corner of Section 27, T 1 N, R 20 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 29, T 1 N, R 21 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 20, T 1 S, R 21 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 22, T 1 S, R 21 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 22, T 2 S, R 21 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 24, T 2 S, R 21 E, N.M.P.M.; thence south along range line to the northeast corner of Section 13, T 3 S, R 21 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 17, T 3 S, R 22 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 29, T 3 S, R 22 E, N.M.P.M.; thence east along section line to the northeast corner of Section 28, T 3 S, R 22 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 4, T 5 S, R 22 E, N.M.P.M.; thence east along township line to the northeast corner of Section 2, T 5 S, R 22 E, N.M.P.M.; thence south along section line to the northeast corner of Section 11, T 5 S, R 22 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 7, T 5 S, R 23 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 31, T 5 S, R 23 E, N.M.P.M.; thence east along township line to the northeast corner of Section 1, T 6 S, R 25 E, N.M.P.M.; thence south along range line to the southeast corner of Section 36, T 6 S, R 25 E, N.M.P.M., a point on the existing Roswell Underground Water Basin boundary; thence east on said existing boundary of Roswell Underground water Basin to the northwest corner of Section 3, T 7 S, R 26 E, N.M.P.M., a point of intersection of the boundaries of the existing Ft. Sumner and Roswell Underground Water Basins; thence east along township line to the northeast corner of Section 5, T 7 S, R 27 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 5; thence east along section lines to the northeast corner of Section 10, T 7 S, R 27 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 2, T 6 S, R 27 E, N.M.P.M.; thence east along township line to the southwest corner of Section 32, T 5 S, R 27 E, N.M.P.M.; thence north along section lines to the northwest corner of Section 29, T 4 S, R 27 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 28, T 4 S, R 28 E, N.M.P.M.; thence south along section lines to the northeast corner of Section 4, T 5 S, R 28 E, N.M.P.M.; thence east along township line to the northeast corner of Section 1, T 5 S, R 29 E, N.M.P.M., a point on the Chaves-Roosevelt county line; thence north along range line and said county line to the northwest corner of Section 30, T 4 S, R 30 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 28, T 4 S, R 30 E, N.M.P.M.; thence south along section lines to the northwest corner of Section 10, T 5 S, R 30 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 10; thence south along section line to the southeast corner of said Section 10; thence east along section line to the northeast corner of Section 13, T 5 S, R 30 E; thence south along range line to the southeast corner of Section 36, T 5 S, R 30 E, N.M.P.M., a point on the Roosevelt - Chavez county line; thence east along township line and said county line to the northeast corner of Section 1, T 6 S, R 31 E, N.M.P.M.; thence south along range line and said county line to the northwest corner of Section 6, T 7 S, R 32 E, N.M.P.M.; thence east along township line to the northeast corner of said Section 6; thence south along section lines to the northwest corner of Section 17, T 7 S, R 32 E, N.M.P.M.; thence east along section line to the northeast

corner of said Section 17; thence south along section lines to the northwest corner of Section 28, T 7 S, R 32 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 28; thence south along section lines to the northwest corner of Section 3, T 8 S, R 32 E, N.M.P.M., a point on the Roosevelt-Chaves county line; thence east along township line and said county line to the northeast corner of said Section 3; thence south along section lines to the southeast corner of Section 34, T 8 S, R 32 E, N.M.P.M., a point on the Chaves-Lea county line; thence west along township line and said county line to the northeast corner of Section 6, T 9 S, R 32 E, N.M.P.M.; thence south along section lines to the northwest corner of Section 32, T 9 S, R 32 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 32; thence south along section lines to the southeast corner of Section 20, T 10 S, R 32 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 19, T 10 S, R 32 E, N.M.P.M., a point on the Lea-Chaves county line; thence south along range line and said county line to the southeast corner of Section 36, T 10 S, R 31 E, N.M.P.M.; thence west along township line to the northeast corner of Section 3, T 11 S, R 31 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 10, T 11 S, R 31 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 10; thence south along section line to the southeast corner of Section 16, T 11 S, R 31 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 16; thence south along section lines to the northwest corner of Section 33, T 11 S, R 31 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 33; thence south along section lines to the northwest corner of Section 3, T 13 S, R 31 E, N.M.P.M.; thence east along section line to the northeast corner of said Section 3; thence south along section lines to the southeast corner of Section 15, T 14 S, R 31 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 15; thence south along section lines to the southeast corner of Section 33, T 14 S, R 31 E, N.M.P.M.; thence west along township line to the northeast corner of Section 6, T 15 S, R 31 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 31, T 15 S, R 31 E, N.M.P.M., a point on the Chaves-Eddy county line; thence east along township line and said county line to the northeast corner of section 3, T 16 S, R 31 E, N.M.P.M.; thence south along section lines to the southeast corner of Section 22, T 16 S, R 31 E, N.M.P.M.; thence east along section lines to the northeast corner of Section 25, T 16 S, R 31 E, N.M.P.M., a point on the Eddy-Lea county line; thence south along range line to the southeast corner of said Section 25; thence east along section lines to the northeast corner of Section 32, T 16 S, R 32 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 32; thence east along township line to the northeast corner of Section 4, T 17 S, R 32 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 4; thence east along section lines to the northeast corner of Section 11, T 17 S, R 32 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 11; thence east along section line to the northeast corner of Section 13, T 17 S, R 32 E, N.M.P.M.; thence south along range line to the southeast corner of said Section 13; thence east along section line to the northeast corner of Section 19, T 17 S, R 33 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 19; thence east along section line to the northeast corner of Section 29, T 17 S, R 33 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 29; thence east

along section line to the northeast corner of Section 33, T 17 S, R 33 E, N.M.P.M.; thence south along section line to the southeast corner of said Section 33, a point of intersection of the boundaries of the existing Lea County and Capitan Underground Water Basins; thence west and south along the existing Capitan Underground Water Basin boundary to the southwest corner of section 31, T 18 S, R 28 E, N.M.P.M., a point of intersection of the existing Capitan and Roswell Underground Water Basin boundaries; thence south, west and north along the existing Roswell Underground Water Basin boundary to the southeast corner of Section 28, T 23 S, R 20 E, N.M.P.M.; thence, leaving the existing Roswell Underground Water Basin boundary, west along section line to the southwest corner of said Section 28; thence north along section line to the northwest corner of said Section 28; thence west along section line to the southwest corner of Section 20, T 23 S, R 20 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 20; thence west along section line to the southwest corner of Section 18, T 23 S, R 20 E, N.M.P.M.; thence north along range line to the northwest corner of said Section 18; thence west along section line to the southwest corner of Section 12, T 23 S, R 19 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 12; thence west along section line to the southwest corner of Section 2, T 23 S, R 19 E, N.M.P.M.; thence north along section line to the southeast corner of Section 27, T 22 S, R 19 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 27; thence north along section lines to the southeast corner of Section 21, T 22 S, R 19 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 21; thence north along section line to the northwest corner of said Section 21; thence west along section line to the southwest corner of Section 17, T 22 S, R 19 E, N.M.P.M.; thence north along section lines to the southeast corner of Section 6, T 22 S, R 19 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 6; thence north along range line to the northwest corner of said Section 6; thence west along township line to the southwest corner of Section 34, T 21 S, R 18 E, N.M.P.M.; thence north along section line to the southeast corner of Section 28, T 21 S, R 18 E, N.M.P.M.; thence west along section line to the southwest corner of said Section 28; thence north along section line to the northwest corner of said Section 28; thence west along section line to the southwest corner of Section 20, T 21 S, R 18 E, N.M.P.M.; thence north along section lines to the southwest corner of Section 20, T 19 S, R 18 E, N.M.P.M.; thence west along section lines to the southwest corner of Section 24, T 19 S, R 17 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 24; thence west along section lines to the southwest corner of Section 15, T 19 S, R 16 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 15; thence west along section line to the southwest corner of Section 9, T 19 S, R 16 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 9; thence west along section line to the southwest corner of Section 5, T 19 S, R 16 E, N.M.P.M.; thence north along section line to the northwest corner of said Section 5, a point on the south boundary of the Penasco Underground Water Basin; thence east and north along south boundary of the existing Penasco Underground Water Basin to the northeast corner of Section 17, T 18 S, R 18 E, N.M.P.M., a point at the intersection of the boundaries of the existing Penasco and Roswell Underground Water Basins; thence north, west, east and south along the boundary of the existing Roswell Underground

Water Basin to the southeast corner of Section 33, T 10 S, R 20 E, N.M.P.M., a point of intersection of the existing boundaries of the Roswell and Hondo Underground Water Basins; thence west and north along the existing boundary of the Hondo Underground Water Basin to the point of beginning.

B. [TOWNSHIP AND RANGE MAP: See 7-20.1 and 2 Roswell Underground Water Basin, PDF file 19.027.0050.8-Roswell.]

[SE 66-1, Article 7-20; Recompiled 12/31/01]

PART 51: [RESERVED]

PART 52: SAN JUAN UNDERGROUND WATER BASIN

19.27.52.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.52.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.52.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.52.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.52.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.52.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.52.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.52.8 SAN JUAN UNDERGROUND WATER BASIN:

A. The lands declared within the San Juan Underground Water Basin on July 29, 1976, are as follows: Beginning at the point of intersection of the Continental Divide and the New Mexico-Colorado state line near mile post 202, being the topographic drainage boundary between the San Juan River stream system and the Rio Grande stream system, at a point on the presently-declared Rio Grande Underground Water Basin boundary; thence southwesterly along the Continental Divide and said topographic drainage boundary to the point common to the topographic drainage boundary of the San Juan River stream system, the Rio Puerco of the Little Colorado River stream system, and the Rio Grande stream system, in the Southeast Quarter of Section 25, Township 16 North, Range 13 West, N.M.P.M.; thence westerly and northwesterly along the southern topographic drainage boundary of the San Juan River stream system, also being the topographic drainage boundary between the San Juan River stream system and the Rio Puerco of the Little Colorado River stream system, passing through Dalton Pass in Section 4, Township 16 North, Range 14 West, passing along Manuelito Plateau, passing near Tohatchi Lookout and passing along the Chuska Mountains, through Washington Pass, to its intersection with the New Mexico-Arizona state line, between latitude 36 degrees 18 minutes North and latitude 36 degrees 19 minutes North; thence northerly along the New Mexico-Arizona state line to its intersection with the New Mexico-Colorado state line, a point common to the boundaries of New Mexico, Arizona, Colorado and Utah; thence easterly along the New Mexico-Colorado state line to the point of beginning.

B. The lands included within the San Juan Underground Water Basin by amendment of March 12, 1980 are as follows: Beginning at the southernmost point of intersection of the New Mexico-Arizona state line and the topographic drainage boundary between the Chinle Wash and the Chaco River, both of the San Juan River stream system, being at about latitude 36 degrees, 18 minutes, 45 seconds North; thence easterly and southeasterly along the topographic drainage boundary between the Chinle Wash and the Chaco River along the Chuska Mountains, passing through Washington Pass, to a point common to the topographic drainage of the Chinle Wash and the Chaco River, both of the San Juan River stream system and Bowl Creek of the Puerco River stream system; thence northwesterly, westerly and then southwesterly

along the north drainage boundary of Bowl Creek, which is the topographic drainage boundary between the San Juan River stream system and the Puerco River stream system, to its intersection with the McKinley-San Juan county line; thence west along the McKinley-San Juan county line approximately 4.2 miles to its intersection with the New Mexico-Arizona state line; thence northerly along the New Mexico-Arizona state line to the point of beginning.

C. [TOWNSHIP AND RANGE MAP: See 7-27.1 and 2 San Juan Underground Water Basin, [PDF file 19.027.0052.8-SanJuan.](#)]

[SE 66-1, Article 7-27; Recompiled 12/31/01]

PART 53: SAN SIMON BASIN

19.27.53.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.53.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.53.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.53.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.53.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.53.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.53.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.53.8 SAN SIMON BASIN:

A. The lands included within the San Simon Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
23 S.	21 W.	7, 8, 17 thru 20, 29 thru 33	Feb. 14, 1963
24 S.	21 W.	4, 9, 10, 15, 16, 21, 22, 27, 28, 33, 34	Feb. 14, 1963
24 S.	21 W.	5 thru 8, 17 thru 20, 29 thru 32	Oct. 20, 1960
25 S.	21 W.	3, 10, 14, 15, 22, 23, 26, 27, 34, 35	Feb. 14, 1963
25 S.	21 W.	4 thru 9, 16 thru 21, 28 thru 33	Oct. 20, 1960
26 S.	21 W.	3 thru 10, 15 thru 22, 27 thru 34	Oct. 20, 1960
26 S.	21 W.	11, 14, 23, 25, 26,	

		35, 36	Feb. 14, 1963
26 S.	22 W.	All	Oct. 20, 1960
27 S.	20 W.	19, 30, 31	Feb. 14, 1963
27 S.	21 W.	2, 11 thru 13	Feb. 14, 1963
27 S.	21 W.	3 thru 10, 14 thru	
		36	Oct. 20, 1960
27 S.	22 W.	All	Oct. 20, 1960
28 S.	20 W.	5 thru 7, 18	Feb. 14, 1963
28 S.	21 W.	1, 12, 13, 22, 23,	
		26, 27, 34, 35	Feb. 14, 1963
28 S.	21 W.	2 thru 11, 14 thru	
		21, 28 thru 33	Oct. 20, 1960
28 S.	22 W.	All	Oct. 20, 1960
29 S.	21 W.	6, 7, 18, 19, 30, 31	Oct. 20, 1960
29 S.	21 W.	4, 5, 8, 9, 16, 17,	
		20, 21, 27 thru 29,	
		32 thru 34	Feb. 14, 1963
29 S.	22 W.	All	Oct. 20, 1960
30 S.	21 W.	3 thru 10, 15 thru	
		21, 29 thru 32	Feb. 14, 1963
30 S.	22 W.	All	Oct. 20, 1960
31 S.	21 W.	5 thru 8, 17 thru	
		21, 28 thru 33	Feb. 14, 1963

31 S.	22 W.	13, 14, 23 thru 26	
		35, 36	Feb. 14, 1963
31 S.	22 W.	1, 2, 11, 12	Oct. 20, 1960
31 S.	22 W.	13, 14, 23 thru 26,	
		35, 36	Feb. 14, 1963

B. [TOWNSHIP AND RANGE MAP: See 7-21.1 San Simon Basin, [PDF File 19.027.0053.8-SanSimon.](#)]

[SE 66-1, Article 7-21; Recompiled 12/31/01]

PART 54: SANDIA UNDERGROUND WATER BASIN

19.27.54.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.54.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.54.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.54.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.54.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.54.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.54.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.54.8 SANDIA BASIN:

A. The lands declared within the Sandia Basin on November 15, 1966, are as follows:

TOWNSHIP	RANGE	SECTIONS
11 N.	5 & 6 E.	That portion of the San Pedro Grant with- in Bernalillo County.
11 N.	5 E.	13, 14, 23 thru 26, 35, 36
11 N.	6 E.	19 thru 36
10 N.	5 E.	1 thru 3, 10 thru 15
10 N.	6 E.	1 thru 18

B. [TOWNSHIP AND RANGE MAP: See 7-23.1 Sandia Basin PDF file 19.027.0054.8-Sandia.]

[SE 66-1, Article 7-23; Recompiled 12/31/01]

PART 55: SIERRA COUNTY [RESERVED]

PART 56: TUCUMCARI BASIN

19.27.56.1 ISSUING AGENCY:

Office of the New Mexico State Engineer, P.O. Box 25102 Santa Fe, New Mexico 87504-5102.

[3/11/98; Recompiled 12/31/01]

19.27.56.2 SCOPE:

Anyone proposing to drill a well and/or appropriate groundwater in San Miguel, Guadalupe, Quay, Colfax, Union or Harding counties.

[3/11/98; Recompiled 12/31/01]

19.27.56.3 STATUTORY AUTHORITY:

Sections 72-1-1, 72-2-1, 72-2-8, 72-12-1, 72-12-3, 72-12-28 NMSA 1978 (Repl. Pamp. 1985 and Cum. Supp. 1996).

[3/11/98; Recompiled 12/31/01]

19.27.56.4 DURATION:

Permanent

[3/11/98; Recompiled 12/31/01]

19.27.56.5 EFFECTIVE DATE:

November 14, 1998, unless a different date is cited at the end of a section or paragraph.

[3-11-98; 11/14/98; Recompiled 12/31/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

19.27.56.6 OBJECTIVE:

The objective of this Special Order No. 156 is to take administrative control of the underground waters within a specific area of the state to provide for the orderly development of water rights and protection of existing water rights. The waters of the underground streams, channels, artesian basins, reservoirs, or lakes having reasonably ascertainable boundaries, are public waters and are subject to appropriation for beneficial use. The Tucumcari basin was declared and bounded by Special Order 132

of the state engineer dated July 7, 1982. The Tucumcari basin boundaries, as presently defined, do not include certain adjacent areas which are a part of the underground water basin having reasonably ascertainable boundaries and in which new appropriations of water might impair existing rights. Additionally, surface and underground waters in some areas within the boundaries of this extension may be interrelated with the surface and underground waters of the Tucumcari basin. THEREFORE, it is hereby declared that the area in San Miguel, Guadalupe, Quay, Colfax, Union and Harding counties comprising of approximately 5327 square miles and more fully described hereinafter is included by extension as part of the Tucumcari underground water basin, subject to New Mexico statutes, and the rules and regulations of the state engineer.

[3/11/98; 11/14/98; Recompiled 12/31/01]

19.27.56.7 DEFINITIONS:

[RESERVED]

19.27.56.8 STATE ENGINEER SPECIAL ORDER NO. 156 TUCUMCARI BASIN EXTENSION:

The area included within the Tucumcari basin extension begins at a point on the New Mexico and Texas state line approximately 500 feet southeast of the northwest corner of Section 17, Township 14 North, Range 37 East, NMPM; thence south along said state line to the northeast corner of Section 5, Township 8 North, Range 37 East, NMPM, being a point on the northern boundary of Curry County and the Curry County Underground Water Basin; thence west along county line to the southeast corner of Section 31, Township 9 North, Range 35 East, NMPM; thence north along section line to the northeast corner of said Section 31; thence west along section line to the northwest corner of Section 34, Township 9 North, Range 33 East, NMPM; thence south along section line to the southwest corner of said Section 34; thence west along Township line to the northwest corner of Section 3, Township 8 North, Range 33 East, NMPM; thence south along section line to the northeast corner of Section 21, Township 8 North, Range 33 East, NMPM; thence west along section line to the northwest corner of Section 19, Township 8 North, Range 33 East, NMPM; thence south along range line to the northeast corner of Section 36, Township 8 North, Range 32 East, NMPM; thence west along section line to the northwest corner of Section 34, Township 8 North, Range 32 East, NMPM; thence south along section line to the northeast corner of Section 4, Township 7 North, Range 32 East, NMPM; thence west along township line to the northwest corner of Section 3, Township 7 North, Range 31 East, NMPM; thence south along section line to the northeast corner of Section 9, Township 7 North, Range 31 East, NMPM; thence west along section line to the northwest corner of Section 11, Township 7 North, Range 30 East, NMPM; thence south along section line to the northeast corner of Section 15, Township 7 North, Range 30 East, NMPM; thence west along section line to the northwest corner of Section 17, Township 7 North, Range 30 East, NMPM, being a point on the existing boundary of the Fort Sumner Underground

Water Basin; thence west along section line to the northwest corner of Section 13, Township 7 North, Range 28 East, NMPM; thence north along section line to the northeast corner of Section 2, Township 7 North, Range 28 East, NMPM; thence west along township line to the southeast corner of Section 32, Township 8 North, Range 28 East, NMPM; thence north along section line to the northeast corner of Section 29, Township 8 North, Range 28 East, NMPM; thence west along section line to the northeast corner of Section 27, Township 8 North, Range 27 East, NMPM; thence north along section line to the northeast corner of Section 3, Township 8 North, Range 27 East, NMPM; thence East along township line to the southeast corner of Section 34, Township 9 North, Range 27 East, NMPM; thence north along section line to the northeast corner of Section 27, Township 9 North, Range 27 East, NMPM; thence west along section line to the southeast corner of Section 21, Township 9 North, Range 27 East, NMPM; thence north along section line to the northeast corner of said Section 21; thence west along section line to the northwest corner of Section corner of Section 23, Township 9 North, Range 26 East, NMPM; thence south along section line to the northwest corner of Section 35, Township 9 North, Range 26 East, NMPM; thence west along section line to the northwest corner of Section 35, Township 9 North, Range 24 East, NMPM; thence north along section line to the northeast corner of Section 27, Township 9 North, Range 24 East, NMPM; thence west along section line to the southeast corner of Section 21, Township 9 North, Range 24 East, NMPM; thence north along section line to the southeast corner of Section 4, Township 9 North, Range 24 East, NMPM; thence east along section line to the southeast corner of Section 3, Township 9 North, Range 24 East, NMPM; thence north along section line to the southeast corner of Section 34, Township 10 North, Range 24 East, NMPM; thence east along Township line to the southeast corner of Section 35, Township 10 North, Range 24 East, NMPM; thence north along section line to the southeast corner of Section 23, Township 10 North, Range 24 East, NMPM; thence east along section line to the southeast corner of Section 24, Township 10 North, Range 24 East, NMPM; thence north along range line to the southeast corner of Section 12, Township 10 North, Range 24 East, NMPM; thence east along section line to the southeast corner of Section 8, Township 10 North, Range 25 East, NMPM; thence north along section line to the southeast corner of Section 5, Township 10 North, Range 25 East, NMPM; thence east along section line to the southeast corner of Section 4, Township 10 North, Range 25 East, NMPM; thence north along section line to the southeast corner of Section 33, Township 11 North, Range 25 East, NMPM; thence east along township line to the southeast corner of Section 34, Township 11 North, range 25 East, NMPM; thence north along section line to the southeast corner of Section 27, Township 11 North, Range 25 East, NMPM; thence east along section line to the southeast corner of Section 26, Township 11 North, Range 25 East, NMPM; thence north along section line to the southeast corner of Section 23, Township 11 North, Range 25 East, NMPM; thence east along section line to the southeast corner of Section 19, Township 11 North, Range 26 East, NMPM; thence north along section line to the southeast corner of Section 18, Township 11 North, range 26 East, NMPM; thence east along section line to the southeast corner of Section 17, Township 11 North, Range 26 East, NMPM; thence north along section line to the northeast corner of Section 29, Township 12 North, Range 26 East, NMPM; thence west along section line to the intersection of the north

boundary of said Section 29 with Longitude 104E 12' 30"; thence north along said longitude to the intersection with latitude 35E 21' 30"; thence east along said latitude to the intersection with longitude 104E 10' 30"; thence north along said longitude to the intersection with latitude 35E 28' 45"; thence east along said latitude to the intersection with longitude 104E 09' 45"; thence north along said longitude to the intersection with the north boundary of Section 10, Township 17 North, Range 26 East, NMPM; thence west along section line to the northeast corner of Section 8, Township 17 North, Range 26 East, NMPM; thence north along section line to the northeast corner of Section 32, Township 18 North, Range 26 East, NMPM; thence west along section line to the northwest corner of Section 31, Township 18 North, Range 26 East, NMPM, being a point on the existing boundary of the Canadian River Underground Water Basin; thence north along range line and the existing east boundary of the Canadian River Basin to the southeast corner of Section 13, Township 27 North, Range 25 East, NMPM; thence east along section line to the southeast corner of Section 16, Township 27 North, Range 26 East, NMPM; thence east along section line to the southeast corner of Section 14, Township 27 North, Range 26 East, NMPM; thence north along section line to the northeast corner of said Section 14; thence east to the northeast corner of Section 16, Township 27 North, Range 27 East; NMPM; thence south to the southeast corner of said Section 16; thence east to the southeast corner of Section 14, Township 27 North, Range 27 East, NMPM; thence south to the southeast corner of Section 23, Township 27 North, Range 27 East, NMPM; thence east to the northeast corner of Section 28, Township 27 North, Range 28 East, NMPM; thence south along section line West of Lonesome Mountain to the southeast corner of said Section 28; thence east to the northeast corner of Section 36, Township 27 North, Range 28 East, NMPM; thence south to the southeast corner of said Section 36; thence east to the northeast corner of Section 6, Township 26 North, Range 29 East, NMPM; thence south to the southeast corner of Section 7, Township 26 North, Range 29 East, NMPM; thence west to the southwest corner of said Section 7; thence south along Township line to the southwest corner of Section 18, Township 25 North, Range 29 East, NMPM; thence east to the northwest corner of Section 21, Township 25 North, Range 29 East, NMPM; thence south through the Don Carlos Hills to the southwest corner of said Section 21; thence east to the northwest corner of Section 26, Township 25 North, Range 29 East, NMPM; thence south to the southwest corner of said Section 26; thence east to the southeast corner of said Section 26; thence south to the southwest corner of Section 36, Township 25 North, Range 29 East, NMPM; thence west along township line to the northeast corner of Section 1, Township 24 North, Range 29 East, NMPM; thence south to the northwest corner of Section 13, Township 24 North, Range 29 East, NMPM; thence east to the northeast corner of said Section 13; thence south along range line to the northwest corner of Section 31, Township 24 North, Range 30 East, NMPM; thence east to the northeast corner of said Section 31; thence south to the southeast corner of said Section 31; thence east to the northeast corner of Section 5, Township 23 North, Range 30 East, NMPM; thence south to the northwest corner of Section 4, Township 22 North, Range 30 East, NMPM; thence east to the northeast corner of said Section 4; thence south to the northwest corner of Section 15, Township 22 North, Range 30 East, NMPM; thence east to the northwest corner of Section 13, Township 22 North, Range 30 East, NMPM; thence south to the southwest corner of said Section 13; thence east

to the southeast corner of said Section 13; thence in a southeasterly direction diagonally across Sections 19, 29 and 33, Township 22 North, Range 31 East, NMPM, to the Union and Harding County line, being the line between Townships 21 North and 22 North, NMPM; at the northwest corner of Section 3, Township 21 North, Range 31 East, NMPM; thence east along said county line to the northeast corner of Section 2, Township 21 North, Range 31 East, NMPM; thence south to the southeast corner of said Section 2; thence east to the northwest corner of Section 12, Township 21 North, Range 32 East, NMPM; thence south to the northwest corner of Section 24, Township 21 North, Range 32 East, NMPM; thence east to the northeast corner of said Section 24; thence south to the northwest corner of Section 31, Township 21 North, Range 33 East, NMPM; thence east to the northeast corner of said Section 31; thence south to the southeast corner of said Section 31; thence east along Township line to the northwest corner of Section 4, Township 20 North, Range 33 East, NMPM; thence in a southeasterly direction diagonally across Sections 4, 10, 14 and 24, Township 20 North, Range 33 East, NMPM, to the northwest corner of Section 30, Township 20 North, Range 34 East, NMPM; thence south along Harding and Union County line, being the line between Ranges 33 East and 34 East, to the northwest corner of Section 18, Township 19 North, Range 34 East, NMPM; thence east to the northeast corner of said Section 18; thence south to the northeast corner of Section 18, Township 18 North, Range 34 East, NMPM; thence west to the northwest corner of said Section 18; thence south along Harding and Union County line and Harding and Quay County line to the southwest corner of Section 6, Township 17 North, Range 34 East, NMPM; thence east to the northwest corner of Section 10, Township 17 North, Range 34 East, NMPM; thence in a southeasterly direction diagonally across Sections 10 and 14, Township 17 North, Range 34 East, NMPM, to the northwest corner of Section 24, Township 17 North, Range 34 East, NMPM; thence east to the northeast corner of Section 19, Township 17 North, Range 35 East, NMPM; thence south to the southeast corner of said Section 19; thence east to the northwest corner of Section 26, Township 17 North, Range 35 East, NMPM; thence south to the southwest corner of said Section 26; thence east to the southeast corner of said Section 26 near Kerlin Hill; thence south to the southwest corner of Section 36, Township 17 North, Range 35 East, NMPM; thence east along township line to the northwest corner of Section 6, Township 16 North, Range 36 East, NMPM; thence south to the northwest corner of Section 7, Township 16 North, Range 36 East, NMPM; thence east to the northeast corner of said Section 7; thence south to the northwest corner of Section 29, Township 16 North, Range 36 East, NMPM; thence east to the northeast corner of said Section 29; thence south to the northwest corner of Section 4, Township 15 North, Range 36 East, NMPM; thence east to the northeast corner of said Section 4; thence south to the northwest corner of Section 15, Township 15 North, Range 36 East, NMPM; thence in a southeasterly direction diagonally across Sections 15 and 23 in Township 15 North, Range 36 East, NMPM, to the northwest corner of Section 25, Township 15 North, Range 36 East, NMPM; thence south to the northwest corner of Section 1, Township 14 North, Range 36 East, NMPM; thence in a southeasterly direction diagonally across Section 1, Township 14 North, Range 36 East, and Section 7, Township 14 North, Range 37 East, straight through the northwest corner of Section 17, Township 14 North, Range 37 East, to a point on the New Mexico and Texas state line, being the point of beginning.

[3/11/98; 11/14/98; Recompiled 12/31/01]

19.27.56.9 WITNESS my hand and official seal this ____ day of _____, A.D., 1998:

Thomas C. Turney

State Engineer

Reviewed and Approved

Ann Finley Wright

Special Assistant

Attorney General

[3/11/98; 11/14/98; Recompiled 12/31/01]

PART 57: TULAROSA UNDERGROUND WATER BASIN

19.27.57.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.57.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.57.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.57.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.57.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.57.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.57.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.57.8 TULAROSA UNDERGROUND WATER BASIN:

A. The lands declared within the Tularosa Underground Water Basin on July 7, 1982, are as follows: Beginning at the southwest corner of Section 35, T-26-S, R-6-E at a point on the New Mexico-Texas state line and the existing boundary of the Hueco Underground Water Basin; thence northerly along the existing boundary of said basin to the northwest corner of Section 17, T-23-S, R-7-E; thence westerly along said basin boundary to its intersection with the existing boundary of the Lower Rio Grande Underground Water Basin at the southwest corner of Section 29, T-23-S, R-4-E; thence northerly along the existing Lower Rio Grande Underground Water Basin boundary to the northeast corner of said basin at the northwest corner of Section 21, T-20-S, R-4-E; thence east along section line to the intersection of the south line of Section 16, T-20-S, R-4-E with the west drainage boundary of Bear Canyon tributary to the Tularosa Basin on the drainage divide between the Tularosa Basin and the Rio Grande stream system; thence northerly along the drainage divide between the Tularosa Basin and the Rio Grande stream system to its intersection with the west line of Section 27, T-13-S, R-2-E; thence north along section line to the northwest corner of said Section 27, a point on the existing boundary of the Rio Grande Underground Water Basin; thence northeasterly along the existing Rio Grande Underground Water Basin boundary to the northeast corner of Section 13, T-3-S, R-7-E; thence east from the existing Rio Grande Underground Water Basin boundary along section lines to the northeast corner of Section 16, T-3-S, R-9-E; thence north along section line to the northwest corner of

Section 10, T-3-S, R-9-E, thence east along section line to the northeast corner of said Section 10; thence north along section lines to the northwest corner of Section 35, T-2-S, R-9-E; thence east along section line to the northeast corner of said Section 35; thence north along section lines to the northwest corner of Section 24, T-2-S, R-9-E; thence east along section line to the northeast corner of said Section 24; thence north along range line to the northwest corner of Section 18, T-2-S, R-10-E; thence east along section line to the northeast corner of said Section 18; thence north along section line and Lincoln-Socorro county line to the northwest corner of Section 8, T-2-S, R-10-E; thence east along section lines to the northeast corner of Section 9, T-2-S, R-10-E; thence north along section line to the northwest corner of Section 3, T-2-S, R-10-E; thence east along township line to the northeast corner of Section 2, T-2-S, R-10-E; thence north along section line to the northwest corner of Section 36, T-1-S, R-10-E; thence east along section lines to the northeast corner of Section 31, T-1-S, R-11-E; thence north along section line to the northwest corner of Section 29, T-1-S, R-11-E; thence east along section lines to the intersection with the drainage divide between the Tularosa Basin and the Pecos River stream system on the north line of Section 26, T-1-S, R-11-E; thence southerly along said drainage divide, passing through Tecolote Peak in Section 4, T-3-S, R-12-E; Jicarilla Peak in Section 18, T-5-S, R-13-E; Ancho Peak in Section 26, T-5-S, R-12-E; Patos Peak in Section 33, T-6-S, R-13-E; Indian Divide on Highway 380 near the northeast corner of Section 27, T-8-S, R-13-E; Nogal Peak in Section 28, T-9-S, R-11-E; Sierra Blanca within the Mescalero Apache Indian Reservation in Otero County; and Apache Summit on Highway 70 near the section line between Sections 32 and 33, T-12-S, R-13-E, to the northernmost intersection of said drainage divide with the west line of Section 19, T-15-S, R-13-E, a point on the existing boundary of the Penasco Underground Water Basin; thence southwesterly along the existing boundary of the Penasco Underground Water Basin to its intersection with the drainage boundary between a tributary of San Andres Canyon tributary of the Tularosa Basin, Water Canyon of the Penasco River of the Pecos River stream system and the Sacramento River on the east line of the northwest quarter of Section 27, T-17-S, R-11-E; thence southerly along the drainage divide between the Tularosa Basin and the Sacramento River stream system, passing through Sacramento Peak in Section 33, T-17-S, R-11-E, to its intersection with the south line of Section 29, T-19-S, R-12-E; thence west along section line to the southwest corner of said Section 29; thence south along section line to the southeast corner of Section 31, T-19-S, R-12-E; thence east along section line to the northeast corner of Section 6, T-20-S, R-12-E; thence south along section lines to the southeast corner of Section 30, T-20-S, R-12-E; thence west along section lines to the southwest corner of Section 25, T-20-S, R-11-E; thence south along section line to the southeast corner of Section 35, T-20-S, R-11-E; thence west along township line to the northeast corner of Section 4, T-21-S, R-11-E; thence south along section lines to the southeast corner of Section 21, T-21-S, R-11-E; thence west along section line to the southwest corner of said Section 21; thence south along section line to the southeast corner of Section 29, T-21-S, R-11-E; thence west along section line to the southwest corner of said Section 29; thence south along section line to the southeast corner of Section 31, T-21-S, R-11-E; thence west along township line to the northeast corner of Section 2, T-22-S, R-10-E; thence south along section lines to the southeast corner of Section 11, T-22-S, R-10-E; thence east along section lines to

the northeast corner of Section 18, T-22-S, R-11-E; thence south along section lines to the southeast corner of Section 6, T-23-S, R-11-E; thence west along section line to the southwest corner of said Section 6; thence south along range line to the southeast corner of Section 36, T-24-S, R-10-E; thence west along township line to the northeast corner of Section 1, T-25-S, R-10-E; thence south along range line to the southeast corner of Section 25, T-25-S, R-10-E; thence west along section lines to the southwest corner of Section 26, T-25-S, R-10-E; thence south along section lines to the southeast corner of Section 10, T-26-S, R-10-E; thence west along section lines to the southwest corner of Section 8, T-26-S, R-10-E; thence south along section lines to the intersection with the New Mexico - Texas state line at the southeast corner of Section 31, T-26-S, R-10-E; thence west along the New Mexico - Texas state line to the point of beginning.

B. [TOWNSHIP AND RANGE MAP: See 7-31.1 & 2 Tularosa Underground Water Basin, [PDF file No. 19.027.0057.8-Tularosa.](#)]

[SE 66-1, Article 7-31; Recompiled 12/31/01]

PART 58: ROOSEVELT COUNTY UNDERGROUND WATER BASIN

19.27.58.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.58.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.58.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.58.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.58.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.58.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.58.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.58.8 THE UNDERGROUND WATER BASIN IN ROOSEVELT COUNTY, NEW MEXICO:

A. The following described lands be, and the same hereby are, excluded from the underground water basin in Roosevelt County, New Mexico, previously declared by order of the state engineer on July 18, 1955:

TOWNSHIP	RANGE	SECTION
1 N.	30 E.	19 thru 23, incl.
1 N.	30 E.	26 thru 36, incl.
1 N.	31 E.	31 and 32
1 S.	30 E.	All
1 S.	31 E.	4 thru 11, incl.
1 S.	31 E.	13 thru 36, incl.
1 S.	32 E.	19 thru 21, incl.
1 S.	32 E.	27 thru 34, incl.
2 S.	31 E.	All
2 S.	32 E.	3 thru 9, incl.

2 S.	32 E.	16 thru 20, incl.
2 S.	32 E.	29 thru 32, incl.
3 S.	31 E.	1 thru 12, incl.
3 S.	32 E.	1 thru 12, incl.
3 S.	33 E.	1 thru 12, incl.

B. The area in Roosevelt and Curry counties, more fully described as follows, overlies waters of an underground reservoir, lake or basin having reasonably ascertainable boundaries, the waters of which are public waters and are subject to appropriation for beneficial use in accordance with the statutes and the rules and regulations formulated by the State Engineer:

TOWNSHIP	RANGE	SECTION
1 N.	30 E.	1 thru 18, incl.
1 N.	30 E.	24 and 25
1 N.	31 E.	1 thru 30, incl.
1 N.	31 E.	33 thru 36, incl.
1 N.	32 E.	All
1 N.	33 E.	All
1 N.	34 E.	19 thru 36, incl.
1 N.	35 E.	19 thru 36, incl.
1 N.	36 E.	19 thru 36, incl.
1 N.	37 E.	19 thru 22, incl.
1 N.	37 E.	27 thru 34, incl.
1 S.	31 E.	1 thru 3, incl.
1 S.	31 E.	12
1 S.	32 E.	1 thru 18, incl.

1 S.	32 E.	22 thru 26, incl.
1 S.	32 E.	35 and 36
1 S.	33 E.	All
1 S.	34 E.	All
1 S.	35 E.	All
1 S.	36 E.	All
1 S.	37 E.	3 thru 10, incl.
1 S.	37 E.	15 thru 22, incl.
1 S.	37 E.	27 thru 34, incl.
2 S.	32 E.	1 and 2
2 S.	32 E.	10 thru 15, incl.
2 S.	32 E.	21 thru 28, incl.
2 S.	32 E.	33 thru 36, incl.
2 S.	33 E.	All
2 S.	34 E.	All
2 S.	35 E.	All
2 S.	36 E.	All
2 S.	37 E.	3 thru 10, incl.
2 S.	37 E.	15 thru 22, incl.
2 S.	37 E.	27 thru 34, incl.
3 S.	34 E.	1 thru 12, incl.
3 S.	35 E.	1 thru 12, incl.
3 S.	36 E.	1 thru 12, incl.

3 S. 37 E. 3 thru 10, incl.

[SE 66-1, Order No. 52; Recompiled 12/31/01]

PART 59: VIRDEN VALLEY BASIN

19.27.59.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.59.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.59.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.59.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.59.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.59.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.59.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.59.8 VIRDEN VALLEY BASIN:

A. The lands included within the Virden Valley Basin are as follows:

TOWNSHIP	RANGE	SECTIONS	DATE DECLARED
18 S.	21 W.	31 thru 34	Dec. 5, 1938
19 S.	20 W.	7, 17, 18, 20, 21	Dec. 5, 1938
19 S.	21 W.	1 thru 6, 10 thru 13	Dec. 5, 1938
19 S.	21 W.	7, 8	Oct. 20, 1960

B. [TOWNSHIP AND RANGE MAP: See 7-22.1 Virden Valley Basin, PDF file 19.027.0059.8-Virden.]

[SE 66-1, Article 7-22; Recompiled 12/31/01]

PART 60: LAS ANIMAS CREEK BASIN

19.27.60.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.60.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.60.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.60.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.60.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.60.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.60.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.60.8 LAS ANIMAS CREEK BASIN:

A. The lands declared within the Las Animas Creek Basin on August 9, 1968, are as follows:

TOWNSHIP	RANGE	SECTIONS
14 S.	7 W.	S 1/2 31, S 1/2 32, S 1/2 33, SW 1/4 and E 1/2 34, 35, W 1/2 and SE 1/4 36
14 S.	8 W.	26 thru 29, 32 thru 36
15 S.	5 W.	S 1/2 19, S 1/2 26, 27 thru 29, N 1/2 30, N 1/2 34, N 1/2 35, N 1/2 36 west of Caballo Reservoir boundary established

at the contour of 4204 feet above
mean sea level

15 S.	6 W.	W 1/2 and SE 1/4 6, 7, 8, S 1/2 9, W 1/2 and SE 1/4 14, 15, 16, N 1/2 17, 18, N 1/2 22, NW 1/4 and E 1/2 23, 24, NE 1/4 25
15 S.	7 W.	1 thru 24, N 1/2 29, N 1/2 30
15 S.	8 W.	1 thru 5, 8 thru 17, N 1/2 20, N 1/2 21, NW 1/4 and E 1/2 22, 23, 24

B. The lands included by the extension of September 17, 1982, are as follows: Beginning at the east quarter corner of Section 19, T-15-S, R-8-W, N.M.P.M., a point on the existing boundary of the Las Animas Creek Underground Water Basin; thence south along section line to its intersection with the southern surface drainage boundary of Las Animas Creek; thence northwesterly along said surface drainage boundary, passing through Bald Hill in projected * Section 13, T-15-S, R-9-W, westerly through Granite Peak and southerly to Hillsboro Peak on the surface drainage boundary between the Rio Grande and the Mimbres River, a point on the Grant-Sierra county line and the existing boundary of the Mimbres Underground Water Basin; thence northwesterly along the existing boundary of the Mimbres Underground Water Basin to its intersection with the northern surface drainage boundary of Las Animas Creek in projected *Section 24, T-14-S, R-10-W, near Mimbres Lake; thence easterly along the northern surface drainage boundary of Las Animas Creek, passing through Victoria Park Mountain, to its intersection with the north line of Section 30, T-14-S, R-8-W; thence east along section line to the northeast corner of said Section 30, a point on the existing boundary of the Las Animas Creek Underground Water Basin; thence south along the existing boundary of the Las Animas Creek Underground Water Basin to the point of beginning. *Projected sections are based on meridian and parallel projections of surveyed townships.

C. [TOWNSHIP AND RANGE MAP: See 7-24.1 Las Animas Creek Basin, [PDF file 19.027.0060.8-LasAnimas.](#)]

[SE 66-1, Article 7-24; Recompiled 12/31/01]

PART 61: SALT UNDERGROUND WATER BASIN

19.27.61.1 ISSUING AGENCY:

Office of the New Mexico State Engineer, P.O. Box 25102, Santa Fe, New Mexico 87504-5102, (505) 827-6091.

[19.27.61.1 NMAC – N, 9-13-00]

19.27.61.2 SCOPE:

Anyone proposing to drill a well and/or appropriate ground water in the area DEFINED AS the Salt Underground Water Basin.

[19.27.61.2 NMAC – N, 9-13-00]

19.27.61.3 STATUTORY AUTHORITY:

N.M.S.A. 72-1-1, 72-2-1, 72-2-8, 72-2-9, 72-12-1 and 72-12-3 through 72-12-28 (1997).

[19.27.61.3 NMAC – N, 9-13-00]

19.27.61.4 DURATION:

Permanent

[19.27.61.4 NMAC –N, 9-13-00]

19.27.61.5 EFFECTIVE DATE:

September 13, 2000

[19.27.61.5 NMAC – N, 9-13-00]

19.27.61.6 OBJECTIVE:

The objective of this Special Order No. 156 is to take administrative control of the underground waters within a specific area of the state, to provide for the orderly development of water rights and to protect existing water rights. The waters of the underground streams, channels, artesian basins, reservoirs or lakes having reasonable ascertainable boundaries, are public waters and are subject to appropriation for beneficial use. The Salt Basin is currently not part of a declared underground water basin.

THEREFORE, the area in Otero and Chaves counties comprising approximately 2420 square miles and more fully described hereinafter as the Salt Underground Water Basin is hereby declared , subject to New Mexico statutes and the rules and regulations of the State Engineer.

[19.27.61.6 NMAC – N, 9-13-00]

19.27.61.7 DEFINITIONS:

[RESERVED]

[19.27.61.7 NMAC – N, 9-13-00]

19.27.61.8 STATE ENGINEER SPECIAL ORDER NO. 156 – SALT UNDERGROUND WATER BASIN:

The area included within the Salt Underground Water Basin begins at the southeast corner of Section 31, Township 26 South, Range 10 East (a point where the eastern boundary of the declared Tularosa Underground Water Basin intersects the New Mexico-Texas border); thence north along section lines to the southeast corner of Section 7, Township 26 South, Range 10 East; thence east along section lines to the southeast corner of Section 10, Township 26 South, Range 10 East; thence north along section lines to the northwest corner of Section 35, Township 25 South, Range 10 East; thence east along section lines to the northeast corner of Section 36, Township 25 South, Range 10 East; thence north along the range line to the southwest corner of Section 6, Township 23 South, Range 11 East; thence east along the section line to the southeast corner of Section 6, Township 23 South, Range 11 East; thence north along section lines to the northeast corner of Section 18, Township 22 South, Range 11 East; thence west along section lines to the southwest corner of Section 12, Township 22 South, Range 10 East; thence north along section lines to the northwest corner of Section 1, Township 22 South, Range 10 East; thence east along the township line to the southeast corner of Section 31, Township 21 South, Range 11 East; thence north along the section line to the southeast corner of Section 30, Township 21 South, Range 11 East; thence east along the section line to the southeast corner of Section 29, Township 21 South, Range 11 East; thence north along the section line to the southeast corner of Section 20, Township 21 South, Range 11 East; thence east along the section line to the southeast corner of Section 21, Township 21 South, Range 11 East; thence north along section lines to the northwest corner of Section 3, Township 21 North, Range 11 East; thence east along the township line to the southeast corner of Section 35, Township 20 South, Range 11 East; thence north along the section line to the northeast corner of said Section 35; thence east along section lines to the northeast corner of Section 31, Township 20 South, Range 12 East; thence north along section lines to the southwest corner of Section 29, Township 19 South, Range 12 East; thence east along the section line of said Section 29 to its intersection with the drainage divide between the Tularosa Basin and the Sacramento River stream system; thence northerly along the drainage divide, passing through Sacramento Peak in Section 33, Township 17 South, Range 11 East to the intersection of the drainage boundary between a tributary of San Andres Canyon tributary of the Tularosa Basin, Water Canyon of the Penasco River of the Pecos River stream system and the Sacramento River on the east line for the northwest quarter of Section 27, Township 17 South, Range 11 East (a point where the existing Tularosa Basin intersects the existing Penasco Basin); thence south along the quarter section line to the center of

Section 27, Township 17 South, Range 11 East; thence east along the quarter section line to the west quarter corner of Section 26, Township 17 South, Range 11 East; thence south along the section line to the northwest corner of Section 35, Township 17 South, Range 11 East; thence east along the section line to the north quarter corner of said Section 35; thence south along the quarter section line to the center of said Section 35; thence east along the quarter section line to the west quarter corner of Section 36, Township 17 South, Range 11 East; thence south along the section line to the southwest corner of Section 36, Township 17 South, Range 11 East; thence east along the section line to the north quarter corner of Section 1, Township 18 South, Range 11 East; thence south along the quarter section line to the center of said Section 1; thence east along the quarter section line to the range line between Range 11 East and Range 12 East; thence south along the range line to the southwest corner of Section 6, Township 18 South, Range 12 East; thence east along section lines to the southwest corner of Section 4, Township 18 South, Range 12 East; thence south along section lines to the southwest corner of Section 16, Township 18 South, Range 12 East; thence east along the section line to the quarter corner of Section 21, Township 18 South, Range 12 East; thence south along the quarter section line to the center of said Section 21; thence east along the quarter section line to the west section line of Section 22, Township 18 South, Range 12 East; thence south along section lines to the northeast corner of Section 33, Township 18 South, Range 12 East; thence east along the section line to the northeast corner of Section 34, Township 18 South, Range 12 East; thence south along the section line to the west quarter corner of Section 35, Township 18 South, Range 12 East; thence east along the quarter section line to the east quarter corner of said Section 35; thence north along the section line to the northwest corner of Section 36, Township 18 South, Range 12 East; thence east along the section line to the northeast corner of Section 36, Township 18 South, Range 12 East; thence south along the range line to the southwest corner of Section 31, Township 18 South, Range 13 East; thence east along the township line to the northwest corner of Section 5, Township 19 South, Range 13 East; thence south along section lines to the northwest corner of Section 17, Township 19 South, Range 13 East; thence east along the section line to the quarter corner of said Section 17; thence south along the quarter section line to the center of said Section 17; thence east along the quarter section line to the east quarter corner of said Section 16, Township 19 South, Range 13 East; thence north along the section line to the northeast corner of said Section 16; thence east along the section line to the south quarter corner of Section 10, Township 19 South, Range 13 East; thence north along the quarter section line to the north quarter corner of said Section 10; thence east along the section line to the southwest corner of Section 2, Township 19 South, Range 13 East; thence north along the section line to the west quarter corner of said Section 2; thence east along quarter section lines to the center of Section 1, Township 19 South, Range 13 East; thence north along the quarter section line to the north quarter corner of said Section 1; thence east along the township line to the southeast corner of Section 31, Township 18 South, Range 14 East; thence north along the section line to the west quarter corner of Section 32, Township 18 South, Range 14 East; thence east along the quarter section line to the east quarter corner of said Section 32; thence north along the section line to the northwest corner of Section 33, Township 18 South, Range 14 East; thence east along the section line to the northeast corner of said Section 33; thence south to the west quarter corner of Section

34, Township 18 South, Range 14 East; thence east along the quarter section line to the east quarter corner to said Section 34; thence south along the section line to the southwest corner of Section 35, Township 18 South, Range 14 East; thence east along the township line to the southeast corner of Section 31, Township 18 South, Range 16 East (a point where the existing Penasco Basin and the existing Roswell Basin intersect); thence south along the section line to the southwest corner of Section 5, Township 19 South, Range 16 East; thence east along the section line to the northeast corner of Section 8, Township 19 South, Range 16 East; thence south along the section line to the northeast corner of Section 17, Township 19 South, Range 16 East; thence east along the section line to the northeast corner of Section 16, Township 19 South, Range 16 East; thence south along the section line to the southeast corner of said Section 16; thence east along section lines to the southwest corner of Section 13, Township 19 South, Range 17 East; thence south along the section line to the southwest corner of Section 24, Township 19 South, Range 17 East; thence east along section lines to the southeast corner of Section 19, Township 19 South, Range 18 East; thence south along section lines to the southwest corner of Section 20, Township 21 South, Range 18 East; thence east along the section line to the southwest corner of Section 21, Township 21 South, Range 18 East; thence south along the section line to the southwest corner of Section 28, Township 21 South, Range 18 East; thence east along the section line to the southwest corner of Section 27, Township 21 South, Range 18 East; thence south along the section line to the southwest corner of Section 34, Township 21 South, Range 18 East; thence east along the township line to the northwest corner of Section 6, Township 22 South, Range 19 East; thence south along the range line to the southwest corner of said Section 6; thence east along the section line to the southeast corner of said Section 6; thence south along section lines to the northeast corner of Section 19, Township 22 South, Range 19 East; thence east along the section line to the northeast corner of Section 20, Township 22 South, Range 19 East; thence south along the section line to the northeast corner of Section 29, Township 22 South, Range 19 East; thence east along the section line to the northeast corner of Section 28, Township 22 South, Range 19 East; thence south along the section line to the northeast corner of Section 33, Township 22 South, Range 19 East; thence east along the section line to the northeast corner of Section 34, Township 22 South, Range 19 East; thence south along section lines to the southwest corner of Section 2, Township 23 South, Range 19 East; thence east along the section line to the southwest corner of Section 1, Township 23 South, Range 19 East; thence south along the section line to the southwest corner of Section 12, Township 23 South, Range 19 East; thence east along the section line to the range line between Ranges 19 East and 20 East; thence south along the range line to the southwest corner of Section 18, Township 23 South, Range 20 East; thence east along the section line to the southeast corner of said Section 18; thence south along the section line to the southwest corner of Section 20, Township 23 South, Range 20 East; thence east along the section line to the northwest corner of Section 28, Township 23 South, Range 20 East; thence south along the section line to the southwest corner of said Section 28; thence east along the section line to the northeast corner of Section 33, Township 23 South, Range 20 East; thence south along the section line to the southeast corner of said Section 33; thence east along the township line to the northeast corner of Section 3, Township 24 South, Range 20 East; thence south along section lines to the northeast corner of Section

15, Township 24 South, Range 20 East; thence east along the section line to the northeast corner of Section 14, Township 24 South, Range 20 East; thence south along section lines to the southwest corner of Section 36, Township 24 South, Range 20 East; thence east along the township line to the northwest corner of Section 6, Township 25 South, Range 21 East; thence south along the range line to the southwest corner of said Section 6; thence east along section lines to the southeast corner of Section 5, Township 25 South, Range 21 East; thence south along section lines to the southeast corner of Section 32, Township 25 South, Range 21 East (a point where the existing Roswell Basin and the existing Carlsbad Basin intersect); thence south along section lines to the southeast corner of Section 32, Township 26 South, Range 21 East (a point where the existing Carlsbad Basin intersects the border between New Mexico and Texas); thence west along the New Mexico-Texas border to the southeast corner of Section 31, Township 26 South, Range 10 East (the point of beginning where the existing Tularosa Basin intersects the border between New Mexico and Texas).

[19.27.61.8 – N, 9-13-00]

PART 62: PLAYAS WATER BASIN

19.27.62.1 ISSUING AGENCY:

Office of State Engineer.

[Recompiled 12/31/01]

19.27.62.2 SCOPE:

[RESERVED]

[Recompiled 12/31/01]

19.27.62.3 STATUTORY AUTHORITY:

Adopted pursuant to the authority of Sections 72-2-8, 72-2-12 and 72-13-4, New Mexico Statutes Annotated, 1978.

[Recompiled 12/31/01]

19.27.62.4 DURATION:

[Permanent]

[Recompiled 12/31/01]

19.27.62.5 EFFECTIVE DATE:

November 1, 1966

[Recompiled 12/31/01]

19.27.62.6 OBJECTIVE:

This Rule is formulated for the purpose of carrying out the provisions of the statutes governing underground waters and describing the present extent of all declared underground water basins in New Mexico.

[Recompiled 12/31/01]

19.27.62.7 DEFINITIONS:

[RESERVED]

[Recompiled 12/31/01]

19.27.62.8 PLAYAS WATER BASIN:

A. The lands declared within the Playas Basin on February 23, 1956, are as follows:

TOWNSHIP	RANGE	SECTIONS
26 S.	17 W.	All
26 S.	18 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36
27 S.	17 W.	All
27 S.	18 W.	1 thru 3, 10 thru 15, 22 thru 27, 34 thru 36
28 S.	17 W.	All
28 S.	18 W.	1, 2, 11 thru 14, 23 thru 26, 35, 36

29 S.	16 W.	5 thru 8, 17 thru 21, 28 thru 34
29 S.	17 W.	All
29 S.	18 W.	1, 2, 11 thru 13, 24, 25, 36
30 S.	16 W.	All
30 S.	17 W.	All
31 S.	16 W.	All
31 S.	17 W.	All
32 S.	16 W.	All
32 S.	17 W.	All
33 S.	16 W.	2 thru 11, 14 thru 23, 26 thru 35
33 S.	17 W.	1 thru 28, 33 thru 36
34 S.	16 W.	5 thru 8, 17 thru 20
34 S.	17 W.	1 thru 4, 9 thru 16, 21 thru 24

B. [TOWNSHIPS AND RANGE MAP: See 7-17.1 Playas Water Basin, [PDF file 19.027.0062.8-Playas.](#)]

[SE 66-1, Article 7-17; Recompiled 12/31/01]

PART 63: DECLARATION OF THE CLAYTON UNDERGROUND WATER BASIN AND EXTENSION OF THE CANADIAN RIVER UNDERGROUND WATER BASIN

19.27.63.1 ISSUING AGENCY:

Office of the State Engineer.

[19.27.63.1 NMAC - N/E, 9/23/2005]

19.27.63.2 SCOPE:

The appropriation and use of underground water within the Clayton underground water basin and the extended area of the Canadian river underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.63.2 NMAC - N/E, 9/23/2005]

19.27.63.3 STATUTORY AUTHORITY:

Chapter 72, Article 12, NMSA 1978. Section 72-1-1 NMSA 1978 provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA 1978 gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA 1978 gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA 1978 gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts.

[19.27.63.3 NMAC - N/E, 9/23/2005]

19.27.63.4 DURATION:

Permanent.

[19.27.63.4 NMAC - N/E, 9/23/2005]

19.27.63.5 EFFECTIVE DATE:

September 23, 2005, unless a later date is cited at the end of a section.

[19.27.63.5 NMAC - N/E, 9/23/2005]

19.27.63.6 OBJECTIVE:

To establish administrative control over the appropriation and use of underground water within the Clayton underground water basin and the extended area of the Canadian river underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.63.6 NMAC - N/E, 9/23/2005]

19.27.63.7 DEFINITIONS:

[RESERVED]

19.27.63.8 BOUNDARY DESCRIPTION OF THE CLAYTON UNDERGROUND WATER BASIN:

Beginning at the point where the eastern topographic drainage boundary of the Canadian river basin intersects the New Mexico and Colorado state line, being a point on the north line of section 21, township 32 north, range 25 east, NMPM, near state line mile corner 68; thence southerly along the east topographic drainage boundary of the Canadian river to the point common to the Carrizozo creek drainage boundary and the Ute creek drainage boundary near the northeast corner of section 16, township 27 north, range 26 east, NMPM; thence south along section line to the southeast corner of said section 16; thence easterly along the drainage boundary between Carrizozo creek and Palo Blanco creek to the southeast corner of section 14, township 27 north, range 26 east, NMPM; thence north along section line to the northeast corner of said section 14; thence east to the northeast corner of section 16, township 27 north, range 27 east, NMPM; thence south to the southeast corner of said section 16; thence east to the southeast corner of section 14, township 27 north, range 27 east, NMPM; thence south to the southeast corner of section 23, township 27 north, range 27 east, NMPM; thence east to the northeast corner of section 28, township 27 north, range 28 east, NMPM; thence south along section line west of Lonesome mountain to the southeast corner of said section 28; thence east to the northeast corner of section 36, township 27 north, range 28 east, NMPM; thence south to the southeast corner of said section 36; thence east to the northeast corner of section 6, township 26 north, range 29 east, NMPM; thence south to the southeast corner of section 7, township 26 north, range 29 east, NMPM; thence west to the southwest corner of said section 7; thence south along township line to the southwest corner of section 18, township 25 north, range 29 east, NMPM; thence east to the northwest corner of section 21, township 25 north, range 29 east, NMPM; thence south through the Don Carlos hills to the southwest corner of said section 21; thence east to the northwest corner of section 26, township 25 north, range 29 east, NMPM; thence south to the southwest corner of said section 26; thence east to the southeast corner of said section 26; thence south to northwest corner of section 13, township 24 north, range 29 east, NMPM; thence east to the northeast corner of said section 13; thence south along range line to the northwest corner of section 31, township 24 north, range 30 east, NMPM; thence east to the northeast corner of said section 31; thence south to the southeast corner of said section 31; thence east to the northeast corner of section 5, township 23 north, range 30 east, NMPM; thence south to the northwest corner of section 4, township 22 north, range 30 east, NMPM; thence east to the northeast corner of said section 4; thence south to the northwest corner of section 15, township 22 north, range 30 east, NMPM; thence east to the northwest corner of section 13, township 22 north, range 30 east, NMPM; thence south to the southwest corner of said section 13; thence east to the southeast corner of said section 13; thence

in a southeasterly direction diagonally across sections 19, 29, and 33 township 22 north, range 31 east to the Union and Harding county line being the line between townships 21 north and 22 north, at the northwest corner of section 3, township 21 north, range 31 east, NMPM; thence east along said county line to the northeast corner of section 2, township 21 north, range 31 east, NMPM; thence south to the southeast corner of said section 2; thence east to the northwest corner of section 12, township 21 north, range 32 east, NMPM; thence south to the northwest corner of section 24, township 21 north, range 32 east, NMPM; thence east to the northeast corner of said section 24; thence south to the northwest corner of section 31, township 21 north, range 33 east, NMPM; thence east to the northeast corner of said section 31; thence south to the southeast corner of said section 31; thence east along township line to the northwest corner of section 4, township 20 north, range 33 east, NMPM; thence in a southeasterly direction diagonally across sections 4, 10, 14 and 24, township 20 north, range 33 east to the northwest corner of section 30, township 20 north, range 33 east, NMPM; thence south along Harding and Union county line, being the line between ranges 33 east and 34 east, to the northwest corner of section 18, township 19 north, range 34 east, NMPM; thence east to the northeast corner of said section 18; thence south to the northeast corner of section 18, township 18 north, range 34 east, NMPM; thence west to the northwest corner of said section 18; thence south along Harding and Union county line and Harding and Quay county line to the southwest corner of section 6, township 17 north, range 34 east, NMPM; thence east to the northwest corner of section 10, township 17 north, range 34 east, NMPM; thence in a southeasterly direction diagonally across sections 10 and 14, township 17 north, range 34 east, NMPM, to the northwest corner of section 24, township 17 north, range 34 east, NMPM; thence east to the northeast corner of section 19, township 17 north, range 35 east, NMPM; thence to the southeast corner of said section 19; thence east to the northwest corner of section 26, township 17 north, range 35 east, NMPM; thence south to the southwest corner of said section 26; thence east to the southeast corner of said section 26 near Kerlin hill; thence south to the southwest corner of section 36, township 17 north, range 35 east, NMPM; thence east along township line to the northwest corner of section 6, township 16 north, range 36 east, NMPM; thence south to the northwest corner of section 7, township 16 north, range 36 east, NMPM; thence east to the northeast corner of said section 7; thence south to the northwest corner of section 29, township 16 north, range 36 east, NMPM; thence east to the northeast corner of said section 29; thence south to the northwest corner of section 4, township 15 north, range 36 east, NMPM; thence east to the northeast corner of said section 4; thence south to the northwest corner of section 15, township 15 north, range 36 east, NMPM; thence in a southeasterly direction diagonally across sections 15 and 23 in township 15 north, range 36 east, NMPM, to the northwest corner of section 25, township 15 north, range 36 east, NMPM; thence south to the northwest corner of section 1, township 14 north, range 36 east, NMPM; thence in a southeasterly direction diagonally across section 1, township 14 north, range 36 east, NMPM, and section 7, township 14 north, range 37 east, NMPM, straight through the northwest corner of section 17, township 14 north, range 37 east, NMPM, to a point on the New Mexico and Texas state line; thence north along said state line to the northeast corner of the state of New Mexico; thence west along the New Mexico and Colorado state line to the eastern topographic drainage boundary of the Canadian river basin

near state line mile corner 68, being a point on the north line of section 21, township 32 north, range 25 east, NMPM, being the point of origin.

[19.27.63.8 NMAC - N/E, 9/23/2005]

19.27.63.9 BOUNDARY DESCRIPTION OF THE EXTENDED AREA OF THE CANADIAN RIVER UNDERGROUND WATER BASIN:

Beginning at the southeast corner of section 3, township 8 north, range 24 east, a point on the existing boundary of the Fort Sumner underground water basin; thence west along section lines to the southwest corner of section 5, township 8 north, range 24 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence north along section line to the northwest corner of said section 5, a point on the existing boundary of the Fort Sumner underground water basin; thence east along section line to the southwest corner of section 32, township 9 north, range 24 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence north along section line to the northwest corner of said section 32, a point on the existing boundary of the Fort Sumner underground water basin; thence west along section line to the southwest corner of section 30, township 9 north, range 24 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence north along range line to the northwest corner of section 19, township 9 north, range 24 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence west along section line to the southwest corner of section 13, township 9 north, range 23 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence north along section lines to the northwest corner of projected section 1, township 9 north, range 23 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence west along projected section lines to the southwest corner of projected section 31, township 10 north, range 23 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence north along projected range line to the southwest corner of projected section 18, township 10 north, range 23 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence west along projected section lines to the intersection with longitude 104°35' west, a point on the existing boundary of the Fort Sumner and upper Pecos underground water basins; thence north along longitude 104°35' west to the intersection with the Guadalupe - San Miguel county line, a point on the existing boundary of the upper Pecos underground water basin; thence west along the Guadalupe-San Miguel county line to the intersection with longitude 104°50' west, a point on the existing boundary of the upper Pecos underground water basin; thence north along longitude 104°50' west to the intersection with latitude 35°20' north, a point on the existing boundary of the upper Pecos underground water basin; thence west along latitude 35°20' north to the intersection with longitude 104°53' west, a point on the existing boundary of the upper Pecos underground water basin; thence north along longitude 104°53' west to the intersection with the northern boundary of the Antonio Ortiz grant, a point on the existing boundary of the upper Pecos underground water basin; thence west along the northern boundary of the Antonio Ortiz grant to the intersection with longitude 105°00' west, a

point on the existing boundary of the upper Pecos underground water basin; thence north along longitude 105°00' west to the intersection with latitude 35°40' north, a point on the existing boundary of the upper Pecos and Canadian river underground water basins, thence east along latitude 35°40' north to the intersection with the Mora grant boundary, a point on the existing boundary of the Canadian river underground water basin; thence south along the Mora grant Boundary to the northwest corner of section 5, township 16 north, range 21 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence east along township lines to the southwest corner of section 34, township 17 north, range 22 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence north along section line to the northwest corner of said section 34, a point on the existing boundary of the Canadian river underground water basin; thence east along section line to the northeast corner of said section 34, a point on the existing boundary of the Canadian river underground water basin; thence north along section line to the northwest corner of section 26, township 17 north, range 22 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence east along section lines to the northeast corner of section 25, township 17 north, range 22 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence north along range line to the northwest corner of section 19, township 17 north, range 23 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence east along section lines to the northeast corner of section 21, township 17 north, range 23 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence north along section lines to the northwest corner of section 10, township 17 north, range 23 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence east along section lines to the northeast corner of section 12, township 17 north, range 25 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence north along range line to the northwest corner of section 31, township 18 north, range 26 east, NMPM, a point on the existing boundary of the Canadian river underground water basin; thence east along section lines to the northeast corner of section 32, township 18 north, range 26 east, NMPM; thence south along section lines to the northeast corner of section 8, township 17 north, range 26 east, NMPM; thence east along section lines to the intersection with longitude 104°09'45" west, a point on the north boundary of section 10, township 17 north, range 26 east, NMPM; thence south along longitude 104°09'45" west to the intersection with latitude 35°28'45" north, a point in the Pablo Montoya grant; thence west along latitude 35°28'45" north to the intersection with longitude 104°10'30" west, a point in the Pablo Montoya grant; thence south along longitude 104°10'30" west to the intersection with latitude 35°21'30" north, a point in the Pablo Montoya grant; thence west along latitude 35°21'30" north to the intersection with longitude 104°12'30" west, a point in the Pablo Montoya grant; thence south along longitude 104°12'30" west to the intersection with the north boundary of section 29, township 12 north, range 26 east, NMPM; thence east along section line to the northeast corner of said section 29; thence south along section lines to the southeast corner of section 17, township 11 north, range 26 east, NMPM; thence west along section line to the southeast corner of section 18, township 11 north, range 26 east, NMPM; thence south along section line to the southeast corner of section 19,

township 11 north, range 26 east, NMPM; thence west along section line to the southeast corner of section 23, township 11 north, range 25 east, NMPM; thence south along section line to the southeast corner of section 26, township 11 north, range 25 east, NMPM; thence west along section line to the southeast corner of section 27, township 11 north, range 25 east, NMPM; , thence south along section line to the southeast corner of section 34, township 11 north, range 25 east, NMPM; thence west along township line to the southeast corner of section 33, township 11 north, range 25 east, NMPM; thence south along section line to the southeast corner of section 4, township 10 north, range 25 east, NMPM; thence west along section line to the southeast corner of section 5, township 10 north, range 25 east, NMPM; thence south along section line to the southeast corner of section 8, township 10 north, range.25 east, NMPM; thence west along section lines to the southeast corner of section 12, township 10 north, range 24 east, NMPM; thence south along range line to the southeast corner of section 24, township 10 north, range 24 east, NMPM; thence west along section line to the southeast corner of section 23, township 10 north, range 24 east, NMPM; thence south along section lines to the southeast corner of section 35, township 10 north, range 24 east, NMPM; thence west along township line to the southeast corner of section 34, township 10 north, range 24 east, NMPM; thence south along section line to the southeast corner of section 3, township 9 north, range 24 east, NMPM; thence west along section line to the southeast corner of section 4, township 9 north, range 24 east, NMPM; thence south along section lines to the southeast corner of section 21, township 9 north, range 24 east, NMPM; thence east along section line to the northeast corner of section 27, township 9 north, range 24 east, NMPM; thence south along section lines to the southeast corner of section 34, township 9 north, range 24 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence west along township line to the northeast corner of section 3, township 8 north, range 24 east, NMPM, a point on the existing boundary of the Fort Sumner underground water basin; thence south along section line to the southeast corner of said section 3, a point on the existing boundary of the Fort Sumner underground water basin, being the point of origin.

[19.27.63.9 NMAC - N/E, 9/23/2005]

PART 64: EXTENSION OF THE TULAROSA UNDERGROUND WATER BASIN

19.27.64.1 ISSUING AGENCY:

Office of the State Engineer.

[19.27.64.1 NMAC - N/E, 9/23/2005]

19.27.64.2 SCOPE:

The appropriation and use of underground water within the extended area of the Tularosa underground water basin, an area declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.64.2 NMAC - N/E, 9/23/2005]

19.27.64.3 STATUTORY AUTHORITY:

Chapter 72, Article 12, NMSA 1978. Section 72-1-1 NMSA 1978 provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA 1978 gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA 1978 gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA 1978 gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts.

[19.27.64.3 NMAC - N/E, 9/23/2005]

19.27.64.4 DURATION:

Permanent.

[19.27.64.4 NMAC - N/E, 9/23/2005]

19.27.64.5 EFFECTIVE DATE:

September 23, 2005, unless a later date is cited at the end of a section.

[19.27.64.5 NMAC - N/E, 9/23/2005]

19.27.64.6 OBJECTIVE:

To establish administrative control over the appropriation and use of underground water within the extended area of the Tularosa underground water basin, an area declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.64.6 NMAC - N/E, 9/23/2005]

19.27.64.7 DEFINITIONS:

[RESERVED]

19.27.64.8 BOUNDARY DESCRIPTION OF THE EXTENDED AREA OF THE TULAROSA UNDERGROUND WATER BASIN:

Beginning at the southeast corner of section 9, township 3 south, range 9 east, NMPM; thence west along section lines to the southeast corner of section 7, township 3 south, range 8 east, NMPM; thence north along range lines to the northwest corner of section 19, township 2 south, range 8 east, NMPM; thence west along section line to the southwest corner of section 13, township 2 south, range 7 east, NMPM; thence north along section line to the northwest corner of section 1, township 1 south, range 7 east, NMPM; thence east along section line to the southwest corner of section 36, township 1 north, range 7 east, NMPM; thence north along section lines to the northwest corner of section 24, township 1 north, range 7 east, NMPM; thence west along section lines to the southwest corner of section 15, township 1 north, range 7 east, NMPM; thence north along section lines to the northwest corner of section 10, township 1 north, range 7 east, NMPM; thence west along section line to the southwest corner of section 4, township 1 north, range 7 east, NMPM; thence north along section lines to the northwest corner of section 33, township 2 north, range 7 east, NMPM; thence west along section lines to the southwest corner of section 30, township 2 north, range 7 east, NMPM; thence north along range line to the northwest corner of section 6, township 2 north, range 7 east, NMPM; thence east along township line to the northeast corner of section 5, township 2 north, range 7 east, NMPM; thence north along section lines to the northwest corner of section 4, township 3 north, range 7 east, NMPM; thence east along township lines to the northeast corner of section 1, township 3 north, range 8 east, NMPM; thence south along range line to the southeast corner of section 12, township 3 north, range 8 east, NMPM; thence east along section lines to the northeast corner of section 14, township 3 north, range 9 east, NMPM; thence south along section line to the southeast corner of section 14, township 3 north, range 9 east, NMPM; thence east along section line to the northeast corner of section 24 township 3 north, range 9 east, NMPM; thence south along range line to the southeast corner of section 36, township 3 north, range 9 east, NMPM; thence east along township line to the northeast corner of section 5, township 2 north, range 10 east, NMPM; thence south along section lines to the southeast corner of section 8, township 2 north, range 10 east, NMPM; thence east along section lines to the northeast corner of section 14, township 2 north, range 10 east, NMPM; thence south along section lines to the southeast corner of section 23, township 2 north, range 10 east, NMPM; thence east along section lines to the northeast corner of section 30, township 2 north, range 11 east, NMPM; thence south along section lines to the southeast corner of section 31, township 2 north, range 11 east, NMPM; thence east along township line to the northeast corner of section 5, township 1 north, range 11 east, NMPM; thence south along section line to the southeast corner of section 5, township 1 north, range 11 east, NMPM; thence east along section line approximately 0.5 mile to a point in the middle of the northern boundary line of section 9, township 1 north, range 11 east, NMPM; thence due south approximately one mile to a point in the middle of the southern boundary line of section 9, township 1 north, range 11 east, NMPM; thence east along section line to the northeast corner of section 16, township 1 north, range 11 east, NMPM; thence south along section lines to the southeast corner of section 9, township 1 south, range 11 east, NMPM; thence east along section line to the

northeast corner of section 15, township 1 south, range 11 east, NMPM; thence south along section lines to the southeast corner of section 22, township 1 south, range 11 east, NMPM; thence west along section lines to the southwest corner of section 20, township 1 south, range 11 east, NMPM; thence south along section line to the southeast corner of section 30, township 1 south, range 11 east, NMPM; thence west along section lines to the southwest corner of section 25, township 1 south, range 10 east, NMPM; thence south along section line to the southeast corner of 35, township 1 south, range 10 east, NMPM; thence west along township line to the southwest corner of section 34, township 1 south, range 10 east, NMPM; thence south along section line to the southeast corner of section 4, township 2 south, range 10 east, NMPM; thence west along section lines to the southwest corner of section 5, township 2 south, range 10 east, NMPM; thence south along section line to the southeast corner of section 7, township 2 south, range 10 east, NMPM; thence west along section line to the southwest corner of section 7, township 2 south, range 10 east, NMPM; thence south along section line to the southeast corner of section 13, township 2 south, range 9 east, NMPM; thence west along section line to the southwest corner of section 13, township 2 south, range 9 east, NMPM; thence south along section lines to the southeast corner of section 26, township 2 south, range 9 east, NMPM; thence west along section line to the southwest corner of section 26, township 2 south, range 9 east, NMPM; thence south along section lines to the southeast corner of section 3, township 3 south, range 9 east, NMPM; thence west along section line to the southwest corner of section 3, township 3 south, range 9 east, NMPM; thence south along section line to the southeast corner of section 9, township 3 south, range 9 east, NMPM; being the point of origin.

[19.27.64.8 NMAC - N/E, 9/23/2005]

[Tularosa basin extension map](#)

PART 65: DECLARATION OF THE MOUNT RILEY, HATCHITA, CLOVERDALE, AND YAQUI UNDERGROUND WATER BASINS

19.27.65.1 ISSUING AGENCY:

Office of the State Engineer.

[19.27.65.1 NMAC - N/E, 9/23/2005]

19.27.65.2 SCOPE:

The appropriation and use of underground water within the Mount Riley underground water basin, the Hatchita underground water basin, the Cloverdale underground water basin, and the Yaqui underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.65.2 NMAC - N/E, 9/23/2005]

19.27.65.3 STATUTORY AUTHORITY:

Chapter 72, Article 12, NMSA 1978. Section 72-1-1 NMSA 1978 provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA 1978 gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA 1978 gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA 1978 gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts.

[19.27.65.3 NMAC - N/E, 9/23/2005]

19.27.65.4 DURATION:

Permanent.

[19.27.65.4 NMAC - N/E, 9/23/2005]

19.27.65.5 EFFECTIVE DATE:

September 23, 2005, unless a later date is cited at the end of a section.

[19.27.65.5 NMAC - N/E, 9/23/2005]

19.27.65.6 OBJECTIVE:

To establish administrative control over the appropriation and use of underground water within the Mount Riley underground water basin, the Hatchita underground water basin, the Cloverdale underground water basin, and the Yaqui underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.65.6 NMAC - N/E, 9/23/2005]

19.27.65.7 DEFINITIONS:

[RESERVED]

19.27.65.8 BOUNDARY DESCRIPTION OF THE MOUNT RILEY UNDERGROUND WATER BASIN:

Beginning at the southeast corner of section 13, township 29 south, range 2 west, NMPM, a point on the border between the United States of America and Mexico; thence

west along said international border to the southwest corner of section 18, township 29 south, range 4 west, NMPM; thence north along range line to the northwest corner of section 7, township 29 south, range 4 west, NMPM; thence east along section line to the northeast corner of section 7, township 29 south, range 4 west, NMPM; thence north along section line approximately 0.5 mile to a point in the middle of the western boundary line of section 5, township 29 south, range 4 west, NMPM; thence east approximately 1.0 mile to a point in the middle of the eastern boundary line of section 5, township 29 south, range 4 west, NMPM; thence north along section line to the northeast corner of section 5, township 29 south, range 4 west, NMPM; thence east along township line to the southwest corner of section 35, township 28 south, range 4 west, NMPM; thence north along section lines to the northwest corner of section 14, township 28 south, range 4 west, NMPM; thence east along section line to the northeast corner of section 14, township 28 south, range 4 west, NMPM; thence north along section lines to the northwest corner of section 36, township 27 south, range 4 west, NMPM; thence east along section line to the northeast corner of section 36, township 27 south, range 4 west, NMPM; thence north along range line to the northwest corner of section 30, township 27 south, range 3 west, NMPM; thence east along section lines to the northeast corner of section 27, township 27 south, range 2 west, NMPM; thence south along section lines to the southeast corner of section 10, township 28 south, range 2 west, NMPM; thence east along section line to the northeast corner of section 14, township 28 south, range 2 west, NMPM; thence south along section lines to the southeast corner of section 26, township 28 south, range 2 west, NMPM; thence east along section line to the northeast corner of section 36, township 28 south, range 2 west, NMPM; thence south along range line to the southeast corner of section 13, township 29 south, range 2 west, NMPM, a point on the border between the United States of America and Mexico, being the point of origin.

[19.27.65.8 NMAC - N/E, 9/23/2005]

19.27.65.9 BOUNDARY DESCRIPTION OF THE HATCHITA UNDERGROUND WATER BASIN:

Beginning at the southeast corner of section 15, township 29 south, range 11 west, NMPM, a point on the border between the United States of America and Mexico; thence west along said international border to the southwest corner of section 18, township 29 south, range 13 west, NMPM; thence south along said international border to the southeast corner of section 24, township 34 south, range 14 west, NMPM; thence west along said international border to the southwest corner of section 21, township 34 south, range 16 west, NMPM; thence north along section lines to the northwest corner of section 4, township 34 south, range 16 west, NMPM; thence east along township line to the southwest corner of section 36, township 33 south, range 16 west, NMPM; thence north along section lines to the northwest corner of section 1, township 33 south, range 16 west, NMPM; thence east along section line to the northeast corner of section 1, township 33 south, range 16 west, NMPM; thence north along range lines to the southeast corner of section 36, township 29 south, range 16 west, NMPM; thence west along township line to the southwest corner of section 35, township 29 south, range 16

west, NMPM; thence north along section line to the northwest corner of section 35, township 29 south, range 16 west, NMPM; thence west along section line to the southwest corner of section 27, township 29 south, range 16 west, NMPM; thence north along section lines to the northwest corner of section 22, township 29 south, range 16 west, NMPM; thence west along section line to the southwest corner of section 16, township 29 south, range 16 west, NMPM; thence north along section lines to the northwest corner of section 4, township 29 south, range 16 west, NMPM; thence west along township line to the southwest corner of section 31, township 28 south, range 16 west, NMPM; thence north along range lines to the northwest corner of section 6, township 27 south, range 16 west, NMPM; thence east along township lines to the northeast corner of section 5, township 27 south, range 13 west, NMPM; thence south along section lines to the southeast corner of section 8, township 27 south, range 13 west, NMPM; thence east along section lines to the northeast corner of section 15, township 27 south, range 13 west, NMPM; thence south along section line to the southeast corner of section 15, township 27 south, range 13 west, NMPM; thence east along section lines to the northeast corner of section 24, township 27 south, range 13 west, NMPM; thence south along range line to the southeast corner of section 24, township 27 south, range 13 west, NMPM; thence east along section line to the northeast corner of section 30, township 27 south, range 12 west, NMPM; thence south along section line to the southeast corner of section 30, township 27 south, range 12 west, NMPM; thence east along section line to the northeast corner of section 32, township 27 south, range 12 west, NMPM; thence south along section line to the southeast corner of section 32, township 27 south, range 12 west, NMPM; thence east along township line to the northeast corner of section 3, township 28 south, range 12 west, NMPM; thence south along section lines to the southeast corner of section 22, township 28 south, range 12 west, NMPM; thence east along section line to the northeast corner of section 26, township 28 south, range 12 west, NMPM; thence south along section line to the southeast corner of section 26, township 28 south, range 12 west, NMPM; thence east along section lines to the northeast corner of section 31, township 28 south, range 11 west, NMPM; thence south along section line to the southeast corner of section 31, township 28 south, range 11 west, NMPM; thence east along township line to the northeast corner of section 4, township 29 south, range 11 west, NMPM; thence south along section line to the southeast corner of section 4, township 29 south, range 11 west, NMPM; thence east along section line to the northeast corner of section 10, township 29 south, range 11 west, NMPM; thence south along section line to the southeast corner of section 15, township 29 south, range 11 west, NMPM, a point on the border between the United States of America and Mexico, being the point of origin.

[19.27.65.9 NMAC - N/E, 9/23/2005]

19.27.65.10 BOUNDARY DESCRIPTION OF THE CLOVERDALE UNDERGROUND WATER BASIN:

Beginning at the southern boundary of section 22, township 34 south, range 19 west, NMPM, at the point of the intersection of the of the international border between the

United States and Mexico with the drainage divide between the Playas valley basin and the Animas river stream system; thence west along said international border approximately 13.5 miles to the intersection of the international border with the of drainage divide between the Cloverdale basin and the Yaqui river stream system; thence northerly along the drainage divide between the Cloverdale basin and the Yaqui river stream system to its intersection with the northwest corner of section 32, township 32 south, range 21 west, NMPM; thence due east to the mid-point of the northern boundary of section 32, township 32 south, range 21 west, NMPM; thence south one mile to the mid-point of the southern boundary of section 32, township 32 south, range 21 west, NMPM; thence east to the northeast corner of section 5, township 33 south, range 21 west, NMPM; thence south to the mid-point of the eastern boundary of section 5, township 33 south, range 21 west, NMPM; thence east to the mid-point of the eastern boundary of section 4, township 33 south, range 21 west, NMPM; thence south to the southeast corner of section 4, township 33 south, range 21 west, NMPM; thence east along section line to the northeast corner of section 10, township 33 south, range 21 west, NMPM; thence south along section line to the mid-point of the eastern boundary of section 10, township 33 south, range 21 west, NMPM; thence east to the mid-point of the eastern boundary of section 11, township 33 south, range 21 west, NMPM; thence north along section lines to the mid-point of the western boundary of section 36, township 32 south, range 21 west, NMPM; thence east to the mid-point of the eastern boundary of section 31, township 32 south, range 20 west, NMPM; thence south to the southeast corner of section 31, township 32 south, range 20 west, NMPM; thence east along township line to the northeast corner of section 2, township 33 south, range 20 west, NMPM; thence north along section line to the mid-point of the western boundary of section 36, township 32 south, range 20 west, NMPM; thence east to the mid-point of the eastern boundary of section 31, township 33 south, range 20 west, NMPM; thence south along section line to the southeast corner of section 31, township 32 south, range 19 west, NMPM; thence east along township line to the intersection with the drainage divide between the Playas valley basin and the Animas river stream system, thence southerly along said drainage divide to the intersection of the of the drainage divide with the international border between the United States and Mexico, being the point of origin.

[19.27.65.10 NMAC - N/E, 9/23/2005]

19.27.65.11 BOUNDARY DESCRIPTION OF THE YAQUI UNDERGROUND WATER BASIN:

Beginning at the southern boundary of section 21, township 34 south, range 21 west, NMPM, at the point of the intersection of the of the international border between the United States and Mexico with the drainage divide between the Cloverdale basin and the Yaqui river stream system; thence west along said international border approximately 3.7 miles to the intersection of the of the international border with the of state line between New Mexico and Arizona; thence north on the New Mexico - Arizona state line a distance of approximately 10.7 miles to its intersection with the northern boundary of projected section 35, township 32 south, range 22 west, NMPM; thence due east approximately 1.5 miles along projected section lines to the intersection with

the drainage divide between the Cloverdale basin and the Yaqui river stream system; thence southeasterly along said drainage divide to the intersection with the international border between the United States and Mexico, a point on the southern boundary of section 21, township 34 south, range 21 west, NMPM, being the point of origin

[19.27.65.11 NMAC - N/E, 9/23/2005]

PART 66: EXTENSION OF THE LORDSBURG, NUTT-HOCKETT, ANIMAS, AND PLAYAS UNDERGROUND WATER BASINS

19.27.66.1 ISSUING AGENCY:

Office of the State Engineer.

[19.27.66.1 NMAC - N/E, 9/23/2005]

19.27.66.2 SCOPE:

The appropriation and use of underground water within the extended areas of the Lordsburg underground water basin, the extended areas of the Nutt-Hockett underground water basin, the extended areas of the Animas underground water basin, and the extended area of the Playas underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.66.2 NMAC - N/E, 9/23/2005]

19.27.66.3 STATUTORY AUTHORITY:

Chapter 72, Article 12, NMSA 1978. Section 72-1-1 NMSA 1978 provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA 1978 gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA 1978 gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA 1978 gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts.

[19.27.66.3 NMAC - N/E, 9/23/2005]

19.27.66.4 DURATION:

Permanent.

[19.27.66.4 NMAC - N/E, 9/23/2005]

19.27.66.5 EFFECTIVE DATE:

September 23, 2005, unless a later date is cited at the end of a section.

[19.27.66.5 NMAC - N/E, 9/23/2005]

19.27.66.6 OBJECTIVE:

To establish administrative control over the appropriation and use of underground water within the extended areas of the Lordsburg underground water basin, the extended areas of the Nutt-Hockett underground water basin, the extended areas of the Animas underground water basin, and the extended area of the Playas underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.66.6 NMAC - N/E, 9/23/2005]

19.27.66.7 DEFINITIONS:

[RESERVED]

19.27.66.8 BOUNDARY DESCRIPTION OF THE EXTENDED AREAS OF THE LORDSBURG UNDERGROUND WATER BASIN:

The following three areas are being added to the Lordsburg underground water basin.

A. Northeastern extension: Beginning at the southeast corner of section 32, township 26 south, range 13 west, NMPM; thence west along township lines to the southwest corner of section 31, township 26 south, range 16 west, NMPM; thence north along range line to the northwest corner of section 6, township 26 south, range 16 west, NMPM; thence east along township line to the southwest corner of section 31, township 25 south, range 15 west, NMPM; thence north along range lines to the northwest corner of section 6, township 23 south, range 15 west, NMPM; thence west along township line to the southwest corner of section 31, township 22 south, range 16 west, NMPM; thence north along range line to the northwest corner of section 19, township 22 south, range 16 west, NMPM; thence west along section lines to the southwest corner of section 18, township 22 south, range 17 west, NMPM; thence north along range line to the northwest corner of section 6, township 22 south, range 17 west, NMPM; thence west along township lines to the southwest corner of section 31, township 21 south, range 19 west, NMPM; thence north along range line to the northwest corner of section 6, township 21 south, range 19 west, NMPM; thence west along township lines to the southwest corner of section 31, township 20 south, range 19 west, NMPM; thence north along range line to the northwest corner of section 19, township 20 south, range 19 west, NMPM; thence east along section line to the northeast corner of section 19,

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along section line to the southeast corner of section 4, township 22 south, range 14 west, NMPM; thence east along section lines to the northeast corner of section 10, township 22 south, range 14 west, NMPM; thence south along section line to the southeast corner of section 10, township 22 south, range 14 west, NMPM; thence east along section lines to the northeast corner of section 14, township 22 south, range 14 west, NMPM; thence south along section line to the southeast corner of section 14, township 22 south, range 14 west, NMPM; thence east along section lines to the northeast corner of section 24, township 22 south, range 14 west, NMPM; thence south along range line to the southeast corner of section 36, township 22 south, range 14 west, NMPM; thence east along township line to the northeast corner of section 6, township 23 south, range 13 west, NMPM; thence south along section lines to the southeast corner of section 31, township 25 south, range 13 west, NMPM; thence east along township line to the northeast corner of section 6, township 26 south, range 13 west, NMPM; thence south along section line to the southeast corner of section 6, township 26 south, range 13 west, NMPM; thence east along section lines to the northeast corner of section 8, township 26 south, range 13 west, NMPM; thence south along section lines to the southeast corner of section 32, township 26 south, range 13 west, NMPM, being the point of origin.

B. Southwestern extension: Beginning at the southeast corner of section 36, township 25 south, range 17 west, NMPM; thence west along township lines to the southwest corner of section 33, township 25 south, range 18 west, NMPM; thence north along section lines to the mid-point of the western boundary of section 28, township 25 south, range 18 west, NMPM; thence due west to the center of section 29, township 25 south, range 18 west, NMPM; thence due north to the mid-point of the northern boundary of said section 29, then west along section line to the southwest corner of section 20, township 25 south, range 18 west, NMPM; thence north along section lines to the mid-point of the western boundary of section 17, township 25 south, range 18 west, NMPM; thence due west to the center of section 18, township 25 south, range 18 west, NMPM; thence due north to the mid-point of the northern boundary of said section 18, thence west along section line to the southwest corner of section 7, township 25 south, range 18 west, NMPM; thence north along range line to the northwest corner of said section 7, thence east along section line to the mid-point of the northern boundary of said section 7, thence due north to the center of section 31, township 24 south, range 18 west, NMPM; thence due east to the center of section 32, township 24 south, range 18 west, NMPM; thence due north to the mid-point of the northern boundary of said section 32, thence east along section lines to the northeast corner of section 33, township 24 south, range 18 west, NMPM; thence south along section line to the southeast corner of said section 33, thence east along township line to the northeast corner of section 1, township 25 south, range 18 west, NMPM; thence south along range line to the southeast corner of section 13, township 25 south, range 18 west, NMPM; thence east along section lines to the northeast corner of section 24, township 25 south, range 17 west, NMPM; thence south along range line to the southeast corner of section 36, township 25 south, range 17 west, NMPM, being the point of origin.

C. Western extension: Beginning at the southeast corner of section 21, township 24 south, range 18 west, NMPM; thence west along section line to the mid-point of the southern boundary of said section 21, thence due north to the center point of said section 21, thence west to the mid-point of the western boundary of said section 21, thence north along section lines to the mid-point of the western boundary of section 9, township 24 south, range 18 west, NMPM; thence due west to the center point of section 8, township 24 south, range 18 west, NMPM; thence due north to the center point of section 5, township 24 south, range 18 west, NMPM; thence due west to the mid-point of the western boundary of said section 5, thence north along section line to the northwest corner of said section 5, thence west along township lines to the southwest corner of section 36, township 23 south, range 19 west, NMPM; thence north along section line to the mid-point of the western boundary of said section 36, thence due west to the center point of section 35, township 23 south, range 19 west, NMPM; thence due north to the mid-point of the northern boundary of section 26, township 23 south, range 19 west, NMPM; thence east along section line to the northeast corner of said section 26, thence north along section line to the northwest corner of section 24, township 23 south, range 19 west, NMPM; thence east along section line to the mid-point of the northern boundary of said section 24, thence north to the mid-point of the northern boundary of section 12, township 23 south, range 19 west, NMPM; thence west along section line to the southwest corner of section 1, township 23 south, range 19 west, NMPM; thence north along section line to the northwest corner of said section 1, thence east along township line to the northeast corner of said section 1, thence south along range line to the southeast corner of said section 1, thence east along sections lines to the northeast corner of section 8, township 23 south, range 18 west, NMPM; thence south along section lines to the southeast corner of section 17, township 23 south, range 18 west, NMPM; thence east along section line to the northeast corner of section 21, township 23 south, range 18 west, NMPM; thence south along section line to the southeast corner of section 21, township 24 south, range 18 west, NMPM, being the point of origin.

[19.27.66.8 NMAC - N/E, 9/23/2005; A, 6/30/2006]

19.27.66.9 BOUNDARY DESCRIPTION OF THE EXTENDED AREAS OF THE NUTT-HOCKETT UNDERGROUND WATER BASIN:

The following two areas are being added to the Nutt-Hockett underground water basin.

A. Main extension (south, east, and west): Beginning at the southeast corner of section 35, township 22 south, range 5 west, NMPM; thence west along township lines to the southwest corner of section 36, township 22 south, range 6 west, NMPM; thence north along section lines to the northwest corner of section 12, township 22 south, range 6 west, NMPM; thence west along section line to the southwest corner of section 2, township 22 south, range 6 west, NMPM; thence north along section lines to the northwest corner of section 23, township 21 south, range 6 west, NMPM; thence west along section line to the southwest corner of section 15, township 21 south, range 6 west, NMPM; thence north along section lines to the northwest corner of section 3,

township 21 south, range 6 west, NMPM; thence east along section lines to the northeast corner of section 2, township 21 south, range 6 west, NMPM; thence south along section lines to the southeast corner of section 14, township 21 south, range 6 west, NMPM; thence east along section line to the northeast corner of section 24, township 21 south, range 6 west, NMPM; thence south along section lines to the southeast corner of section 36, township 21 south, range 6 west, NMPM; thence east along section line to the northeast corner of section 6, township 22 south, range 5 west, NMPM; thence south along section lines to the southeast corner of section 18, township 22 south, range 5 west, NMPM; thence east along section lines to the northeast corner of section 23, township 22 south, range 5 west, NMPM; thence north along section line to the northwest corner of section 13, township 22 south, range 5 west, NMPM; thence east along section line to the northeast corner of section 13, township 22 south, range 5 west, NMPM; thence north along section lines to the northwest corner of section 31, township 20 south, range 4 west, NMPM; thence east along section line to the northeast corner of section 31, township 20 south, range 4 west, NMPM; thence north along section line to the northwest corner of section 29, township 20 south, range 4 west, NMPM; thence east along section line to the northeast corner of section 29, township 20 south, range 4 west, NMPM; thence north along section lines to the northwest corner of section 21, township 20 south, range 4 west, NMPM; thence east along section line to the northeast corner of section 21, township 20 south, range 4 west, NMPM; thence north along section line to a point on the east section line of section 15, township 20 south, range 4 west, NMPM; thence south easterly along the drainage divide between the Nutt-Hockett basin and the Rio Grande stream system to its intersection with the northern boundary of section 22, township 21 south, range 3 west, NMPM; thence west along section lines to the southwest corner of section 23, township 21 south, range 4 west, NMPM; thence south along section lines to the northeast corner of section 3, township 22 south, range 4 west, NMPM; thence west along section lines to the northwest corner of section 4, township 22 south, range 4 west, NMPM; thence south along section lines to the southeast corner of section 8, township 22 south, range 4 west, NMPM; thence west along section line to the southwest corner of section 8, township 22 south, range 4 west, NMPM; thence south along section line to the southeast corner of section 18, township 22 south, range 4 west, NMPM; thence west along section line to the southwest corner of section 18, township 22 south, range 4 west, NMPM; thence south along section lines to the southeast corner of section 25, township 22 south, range 5 west, NMPM; thence west along section line to the southwest corner of section 25, township 22 south, range 5 west, NMPM; thence south along section line to the southeast corner of section 35, township 22 south, range 5 west, NMPM, being the point of origin.

B. Northwestern extension of underground basin: Beginning at the southeast corner of section 12, township 20 south, range 6 west, NMPM; thence west along section lines to the southwest corner of section 11, township 20 south, range 6 west, NMPM; thence south along section lines to the southeast corner of section 27, township 20 south, range 6 west, NMPM; thence west along section line to the southwest corner of section 27, township 20 south, range 6 west, NMPM; thence north along section lines to the northwest corner of section 22, township 20 south, range 6 west, NMPM; thence

east along section line approximately one half mile to the middle of the southern boundary line of section 15, township 20 south, range 6 west, NMPM; thence due north one mile to the intersection with the northern boundary of section 15, township 20 south, range 6 west, NMPM; thence east along section line to the southwest corner of section 11, township 20 south, range 6 west, NMPM; thence north along section lines to the northwest corner of section 23, township 19 south, range 6 west, NMPM; thence east along section lines to the northeast corner of section 19, township 19 south, range 5 west, NMPM; thence south along section lines to the southeast corner of section 6, township 20 south, range 5 west, NMPM; thence west along section line to the southwest corner of section 6, township 20 south, range 5 west, NMPM; thence south along section line to the southeast corner of section 12, township 20 south, range 6 west, NMPM, being the point of origin.

[19.27.66.9 NMAC - N/E, 9/23/2005; A, 6/30/2006]

19.27.66.10 BOUNDARY DESCRIPTION OF THE EXTENDED AREA OF THE PLAYAS UNDERGROUND WATER BASIN:

Beginning at the southeast corner of section 20, township 34 south, range 17 west, NMPM, a point on the border between the United States of America and Mexico; thence west along said border a distance of approximately 10.5 miles to the intersection of the of the international border with the of drainage divide between the Playas valley basin and the Animas river stream system; thence northerly along the drainage divide between the Playas valley basin and the Animas river stream system to its intersection with the northern boundary of section 6, township 28 south, range 18 west, NMPM; thence east along township line to the northeast corner of section 3, township 28 south, range 18 west, NMPM; thence south along section lines to the southeast corner of section 34, township 28 south, range 18 west, NMPM; thence east along township line to the northeast corner of section 3, township 29 south, range 18 west, NMPM; thence south along section lines to the southeast corner of section 10, township 29 south, range 18 west, NMPM; thence east along section line to the northeast corner of section 14, township 29 south, range 18 west, NMPM; thence south along section lines to the southeast corner of section 35, township 29 south, range 18 west, NMPM; thence east along township line to the northeast corner of section 1, township 30 south, range 18 west, NMPM; thence south along range lines to the southeast corner of section 24, township 33 south, range 18 west, NMPM; thence east along section lines to the northeast corner of section 29, township 33 south, range 17 west, NMPM; thence south along section lines to the southeast corner of section 20, township 34 south, range 17 west, NMPM, a point on the border between the United States of America and Mexico, being the point of origin.

[19.27.66.10 NMAC - N/E, 9/23/2005]

19.27.66.11 BOUNDARY DESCRIPTION OF THE EXTENDED AREAS OF THE ANIMAS UNDERGROUND WATER BASIN:

The following three areas are being added to the Animas underground water basin.

A. Upper Animas extension: Beginning at the intersection of the southern boundary of section 33, township 32 south, range 19 west, NMPM, with the drainage divide between the Playas valley basin and the Animas river stream system; thence west along township line to the southwest corner of section 32, township 32 south, range 19 west, NMPM; thence north along section line one-half mile to the mid-point of the western boundary of said section 32, thence west to the mid-point of the western boundary of section 36, township 32 south, range 20 west, NMPM; thence south along section line to the southwest corner of section 36, township 32 south, range 20 west, NMPM; thence west along township line to the southwest corner of section 32, township 32 south, range 20 west, NMPM; thence north along section line one-half mile to the mid-point of the western boundary of said section 32, thence due west to the mid-point of the eastern boundary of section 35, township 32 south, range 21 west, NMPM; thence south along section lines to the mid-point of the eastern boundary of section 11, township 33 south, range 21 west, NMPM; thence due west to the mid-point of the western boundary of said section, thence north along section line to the northwest corner of said section, thence west along section line to the southwest corner of section 3, township 33 south, range 21 west, NMPM; thence north along section line one-half mile to the mid-point of the western boundary of section 3, township 33 south, range 21 west, NMPM; thence due west to the mid-point of the western boundary of section 4, township 33 south, range 21 west, NMPM; thence north along section line to the northwest corner of said section 4, thence west along township line one-half mile to the mid-point of the southern boundary of section 32, township 32 south, range 21 west, NMPM; thence due north to the midpoint of the northern boundary of said section 32, then west along section lines and projected section lines to the intersection with the state line between the states of Arizona and New Mexico, thence north along said state line to its intersection with the southwest corner of section 35, township 31 south, range 22 west, NMPM; thence east along township line to the northeast corner of section 4, township 32 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 22, township 31 south, range 21 west, NMPM; thence west along section line to the southwest corner of section 16, township 31 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 28, township 30 south, range 21 west, NMPM; thence east along section line to the northeast corner of said section 28, then north along section line to the northwest corner of section 22, township 30 south, range 21 west, NMPM; thence east along section line to the northeast corner of said section 22, thence north along section lines to the northwest corner of section 26, township 29 south, range 21 west, NMPM; thence west along section line to the southwest corner of section 22, township 29 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 3, township 29 south, range 21 west, NMPM; thence east along township line to the southwest corner of section 36, township 28 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 24, township 28 south, range 21 west, NMPM; thence east along section lines to the northeast corner of section 19, township 28 south, range 20 west, NMPM; thence north along section lines to the northwest corner of section 8, township 28 south, range 20 west, NMPM; thence east

along section line to the northeast corner of said section 8, then north along section line to the northwest corner of section 4, township 28 south, range 20 west, NMPM; thence east along township line to the northeast corner of section 3, township 28 south, range 20 west, NMPM; thence south along section lines to the southeast corner of section 34, township 28 south, range 20 west, NMPM; thence east along township line to the northeast corner of section 3, township 29 south, range 20 west, NMPM; thence south along section lines to the southeast corner of section 34, township 30 south, range 20 west, NMPM; thence east along township line to the northeast corner of section 1, township 31 south, range 19 west, NMPM; thence north along range line to the northwest corner of section 6, township 29 south, range 18 west, NMPM; thence west along range line to the southwest corner of section 31, township 28 south, range 18 west, NMPM; thence north along township line to the northwest corner of section 6, township 28 south, range 18 west, NMPM; thence east approximately one-half mile along township line to the intersection of the township line with the drainage divide between the Playas valley basin and the Animas river stream system, thence southerly along the drainage divide between the Playas valley basin and the Animas river stream system to its intersection with the southern boundary of section 33, township 32 south, range 19 west, NMPM, being the point of origin.

B. Lower Animas extension: Beginning at the southeast corner of section 32, township 25 south, range 18 west, NMPM; thence west along township line to the southwest corner of section 33, township 25 south, range 19 west, NMPM; thence north along section lines to the northwest corner of section 4, township 24 south, range 19 west, NMPM; thence west along township line to the southwest corner of section 31, township 23 south, range 20 west, NMPM; thence south along range line to the southeast corner of section 36, township 25 south, range 21 west, NMPM; thence west along township line to the northeast corner of section 2, township 26 south, range 21 west, NMPM; thence south along section line to the southeast corner of section 2, township 26 south, range 21 west, NMPM; thence west along section line to the southwest corner of section 2, township 26 south, range 21 west, NMPM; thence north along section line to the northwest corner of section 2, township 26 south, range 21 west, NMPM; thence east along township line to the southwest corner of section 36, township 25 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 13, township 25 south, range 21 west, NMPM; thence west along section line to the southwest corner of section 11, township 25 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 11, township 24 south, range 21 west, NMPM; thence west along section line to the southwest corner of section 3, township 24 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 34, township 23 south, range 21 west, NMPM; thence west along section line to the southwest corner of section 28, township 23 south, range 21 west, NMPM; thence north along section lines to the northwest corner of section 9, township 23 south, range 21 west, NMPM; thence west along section line to the southwest corner of section 6, township 23 south, range 21 west, NMPM; thence north along the New Mexico-Arizona state line to the northwest corner of section 6, township 22 south, range 21 west, NMPM; thence east along township line to the northeast corner of section 6, township 22 south, range 21 west,

NMPM; thence north along section line to the northwest corner of section 32, township 21 south, range 21 west, NMPM; thence east along section line to the northeast corner of section 32, township 21 south, range 21 west, NMPM; thence north along section line to the northwest corner of section 28, township 21 south, range 21 west, NMPM; thence east along section line to the northeast corner of section 28, township 21 south, range 21 west, NMPM; thence north along section line to the northwest corner of section 22, township 21 south, range 21 west, NMPM; thence east along section line to the northeast corner of section 22, township 21 south, range 21 west, NMPM; thence north along section line to the northwest corner of section 14, township 21 south, range 21 west, NMPM; thence east along section lines to the northeast corner of section 13, township 21 south, range 21 west, NMPM; thence north along range line to the northwest corner of section 6, township 21 south, range 20 west, NMPM; thence east along township line to the southwest corner of section 32, township 20 south, range 20 west, NMPM; thence north along section line to the northwest corner of section 32, township 20 south, range 20 west, NMPM; thence east along section line to the northeast corner of section 32, township 20 south, range 20 west, NMPM; thence north along section line to the northwest corner of section 28, township 20 south, range 20 west, NMPM; thence east along section line to the northeast corner of section 28, township 20 south, range 20 west, NMPM; thence north along section line to the northwest corner of section 22, township 20 south, range 20 west, NMPM; thence east along section lines to the northeast corner of section 24, township 20 south, range 20 west, NMPM; thence south along section lines to the southeast corner of section 36, township 20 south, range 20 west, NMPM; thence east along section lines to the northeast corner of section 1, township 21 south, range 20 west, NMPM; thence south along range line to the southeast corner of section 36, township 22 south, range 20 west, NMPM; thence east along township line to the northeast corner of section 2, township 23 south, range 19 west, NMPM; thence south along section line to the southeast corner of said section 2, thence east along section line to the mid-point of the northern boundary of section 12, township 23 south, range 19 west, NMPM; thence due south to the mid-point of the southern boundary of section 13, township 23 south, range 19 west, NMPM; thence west along section line to the southwest corner of said section 13, thence south along section line to the southeast corner of section 23, township 23 south, range 19 west, NMPM; thence west along section line to the mid-point of the southern boundary of section 23, township 23 south, range 19 west, NMPM; thence due south to the center point of section 35, township 23 south, range 19 west, NMPM; thence due east to the mid-point of the eastern boundary of said section 35, thence south along section line to the southeast corner of said section 35, thence east along township line to the northeast corner of section 6, township 24 south, range 18 west, NMPM; thence south along section line to the mid-point of the eastern boundary of said section 6, thence due east to the center point of section 5, township 24 south, range 18 west, NMPM; thence due south to the center point of section 8, township 24 south, range 18 west, NMPM; thence due east to the mid-point of the eastern boundary of said section 8, thence south along section lines to the mid-point of the eastern boundary of section 20, township 24 south, range 18 west, NMPM; thence due east to the center point of section 21, township 24 south, range 18 west, NMPM; thence due south to the mid-point of the southern boundary of said section 21, thence east along section line to

the northeast corner of section 28, township 24 south, range 18 west, NMPM; thence south along section line to the southeast corner of said section 28, thence west along section lines to the mid-point of the southern boundary of section 29, township 24 south, range 18 west, NMPM; thence due south to the center point of section 32, township 24 south, range 18 west, NMPM; thence due west to the center point of section 31, township 24 south, range 18 west, NMPM; thence south to the mid-point of the southern boundary of section 6, township 25 south, range 18 west, NMPM; thence west along section line to the southwest corner of said section 6, thence south along range line to the southeast corner of section 12, township 25 south, range 19 west, NMPM; thence east along section line to the mid-point of the northern boundary of section 18, township 25 south, range 18 west, NMPM; thence due south to the center point of said section 18, thence due east to the mid-point of the eastern boundary of said section 18, thence south along section lines to the southeast corner of section 19, township 25 south, range 18 west, NMPM; thence east along section line to the mid-point of the northern boundary of section 29, township 25 south, range 18 west, NMPM; thence due south to the center point of said section 29, thence due east to the mid-point of the eastern boundary of said section 29, thence south along section lines to the southeast corner of section 32, township 25 south, range 18 west, NMPM, being the point of origin.

C. Lower Animas extension (additional section): The Animas underground water basin is extended to include section 1 of township 27 south, range 21 west, NMPM.

[19.27.66.11 NMAC - N/E, 9/23/2005]

PART 67: DECLARATION OF THE CAUSEY LINGO UNDERGROUND WATER BASIN

19.27.67.1 ISSUING AGENCY:

Office of the State Engineer.

[19.27.67.1 NMAC - N/E, 9/23/2005]

19.27.67.2 SCOPE:

The appropriation and use of underground water within the Causey Lingo underground water basin, an area declared by the state engineer to have a reasonably ascertainable boundary.

[19.27.67.2 NMAC - N/E, 9/23/2005]

19.27.67.3 STATUTORY AUTHORITY:

Chapter 72, Article 12, NMSA 1978. Section 72-1-1 NMSA 1978 provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA 1978 gives the state engineer

general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA 1978 gives the state engineer authority to adopt regulations and codes to implement and enforce any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA 1978 gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts.

[19.27.67.3 NMAC - N/E, 9/23/2005]

19.27.67.4 DURATION:

Permanent.

[19.27.67.4 NMAC - N/E, 9/23/2005]

19.27.67.5 EFFECTIVE DATE:

September 23, 2005, unless a later date is cited at the end of a section.

[19.27.67.5 NMAC - N/E, 9/23/2005]

19.27.67.6 OBJECTIVE:

To establish administrative control over the appropriation and use of underground water within the Causey Lingo underground water basin, an area declared by the state engineer to have a reasonably ascertainable boundary.

[19.27.67.6 NMAC - N/E, 9/23/2005]

19.27.67.7 DEFINITIONS:

[RESERVED]

19.27.67.8 BOUNDARY DESCRIPTION OF THE CAUSEY LINGO UNDERGROUND WATER BASIN:

The area included in the Causey Lingo basin begins at the northeast corner of section 15, township 3 south, range 37 east, NMPM, a point on the New Mexico and Texas state line; thence south along said state line to the southeast corner of section 33, township 8 south, range 38 east, NMPM, being a point on the northern county line for Lea county, New Mexico; thence west along the county line of Lea county to the southwest corner of section 35, township 8 south, range 32 east, NMPM; thence north along section line to the northwest corner of section 2, township 8 south, range 32 east, NMPM; thence west along section line to the southwest corner of section 34, township 7

[illegible]

east, NMPM; thence east along section line to the northeast corner of section 13, township 1 south, range 31 east, NMPM; thence south along range line to the southeast corner of section 13, township 1 south, range 31 east, NMPM; thence east along section lines to the northeast corner of section 21, township 1 south, range 32 east, NMPM; thence south along section lines to the southeast corner of section 21, township 1 south, range 32 east, NMPM; thence east along section line to the northeast corner of section 27, township 2 south, range 32 east, NMPM; thence south along section line to the southeast corner of section 3, township 2 south, range 32 east, NMPM; thence west along section line to the southwest corner of section 3, township 2 south, range 32 east, NMPM; thence south along section lines to the southeast corner of section 16, township 2 south, range 32 east, NMPM; thence west along section line to the southwest corner of section 16, township 2 south, range 32 east, NMPM; thence south along section lines to the southeast corner of section 32, township 2 south, range 32 east, NMPM; thence east along township lines to the northeast corner of township 3 south, range 33 east, NMPM; thence south along range line to the southeast corner of section 12, township 3 south, range 33 east, NMPM; thence east along section lines to the northeast corner of section 15, township 3 south, range 37 east, NMPM, being the point of origin.

[19.27.67.8 NMAC - N/E, 9/23/2005]

PART 68: EXTENSION OF THE LEA COUNTY, FORT SUMNER AND CURRY COUNTY UNDERGROUND WATER BASINS

19.27.68.1 ISSUING AGENCY:

Office of the State Engineer.

[19.27.68.1 NMAC - N/E, 9/23/2005]

19.27.68.2 SCOPE:

The appropriation and use of underground water within the extended area of the Lea county underground water basin, the extended area of the Fort Sumner underground water basin, and the extended area of the Curry county underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.68.2 NMAC - N/E, 9/23/2005]

19.27.68.3 STATUTORY AUTHORITY:

Chapter 72, Article 12, NMSA 1978. Section 72-1-1 NMSA 1978 provides that all natural waters flowing in streams and water courses belong to the public and are subject to appropriation for beneficial use. Section 72-2-1 NMSA 1978 gives the state engineer general supervision of waters of the state and of the measurement, appropriation and distribution thereof and such other duties as required. Section 72-2-8 NMSA 1978 gives the state engineer authority to adopt regulations and codes to implement and enforce

any provision of any law administered by him and also provides the state engineer with authority to issue orders necessary to implement his decisions and to aid him in the accomplishment of his duties. Section 72-2-9 NMSA 1978 gives the state engineer authority over and supervision of the apportionment of water in this state according to the licenses issued by him and his predecessors and the adjudications of the courts.

[19.27.68.3 NMAC - N/E, 9/23/2005]

19.27.68.4 DURATION:

Permanent.

[19.27.68.4 NMAC - N/E, 9/23/2005]

19.27.68.5 EFFECTIVE DATE:

September 23, 2005, unless a later date is cited at the end of a section.

[19.27.68.5 NMAC - N/E, 9/23/2005]

19.27.68.6 OBJECTIVE:

To establish administrative control over the appropriation and use of underground water within the extended area of the Lea county underground water basin, the extended area of the Fort Sumner underground water basin, and the extended area of the Curry county underground water basin, areas declared by the state engineer to have reasonably ascertainable boundaries.

[19.27.68.6 NMAC - N/E, 9/23/2005]

19.27.68.7 DEFINITIONS:

[RESERVED]

19.27.68.8 BOUNDARY DESCRIPTION OF THE EXTENDED AREA OF THE LEA COUNTY UNDERGROUND WATER BASIN:

Beginning at the southwest corner of township 10 south, range 32 east, NMPM; thence north along range line to the northwest corner of section 30, township 10 south, range 32 east, NMPM; thence east along section lines to the northeast corner of section 29, township 10 south, range 32 east, NMPM; thence north along section lines to the northwest corner of section 33, township 9 south, range 32 east, NMPM; thence west along section line to the southwest corner of section 29, township 9 south, range 32 east, NMPM; thence north along section lines to the northwest corner of section 5, township 9 south, range 32 east, NMPM; thence east along township lines, and the Lea county line, to the northeast corner of township 9 south, range 38 east, NMPM, a point

on the New Mexico-Texas state line; thence south along said state line to the southeast corner of township 11 south, range 38 east, NMPM; thence west along township lines to the southwest corner of township 11 south, range 35 east, NMPM; thence north along range line to the northwest corner of section 19, township 11 south, range 35 east, NMPM; thence west along section lines to the southwest corner of section 15, township 11 south, range 34 east, NMPM; thence north along section lines to the northwest corner of section 3, township 11 south, range 34 east, NMPM; thence west along township lines to the southwest corner of township 10 south, range 32 east, NMPM, being the point of origin.

[19.27.68.8 NMAC - N/E, 9/23/2005]

19.27.68.9 BOUNDARY DESCRIPTION OF THE EXTENDED AREA OF THE FORT SUMNER UNDERGROUND WATER BASIN:

Beginning at the southwest corner of section 35, township 2 north, range 30 east, NMPM; thence north along section lines to the northwest corner of section 23, township 3 north, range 30 east, NMPM; thence east along section line to the northeast corner of section 23, township 3 north, range 30 east, NMPM; thence north along section line to the northwest corner of section 13, township 3 north, range 30 east, NMPM; thence east along section line to the northeast corner of section 13, township 3 north, range 30 east, NMPM; thence south along range lines to the southeast corner of section 36, township 2 north, range 30 east, NMPM; thence west along township line to the southwest corner of section 35, township 2 north, range 30 east, NMPM, being the point of origin.

[19.27.68.9 NMAC - N/E, 9/23/2005]

19.27.68.10 BOUNDARY DESCRIPTION OF THE EXTENDED AREA OF THE CURRY COUNTY UNDERGROUND WATER BASIN:

Beginning at the southeast corner of section 36, township 8 north, range 34 east, NMPM; thence west along township lines to the southeast corner of section 36, township 8 north, range 33 east, NMPM; thence south along range lines to the southeast corner of section 36, township 7 north, range 33 east, NMPM; thence west along township lines to the southeast corner of section 36, township 7 north, range 32 east, NMPM; thence south along range lines to the southeast corner of section 36, township 6 north, range 32 east, NMPM; thence west along township lines to the southwest corner of section 35, township 6 north, range 31 east, NMPM; thence north along section line to the northwest corner of section 35, township 6 north, range 31 east, NMPM; thence west along section line to the southwest corner of section 27, township 6 north, range 31 east, NMPM; thence north along section line to the northwest corner of section 27, township 6 north, range 31 east, NMPM; thence west along section line to the southwest corner of section 21, township 6 north, range 31 east, NMPM; thence north along section line to the northwest corner of section 21, township 6 north, range 31 east, NMPM; thence west along section lines to the southwest corner of section 18, township 6 north, range 31 east, NMPM; thence north

along range line to the northwest corner of section 18, township 6 north, range 31 east, NMPM; thence west along section lines to the southwest corner of section 11, township 6 north, range 30 east, NMPM; thence north along section line to the northwest corner of section 2, township 6 north, range 30 east, NMPM; thence west along township line to the southwest corner of section 33, township 7 north, range 30 east, NMPM; thence north along section lines to the northwest corner of section 28, township 7 north, range 30 east, NMPM; thence west along section line to the southwest corner of section 20, township 7 north, range 30 east, NMPM; thence north along section lines to the northwest corner of section 17, township 7 north, range 30 east, NMPM; thence east along section lines to the northeast corner of section 15, township 7 north, range 30 east, NMPM; thence north along section lines to the northwest corner of section 11, township 7 north, range 30 east, NMPM; thence east along section lines to the northeast corner of section 9, township 7 north, range 31 east, NMPM; thence north along section lines to the northwest corner of section 3, township 7 north, range 31 east, NMPM; thence east along township lines to the northeast corner of section 4, township 7 north, range 32 east, NMPM; thence north along section line to the northwest corner of section 34, township 8 north, range 32 east, NMPM; thence east along section lines to the northeast corner of section 36, township 8 north, range 32 east, NMPM; thence north along range line to the northwest corner of section 19, township 8 north, range 33 east, NMPM; thence east along section lines to the northeast corner of section 21, township 8 north, range 33 east, NMPM; thence north along section lines to the northwest corner of section 3, township 8 north, range 33 east, NMPM; thence east along township line to the southwest corner of section 34, township 9 north, range 33 east, NMPM; thence north along section line to the northwest corner of section 34, township 9 north, range 33 east, NMPM; thence east along section lines to the northeast corner of section 31, township 9 north, range 35 east, NMPM; thence south along section line to the southeast corner of section 31, township 9 north, range 35 east, NMPM; thence west along township line to the northeast corner of section 1, township 8 north, range 34 east, NMPM; thence south along range line to the southeast corner of section 36, township 8 north, range 34 east, NMPM, being the point of origin.

[19.27.68.10 NMAC - N/E, 9/23/2005]

CHAPTER 28-29: [RESERVED]

CHAPTER 30: WILDLIFE ADMINISTRATION

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: DEPREDAATION ASSISTANCE

19.30.2.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[1-13-96; 19.30.2.1 NMAC - Rn, 19 NMAC 30.2.1, 7-16-01]

19.30.2.2 SCOPE:

Agricultural producers, property owners and sportsmen. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30, 31, 32 and 33 of Title 19.

[1-13-96; 19.30.2.2 NMAC - Rn, 19 NMAC 30.2.2, 7-16-01]

19.30.2.3 STATUTORY AUTHORITY:

17-1-14, 17-1-26, 17-2-7.2, 17-2-10, 17-2-26, 17-3-13.3, 17-3-13.4, 17-3-31, and 17-5-3 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[9-1-89; 1-13-96; 9-15-97; 19.30.2.3 NMAC - Rn & A, 19 NMAC 30.2.3, 7-16-01]

19.30.2.4 DURATION:

Permanent.

[1-13-96; 19.30.2.4 NMAC - Rn, 19 NMAC 30.2.4, 7-16-01]

19.30.2.5 EFFECTIVE DATE:

January 13, 1996, unless a different date is cited at the end of a section or paragraph.

[1-13-96; 9-15-97; 19.30.2.5 NMAC - Rn, 19 NMAC 30.2.5, 7-16-01]

19.30.2.6 OBJECTIVE:

Establish procedures and limits for the handling of depredation caused by protected wildlife species on privately owned or leasehold interest land. Establish procedures and requirements for the big game depredation damage stamp.

[1-13-96; 19.30.2.6 NMAC - Rn & A, 19 NMAC 30.2.6, 7-16-01]

19.30.2.7 DEFINITIONS:

A. Game animals: This regulation shall apply to only those wildlife species defined as protected under 17-2-3, 17-5-2, 17-2-13, 17-2-14 NMSA 1978 and any other wildlife species managed or regulated by the New Mexico state game commission and New Mexico department of game and fish.

B. "Depredation" is hereby defined as private property damage, including growing crops or harvested and stored crops, caused by game animals on privately owned or leasehold private land, such that the damage caused results in a measurable loss of value. This definition may apply to private property that occurs on other than private land, as reasonable and appropriate, as determined by the department.

C. "Threat to human life" shall mean that death or great bodily harm is likely to occur to a person due to the closeness, aggression or attack of a game animal or quadruped.

D. "Immediate threat to human life" shall mean that an attack is so imminent that nothing, short of destruction, can be done to avert the aggression.

E. "Immediate threat of damage to property or crops" shall mean that game animals exist in such numbers that there is no time for intervention by the department to avert substantial private property damage.

F. "Crops" shall mean any cultivated field or forage, whether sown or natural, which is used chiefly for livestock in that the landowner harvests the product to feed livestock or commercially sell it; or any other feed or commercially sold product that may be stored on properties for future shipping or marketing or any other crop grown to provide human subsistence.

G. "Attractive nuisance" shall mean any crop or other material placed on a landowner's property to intentionally draw in protected wildlife.

H. "Landowner" is any person who personally owns private property legally recognized by the state of New Mexico.

I. "Lessee" is any person who leases private property from another in order to grow crops or produce livestock.

J. "Employee" is any person who is paid by a landowner or lessee for providing services to the landowner or lessee and that the service is related to the depredation.

K. "Take" shall mean to trap, ensnare, or intentionally prevent the natural movement of a game animal or quadruped.

L. "Leasehold interest" shall mean any person who leases or rents private agricultural property, whether or not that person is responsible for the crop or livestock.

M. "Quadruped" shall mean any furbearing animal, as defined in 17-5-2 NMSA 1978, for which the department has jurisdiction (muskrat, mink, nutria, otter, weasel, beaver, masked or black-footed ferret, ringtail cat, raccoon, pine marten, coatimundi, badger, bobcat, and all foxes).

N. "Good cause" as used herein shall mean either or both of the following.

(1) The landowner can document that the intervention offered would cause physical damage to persons or property.

(2) The landowner can document that the intervention offered will not result in a substantial lessening of the depredation it is intended to affect.

(3) In either instance the claim of good cause by the landowner must be made in good faith and supported with facts sufficient reasonably to meet either or both of the above criteria and provided to the department in written form within ten (10) days following the proposed interventions being communicated to the landowner or lessee.

O. "Negligence" shall mean the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.

P. "Big game depredation damage stamp" shall mean a stamp, check off or other official mark purchased with each big game hunting license as required by 17-3-13.3 and 17-3-13.4 NMSA 1978.

[9-1-89, 9-15-97; 19.30.2.7 NMAC - Rn & A, 19 NMAC 30.2.7, 7-16-01; A, 12-28-01; A, 12-31-08]

19.30.2.8 TECHNIQUES/INTERVENTION:

A. Reporting: A landowner, lessee, or employee, upon recognizing depredation, shall contact the department of game and fish by toll-free phone number available twenty-four (24) hours a day, seven (7) days a week.

(1) Upon being notified by a landowner, lessee, or employee of a wildlife complaint, the appropriate department staff will contact the landowner, lessee, or employee as soon as is reasonably possible. Department staff will arrange an inspection of the property as promptly as possible, and as agreed to by the landowner, lessee, or employee.

(2) Upon completion of inspection and provided the inspection resulted in confirmation of depredation as defined pursuant to this regulation, the department will, within ten (10) days, offer a minimum of three (3) formal interventions, if practical, that are reasonable and effective, for preventing, resolving or correcting the wildlife caused damage.

(3) Within ten (10) days following receipt of interventions, the landowner, lessee, or employee shall notify the department, in writing or on an approved form, of acceptance or rejection of each intervention offered.

(4) The department will initiate interventions accepted by the landowner, lessee, within five (5) days of receipt of acceptance, or such later time as reasonable based on the intervention accepted.

(5) If the landowner, lessee, or employee rejects all interventions offered by the department, the landowner, lessee, or employee must submit written grounds for good cause for rejection. The department shall take no further action until justifications for rejection have been met pursuant to this regulation and been approved by the director. If the grounds for good cause are approved the landowner may continue working with the department to develop alternative interventions or take action pursuant to 17-2-7.2B.

B. Exceptions:

(1) In the case of an immediate threat to human life, or an immediate threat of damage to private property, including crops, by a game animal or other quadruped, game bird, or fowl, a landowner or lessee, or employee of either, may take or kill the game animal, quadruped, game bird or fowl, and must report such killing to the department's toll free phone number within 24 hours. If the taking or killing is not reported within two (2) hours, the landowner or lessee, or employee of either shall field dress the carcass so as to salvage any edible portions and preserve them for disposal by the department in accordance with the law, which may include sale to the highest bidder. In no case shall the landowner or lessee, or employee of either refuse or prevent the department motorized vehicle access to any carcasses taken pursuant to this rule and the department shall not be responsible for removal of any carcass, or parts thereof, if it is determined by the department to be un-fit for human consumption. If game animals are killed pursuant to this Paragraph, the department shall publish at least quarterly, a notice of the incidents. The notice shall describe each incident, the county of the occurrence, landowner, lessee, or employee of either involved, and the number of game animals, quadrupeds, game birds, or fowl taken.

(2) In the case of threat of damage to property or crops, that is not immediate, a landowner may take any non-lethal action to discourage the protected animal or quadruped, and continue such action until the agreed upon intervention method begins. If the department does not resolve the threat within one year, and the property depredation meets the conditions set forth in 17-2-7.2 B (6) NMSA 1978, the landowner, lessee, or employee may take action as prescribed in 17-2-7.2 B (7) NMSA 1978 by taking or killing the offending animals. All reporting, field dressing, and department access requirements identified above shall apply. Nothing in this provision shall be interpreted to limit any protections afforded by the constitution.

(3) Nothing shall prevent the department from taking action to discourage the offending animals during the pendency of the written intervention agreement.

(4) Nothing shall prevent a landowner, lessee, or employee from continuing to work with the department after one year, thereby preventing the destruction of the animals, if agreed by the parties.

(5) Nothing in this regulation shall authorize taking or harassing any animals contrary to the federal Endangered Species Act or Migratory Bird Treaty Act or contrary to any other federal or state law.

(6) Conflicts of interest: to avoid conflict of interest or the harvesting of wildlife for personal gain, the landowner, lessee, employee, all family members and any person involved in the killing of the offending animal are not allowed to take possession or bid on the animals killed.

C. Interventions: Intervention methods offered by the department shall be designed to achieve fiscally responsible, reasonable, effective, and, if practical, long-term solutions to depredation on private lands and shall be incorporated into the written agreements pursuant to this regulation.

D. Causing a nuisance game animal problem: It shall be unlawful for any person, by their action or lack of action, whether intentionally or through negligence, to cause a nuisance game animal or depredation problem by baiting, feeding, or otherwise enticing game animals to an area, and such persons, if convicted, may be punished under 17-2-10 NMSA 1978. The department shall not be required to offer or provide interventions to depredation complaints caused by landowner, lessee, or employee of either violating this prohibition.

[9-1-89, 9-15-97; 19.30.2.8 NMAC - Rn, 19 NMAC 30.2.8, 7-16-01; A, 07-31-02; A, 12-31-08]

19.30.2.9 [RESERVED]

[9-15-97; 19.30.2.9 NMAC - Rn, 19 NMAC 30.2.9, 7-16-01; A, 07-31-02; Repealed, 12-31-08]

19.30.2.10 [RESERVED]

[9-15-97; 19.30.2.10 NMAC - Rn, 19 NMAC 30.2.10, 7-16-01; Repealed, 12-31-08]

19.30.2.11 REPORTS:

A department representative shall make regular reports to the commission regarding recent wildlife complaints, their nature, resolution status and any other pertinent information per commission request.

[9-15-97; 19.30.2.11 NMAC - Rn, 19 NMAC 30.2.11, 7-16-01; A, 12-31-08]

19.30.2.12 BIG GAME DEPREDATION DAMAGE STAMP:

A. Purchase: Each person hunting any big game species in New Mexico must purchase a big game depredation damage stamp at the time of application or purchase of a big game license. Stamp fees shall be in accordance with 19.30.1.9.

B. Availability: Big game depredation damage stamps will be sold with all big game licenses by all hunting and fishing license vendors. The big game depredation damage stamp fee shall be included with every big game license type purchased.

C. Expiration: Each big game hunter shall be required to purchase one stamp or validation per license. Each stamp will expire at the same time as the license it is issued to.

[19.30.2.12 NMAC - N, 7-16-01, A, 12-28-01]

[This amendment is for any application or license purchased for the 2002 hunting license season and beyond]

19.30.2.13 BIG GAME DEPREDATION DAMAGE FUND:

A. Expenditures: Allowable expenditures from the big game depredation damage fund shall be restricted to the procurement of goods and services intended to resolve or mitigate depredation in accordance with 17-3-13.4.B NMSA 1978, 17-2-7.2.B NMSA 1978, and 19.30.2 NMAC. Direct compensation shall not be allowed.

(1) No intervention method shall be approved if funding is not available.

(2) If funding is limited, big game depredation damage agreements will be funded and given a priority based upon the level of verifiable and irreversible financial loss, history of documented depredation reporting by the landowner, lessee or employee, agreement by landowner, lessee or employee to provide in-kind contributions, such as costs or labor, and by availability of funds.

B. Written agreements: All written agreements that result in the expenditure of funds from the big game depredation damage fund shall be signed by both the director of the department, or his designee, and the landowner, and the lessee as to an existing leasehold interest, or an authorized representative of each. Each agreement shall specify the exact location where the intervention method will be implemented, the standard and specifications with which it will be implemented (i.e. fence-height, width, length, gate design, etc.), estimated cost per intervention, life expectancy of intervention, and maintenance and repair responsibilities. Prior to implementation of any intervention method, an owner or their representative, and lessee if applicable, must provide verifiable proof as to the land status and ownership of the property. If any conflict in documentation, map, deed or survey is found to exist, the owner shall have a

survey completed depicting land ownership status and submit the results to the department prior to implementation of any intervention method.

[19.30.2.13 NMAC - N, 12-14-01; A, 07-31-02; A, 12-31-08]

PART 3: GAME AND FISH OPEN MEETINGS

19.30.3.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[8-15-95; 19.30.3.1 NMAC - Rn, 19 NMAC 30.3.1, 2-14-02]

19.30.3.2 SCOPE:

Persons interested in and affected by actions of the state game commission and the department of game and fish.

[8-15-95; 19.30.3.2 NMAC - Rn, 19 NMAC 30.3.2, 2-14-02; A, 09-15-2014]

19.30.3.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 10-15-1 to 4 (as amended through 2012, "Open Meetings Act") and NMSA 1978, Sections 17-1-14 and 17-1-26 that provide the New Mexico state game commission with the authority to establish rules that it may deem necessary to carry out the purpose of Chapter 17, Article 1 and all other acts pertaining to protected species.

[12-17-75, 9-3-82, 1-27-84, 12-3-87, 3-5-91, 8-15-95; 19.30.3.3 NMAC - Rn, 19 NMAC 30.3.3, 2-14-02; A, 09-15-2014]

19.30.3.4 DURATION:

Permanent.

[8-15-95; 19.30.3.4 NMAC - Rn, 19 NMAC 30.3.4, 2-14-02]

19.30.3.5 EFFECTIVE DATE:

August 15, 1995, unless a different date is cited at the end of a section.

[8-15-95; 19.30.3.5 NMAC - Rn, 19 NMAC 30.3.5, 2-14-02]

19.30.3.6 OBJECTIVE:

To establish rules pursuant to the "Open Meetings Act" determining what constitutes reasonable notice of state game commission public meetings.

[8-15-95; 19.30.3.6 NMAC - Rn, 19 NMAC 30.3.6, 2-14-02; A, 09-15-2014]

19.30.3.7 DEFINITIONS:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Department's public website" means: www.wildlife.state.nm.us.

C. "Emergency meeting" is a meeting called to address unforeseen circumstances that, if not addressed immediately by the commission, will likely result in injury or damage to persons or property, or substantial financial loss to the commission.

D. "Publish" shall mean to publish via paid legal advertisement in a newspaper of general circulation.

[8-15-95; 19.30.3.7 NMAC - Rn, 19 NMAC 30.3.7, 2-14-02; A, 09-15-2014; A, 02-27-2015]

19.30.3.8 OPEN MEETINGS:

A. Reasonable notice: Reasonable notice shall be given, as hereinafter provided, of all meetings of a quorum of the state game commission held for the purpose of discussing or adopting any proposed rule or resolution, or taking formal action. At its first meeting each year, the commission will determine what is a reasonable notice for all meetings as required by Section 10-15-1(D) NMSA 1978. At that meeting, the commission shall adopt a resolution to either continue or amend its existing practice as stated below:

(1) Ten day notice for regular meetings: At least 10 days in advance of each regularly scheduled meeting, notice will be posted on the department's public website and social media sites and in addition will be sent to newspapers, radio stations, wire services and television stations in the state that have provided a written request for the notice of meetings per Section 10-15-1(D) NMSA 1978. These notices shall contain the date, time, and place of the meeting and information on how a copy of the agenda may be obtained.

(2) Three day notice for special meeting: At least three days in advance of each special meeting, notice will be posted on the department's public website and social media sites and given by telephone to newspapers, radio stations, wire services and television stations in the state that have provided a written request for the notice of meetings per Section 10-15-1(D) NMSA 1978. These notices shall provide the date, time, and place of the meeting and information on how a copy of the agenda may be obtained.

(3) 24 hour notice for emergency meetings: Notwithstanding any other provision of this rule, the chairman of the state game commission may call an emergency meeting to consider any unforeseen and urgent matter that demands immediate commission action. Notice of an emergency meeting shall be posted on the department's public website and social media sites at least 24 hours in advance unless threat of personal injury or property damage requires less notice, and shall be given by telephone to the associated press and, if time permits, via newsrelease faxed or hand delivered to at least one daily newspaper of general circulation in the state.

(4) Telephone participation: Commissioners may choose to participate in properly noticed meetings of the state game commission by telephone or other similar communications equipment, but only when attendance in person is difficult or impossible. Each commissioner participating by telephone or other similar equipment must be identified when speaking. All commissioners must be able to hear each other at the same time and hear any other speaker, and members of the public attending the meeting must be able to hear any commissioner.

B. Correspondence with interested parties: Prior to each regularly scheduled meeting, correspondence announcing the date, time, and place of the meeting and information on how a copy of the agenda may be obtained shall be sent to agencies, organizations, groups, or individuals who have requested such notice.

C. Agenda availability and changes:

(1) Agenda availability: Except for emergency meetings, the agenda for a regular or special meeting will be made available to the public by posting on the department's public website and social media sites and from the office of the director, New Mexico department of game and fish, one Wildlife Way, Santa Fe, New Mexico 87507 at least 72 hours in advance of each meeting.

(2) The proposed agenda for any meeting is subject to change as deemed necessary by the chairman of the state game commission. However, such changes may not be made less than 72 hours in advance of any meeting and the final agenda incorporating any such changes, will be made available to the public at least 72 hours in advance of the meeting from the office of the director.

[12-17-75, 9-3-82, 12-3-87, 3-5-91, 8-15-95, 3-15-99, 2-14-00; 19.30.3.8 NMAC - Rn & A, 19 NMAC 30.3.8, 2-14-02; A, 09-15-2014; A, 02-27-2015]

PART 4: BOUNDARY DESCRIPTIONS FOR GAME MANAGEMENT UNITS

19.30.4.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.4.1 NMAC - Rp, 19.30.4.1 NMAC, 8/25/2020]

19.30.4.2 SCOPE:

Department staff and licensed hunters and trappers.

[19.30.4.2 NMAC - Rp, 19.30.4.2 NMAC, 8/25/2020]

19.30.4.3 STATUTORY AUTHORITY:

17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.30.4.3 NMAC - Rp, 19.30.4.3 NMAC, 8/25/2020]

19.30.4.4 DURATION:

Permanent.

[19.30.4.4 NMAC - Rp, 19.30.4.4 NMAC, 8/25/2020]

19.30.4.5 EFFECTIVE DATE:

August 25, 2020, unless a different date is cited at the end of a section.

[19.30.4.5 NMAC - Rp, 19.30.4.5 NMAC, 8/25/2020]

19.30.4.6 OBJECTIVE:

Establishing boundary descriptions for game management units and other designated areas.

[19.30.4.6 NMAC - Rp, 19.30.4.6 NMAC, 8/25/2020]

19.30.4.7 DEFINITIONS:

A. "County road" or "CR" as used herein shall be a numbered road that is designated and managed by New Mexico county governments.

B. "East" or "E" as used herein shall be the cardinal direction east.

C. "Forest road" or "FR" as used herein shall be a numbered road that is under the jurisdiction of and managed by the United States Forest Service.

D. "Forest trail" or "FT" as used herein shall be a numbered trail that is under the jurisdiction of and managed by the United States Forest Service.

E. "Game management unit" or "GMU" as used herein, shall be a geographical subdivision of the state used to manage game species.

F. "Interstate" or "I-" as used herein shall be a numbered controlled access highway that is part of the United States Interstate Highway System.

G. "New Mexico highway" or "NM" as used herein shall be a numbered highway or route that is part of the New Mexico State Highway System managed by the New Mexico Department of Transportation.

H. "North" or "N" as used herein shall be the cardinal direction north.

I. "Range" or "R" as used herein shall be range designations based on the New Mexico Principal Meridian and Base Line of the United States Public Land Survey System. Ranges are numbered in order east and west from the principal meridian (e.g. R10E is the 10th range east of the principle meridian).

J. "South" or "S" as used herein shall be the cardinal direction south.

K. "Township" or "T" as used herein shall be township designations based on the New Mexico Principal Meridian and Base Line of the United States Public Land Survey System. Townships are numbered in order north and south from the base line (e.g. T2N is the second township north of the base line).

L. "United States highway" or "US" as used herein shall be a numbered highway that is part of the United States Numbered Highway System coordinated by the American Association of State Highway and Transportation Officials.

M. "West" or "W" as used herein shall be the cardinal direction west.

[19.30.4.7 NMAC - Rp, 19.30.4.7 NMAC, 8/25/2020]

19.30.4.8 GAME MANAGEMENT UNITS:

A. GMU 1: The Ute Mountain Ute Tribe reservation and all contiguous portions of the Navajo Nation reservation north and west of and including section 31, T 17 N, R 13 W.

B. GMU 2: Beginning at the junction of the east boundary of the Ute Mountain Ute Tribe reservation and the Colorado-New Mexico state line and running east along the state line to the western boundary of the Jicarilla Apache Nation reservation, then south, west and south along the reservation boundary to its intersection with US 550, then northwest along US 550 to its intersection with the San Juan river, then west along the San Juan river to the east boundary of the Navajo Nation reservation, then north along the east boundary of the Navajo reservation to its junction with the south boundary of

the Ute Mountain Ute Tribe reservation, then east and north along the Ute Mountain Ute Tribe reservation boundary to the Colorado-New Mexico state line.

C. GMU 2A: That portion of GMU 2 west of the Los Pinos river (Pine Arm of Navajo reservoir) and north of the San Juan river.

D. GMU 2B: That portion of GMU 2 east and north of the following line: from the junction of the New Mexico-Colorado state line and Pine river, then south along the Pine river to its junction with the San Juan river, then south and west along the San Juan river to its junction with Largo canyon, then south and east along the central wash of Largo canyon to its junction with Carrizo canyon (Cereza canyon), then south and east along the central wash of Carrizo canyon (Cereza canyon) to the Jicarilla Apache Nation reservation boundary.

E. GMU 2C: That portion of GMU 2 south and west of the following line: from the junction of US 550 and the San Juan river at Bloomfield, then east along the San Juan river to its junction with Largo canyon, then south and east along the central wash of Largo canyon to its junction with Carrizo canyon (Cereza canyon), then south and east along the central wash of Carrizo canyon (Cereza canyon) to the Jicarilla Apache Nation reservation boundary.

F. GMU 3: The Jicarilla Apache Nation reservation.

G. GMU 4: Beginning at the junction of the east boundary of the Jicarilla Apache Nation reservation and the Colorado-New Mexico state line and running east along the state line to the eastern boundary of the Tierra Amarilla grant, then south along the east boundary of the Tierra Amarilla grant and west along its south boundary to its junction with the east boundary of the Jicarilla Apache Nation reservation, then north along the east boundary of the reservation to its junction with the Colorado-New Mexico state line.

H. GMU 5: Beginning at the intersection of the east boundary of the Jicarilla Apache Nation reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama, running south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84, then south along US 84 to its junction with NM 96 northwest of Abiquiu, then west along NM 96 to its junction with NM 595 north of Regina, then west along NM 595 to its intersection with the east boundary of the Jicarilla Apache Nation reservation, then northerly along the east boundary of the reservation to its junction with the south boundary of the Tierra Amarilla grant and the Rio Chama.

I. GMU 5A: That portion of GMU 5 beginning at the junction of the northwest boundary of the Santa Fe national forest administrative boundary with the Jicarilla Apache Nation reservation north of Lindrith and following the forest administrative boundary south towards Lindrith, then northeasterly past Llaves, thence southerly to its intersection with NM 96, then west along NM 96 to its junction with NM 595 north of Regina, then west along NM 595 to its intersection with the east boundary of the

Jicarilla Apache Nation reservation, then following the reservation boundary north to its intersection with the northwest corner of the Santa Fe national forest administrative boundary.

J. GMU 5B: That portion of GMU 5 beginning at the intersection of the east boundary of the Jicarilla Apache Nation reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama, running south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84, then south along US 84 to its junction with NM 96 northwest of Abiquiu, then west along NM 96 to its junction with the Santa Fe national forest administrative boundary west of Gallina, then following the forest boundary north then west past Llaves then southwesterly to south of Lindrith, then north along the forest service administrative boundary line to its intersection with the Jicarilla Apache Nation reservation, then east along the reservation boundary to the junction of the reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama.

K. GMU 6: Beginning at the junction of I-25 and US 550 near Bernalillo and running northwest and west along US 550 past San Ysidro to its intersection with the boundary of the Pueblo of Zia reservation, then south, west and north along the Pueblo of Zia reservation boundary to the boundary of the Pueblo of Jemez reservation, then west, north and east along the Pueblo of Jemez reservation boundary to its intersection with US 550 near La Ventana, then north and west along US 550 to its intersection with the south boundary of the Jicarilla Apache Nation reservation, then east along the south boundary of the reservation and north along its east boundary to its intersection with NM 595, then east along NM 595 to its junction with NM 96, then east along NM 96 to its junction with US 84 northwest of Abiquiu, then southeast along US 84 to its junction with I-25 at Santa Fe, then southwest along I-25 to its junction with US 550.

L. GMU 6A: That portion of GMU 6 starting at the junction of I-25 and US 550 at Bernalillo and running northwest and west along US 550 past San Ysidro to its intersection with the boundary of the Pueblo of Zia reservation, then south, west and north along the Pueblo of Zia reservation boundary to the Pueblo of Jemez reservation, then west, north and east along Pueblo of Jemez reservation boundary to its intersection with US 550 near La Ventana, then north and west along US 550 to its intersection with the south boundary of the Jicarilla Apache Nation reservation, then east along the south boundary of the Jicarilla Apache Nation reservation and north along its east boundary to its intersection with NM 595, then east along NM 595 to its junction with NM 96, then east along NM 96 to its junction with Santa Fe FR 103, then south along Santa Fe FR 103 to its junction with Santa Fe FR 117, then south along Santa Fe FR 117 to its junction with Santa Fe FR 527 (Pipeline road), then east along Santa Fe FR 527 to its junction with the west boundary of the Valles Caldera national preserve, then south and east along the boundary of the Valles Caldera national preserve to its junction with Santa Fe FR 280 and NM 4, then south along Santa Fe FR 280 to its junction with Santa Fe FT 140, then south along Santa Fe FT 140 to Peralta creek, then south and east along Peralta creek to its junction with Santa Fe FR 266,

then south and east along Santa Fe FR 266 to its junction with NM 22, then along NM 22 to its junction with NM 16, then southeast along NM 16 to its junction with I-25, then south and west along I-25 to its junction with US 550 at Bernalillo.

M. GMU 6B: That portion of GMU 6 comprised of all lands within the fenced or posted boundary of the Valles Caldera national preserve as fenced or posted by the United States forest service.

N. GMU 6C: That portion of GMU 6 starting at the junction of NM 96 and Santa Fe FR 103 east of Gallina and running south along Santa Fe FR 103 to its junction with Santa Fe FR 117, then south along Santa Fe FR 117 to its junction with Santa Fe FR 527 (Pipeline road), then east along Santa Fe FR 527 to its junction with the west boundary of the Valles Caldera national preserve, then north, east, south and west along the boundary of the Valles Caldera national preserve to its junction with NM 4 and Santa Fe FR 280, then south along Santa Fe FR 280 to its junction with Santa Fe FT 140, then south along Santa Fe FT 140 to Peralta creek, then south and east along Peralta creek to its junction with Santa Fe FR 266, then south and east along Santa Fe FR 266 to its junction with NM 22, then along NM 22 to its junction with NM 16, then south and east along NM 16 to its junction with I-25, then north along I-25 to its junction with US 84 at Santa Fe, then north along US 84 to its junction with NM 96 west of Abiquiu, then west along NM 96 to its junction with Santa Fe FR 103.

O. GMU 7: Beginning at the intersection of the east boundary of the Navajo Nation reservation and Navajo W Route 9 at section 31, T18N, R13W, then running north along the reservation boundary to the northeastern corner immediately west of Farmington, then east along the San Juan river to its intersection with US 550 at Bloomfield, then southeast along US 550 to its intersection with the west boundary of the Jicarilla Apache Nation reservation, then south along the west boundary of the reservation and east along its south boundary to its intersection with US 550, then east and south along US 550 to its intersection with the north boundary of the Pueblo of Jemez reservation south of La Ventana, then west along the north boundary of the reservation and south along its west boundary to its intersection with the San Luis road, then southwest along San Luis road to its intersection with arroyo Chico, then west up arroyo Chico to its junction with Voght draw, then west up Voght draw to its junction with Inditos draw, then west up Inditos draw to its intersection with NM 509, south of Hospah, south along NM 509 to McKinley CR 19-A (Prewitt road), then southwest along McKinley CR 19-A (Prewitt road) to its junction with the continental divide (near Borrego pass), then westerly along the continental divide to its intersection with NM 371, then north along NM 371 to its junction with Navajo W Route 9, then northwest along Navajo W Route 9 to its intersection with the boundary of the Navajo Nation reservation at section 31, T18N, R13W.

P. GMU 8: Beginning at the intersection of I-40 and I-25 at Albuquerque and running northeast along I-25 to its junction with NM 14, then south along NM 14 to Santa Fe CR 42, then southeast along the county road to its junction with NM 41 at

Galisteo, then south along NM 41 to its intersection with I-40 at Moriarty, then west along I-40 to its intersection with I-25.

Q. GMU 9: Beginning at Prewitt at the junction of I-40 and NM 412 and running north along NM 412 to NM 122, then east along NM 122 to its intersection with McKinley CR 19-A (Prewitt road), then north along CR 19-A to its intersection with NM 509, then north along NM 509 to its intersection with Inditos draw, then south and east down Inditos draw to its junction with Voght draw, then east down Voght draw to its junction with arroyo Chico, then east down arroyo Chico to its intersection with the San Luis road, then northeast along the San Luis road to its intersection with the west boundary of the Pueblo of Jemez reservation, then east along the Pueblo of Jemez reservation southern boundary to the boundary of the Pueblo of Zia reservation, then south and east along the Pueblo of Zia reservation boundary to its intersection with US 550 west of San Ysidro, then east and southeast along US 550 to its junction with I-25 at Bernalillo, then south along I-25 to its junction with NM 6 at Los Lunas, then west and northwest along NM 6 to its junction with I-40, then west along I-40 to Prewitt.

R. GMU 10: Beginning at the junction of the north boundary of the Pueblo of Zuni reservation with the Arizona-New Mexico state line and running north along the state line to the boundary of the Navajo Nation reservation at section 35, T17N, R21W, then east along the contiguous southern boundary of the Navajo Nation reservation and north along its east boundary to its intersection with Navajo W Route 9 at section 31, T18N, R13W, then southeast along Navajo W Route 9 to its junction with NM 371, then east and south along NM 371 to its intersection with the continental divide, then east along the continental divide to its junction with McKinley CR 19-A (Prewitt road) near Borrego pass, then south along CR 19-A to NM 122, then west along NM 122 to NM 412, then south along NM 412 to its junction with I-40 at Prewitt, then southeast along I-40 to its junction with NM 53 (Ice Caves road) near Grants, then south and west along NM 53 to its intersection with the east boundary of the Pueblo of Zuni reservation, then north along the east boundary of the Pueblo of Zuni reservation and west along its north boundary to its junction with the Arizona-New Mexico state line.

S. GMU 11: The Pueblo of Zuni reservation.

T. GMU 12: Beginning at the intersection of US 60 and the Arizona-New Mexico state line and running north along the state line to the south boundary of the Pueblo of Zuni reservation, then east along the south boundary of the reservation and north along its east boundary to its intersection with NM 53, then east along NM 53 to its junction with Cibola CR 42, then south along Cibola CR 42 to its junction with NM 117, then east along NM 117 to its junction with Cibola CR 41, then south along Cibola CR 41 to its junction with Catron CR A083, then south along Catron CR A083 to its junction with NM 603, then south along NM 603 to its junction with US 60 at Pie Town, thence west along US 60 to the Arizona-New Mexico state line.

U. GMU 13: Beginning at the junction of NM 53 (Ice Caves road) and I-40 west of Grants and running east along I-40 to its junction with NM 6, then southeast along NM 6

to its junction with I-25 at Los Lunas, then south along I-25 to its junction with US 60 at Socorro, then west along US 60 to its junction with NM 12 at Datil, then southwest along NM 12 to its junction with Catron CR B034, then northwest along Catron CR B034 to its junction with Greens Gap road (Catron CR A130), then west and north along Greens Gap road (Catron CR A130) to its junction with Pie Town road (Catron CR A056), then north along Pie Town road (Catron CR A056) to Pie Town, then north along NM 603 to its junction with York Ranch road (Catron CR A083), then north along York Ranch road (Catron CR A083 and Cibola CR 41) to its junction with NM 117, then west along NM 117 to its junction with Back Country Byway (Cibola CR 42), then north along Back Country Byway (Cibola CR 42) to its junction with NM 53, then east and north along NM 53 to its junction with I-40 west of Grants.

V. GMU 14: Beginning at the junction of US 60 and I-25 at Bernardo and running north along I-25 to its intersection with I-40 at Albuquerque, then east along I-40 to its intersection with NM 41 at Moriarty, then south along NM 41 to its junction with US 60 at Willard, then west along US 60 to its junction with I-25.

W. GMU 15: Beginning at the intersection of the Arizona-New Mexico state line and US 60 and running east along US 60 to its intersection with NM 603 at Pie Town, then south and east along Pie Town road (Catron CR A056) to its junction with Greens Gap road (Catron CR A130), then east along Greens Gap road (Catron CR A130) to its junction with NM 12 south of Datil, then southwest along NM 12 to its junction with US 180 west of Reserve, then northwest along US 180 to its intersection with the Arizona-New Mexico state line, then north along the Arizona-New Mexico state line to its intersection with US 60.

X. GMU 16: Beginning at the junction of NM 12 and US 60 at Datil and running east along US 60 to its intersection with NM 52, then southwest along NM 52 to its intersection with NM 163, then southwest along NM 163 to its intersection with the continental divide, then south and southwest along the continental divide to its intersection with the Grant-Sierra county line at Reed's peak, then south along the Grant-Sierra county line to its intersection with Gila FR 152 at Board Gate saddle, then northwest and southwest along Gila FR 152 to its junction with NM 35, then northwest along NM 35 to its junction with Sapillo creek, then west along Sapillo creek to its junction with the Gila river, then northwest along the Gila river to its intersection with Turkey creek, then northwest along Turkey creek to its intersection with Gila FT 158, then northwest along Gila FT 158 through Woodrow canyon to Mogollon creek, then northwest along Mogollon creek to its junction with the west fork of Mogollon creek and Gila FT 224, then northwest along the west fork of Mogollon creek and Gila FT 224 to its junction with Gila FT 182, then north and west on Gila FT 182 to its junction with Bursum road (NM 159) at Sandy point, then west on Bursum road to its junction with US 180 south of Alma, then north on US 180 to its intersection with NM 12, thence northeast along NM 12 to its junction with US 60 at Datil.

Y. GMU 16A: That portion of GMU 16 beginning at the junction of Bursum road (NM 159) and US 180, then north along US 180 to its junction with NM 12, then northeast

along NM 12 to its junction with NM 435, then south along NM 435 to its junction with Negrito creek south of Reserve, then east along Negrito creek to its junction with the north fork of Negrito creek, then east along the north fork of Negrito creek to its junction with Gila FR 94 at Collins park, then south on Gila FR 94 to its junction with Gila FR 28, then southeasterly on Gila FR 28 to its junction with Gila FR 30, then southeasterly on Gila FR 30 to its junction with Snow Lake road (Catron CR 021), then southwesterly on Snow Lake road to its junction with Gila FR 142C west of Cooney prairie, then south on Gila FR 142C to the Gila wilderness boundary, then west along the Gila wilderness boundary to its junction with Snow creek below Snow lake, then south along Snow creek to its junction with Gilita creek, then west along Gilita creek to its junction with Willow creek, then west along Willow creek to its junction with Gila FT 138, then westerly along Gila FT 138 to its junction with Gila FT 182, then north on Gila FT 182 to its junction with Bursum road (NM 159) at Sandy point, then west along Bursum road (NM 159) to its junction with US 180.

Z. GMU 16B: That portion of GMU 16 beginning at the junction of Gila FR 152 and the Grant-Sierra county line southwest of Board Gate saddle, then north along the Grant-Sierra county line to Reeds peak and the continental divide, thence north along the continental divide to its intersection with Gila FT 42, then west along Gila FT 42 to its junction with Gila FT 40 at Diamond creek, then west along Gila FT 40 and Diamond creek to Gila FR 4069G, then west to Gila FR 225, then southwest along Gila FR 225 to its junction with Gila FR 18, then northwest along Gila FR 18 to its junction with Gila FR 704, then west along Gila FR 704 to Gila FR 4208P, then northwesterly along Gila FR 4208P to Gila FT 772, then northwesterly along Gila FT 772 to Black mountain, then west from Black mountain along Gila FT 23 to Gila FT 812, then north along Gila FT 812 to its intersection with the south fork of Christie canyon and the wilderness boundary, then west along the wilderness boundary to Snow creek, then south along Snow creek to Gilita creek, then west along Gilita creek to Willow creek, then west along Willow creek to Gila FT 138, then westerly along Gila FT 138 to Gila FT 182, then south and east on Gila FT 182 to its junction with Gila FT 224 at west fork saddle, then south along Gila FT 224 and down the west fork of Mogollon creek to its junction with Mogollon creek, then easterly along Mogollon creek to Gila FT 158 at Woodrow canyon, then southeast along Gila FT 158 to Turkey creek, then south along Turkey creek to the Gila river, then east along the Gila river to Sapillo creek, then east along Sapillo creek to NM 35, then east along NM 35 to its intersection with Gila FR 152, then northeast along Gila FR 152 to its junction with the Sierra-Grant county line southwest of Board Gate saddle.

AA. GMU 16C: That portion of GMU 16 beginning at the road junction of O Bar O Canyon road (Catron CR 072) and Gila FR 30 in Railroad canyon, then northeast along O Bar O Canyon road to its junction with NM 163, then northeast along NM 163 to the continental divide, then south along the continental divide to Gila FT 42, then south along Gila FT 42 to Gila FT 40, then west on Gila FT 40 to Gila FR 4069G, then west to Gila FR 225, then southwest along Gila FR 225 to Gila FR 18, then northwest along Gila FR 18 to Gila FR 704, then west along Gila FR 704 to Gila FR 4208P, then northwesterly along Gila FR 4208P to Gila FT 772, then northwest along Gila FT 772 to

Gila FT 23 on Black mountain, then northwest along Gila FT 23 to Gila FT 812, then north along Gila FT 812 to south fork of Christie canyon, then north and west along south fork of Christie canyon to Gila FR 142C, then north along Gila FR 142C to Snow Lake road (Catron CR 021), then northeast along Snow Lake road to its junction with Gila FR 30, then east along Gila FR 30 to its junction with O Bar O Canyon road in Railroad canyon.

BB. GMU 16D: That portion of GMU 16 beginning at Apache creek and continuing south and west along NM 12 to its junction with NM 435 at Reserve, then south along NM 435 to its junction with Negrito creek, then east along Negrito creek to its junction with the north fork of Negrito creek, then east along the north fork of Negrito creek to its junction with Gila FR 94 at Collins park, then south along Gila FR 94 to its junction with Gila FR 28, then east along Gila FR 28 to junction with Gila FR 30, then southeast along Gila FR 30 to its intersection with Coyote Canyon road (Catron CR 016), then north and west along Coyote Canyon road to its junction with Bursum road (Catron CR 019), then north along Bursum road to its intersection with NM 12, then west on NM 12 to Apache creek.

CC. GMU 16E: That portion of GMU 16 beginning at the intersection of Coyote Canyon road (Catron CR 016) and Gila FR 30, then northwesterly along Coyote Canyon road to its intersection with Bursum road (Catron CR 019), then north on Bursum road to its intersection with NM 12, then east on NM 12 to its intersection with NM 60 at Datil, then east on NM 60 to its intersection with NM 52, then south on NM 52 to its intersection with NM 163, then west on NM 163 to its intersection with O Bar O Canyon road (Catron CR 072), then west on O Bar O Canyon road to its intersection with Gila FR 30, then west on Gila FR 30 to its intersection with Coyote Canyon road.

DD. GMU 17: Beginning at the junction of NM 52 and US 60 east of Datil and running east along US 60 to its junction with I-25 at Socorro, then south along I-25 to its junction with NM 181, then north along NM 181 to its junction with NM 52 east of Cuchillo, then west along NM 52 to its junction with NM 142, then northwest along NM 142 to its junction with Alamosa creek at Monticello, then northwest along Alamosa creek through Monticello canyon to its junction with NM 52 south of Dusty, then north along NM 52 to its junction with US 60.

EE. GMU 18: Beginning at the junction of US 380 and I-25 at San Antonio and running north along I-25 to its junction with US 60 at Bernardo, then east along US 60 to NM 55 at Mountainair, then south and southeast along NM 55 to its junction with US 54, then south along US 54 to its intersection with the Lincoln-Otero county line, then west along the county line to the east boundary of White Sands missile range, then north along the east boundary and west along the north boundary of White Sands missile range to the northwest corner of the missile range, then due north to US 380, then west along US 380 to its junction with I-25 at San Antonio.

FF. GMU 19: Beginning at the intersection of US 70 and the west boundary of the White Sands missile range east of Organ and running north along the west boundary,

east along the north boundary, and south along the east boundary of White Sands missile range, then southerly following the eastern boundary of Holloman Air Force base, continuing south along the east boundary of White Sands missile range, then south and east along the eastern boundary of Fort Bliss - Dona Ana Range Camp to its intersection with US 54 south of Orogrande, then south along US 54 to its intersection with the New Mexico-Texas state line, then west along the state line to its intersection with I-10, then northwest along I-10 to its junction with I-25, then north along I-25 to its junction with US 70 at Las Cruces, then east along US 70 to its intersection with the west boundary of the White Sands missile range.

GG. GMU 20: Beginning at the junction of US 70 and I-25 at Las Cruces and running north along I-25 to its junction with US 380 at San Antonio, then east along US 380 to a point due north of the northwestern corner of the White Sands missile range, then due south to the northwest corner of the missile range, then south along the west boundary of the missile range to its intersection with US 70 east of Organ, then west along US 70 to its junction with I-25.

HH. GMU 21: Beginning at the junction of US 180 and NM 26 north of Deming and running northeast along NM 26 to its junction with NM 27 at Nutt, then northwest along NM 27 to its intersection with the Sierra-Luna county line, then west along the south boundary of Sierra county and north along its west boundary to the junction of the county line and the continental divide, then north along the continental divide to its intersection with NM 163, then northeast along NM 163 to its junction with NM 52, then southeast along NM 52 to its intersection with Alamosa creek south of Dusty, then southeast along Alamosa creek through Monticello canyon to its intersection with NM 142 at Monticello, then southeast along NM 142 to its intersection with NM 52, then southeast along NM 52 to its junction with NM 181, then south along NM 181 to its junction with I-25, then south along I-25 to its junction with US 180 at Las Cruces, then west along US 180 to Deming and north along US 180 to its junction with NM 26.

II. GMU 21A: That northwest portion of GMU 21 that lies within the Gila national forest boundary.

JJ. GMU 21B: That portion of GMU 21 that lies outside the Gila national forest boundary.

KK. GMU 22: Beginning at the intersection of the Gila river and US 180 south of Cliff running north along US 180 to its junction with Bursum road (NM 159), then east along Bursum road to its junction with Gila FT_182 at Sandy point, then south along Gila FT 182 to its junction with Gila FT 224 at the west fork saddle, then south on Gila FT 224 down the west fork of Mogollon creek to its junction with the main Mogollon creek, then easterly along Mogollon creek to the junction of Gila FT 158 at Woodrow canyon, then south along Gila FT 158 to main Turkey creek, then south along Turkey creek to its junction at the Gila river, then southwest along the Gila river to its junction with US 180.

LL.GMU 23: Beginning at the intersection of US 180 and the Arizona-New Mexico state line west of Luna, then south along the state line to its intersection with US 70, then southeast along US 70 to its junction with US 180 at Deming, thence northwest along US 180 to its junction with the Arizona-New Mexico state line.

MM. GMU 24: Beginning at the junction of NM 26 and US 180 north of Deming and running northwest along US 180 to its intersection with the Gila river south of Cliff, then northeast along the Gila river to its junction with Sapillo creek, then east along Sapillo creek to NM 35, then east and south on NM 35 to its junction with Gila FR 152, then northeast along Gila FR 152 to its junction with the Grant-Sierra county line southwest of Board Gate saddle, then south along the west boundary of Sierra county and east along its south boundary to its intersection with NM 27, then south along NM 27 to its junction with NM 26, then southwest along NM 26 to its junction with US 180.

NN. GMU 25: Beginning at the junction of the United States-Mexico boundary with the west boundary of Luna county and running north along the county line to its intersection with NM 9, then northwest along NM 9 to its intersection with NM 146 (old NM 81) at Hachita, then north along NM 146 (old NM 81) to its junction with I-10, then east and south along I-10 to its junction with US 70, then east along US 70 to its junction with I-25, then south along I-25 to its junction with I-10, then south along I-10 to its intersection with the Texas-New Mexico state line, then west and south along the Texas state line to the United States-Mexico boundary, then west along the international boundary to the west boundary of Luna county.

OO. GMU 26: Beginning at Paskle gate on the United States-Mexico boundary, near international boundary marker No. 69, then north on the private dirt road from Paskle gate to its intersection with NM 338 approximately 100 yards west of Cloverdale and running north along NM 338 to its intersection with I-10, then north and east along I-10 to its intersection with NM 146 (old NM 81), then south along NM 146 to its intersection with NM 9 at Hachita, then east along NM 9 to its intersection with the west boundary of Luna county, then south along the Luna county line to the United States-Mexico boundary, then south and west along the international boundary to Paskle gate.

PP. GMU 27: Beginning at Paskle gate on the United States-Mexico boundary, near international boundary marker No. 69, then north on the private dirt road from Paskle gate to its intersection with NM 338 approximately 100 yards west of Cloverdale, then north along NM 338 to its intersection with I-10, then east along I-10 to its intersection with US 70 at Lordsburg, then northwest along US 70 to the Arizona-New Mexico state line, then south along the state line to its intersection with the United States-Mexico boundary, then east along the international boundary to Paskle gate.

QQ. GMU 28: The Fort Bliss-McGregor Range Camp military reservation east of US 54, excluding that part of the Sacramento division of the Lincoln national forest lying within the McGregor range co-use area.

RR. GMU 29: Beginning at the junction of the New Mexico-Texas state line and the east boundary of the Fort Bliss military reservation and running northeast along the military reservation boundary to its intersection with NM 506 (Otero CR E038) leading to Pinon, then east, north and east along NM 506 (Otero CR E038) to its intersection with NM 24 at Pinon, then east on NM 24 and Pinon Dunken road approximately three miles to its intersection with Cornucopia Canyon road and NM 506, then running southerly along Cornucopia Canyon road and NM 506 through Cornucopia draw and Crow flats to its intersection with the New Mexico-Texas state line near Dell City, Texas, then west along the state line to the east boundary of the Fort Bliss military reservation.

SS. GMU 30: Beginning at the New Mexico-Texas state line near Dell City, Texas, and its intersection with NM 506, then northerly along NM 506 and Cornucopia Canyon road through Crow flats and Cornucopia draw to its junction with Pinon Dunken road east of Pinon, then northeast along Pinon Dunken to its junction with US 82 north of Dunken, then east along US 82 to its intersection with US 285 at Artesia, then south and southeast along US 285 to its junction with US 180 at Carlsbad, then south along US 180 to its intersection with the New Mexico-Texas state line, then west along the state line to its intersection with NM 506.

TT.GMU 31: Beginning at the intersection of the New Mexico-Texas state line and US 180, southwest of Carlsbad, and running northeast along US 180 to its junction with US 285 at Carlsbad, then north along US 285 to its intersection with US 82 at Artesia, then east along US 82 to its junction with NM 249 at Maljamar, then north along NM 249 to its junction with NM 172, then north along NM 172 (Tower road) to its junction with US 380 west of Caprock, then east along US 380 to its junction with Button Mesa road, then north along Button Mesa road continuing north along Lea CR T-156, continuing north along Reserve road, continuing north along S Roosevelt road AK to its junction at Elida, then north along NM 330 to its junction with NM 267 west of Floyd, then north along NM 267 to its junction with US 60 east of Melrose, then east along US 60 to the New Mexico-Texas state line, then south and west along the state line to its intersection with US 180 southwest of Carlsbad.

UU. GMU 32: Beginning at the intersection of US 380 and the east boundary of Lincoln county and running north along the east boundary of Lincoln county to the west boundary of De Baca county, then north along the west boundary of De Baca county to its intersection with US 60, then east along US 60 to its junction with NM 267 east of Melrose, then south along NM 267 to its junction with NM 330 west of Floyd, then south along NM 330 to its junction with US 70 at Elida, then southwest along US 70 to its intersection with the Pecos river, then south along the Pecos river to its intersection with Aberdeen road (NM 249) at Hagerman, then west along Aberdeen road (NM 249) to its junction with NM 2, then south along NM 2 to its intersection with US 285 north of Artesia, then south on US 285 to its intersection with US 82 at Artesia, then west along US 82 to its junction with Picacho road (Chaves CR C433) near mile marker 60, then north along Picacho road to its intersection with Felix Canyon road near Flying H, then west along Felix Canyon road to its intersection with Picacho road, then

north along Picacho road continuing northerly along Picacho road (Lincoln CR E030 and Lincoln CR E028) to its junction with US 380. about a mile west of Picacho, then east along US 380 to its intersection with the east boundary of Lincoln county.

VV. GMU 33: Beginning at the intersection of US 82 and US 285 at Artesia and running north along US 285 to its junction with NM 2, then north on NM 2 to its intersection with NM 249 at Hagerman, then east along NM 249 to its intersection with the Pecos river, then north along the Pecos river to its intersection with US 70, then northeast along US 70 to S Roosevelt road AK at Elida, then south along S Roosevelt road AK continuing south along Reserve road, Button Mesa road and Lea CR T-156, then northwest along US 380 to NM 172 to US 82, then west along US 82 to US 285 at Artesia.

WW. GMU 34: Beginning at the junction of Tulie Gate road (Otero CR B-006) and the east boundary of the White Sands missile range at Tularosa gate and running east along Tulie Gate road to its junction with Railroad avenue (Otero CR B-009), then north on Railroad avenue to its intersection with US 54, then running south along US 54 to its intersection with US 70 at Tularosa, then running northeast along US 70 to its intersection with the west boundary of the Mescalero Apache Tribe reservation, then south along the west boundary of the reservation, east along its south boundary, and north along its east boundary to the Lincoln-Chaves county line, then east along the county line approximately two miles to its intersection with Picacho road, then southerly along Picacho road to its intersection with Felix Canyon road, then east along Felix Canyon road to its intersection with Picacho road, then south along Picacho road to its intersection with US 82, then west along US 82 to its junction with NM 24 north of Dunken, then south along Pinon Dunken road (NM 24) to its intersection with Owen Prather highway (NM 506) at Pinon, then west, south and west on Owen Prather highway (NM 506) to the east boundary of the Fort Bliss military reservation, then north and west along the boundary of the Fort Bliss-McGregor Range Camp military reservation to its intersection with the Sacramento division of the Lincoln national forest, then west and north along the boundary of the Sacramento division of the Lincoln national forest to its intersection with the north boundary of the Fort Bliss-McGregor Range Camp military reservation, then west and south along the boundary of the Fort Bliss-McGregor Range Camp military reservation to its junction with the east boundary of the Fort Bliss-Dona Ana Range Camp at US 54 south of Orogrande, then north along the east boundary of Fort Bliss-Dona Ana Range Camp, then north along the east boundary of White Sands missile range to Holloman Air Force base, then east and north along the eastern Holloman Air Force base boundary to the east boundary of White Sands missile range, then north along the east boundary of White Sands missile range to its intersection of Tulie Gate road (Otero CR B-006) at Tularosa gate.

XX. GMU 35: The Mescalero Apache Tribe reservation.

YY. GMU 36: Beginning at the junction of Otero CR B-006 and the east boundary of the White Sands missile range at Tularosa gate and running north along the east boundary to its intersection with the Lincoln-Otero county line, then east along

the county line to its intersection with US 54, then north along US 54 to its intersection with US 380 at Carrizozo, then east along US 380 to its junction with Picacho road (Lincoln CR E028), approximately 1 mile west of Picacho, then south along Picacho road (Lincoln CR E028) to its intersection with Picacho road (Lincoln CR E030), then south and west along Picacho road (Lincoln CR E030) to its intersection with the Lincoln-Chaves county line, then west along the county line to the east boundary of the Mescalero Apache Tribe reservation, then north along the east boundary of the reservation, west along its north boundary, and south along its west boundary to its intersection with US 70, then west along US 70 to its junction with US 54 at Tularosa, then north along US 54 to its junction with Otero CR B-009, then south along CR B-009 to its junction with Tulie Gate road (Otero CR B-006), then west along Tulie Gate road (Otero CR B-006) to its junction with the east boundary of White Sands missile range at Tularosa gate.

ZZ.GMU 37: Beginning at the intersection of US 380 and US 54 at Carrizozo and running north along US 54 to its junction with NM 462 west of Ancho, then east along NM 462 to its intersection with the Southern Pacific railroad tracks, then north along the railroad tracks to Hasparos canyon, then east down Hasparos canyon to the east boundary of Lincoln county, then south along the east boundary of Lincoln county to its intersection with US 380, then west along US 380 to its intersection with US 54 at Carrizozo.

AAA. GMU 38: Beginning at the junction of US 54 and NM 55 and running northwesterly along NM 55 to its junction with US 60 at Mountainair, then east along US 60 to the Guadalupe-De Baca county line, then south along the county line and along the east boundary of Lincoln county to its intersection with Hasparos canyon, then west up Hasparos canyon to the Southern Pacific railroad tracks northeast of Ancho, then south along the railroad tracks to their intersection with NM 462 at Ancho, then west along NM 462 to its junction with US 54, then south along US 54 to its junction with NM 55.

BBB. GMU 39: Beginning at the junction of US 60 and NM 41 west of Willard and running north along NM 41 to its intersection with I-40 at Moriarty, then east along I-40 to its junction with US 84 east of Santa Rosa, then southeast along US 84 to its junction with US 60 at Fort Sumner, then west along US 60 to its junction with NM 41 west of Willard.

CCC. GMU 40: Beginning at the junction of US 84 and I-40 east of Santa Rosa and running east along I-40 to the New Mexico-Texas state line, then south along the state line to its intersection with US 84, then west and north along US 84 to its junction with I-40.

DDD. GMU 41: Beginning at the junction of I-40 and NM 469 at San Jon and running north along NM 469 to its junction with US 54 south of Logan, then north along US 54 to its intersection with NM 39 north of Logan, then northwest along NM 39 to its junction with NM 102 east of Mosquero, then east, north and east along NM 102 to its

intersection with NM 402 north of Amistad, then north along NM 402 to its intersection with NM 421 north of Stead, then east along NM 421 to the New Mexico-Texas state line, then south along the state line to its intersection with I-40, then west along I-40 to its intersection with NM 469 at San Jon.

EEE. GMU 42: Beginning at the intersection of I-40 and the Pecos river at Santa Rosa and running northwest up the Pecos river to its intersection with US 84 at Dilia, then northwest along US 84 to its junction with I-25 at Romeroville, then northeast along I-25 to its intersection with the Mora river at Watrous, then east down the Mora river to the Canadian river, then south down the Canadian river to its intersection with NM 419 south of Sabinoso, then northeast along NM 419 to its junction with NM 39 northwest of Mosquero, then southeast along NM 39 to its intersection with US 54, then south along US 54 to its intersection with NM 469, then south along NM 469 to its intersection with I-40 at San Jon, then west along I-40 to its intersection with the Pecos river.

FFF. GMU 43: Beginning at the intersection of I-40 and NM 41 at Moriarty and running north along NM 41 to the junction at Galisteo with Santa Fe CR 42, then west along the county road to the junction with NM 14, then north along NM 14 to its junction with I-25, then northeast along I-25 to Santa Fe and east along I-25 to its junction with US 84 at Romeroville, then southeast along US 84 to its intersection with the Pecos river at Dilia, then east and south along the Pecos river to its intersection with I-40 at Santa Rosa, then west along I-40 to its intersection with NM 41.

GGG. GMU 45: Beginning at Glorieta on US 84, and running west and north along US 84 to its intersection with NM 68 at Espanola, then northeast along NM 68 to its intersection with NM 75 at Embudo, then east along NM 75 to its intersection with NM 518, then east along NM 518 to its intersection with the Santa Fe national forest administrative boundary line near Holman hill, then south along the Santa Fe national forest administrative boundary line to its intersection with the Tecolote land grant boundary line, then south along the Tecolote land grant boundary line to its intersection with US 84/I-25, then west along US 84/I-25 to Glorieta.

HHH. GMU 46: Beginning at the junction of I-25 and NM 120 at Wagon Mound and running northwest along NM 120 to its junction with NM 434, Black lake area, then north on NM 434 to Carson FR 76 to the Carson national forest administrative boundary, then south following the Carson national forest administrative boundary to the Santa Fe national forest administrative boundary at Holman hill, then continue south along the Santa Fe national forest administrative boundary to the Tecolote land grant boundary, then south along the Tecolote land grant boundary to I-25, then north along I-25 to the junction of I-25 and NM 120 at Wagon Mound.

III. GMU 47: Beginning at the intersection of the Mora river and I-25 near Watrous and running northeast along I-25 to its junction with US 56 at Springer, then east along US 56 to its junction with NM 39 at Abbott, then south and southeast along NM 39 to its junction with NM 419 southeast of Solano, then southwest along NM 419 to its

intersection with the Canadian river, then northwest up the Canadian river to the Mora river, then west up the Mora river to its intersection with I-25.

JJJ. GMU 48: Beginning at the intersection of I-25 and NM 120 at Wagon Mound, then northwest along NM 120 to its intersection with the south boundary of the Maxwell grant, then east along the south boundary of the Maxwell grant to its intersection with I-25, then south along I-25 to its intersection with NM 120 at Wagon Mound.

KKK. GMU 49: Beginning on the Rio Grande at Embudo creek and running north along the Rio Grande to its intersection with NM 567 at Taos junction bridge, then east on NM 567 to NM 570, then northeast on NM 570 to its junction with NM 68 immediately south of Ranchos de Taos, then north along NM 68 to the south boundary of the Pueblo of Taos, then east along the Pueblo of Taos's south boundary to the Taos county line, then south along the Taos county line to its intersection with US 64, then east along US 64 to its junction with NM 434 north of Black lake, then south along NM 434 to the Carson national forest administrative boundary at Carson FR 76, then south along Carson national forest administrative boundary to its intersection with NM 518 at Holman hill, then westerly along NM 518 to its junction with NM 75, then west along NM 75 to NM 68, then south on NM 68 to Embudo creek, then west on Embudo creek to the Rio Grande.

LLL. GMU 50: Beginning at the junction of US 84 and NM 554 east of Abiquiu and running north and east along NM 554 to its junction with NM 111, then southeast along NM 111 to its junction with US 285, then north along US 285 to the Colorado-New Mexico state line, then east along the state line to its intersection with the Rio Grande, then south along the Rio Grande to its junction with Embudo creek, then east up Embudo creek to NM 68 at Embudo, then southwest along NM 68 to its junction with US 84 at Espanola, then northwest along US 84 to its junction with NM 554.

MMM. GMU 51: Beginning at the intersection of US 64 and the eastern boundary of the Tierra Amarilla grant, running south then west along the Tierra Amarilla grant boundary line to its intersection with the Rio Chama, then south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84 northwest of Abiquiu, then southeast along US 84 to its intersection with NM 554 east of Abiquiu, then north and east along NM 554 to its intersection with NM 111, then south along NM 111 to its intersection with US 285 north of Ojo Caliente, then east and north along US 285 to its intersection with US 64 at Tres Piedras, then west along US 64 to its intersection with the Tierra Amarilla grant boundary.

NNN. GMU 51A: That portion of GMU 51 beginning at the intersection of US 64 and the eastern boundary of the Tierra Amarilla grant, running south then west along the Tierra Amarilla grant boundary line to its junction with US 84, then southeast along US 84 to its intersection with NM 554 east of Abiquiu, then north and east along NM 554 to its intersection with NM 111, then south along NM 111 to its intersection with US 285

north of Ojo Caliente, then east and north along US 285 to its intersection with US 64 at Tres Piedras, then west along US 64 to its intersection with the Tierra Amarilla grant boundary.

OOO. GMU 51B: That portion of GMU 51 beginning at the intersection of the east boundary of the Jicarilla Apache Nation reservation, the south boundary of the Tierra Amarilla grant and the Rio Chama, running south along the Rio Chama to its intersection with the Piedra Lumbre grant boundary line, then northeast along the Piedra Lumbre grant boundary line to its intersection with US 84, then north along US 84 to its junction with the south boundary of the Tierra Amarilla grant, then west along the south boundary of the Tierra Amarilla grant to its junction with the Rio Chama.

PPP. GMU 52: Beginning at the intersection of US 64 and the east boundary of the Tierra Amarilla grant and running north along the eastern boundary of the grant to the Colorado-New Mexico state line, then east along the state line to its intersection with US 285, then south along US 285 to its junction with US 64 at Tres Piedras, then west along US 64 to its intersection with the east boundary of the Tierra Amarilla grant.

QQQ. GMU 53: Beginning at the intersection of NM 567 and the Rio Grande and running north along the Rio Grande to the Colorado-New Mexico state line, then east along the state line to its junction with NM 522, then south along NM 522 to the south boundary of the Sangre de Cristo grant, then east along the grant boundary to the Taos-Colfax county line, then south along the Colfax county line to the south boundary of the Pueblo of Taos, then west along the south boundary of the Pueblo of Taos to NM 68, then south along NM 68 to NM 570 immediately south of Ranchos de Taos, then west along NM 570 to its junction with NM 567, then west along NM 567 to its intersection with the Rio Grande.

RRR. GMU 54: Beginning at the intersection of the south boundary of the Maxwell grant and NM 434 and running north along NM 434 to its junction with US 64, then north and east along US 64 to its junction with NM 21 west of Cimarron, then south and east along NM 21 to its junction with I-25 south of Springer, then south along I-25 to its intersection with the south boundary of the Maxwell grant, then west along the south boundary of the grant to its intersection with NM 434.

SSS. GMU 55: Beginning at the junction of NM 21 and US 64 west of Cimarron and running west and south along US 64 to the Colfax-Taos county line at Palo Flechado pass, then north along the Colfax county line to the south boundary of the Sangre de Cristo grant, then north and west along the Sangre de Cristo grant's south boundary to NM 522, then north along NM 522 to the Colorado-New Mexico state line, then east along the state line to its intersection with I-25, then south along I-25 to its junction with NM 21 at Springer, then west and north along NM 21 to its junction with US 64 west of Cimarron.

TTT. GMU 55A: That portion of GMU 55 beginning at the junction of NM 58 and US 64 at Cimarron and running west and south along US 64 to the Colfax-Taos county

line at Palo Flechado pass, then north along the Colfax county line to the south boundary of the Sangre de Cristo grant, then north and west along the Sangre De Cristo grant's south boundary to NM 522, then north along NM 522 to the Colorado-New Mexico state line, then east along the state line to its intersection with I-25, then south along I-25 to its junction with US 64, thence southwest along US 64 to its junction with NM 58 at Cimarron.

UUU. GMU 55B: That portion of GMU 55 beginning at the junction of I-25 and US 64 south of Raton, then south and west along US 64 to its junction with NM 21 west of Cimarron, then south and east along NM 21 to its junction with I-25 south of Springer, then north along I-25 to its junction with US 64 south of Raton.

VVV. GMU 56: Beginning at the junction of US 56 and I-25 at Springer and running north along I-25 to its junction with US 64 at Raton, then east along US 64 to its junction with US 56 at Clayton, then west along US 56 to its junction with I-25.

WWW. GMU 57: Beginning at the junction of US 64 and I-25 at Raton and running north along I-25 to the Colorado-New Mexico state line, then east along the state line to NM 551, then south along NM 551 to its junction with NM 456, then southwest along NM 456 to its junction with NM 325, then southwest along NM 325 to its junction with US 64, then west along US 64 to its junction with I-25.

XXX. GMU 58: Beginning at the junction of US 64 and NM 325 at Capulin and running northeast along NM 325 to its junction with NM 456, then northeast along NM 456 to its junction with NM 551, then north along NM 551 to the Colorado-New Mexico state line, then east along the state line to the Oklahoma-New Mexico state line, then south along the state line to its intersection with US 64, then west along US 64 to its junction with NM 325.

YYY. GMU 59: Beginning at the intersection of NM 39 and US 56 at Abbott, then east along US 56 to the New Mexico-Texas state line, then south along the New Mexico-Texas state line to NM 421 east of Sedan, then west along NM 421 to its intersection with NM 402 north of Stead, then south along NM 402 to its intersection with NM 102 north of Amistad, then west, south and west along NM 102 to its intersection with NM 39 east of Mosquero, then north along NM 39 to its intersection with US 56 at Abbott.

[19.30.4.8 NMAC - Rp, 19.30.4.8 NMAC, 8/25/2020]

19.30.4.9 OTHER DESIGNATED AREAS:

A. GMU 23 (Burro mountain hunt area): That portion of GMU 23 comprised of the Big Burro mountains portion of the Gila national forest and shall include all private land lying within the national forest boundary.

B. GMU 24 (Fort Bayard management area): That portion of GMU 24 beginning at the NW corner of section 22, T17S, R13W south along the west section line of sections 22, 27 and 34 to the north right-of-way fence of US 180, thence easterly along the north right-of-way fence of US 180 through sections 34 and 35 to the east right-of-way fence of the road entering Fort Bayard medical center, thence northwesterly along this east right-of-way fence through sections 35 and 26 for approximately one and one-quarter miles to the forest boundary fence, thence northeasterly along the forest boundary fence for approximately five-eighths mile, thence easterly along the forest boundary fence through sections 26 and 25 for approximately three-quarters mile, thence southerly along the forest boundary fence for approximately one-half mile, thence easterly along the forest boundary fence for approximately five-eighths mile to the west right-of-way fence of NM 90, thence northeasterly along the right-of-way fence for about one-half mile to the intersection with the forest boundary fence, thence northerly along the forest boundary fence through sections 30, 19, 18 and 7 for about three and three-quarters miles, thence westerly along the forest boundary fence for approximately one-quarter mile to the southeastern corner of the Pear Tree pasture fence, thence northerly along the eastern boundary of the Pear Tree pasture fence for approximately one mile, thence westerly along the northern fenced boundary through sections 1, 2 and 3 of T17S, R13W of the Pear Tree, Castle Knob, Twin Sisters and Enclosure pasture fences for approximately three and a half miles to the corner of west section line of section 3, thence southerly along the west section lines of sections 3, 10 and 15 for approximately two and three-quarters miles to the point of origin.

C. GMU 25 (Florida mountains): That portion of GMU 25 comprised of the main Florida mountain range and Little Floridas, bounded by I-10 on the north, the Luna-Dona Ana county line on the east, the Mexico-New Mexico boundary line on the south, and NM 11 on the west.

D. GMU 32 (Roswell hunt area): That portion of GMU 32 beginning at the intersection of US 285 and NM 557, then east along NM 557 to its junction with NM 2, then north along NM 2 to its junction with NM 249, then east along NM 249 to the Pecos river, then north along the Pecos river to the north section line of section 2 of T9S, R25E, then west along the north township lines of T9S, R25E and T9S, R24E to US 285, then south along US 285 to the northeast corner of section 32 of T9S, R24E, then west along the north section lines of sections 32 and 31 of T9S, R24E, then sections 36, 35, 34, 33, 32 and 31 of T9S, R23E, and then sections 36, 35, 34 and 33 of T9S, R22E, then south along the west section lines of section 33 of T9S, R22E, then sections 4, 9, 16, 21, 28 and 33 of T10S, R22E, then sections 4, 9, 16, 21, 28 and 33 of T11S, R22E, then sections 4, 9, 16, 21, 28 and 33 of T12S, R22E, then east along the south section lines of sections 33 and 34 of T12S, R22E to the northwest corner of section 1 of T13S, R22E, then south along the west section lines of sections 1, 12 and 13 of T13S, R22E, then east along the south section lines of section 13 of T13S, R22E, then sections 18, 17, 16, 15, 14 and 13 of T13S, R23E and then section 18 of T13S, R24E to Old YO Crossing road, then south and west along Old YO Crossing road to its junction with NM 13, then east along NM 13 to its junction with US 285, then south along US 285 to its junction with NM 557.

E. GMU 36 (Fort Stanton hunt area): That portion of GMU 36 comprised of those lands owned and administered by the bureau of land management within the historic Fort Stanton military reservation.

F. GMU 53 (Cerro portion): That portion of GMU 53 beginning at the intersection of NM 522 and NM 378, then north on NM 522 approximately three point one miles to its intersection with Taos CR B-041 (Buena Vista road), then west on Taos CR B-041 1 mile to the dirt road on the boundary of townships T30N and T29N, then west on that dirt road two miles to its intersection with Taos CR B-048 (Sunshine-Jarosa road), then south on Taos CR B-048 approximately one point three miles to its intersection with NM 378, then southeasterly on NM 378 approximately three point five miles to its intersection with NM 522.

[19.30.4.10 NMAC - Rp, 19.30.4.9 NMAC, 8/25/2020]

PART 5: PRIVATE LAND ELK LICENSE ALLOCATION

19.30.5.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.5.1 NMAC - Rp, 19.30.5.1 NMAC, 4-1-2019]

19.30.5.2 SCOPE:

To acknowledge landowners who provide meaningful benefit to elk and accept elk on their properties and to provide hunting opportunities on private and public land to all elk hunters who wish to recreate within New Mexico's exterior boundaries. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.30.5.2 NMAC - Rp, 19.30.5.2 NMAC, 4-1-2019]

19.30.5.3 STATUTORY AUTHORITY:

Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish. Statute 17-3-14.1 NMSA 1978 authorizes the director to issue landowner permits for the lawful taking of elk.

[19.30.5.3 NMAC - Rp, 19.30.5.3 NMAC, 4-1-2019]

19.30.5.4 DURATION:

Permanent.

[19.30.5.4 NMAC - Rp, 19.30.5.4 NMAC, 4-1-2019]

19.30.5.5 EFFECTIVE DATE:

April 1, 2019, unless a later date is cited at the end of a section.

[19.30.5.5 NMAC - Rp, 19.30.5.5 NMAC, 4-1-2019]

19.30.5.6 OBJECTIVE:

Establish an equitable and flexible system that recognizes the contributions of private lands and landowners to the management of elk and their habitats, while providing hunting opportunities on private lands, and to support appropriate, biologically sound, and effective harvest goals set by the department for elk.

[19.30.5.6 NMAC - Rp, 19.30.5.6 NMAC, 4-1-2019]

19.30.5.7 DEFINITIONS:

A. "Annual agreement" or "Agreement" shall mean the document that contains the specific ranch information, sets forth the terms and conditions of the agreement, special instructions, requirements and regulations concerning participation in this program and affirms a signatory understanding of such.

B. "Authorization number" or "Authorization" shall mean a multi-digit number which allows the holder to purchase a private land elk license specifying sex and sporting arm type. May also collectively refer to types and numbers of private land elk hunting opportunities available in a game management unit or assigned to a recipient pool of elk hunting opportunities.

C. "Authorization statement" shall mean the document generated by the department and issued to an authorized ranch contact that contains the authorization numbers, which allows the holder to purchase a specified license to hunt elk.

D. "Authorized Ranch Contact" or "ARC" shall mean the person designated in writing by the landowner(s) to act as the liaison between the ranch and the department. ARC is responsible for acting in the landowner(s) best interest and has the authority to sign an elk private lands use system agreement and receive authorization statements. All persons listed on the recorded deed(s) must sign and notarize an authorization of ranch contact form provided by the department authorizing the same individual as the authorized ranch contact.

E. "Base allocation" shall mean the number and authorization types issued to base ranches through the allocation formula.

F. "Base ranch" shall mean a ranch in the primary management zone able to receive at least one whole authorization through the allocation formula based on weighted acreage and ranch score.

G. "Bonus allocation" shall mean the number and authorization types represented by private lands not participating in the elk private lands use system in the primary management zone, through the allocation formula.

H. "Co-op" shall mean more than one ranch enrolled by separate landowners and combined together to form a single ranch and naming a single ARC.

I. "Deeded acres" shall mean privately owned acres that can be verified by the department.

J. "Department" shall mean the New Mexico department of game and fish.

K. "Director" shall mean the director of the New Mexico department of game and fish.

L. "Elk Contribution Rating" or "ECR" shall mean the rating assigned to a ranch by appropriate department staff based on the following: occasional elk presence shall receive an ECR of 1, frequent elk presence shall receive an ECR of 1.25, continuous elk presence shall receive an ECR of 1.5.

M. "EPLUS" shall mean the elk private lands use system.

N. "Game Management Unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC Boundary Descriptions for Game Management Units.

O. "Inactivation" shall mean the procedure that immediately stops all issuance of authorizations and suspends participation in the program.

P. "In review" shall mean a period of time during which an active ranch may be placed into temporary suspension, stopping agreements and authorization statements from being issued to the ARC, until the department review concludes that all participation requirements have been met.

Q. "Landowner" shall mean the person(s) listed on the most current recorded deed(s) being considered as a ranch for participation, is responsible for signing the initial application, and is responsible for assigning a single authorized ranch contact.

R. "Meaningful benefit" shall mean a variety of elk habitat components that are known to be beneficial to elk throughout at least one season and further determined by state game commission adopted participation guidelines.

S. "Participation guidelines" shall mean the written requirements for enrollment and participation in the program that department staff use to evaluate ranches and approved by the state game commission.

T. "Percent weighted acres" shall mean the quotient of a ranch's weighted acres divided by the total private acres in the primary management zone within a GMU.

U. "Primary management zone" shall mean areas of the state designated by the department upon which elk management goals and subsequent harvest objectives are based.

V. "Public land" shall mean those lands held by state, federal, or public land use agencies.

W. "Ranch" shall mean any deeded acres included in an agreement and treated as a single property.

X. "Ranch-only" shall mean a ranch whose ARC has selected the ranch-only hunting option as defined on their agreement or whose ranch is located in a GMU designated as ranch-only.

Y. "Ranch-only authorization number" shall mean a private land authorization that allows a person to purchase an elk license only valid on the designated ranch except as otherwise allowed by rule.

Z. "Ranch score" shall mean the score resulting from the ranches evaluation as defined in participation guidelines.

AA. "Secondary management zone" shall mean areas of the state that are not part of the primary management zone or special management zone.

AB. "Small Contributing Ranch" or "SCR" shall mean those ranches that meet the minimum qualifications to participate, but are unable to receive at least one whole authorization pursuant to the allocation formula based on weighted acreage alone.

AC. "SCR pool" shall mean the number and authorization types that result from the fractional consolidation of authorizations awarded to small contributing ranches through the allocation formula.

AD. "Special management zone" shall mean areas of the state not within the primary management zone or secondary management zone and where private land authorization issuance includes eligibility requirements or restrictions.

AE. "Two year unconverted" shall mean the number and authorization types initially allocated to participating properties but not converted to licenses averaged over the previous two license years.

AF. "Unit-wide" shall mean a ranch whose ARC has selected the unit-wide hunting option as defined on their agreement and received a unit-wide authorization(s) for the current license year. The unit-wide selection allows hunters who have a unit-wide license from the ranch to hunt any legally accessible public lands, other unit-wide ranches, and other private land with written permission within the GMU as well as allows any other licensed elk hunter with either a public draw license or a unit-wide elk license access to the unit-wide ranch.

AG. "Unit-wide authorization number" shall mean an authorization that allows a person to purchase an elk license valid on any legally accessible public lands, other unit-wide ranches, and other private land with written permission within the GMU.

AH. "Weighted acres" shall mean the product of a ranch's deeded acres multiplied by the elk contribution rating assigned to that ranch.

[19.30.5.7 NMAC - Rp, 19.30.5.7 NMAC, 4-1-2019]

19.30.5.8 PARTICIPATION REQUIREMENTS AND AUTHORIZATION DISTRIBUTION IN THE PRIMARY MANAGEMENT ZONE:

A. Minimum requirements:

- (1) Private lands that lie within the primary management zone.
- (2) Private lands that demonstrate regular elk use and provide meaningful benefits to elk as determined by appropriate department staff and in accordance with commission approved guidelines.
- (3) Only landowners and ARCs who agree in writing to accept elk on their property will be considered for participation in EPLUS.
- (4) Landowner and ARC must agree that participation is voluntary. Number of authorizations may vary annually and are based on GMU harvest objectives found in 19.31.14 NMAC. There is no guarantee of a specific number of authorizations issued each year.
- (5) Any property which is part of a subdivision, village or town that does not allow hunting or restricts the discharge of all sporting arm types will be disqualified from participation in EPLUS. All other properties within a subdivision, village or town will be considered on a case-by-case basis.

(6) The department encourages landowners whose properties do not qualify to cooperate with other landowners to create co-ops to meet minimum participation requirements.

B. Enrollment and initial application:

(1) Landowners who wish to participate in EPLUS must submit a completed application provided by the department. Applications must include all required documentation as determined by the department and name a single ARC. Only the property owner(s) listed on the recorded deed(s) may submit an initial EPLUS application and assign an ARC. If there are multiple owners listed on the property deed(s), all co-owners must sign an affidavit authorizing one of the owners to be responsible for the initial application.

(2) The application must include the most recent recorded property ownership records including property legal descriptions and maps or surveys sufficient to establish the legal landowner(s) and property boundaries.

(3) Application must be submitted to the department, hand delivered or post marked, no later than January 5 of each year. Applications received without all required documentation or hand delivered or postmarked after January 5 shall be rejected. Applications rejected as a result of missing documents may be corrected and resubmitted through February 1 to be included that year if the original application was submitted by the January 5 deadline. Exceptions may be made for extenuating circumstances on a case-by-case basis.

(4) Applications will be reviewed by appropriate department staff so a determination can be made as to the application satisfying the requirements set forth in Subsection A of 19.30.5.8 NMAC.

(5) Ranches meeting the requirements set forth in Subsection A of 19.30.5.8 NMAC will be assigned an elk contribution rating and must meet a minimum ranch score to be eligible for authorizations pursuant to the processes set forth in Subsection D of 19.30.5.8 NMAC.

(6) ARCs with ranches that do not meet the requirements set forth in Subsection A of 19.30.5.8 NMAC will be advised and provided options including the right to request a review of the department's decision as outlined in 19.30.5.12 NMAC.

C. Participating ranches:

(1) All ARCs for participating ranches will receive an agreement annually.

(2) The annual agreement will list the name, address, and phone number of the authorized ranch contact, the number of deeded acres considered, the ranch score and the elk contribution rating assigned. It will provide the opportunity to request a

review of the listed acreage, the ranch score and the assigned elk contribution rating. The agreement will set out the terms for participation and provide the ability to elect the ranch-only option. The annual agreement will require the ARC to notify the department of any changes affecting the ranch's enrollment or participation eligibility. The annual agreement must be signed and initialed by the ARC where designated and returned to the department via hand delivery or post marked no later than January 5 each year. Failure to meet these requirements will result in the agreement not being activated for the current license year. Exceptions may be made for extenuating circumstances on a case-by-case basis.

(3) Any ranch for which rightful ownership or legal representation cannot be determined shall be placed in review until such time as rightful ownership or legal representation is verified. If after one year, adequate documentation of ownership is not provided, the ranch will be inactivated.

(4) Landowners requesting to split their separately deeded properties currently under one ranch into separate ranches shall be required to submit a new application for each property. Ranches whose property is entirely contained on one deed may not be split.

(5) Upon the second consecutive year of non-receipt of the annual agreement, the department will inactivate the respective ranch until a new initial application has been submitted.

(6) Ranches that are sold or transferred to new ownership must apply as required for initial participation. The department may make reasonable accommodations in circumstances where transfer of ownership occurs after the January 5 deadline.

(7) Participating ranches that the department determines no longer qualify for participation shall be sent written notice of inactivation for the following license year.

(8) Appropriate department staff may adjust the elk contribution rating or ranch score for any participating ranch annually. In the case an adjustment is warranted, the ARC will be contacted and notified of the rating change.

(9) Any landowner who requests interventions to eliminate the presence of elk on their participating acreage in accordance with 19.30.2 NMAC shall be placed in review. If the depredation only applies to a portion of the ranch and the remaining acreage continues to provide meaningful benefit to elk, only the acreage where depredation response actions are to occur will be inactivated. Exceptions to this may be considered by appropriate department staff on a case-by-case basis.

(10) Should any landowner or ARC take action pursuant to Section 17-2-7.2 NMSA 1978 the ranch upon which the action occurred shall immediately be inactivated from EPLUS for a period of three years and all unconverted authorizations may be voided.

(11) All participating ranches will be subject to the requirements found in this section on an annual basis. Any change affecting a ranches qualifications for this program will result in that ranch being re-evaluated to determine if the ranch meets the minimum requirements.

D. Determination of authorizations:

(1) In each GMU, the pool of private land elk authorizations shall be comprised of the base allocation, bonus allocation, two year unconverted and SCR pool.

(2) A portion of the bonus allocations or two year unconverted, should they be available, may be distributed to specific ranches in the form of incentive authorizations issued in recognition of significant contributions to elk management.

(3) The base allocation per ranch will be set as follows:

(a) A ranch's deeded acres multiplied by that ranch's elk contribution rating equals ranch weighted acres.

(b) A ranch's weighted acres divided by the total private deeded acres in the GMUs primary management zone equals that ranches percent ranch weighted acres.

(c) Percent ranch weighted acres multiplied by the number of available private land elk authorizations for the GMU equals the number of authorizations per ranch.

(d) All ranches receiving at least one whole authorization through the allocation formula will be considered a base ranch and will receive a base allocation.

(e) When a ranch is unable to receive at least one whole authorization through the allocation formula, the ranch will become a SCR.

(f) The combined fractional authorizations from SCRs will comprise the allocations available in the SCR pool.

(4) Distribution of the SCR pool will be as follows:

(a) SCRs will compete in a yearly, random, drawing weighted on the ranches ranch score for authorizations.

(b) SCRs may receive not more than one authorization through the yearly, random drawing.

(c) Bonus allocations and two year unconverted authorizations remaining after the issuance of incentive authorizations will be added into the pool for the SCR drawing.

(5) Authorizations not distributed in the SCR draw will be redistributed to base ranches pursuant to the allocation formula.

(6) All authorizations issued to a ranch pursuant to this section will be:

(a) Considered unit-wide unless otherwise requested by the ARC, or

(b) In GMUs 4 and 5A, authorizations will be ranch-only but transferrable to other private lands within the specific GMU with written landowner permission.

E. Inactivation:

(1) A landowner or ARC, along with the ranch shall be inactivated for:

(a) providing or permitting misrepresentation of the ranch's participating deeded acreage, ranch ownership or designated ARC;

(b) prohibiting access to other unit-wide license holders or public draw hunting license holders; or

(c) the landowner or ARC violating Chapter 17 NMSA 1978 or state game commission rules involving licenses converted with the ranches' authorization(s), or being an accessory to the same, regardless of whether the violation occurred on or off the ranch, resulting in a violation(s) that accumulates 20 or more revocation points pursuant to 19.31.2 NMAC on any single individual.

(2) A landowner or ARC, along with the ranch may be inactivated for breaching or violating any other condition of the EPLUS agreement.

(3) Upon determination that a violation or breach of Paragraph 1 or Paragraph 2 of this Subsection or any other inactivation provision in 19.30.5.8 NMAC has occurred, the landowner and ARC shall be notified explaining the determination for the inactivation.

(4) Should the landowner or ARC have multiple properties in EPLUS, all properties may be inactivated from EPLUS and disqualified from participation in department sponsored programs.

(5) If a ranch is signed up in a co-op, inactivation action(s) may be taken against the co-op in its entirety or individual properties participating that form the co-op and will be considered on a case-by-case basis.

(6) If the inactivated ranch(s) changes ownership during the disqualification period, the department may consider the ranch for future participation.

(7) Inactivation from EPLUS and disqualification from department sponsored programs may be for a period up to three years.

(8) The landowner may request a review that shall be held in accordance with the processes set forth in 19.30.5.12 NMAC. The standard of proof in cases where no conviction is involved shall be the preponderance of evidence. If a conviction has been rendered, a certified copy or a filed copy of the conviction from any court of competent jurisdiction shall be conclusive evidence of a violation.

[19.30.5.8 NMAC - Rp, 19.30.5.8 NMAC, 4-1-2019]

19.30.5.9 PARTICIPATION REQUIREMENTS AND AUTHORIZATION DISTRIBUTION IN THE SPECIAL MANAGEMENT ZONE:

A. Minimum requirements:

- (1) Private lands that lie within the special management zone.
- (2) Private lands must provide demonstrated occasional elk use to be eligible.
- (3) Only landowners and ARCs who agree in writing to accept elk on their property will be considered for participation in EPLUS.
- (4) Landowner and ARC must agree that participation is voluntary. Number of authorizations may vary annually and are based on elk management objectives found in 19.31.14 NMAC. There is no guarantee of a specific number of authorizations issued each year.
- (5) Any property which is part of a subdivision, village or town that does not allow hunting or restricts the discharge of all sporting arm types will be disqualified from participation in EPLUS. All other properties within a subdivision, village or town will be considered on a case-by-case basis.

B. Enrollment and initial application:

- (1) Landowners who wish to participate in EPLUS must submit a completed application provided by the department. Applications must include all required documentation as determined by the department and name a single ARC. Only the property owner(s) listed on the recorded deed(s) may submit an initial EPLUS application and assign an ARC. If there are multiple owners listed on the property deed(s), all co-owners must sign an affidavit authorizing one of the owners to be responsible for the initial application.

(2) The application must include the most recent recorded property ownership records including property legal descriptions and maps or surveys sufficient to establish the legal landowner(s) and property boundaries.

(3) Applications may be submitted at any time.

(4) Applications will be reviewed by appropriate department staff so a determination can be made as to the application satisfying the requirements set forth in Subsection A of 19.30.5.9 NMAC. Applications received without all required documentation shall be rejected. Rejected applications may be corrected and resubmitted.

C. Participating ranches:

(1) All ARCs for participating ranches will receive an agreement annually.

(2) The annual agreement will list the name, address and phone number of the ARC and the number of deeded acres considered. It will provide the opportunity to request a review of the listed acreage. The agreement will set out the terms for participation. The annual agreement will require the ARC to notify the department of any changes affecting the ranch's enrollment or participation eligibility. The annual agreement must be signed and initialed by the ARC where designated and returned to the department each year. Failure to return the agreement will result in the agreement not being activated for the current license year.

(3) Any ranch for which rightful ownership or legal representation cannot be determined shall be placed in review until such time as rightful ownership or legal representation is verified. If after one year, adequate documentation of ownership is not provided the ranch will be inactivated.

(4) Ranches that are sold or transferred to new ownership must apply as required for initial participation.

(5) Any landowner who requests interventions to eliminate the presence of elk on their participating acreage in accordance with 19.30.2 NMAC shall be placed in review. Should the landowner enter into a depredation agreement with the department, the acreage where depredation response actions are to occur will be inactivated from EPLUS. Exceptions to this may be considered by appropriate department staff on a case-by-case basis.

(6) Should any landowner or ARC take action pursuant to Section 17-2-7.2 NMSA 1978 the ranch upon which the action occurred shall immediately be inactivated from EPLUS for a period of three years and all unconverted authorizations may be voided.

(7) All participating ranches will be subject to the requirements found in this section on an annual basis. Any change affecting a ranches qualifications for this program will result in that ranch being re-evaluated to determine if the ranch meets the minimum requirements.

D. Determination of authorizations:

(1) Authorizations within the special management zone will be determined on a ranch-by-ranch basis and negotiated between the department and the ARC.

(2) Bag limits, sporting arm type, and season dates will follow the provisions found in 19.31.14 NMAC in the special management zone. Season dates requested outside those found in 19.31.14 NMAC shall be considered on a ranch-by-ranch basis and not conflict with department management goals.

(3) All authorizations shall be ranch-only and transferrable to other private lands within the specified GMU with written landowner permission. Written permission requirements for access on private property will follow the provisions found in 19.31.10 NMAC.

E. Inactivation:

(1) A landowner or ARC, along with the ranch shall be inactivated for:

(a) providing or permitting misrepresentation of the ranch's participating deeded acreage, ranch ownership or designated ARC; or

(b) the landowner or ARC violating Chapter 17 NMSA 1978 or state game commission rules involving licenses converted with the ranch's authorization(s), or being an accessory to the same, regardless of whether the violation occurred on or off the ranch, resulting in a violation(s) that accumulates 20 or more revocation points pursuant to 19.31.2 NMAC on any single individual.

(2) A landowner or ARC, along with the ranch may be inactivated for breaching or violating any other condition of the EPLUS agreement.

(3) Upon determination that a violation or breach of Paragraph 1 or Paragraph 2 of this Subsection or any other inactivation provision in 19.30.5.9 NMAC has occurred, the landowner and ARC shall be notified explaining the determination for the inactivation.

(4) Should the landowner or ARC have multiple properties in EPLUS, all properties may be inactivated from EPLUS and disqualified from participation in department sponsored programs.

(5) If a ranch is signed up in a co-op, inactivation action(s) may be taken against the co-op in its entirety or individual properties participating that form the co-op and will be considered on a case-by-case basis.

(6) If the inactivated ranch(s) changes ownership during the disqualification period, the department may consider the ranch for future participation.

(7) Inactivation from EPLUS and disqualification from department sponsored programs may be for a period up to three years.

(8) The landowner may request a review that shall be held in accordance with the processes set forth in 19.30.5.12 NMAC. The standard of proof in cases where no conviction is involved shall be the preponderance of the evidence. If a conviction has been rendered, a certified copy or a filed copy of the conviction from any court of competent jurisdiction shall be conclusive evidence of a violation.

[19.30.5.11 NMAC - Rp, 19.30.5.9 NMAC, 4-1-2019]

19.30.5.10 PARTICIPATION REQUIREMENTS IN THE SECONDARY MANAGEMENT ZONE:

A. Minimum requirements: Private lands that lie within a secondary management zone.

B. Enrollment process:

(1) Land ownership documentation will be required that will verify the ranch lies within a secondary management zone.

(2) Requests for a ranch code may be submitted to the department at any time.

(3) Ranch ownership must be affirmed on an annual basis.

C. Bag limits, sporting arm type, and season dates will follow the provisions found in 19.31.14 NMAC in the secondary management zone. Season dates requested outside those found in 19.31.14 NMAC shall be considered on a ranch-by-ranch basis.

D. Ranches within the secondary management zone will be issued a ranch code annually to identify individual ownership.

E. A ranch code will be required to purchase a private land elk license for a specific ranch.

F. All licenses require written permission and shall be valid only on the specified property and transferrable with written permission to other private lands within the

specified GMU. Written permission requirements for access on private property will follow the provisions found in 19.31.10 NMAC.

[19.30.5.10 NMAC - N, 4-1-2019]

19.30.5.11 SPECIAL MANAGEMENT RANCH:

A. In the primary or special management zones, the department may identify unique ranches of any size as a special management ranch.

B. A department approved conservation plan will be required and developed in conjunction with the landowner and will include habitat improvement, population management, and harvest management goals as a minimum.

(1) Alternative season dates, bag limits, sporting arm types, and additional authorizations may be considered for these ranches.

(2) Authorizations issued pursuant to these management plans:

(a) Shall be ranch only and not transferrable to other private lands;

(b) Will be considered based on documented habitat improvements or maintenance of habitat enhancement projects or existing habitat quality;

(c) May be as a result of working directly with the department on special projects related to population management or research needs in the GMU; and

(d) Shall be allocated to assure elk management goals as stated in 19.31.14 NMAC are sustainable and appropriate within the GMU and on the participating ranch.

(3) The conservation plan must be updated and submitted by January 5 on an annual basis to be approved by the department.

[19.30.5.12 NMAC - Rp, 19.30.5.11 NMAC, 4-1-2019]

19.30.5.12 LANDOWNER RIGHT TO REVIEW:

A. Landowners or ARCs for participating ranches shall have the right to request a review of the following:

(1) The number of deeded acres.

(2) The elk contribution rating assigned to the ranch.

(3) The ranch score.

(4) A decision by the department that a ranch does not meet the minimum requirements to participate.

(5) Other inactivation provisions within 19.30.5 NMAC.

B. Requests to review deeded acres, ranch score, or the elk contribution rating shall be submitted on the annual agreement.

C. ARCs for newly applying ranches or existing ranches that the department determines do not meet the minimum requirements to participate per commission approved guidelines will be given the opportunity to request a review of the department's finding.

D. All review requests will be submitted to the EPLUS manager and handled in accordance below:

(1) All ranches that the department determines do not meet the minimum participation requirements or have been inactivated for other provisions within 19.30.5 NMAC will be sent a letter explaining the determination along with an objection form explaining documentation requirements.

(2) ARCs who wish to request a review of the department's determination must complete and return the objection form along with all requested documentation within 30 days of the date on the department's letter.

(3) Upon receipt of the requested documentation the department will assign staff to re-evaluate the ranch in question. The department shall have 45 days to complete this evaluation.

(4) If the second evaluation shows the ranch meets the minimum participation requirements or if the inactivation was not warranted the ARC will be sent a follow up letter and the ranch will be allowed to participate in the program.

(5) If, after a second evaluation, it is determined that the ranch still does not meet participation requirements the ARC will be sent a follow up letter explaining the determination.

(6) The ARC may submit a letter to the EPLUS manager requesting a division evaluation should they feel the second decision is in error. The ARC may submit any additional documents or a written statement along with the request for the evaluation. This request and any additional documents must be received by the department within 30 days of the date on the department's second evaluation letter.

(7) A division evaluation will be conducted by the division chief of the wildlife management division or his or her designee(s) and will be designed to ensure that commission approved guidelines and the intent of this rule have been appropriately

applied to the ranch in question. A recommendation as to ranch's participation eligibility will be sent to the director.

(8) The ARC will be notified in writing of the determination made by the director within 45 days of the submission of the ARC letter.

(9) The ARC may submit a letter within 30 days of the date on the department's letter regarding the director's decision to the EPLUS manager requesting a commission evaluation should they feel the director's decision is in error.

(10) The commission shall review the director's determination during a scheduled commission meeting. Within 20 days after the commission's decision is rendered and signed by the chairperson of the commission, the department shall provide the ARC with the written determination which will stand as the final decision of the department.

[19.30.5.13 NMAC - Rp, 19.30.5.12 NMAC, 4-1-2019]

19.30.5.13 DEPARTMENT RIGHT TO REQUEST UPDATED DOCUMENTATION AND CONDUCT AUDITS:

A. The department reserves the right to request the submission of complete ownership documentation at any time during the year should an audit determine that documents are missing or participation requirements are in question.

(1) Should necessary documentation be found missing resulting from any audit, the ranch will be placed in review and documents will be requested.

(2) The department request for updated documents may include but is not limited to the most recent recorded property ownership records showing clear ownership and include property legal descriptions and maps or surveys that will establish the legal landowner(s) and property boundaries.

B. Failure to respond to the initial document request shall result in the ranch remaining in review until:

(1) The requested documents are received and verified; and

(2) Authorizations can be issued without affecting the allocation of other participating ranches.

C. If after one year, adequate documentation of ownership is not provided, the ranch will be inactivated.

[19.30.5.14 NMAC - Rp, 19.30.5.13 NMAC, 4-1-2019]

PART 6: PREDATOR MANAGEMENT [REPEALED]

[This part was repealed on April 1, 2007.]

PART 7: QUALITY HUNT CRITERIA AND AREAS [REPEALED]

[This part was repealed on April 1, 2007.]

PART 8: GUIDE AND OUTFITTER REGISTRATION

19.30.8.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.8.1 NMAC - Rp, 19.30.8.1 NMAC, 01/01/2018]

19.30.8.2 SCOPE:

Hunting outfitters, guides, and hunters for New Mexico.

[19.30.8.2 NMAC - Rp, 19.30.8.2 NMAC, 01/01/2018]

19.30.8.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species. Additional authority may be found in Sections 17-2A-1, 17-2A-3 and 17-3-16 NMSA 1978.

[19.30.8.3 NMAC - Rp, 19.30.8.3 NMAC, 01/01/2018]

19.30.8.4 DURATION:

Permanent.

[19.30.8.4 NMAC - Rp, 19.30.8.4 NMAC, 01/01/2018]

19.30.8.5 EFFECTIVE DATE:

January 01, 2018, unless a later date is cited at the end of a section.

[19.30.8.5 NMAC - Rp, 19.30.8.5 NMAC, 01/01/2018]

19.30.8.6 OBJECTIVE:

To register, regulate and set professional standards for guides, outfitters and their operations within New Mexico.

[19.30.8.6 NMAC - Rp, 19.30.8.6 NMAC, 01/01/2018]

19.30.8.7 DEFINITIONS:

A. "Accompanied" shall mean that the outfitter or their registered guide physically escorts the hunter-client in the field during the hunter-client's license hunt dates.

B. "Agent" shall mean a person who is legally authorized by employment or written contract to act on behalf of a private landowner to oversee the landowner's hunting operation on their deeded property.

C. "Conviction" shall mean any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order, penalty assessment or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.

D. "Department" shall mean the New Mexico department of game and fish.

E. "Director" shall mean the director of the department of game and fish.

F. "Guide" shall mean any person contracted, employed or accepting compensation for providing, within the unit where a hunt occurs, equipment or services for hunting activities; provided, however, that "guide" does not include a person who only cooks, cuts wood or performs other comparable or incidental duties not directly related to hunting activities.

G. "History of violation" shall mean any one conviction or multiple convictions from any law enforcement agency for violation(s) of hunting, fishing, trapping, outfitting or guiding rules or land-use regulations, including any conviction as an accessory, during the three-year period immediately preceding the application for registration, provided that the violation committed, if committed in New Mexico, would equal or exceed the 20-point equivalent.

H. "Hunter-client" shall mean an individual who contracts or utilizes the hunting services of a registered outfitter or is taken into the field by a person acting as an outfitter or guide regardless of their registration status.

I. "Landowner permit" shall be a license issued pursuant to a landowner authorization.

J. "License year" shall mean that period beginning April 1 and ending March 31 each year for the purposes of hunting or outfitter and guide registration.

K. "New Mexico outfitter" shall mean an outfitter that is qualified by the department in accordance with 19.30.8.9 NMAC to participate in the special drawing pool by utilizing their outfitter number as established by Section 17-3-16 NMSA 1978.

L. "Outfitter" shall mean any person who advertises or holds themselves out to the public for hire or is employed or accepts compensation for providing, within the unit where a hunt occurs, facilities, equipment or services for hunting activities; provided, however, that "outfitter" does not include a person who only cooks, cuts wood or performs other comparable or incidental duties not directly related to hunting activities. Any person who purchases landowner permits or private land licenses for a hunter-client or pays for access to a landowner's deeded property for a hunter-client in any way, shall be considered an outfitter.

M. "Registered outfitter" shall be an outfitter who has met all the requirements described herein and has been issued a current registration by the department.

N. "Special drawing pool" shall refer to the ten percent allocation of special draw licenses available to the public who have contracted with a qualified New Mexico outfitter to provide professional guide services.

O. "Supervision" shall mean that outfitters are required to ensure all guides employed or contracted by them are informed of all pertinent geographic hunt boundaries, any special restrictions which apply to their hunter-clients license and statutes and rules regarding lawful hunting, guiding and outfitting. Supervision also means that outfitters have provided all the guidance and oversight that a reasonable business person would provide to their employees.

[19.30.8.7 NMAC - Rp, 19.30.8.7 NMAC, 01/01/2018]

19.30.8.8 GENERAL REGISTRATION PROCEDURES AND REQUIREMENTS:

In addition to the requirements set in Sections 17-2A-1, 17-2A-3 and 17-3-16 NMSA 1978 the following requirements apply;

A. Application form: Applications to guide and outfit as defined in Section 17-2A-3 NMSA 1978 and 19.30.8 NMAC shall be made on forms provided by the department as prescribed by the director.

B. Application deadlines: An outfitter or guide may register at any time by completing and submitting the proper application form and fee. No one shall be a registered outfitter or guide until they successfully complete all requirements and are issued a valid registration by the department. Exception:

(1) Deadline date to qualify as a New Mexico outfitter for special drawing pool: All New Mexico outfitter applicants must apply by February 15 to be eligible to

participate in the special drawing pool of resident/nonresident hunter applicants for the next hunting season.

(2) New Mexico outfitter late fee: All New Mexico outfitter applications received after February 15 but before the close of business on March 15 will be subject to an administrative fee of \$100 in addition to the normal application fees.

(3) New Mexico outfitter ineligibility: An applicant for a New Mexico outfitter that fails to successfully complete the department's process by close of business on March 15 will be ineligible to have a hunter-client use their registration number for the special drawing pool established in Section 17-3-16 NMSA 1978.

C. All outfitter and guide applicants shall have successfully completed a certified hunter education course from the state of New Mexico or other similar qualifying hunter education course acceptable to the department prior to making application.

D. Outfitter and guide applicants cannot have a history of violation.

E. No person shall be allowed to register or work as a registered hunting guide or outfitter in New Mexico:

(1) if the person has had a guide or outfitter license, registration, permit or certificate revoked in another state;

(2) if the person has had a guide or outfitter license, registration, permit or certificate suspended in another state and it has not been reinstated;

(3) if the person has been convicted of a felony, no matter when the felony was committed;

(4) An outfitter or guide's registration shall be immediately invalid when any of Paragraph 1 thru 3 of Subsection E of 19.30.8.8 NMAC apply. The outfitter or guide registration may be reinstated if the conviction, revocation or suspension is reversed during the year in which they were originally registered.

F. Outfitter and guide applicants, including renewing applicants, shall not have had their guide or outfitter's license, permit authorization or registration revoked or denied for cause by any controlling government land management agency. The applicant shall not be registered by the state during the term of the revocation or pendency of the denial.

G. Examinations for guiding and outfitting:

(1) Exams will be conducted during posted testing periods at department offices or by appointment, at any location approved by the guide and outfitter registrar.

(2) An applicant shall only be allowed to take the examination once per day.

(3) Applicant must successfully pass a department approved examination with a minimum passing grade of seventy percent.

(4) If an applicant fails to renew their registration for two or more years, all registration requirements must be completed, including successfully passing a department approved exam prior to being registered.

H. Applicants for a guide's registration shall be at least 18 years of age and meet all the qualifications for guides set forth in 19.30.8 NMAC and in Section 17-2A-3 NMSA 1978.

I. Additional outfitter registration requirements:

(1) Applicants for an outfitter registration shall be at least 21 years of age and meet all the qualifications for outfitters set forth in 19.30.8 NMAC, Sections 17-2A-3 and 17-3-16 NMSA 1978.

(2) Applicants for an outfitter registration must have operated as a New Mexico registered guide for three years. Applicant must submit evidence, as approved by and to the satisfaction of the department, of three years of actual guiding experience and substantial knowledge of guiding in New Mexico for a register outfitter. The evidence must be submitted with the application and may consist of federal land use permits, business or employment records from the registered outfitter and a letter from said registered outfitter attesting to the applicants guiding experience.

(3) Applicant shall register with the taxation and revenue department and provide proof of registration and compliance to the department.

J. Each guide or outfitter shall carry proof of registration in the field and provide such proof upon request.

K. Registration exemption: A landowner or their agent who is guiding or outfitting on the landowner's deeded property or pursuant to a landowner permit is exempt from the department's registration process. Nothing in this exemption shall prevent a landowner or their agent from registering, if they choose. Agents may not act independently from the landowner. A landowner or their agent must be in compliance with the registration requirements of any pertinent government land management agency when involved with commercial activities on lands controlled or administered by a government land management agency.

L. All outfitter and guide applicants, including renewing applicants, shall submit to the department any additional documentation requested by the department.

[19.30.8.8 NMAC - Rp, 19.30.8.8 NMAC, 01/01/2018]

19.30.8.9 ADDITIONAL REQUIREMENTS TO BECOME A NEW MEXICO OUTFITTER:

A. To qualify as a New Mexico outfitter as a corporation, LLC or similar status: a New Mexico outfitter is a person who has a business:

- (1) with a valid New Mexico state, county or municipal business registration and a valid outfitter license issued by the department of game and fish;
- (2) that is authorized to do and is doing outfitting business under the laws of this state;
- (3) that has paid property taxes or rent on real property in New Mexico, paid gross receipts taxes and paid at least one other tax administered by the taxation and revenue department in each of the three years immediately preceding the submission of an affidavit to the department of game and fish;
- (4) the majority of which is owned by the person who has resided in New Mexico during the three-year period immediately preceding the submission of an affidavit to the department of game and fish;
- (5) that employs at least eighty percent of the total personnel of the business who are New Mexico residents;
- (6) that has either leased property for ten years or purchased property greater than \$50,000 in value in New Mexico;
- (7) that, if it has changed its name from that of a previously certified business, the business is identical in every way to the previously certified business that meets all criteria;
- (8) that possesses all required federal or state land use permits for the hunt; and
- (9) that operates as a hunting guide service during which at least two days are accompanied with the client in the area where the license is valid.

B. To qualify as a New Mexico outfitter as a sole proprietor business: a New Mexico outfitter is a person who has a business:

- (1) with a valid New Mexico state, county or municipal business registration and a valid outfitter license issued by the department of game and fish;
- (2) that is authorized to do and is doing outfitting business under the laws of this state;

(3) that, if it has changed its name from that of a previously certified business, the business is identical in every way to the previously certified business that meets all criteria;

(4) that possesses all required federal or state land use permits for the hunt; and

(5) that operates as a hunting guide service during which at least two days are accompanied with the client in the area where the license is valid.

[19.30.8.9 NMAC - Rp, 19.30.8.9 NMAC, 01/01/2018]

19.30.8.10 OUTFITTER INSURANCE REQUIREMENTS:

A. An outfitter applicant shall submit with their application a certificate of commercial liability insurance of at least \$500,000 from an insurance company stating they will insure the applicant for the current license year.

B. A copy of the insurance certificate that indicates who is insured, effective dates, policy number and amounts of coverage, must be provided to the department upon issuance by the insurer and prior to engaging in any outfitting activity.

C. Failure to provide proof of coverage during the registration period shall result in suspension of the registration for the period in which such insurance is required to be maintained.

(1) If an outfitter applicant or a registered outfitter fails to submit a copy of a valid insurance certificate before the insurance certificate on file with the department expires, the non-compliance notice will be sent to the outfitter by the department. The outfitter shall be required to submit a copy of a valid insurance certificate and a \$50 administrative fee. No outfitter will be registered until the administrative fee has been paid in full.

(2) If the outfitter fails to comply with the non-compliance notice; the department shall issue the outfitter a notice of contemplated commission action. The outfitter shall then be required to submit a copy of a valid insurance certificate and a \$250 administrative fee. No outfitter will be registered until the administrative fee has been paid in full.

(3) If the insurance is not in effect, at any time while conducting any outfitting activity as defined herein, the outfitter's registration will be declared void and the outfitter's registration shall be suspended until a valid insurance certificate and administrative fees are satisfied.

[19.30.8.10 NMAC - Rp, 19.30.8.9 NMAC, 01/01/2018]

19.30.8.11 REGISTRATION FEES:

A. The payment of the annual registration fee for an outfitter or guide is required prior to registration, including any reinstatement or administrative fees.

(1) The annual registration fee for a registered guide in New Mexico is \$50 for a resident and \$100 for a nonresident.

(2) The annual registration fee to be a registered outfitter in New Mexico is \$500 for either a resident or a nonresident.

B. All registration fees, except a \$50 administrative fee, may be refunded if an applicant is rejected or fails to complete the registration process. No other refunds shall be permitted.

C. Emergency fee and criteria: In an emergency situation, a temporary guide registration may be issued by the department.

(1) The fee shall be \$10.

(2) A guide registered pursuant to the emergency situation may only be used once in a license year by the registered outfitter requesting the replacement of a registered guide who has become ill, injured or has a bona fide emergency.

(3) The temporary registration is only valid for seven days and may be renewed only once per emergency situation.

(4) The temporary guide registration may not be used to accommodate additional hunter-clients.

[19.30.8.11 NMAC - N, 01/01/2018]

19.30.8.12 CONTRACTS:

A. A New Mexico outfitter shall execute a written contract with each special drawing pool applicant. The contract must be signed and dated by all parties prior to application for any special drawing pool license. New Mexico outfitters who execute a multi-year application contract shall be required to sign an updated contract with the hunter-client every three years from the initial signature date.

B. All outfitters shall execute a written contract with each hunter-client. The contract must be signed and dated by all parties before the hunt begins and shall designate the terms, guide to hunter-client ratio, hunt dates, compensation charged and services to be provided.

C. All outfitters shall have a copy of the contract available for inspection by the department in the field during the hunt or they must submit an electronic copy of the contract to the department's guide and outfitter registrar at least 48 hours prior to the scheduled hunt. A hunter-client who obtains a license through the special drawing pool, and chooses to hunt beyond their contracted hunt dates must carry a copy of the contract while hunting if it had not been submitted electronically to the registrar at least 48 hours prior to the scheduled hunt.

D. All contracts shall be retained by the outfitter for three years from the latest date signed by each party.

E. All outfitters shall provide any contract to the department upon request.

F. A New Mexico outfitter shall ensure that each hunter-client who obtains a license through the special drawing pool is accompanied by the outfitter or their registered guide for at least two days during the contracted dates of the hunt in the area where the hunter-client's license is valid. An outfitter or guide cannot contract with themselves to apply in the special drawing pool. An outfitter or guide who obtains a license through the special drawing pool is not allowed to guide themselves during their hunt.

G. A New Mexico outfitter may release a contracted hunter-client to another New Mexico outfitter provided that the original contract was valid, in place prior to the application deadline and only if it is mutually agreed upon by all parties. The release shall be in writing and shall be signed by all parties. A hunter-client must enter into a new contract with a New Mexico outfitter prior to hunting. Hunter-client licenses obtained through the special drawing pool are not valid unless the hunter-client is accompanied by a New Mexico outfitter or their registered guide.

H. All outfitters shall provide at least one registered guide or outfitter in the field for every four or fewer hunter-clients who are contracted for guided hunting services with the outfitter.

[19.30.8.12 NMAC - Rp, 19.30.8.11 NMAC, 01/01/2018]

19.30.8.13 OUTFITTER OR GUIDE MISCONDUCT:

A. Misrepresentation: An outfitter or guide shall not engage in fraud, deceit, misrepresentation or concealment of any material fact in advertising, soliciting or providing professional services to the hunter-client or the public, as determined by a court of competent jurisdiction.

B. Failure to report illegal activity: An outfitter or guide shall report illegal hunting activities or any violation of local, state or federal law relating to hunting, fishing, trapping, outfitting, guiding or land management that they have witnessed or have been made aware of to any commissioned conservation officer or to the appropriate law enforcement agency as soon as it is feasible to do so.

C. Failure to comply: An outfitter or guide shall comply with all local, state and federal laws and regulations pertaining to hunting, fishing, trapping, outfitting, guiding or land management. Conviction of any local, state and federal laws and regulations pertaining to hunting, fishing, trapping, outfitting, guiding or land management for which points have not already been assessed shall be misconduct.

D. Breach of contract: An outfitter or guide shall not breach a contract, as determined by a court of competent jurisdiction, with any person using outfitting or guiding services of the outfitter.

E. Failure to comply with registration audit or conditions: An outfitter or guide, including a renewing applicant, shall submit to the department any documentation requested by the department within the specified timeframe or deadline set by the department.

F. Failure to disclose: An outfitter or guide applicant shall not submit false or fraudulent documentation or statements or knowingly omit required information in connection with an application for registration or renewal.

G. Failure to supervise guides: Outfitters shall responsibly supervise each registered guide working under the outfitter's direction.

[19.30.8.13 NMAC - Rp, 19.30.8.12 NMAC, 01/01/2018]

19.30.8.14 CRIMINAL VIOLATIONS:

A. It is unlawful to apply for or receive an outfitter or guide registration while on revocation.

B. It is unlawful for a guide to book or service a hunter-client unless employed or contracted to do so by a registered outfitter.

C. It is unlawful to use an outfitter or guide registration issued to another.

D. It is unlawful for an outfitter to allow or use an unregistered person to perform outfitting or guiding services for the outfitter.

E. It is unlawful for any person to guide or outfit in New Mexico without completing all requirements and possessing a current registration from the department. Each guide or outfitter shall carry proof of registration in the field and provide such proof upon request.

F. It is unlawful to apply in the special drawing pool using a New Mexico outfitter number prior to having a valid, signed contract with the same New Mexico outfitter.

G. It is unlawful for a New Mexico outfitter to knowingly allow a hunter-client to apply in the special drawing pool prior to having a valid, signed contract.

H. It is unlawful to hunt with a license obtained through the special drawing pool without being accompanied by, and contracted with, a New Mexico outfitter or their guide for at least two days during the hunt.

I. It is unlawful for any outfitter to not have a valid, signed contract with each hunter-client as prescribed in 19.30.8.12 NMAC.

J. It is unlawful for any outfitter to refuse or fail to produce a contract when requested by the department.

K. It is unlawful for any person to submit an application for any hunt or for any person to counsel, aid or abet any person in submitting an application for any hunt in the special drawing pool with an unregistered or unqualified outfitter number.

L. It is unlawful for an outfitter or guide to have more than four hunter-clients in the field for each registered guide or outfitter.

M. It is unlawful for an outfitter or guide to contract with themselves or to guide themselves using a special drawing pool license.

[19.30.8.14 NMAC - Rp, 19.30.8.17 NMAC, 01/01/2018]

19.30.8.15 REVOCATION POINT SYSTEM:

Any person in violation of this section is subject to revocation and point assessments pursuant to 19.31.2 NMAC.

[19.30.8.15 NMAC - Rp, 19.30.8.16 NMAC, 01/01/2018]

19.30.8.16 CRIMINAL PENALTY PROVIDED:

A violation of any criminal provision of this rule or Sections 17-2A-1 and 17-2A-3 NMSA 1978 that is a criminal violation, is a misdemeanor and shall be punished in accordance with the provisions of Section 17-2-10 NMSA 1978.

[19.30.8.16 NMAC - Rp, 19.30.8.17 NMAC, 01/01/2018]

19.30.8.17 HEARING REQUESTED:

A registration revocation hearing may be requested and will be provided in accordance with 19.31.2 NMAC.

[19.30.8.17 NMAC - Rp, 19.30.8.18 NMAC, 01/01/2018]

PART 9: GAME AND FISH LICENSES/PERMITS

19.30.9.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.9.1 NMAC - Rp, 19.30.9.1 NMAC, 4/1/2020]

19.30.9.2 SCOPE:

License vendors and individuals utilizing the special use of wildlife licenses and permits.

[19.30.9.2 NMAC - Rp, 19.30.9.2 NMAC, 4/1/2020]

19.30.9.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-3-5, 17-3-7, and 17-3-12 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17, NMSA 1978 and all other acts pertaining to protected species.

[19.30.9.3 NMAC - Rp, 19.30.9.3 NMAC, 4/1/2020]

19.30.9.4 DURATION:

Permanent.

[19.30.9.4 NMAC - Rp, 19.30.9.4 NMAC, 4/1/2020]

19.30.9.5 EFFECTIVE DATE:

April 1, 2020, unless a later date is cited at the end of a section.

[19.30.9.5 NMAC - Rp, 19.30.9.5 NMAC, 4/1/2020]

19.30.9.6 OBJECTIVE:

Establishing eligibility and application requirements, procedures and financial obligations of license vendors, and certain licenses, permits, certificates and fees for special uses of wildlife, draw applications and license purchases.

[19.30.9.6 NMAC - Rp, 19.30.9.6 NMAC, 4/1/2020]

19.30.9.7 DEFINITIONS:

A. "Vendor" shall mean any owner(s) of a private or public business concern authorized by the New Mexico department of game and fish to sell license documents.

B. "Carcass tag" shall mean any tag form provided to the vendor by the Department of Game and Fish that authorizes a person to legally possess big-game species or turkey killed in New Mexico.

C. "Financial obligation" shall mean any dollar value owed to the Department, including penalty fees for unreturned carcass tags and payments for cash sales.

D. "License year" shall mean the period of April 1 through March 31.

E. "Hearing officer" shall mean the official designated by the department for the purpose of conducting revocation hearings and providing recommendations to the state game commission, relating to the suspension of hunting and fishing license vendors.

[19.30.9.7 NMAC - Rp, 19.30.9.7 NMAC, 4/1/2020]

19.30.9.8 LICENSE VENDORS:

A. Financial Obligations to the Department of Game and Fish:

(1) The department will consign carcass tags to each vendor prior to the beginning of each license year, and will conduct an audit at the end of the license year to account for all carcass tags not issued to customers. All carcass tags designated unusable in any month during the license year must be returned to the department no later than the 10th day of the next month, and all blank, unused carcass tags must be returned to the department at the end of the license year no later than May 10.

(2) A fee of \$100 per missing carcass tag shall be levied upon the license vendor for failure to return any carcass tag designated unusable or any blank, unused carcass tag as required.

(3) Each vendor accepting cash payments, must submit payment for cash sales to the department every two weeks or when the total amount due (including license and vendor fees) reaches \$5,000, whichever comes first.

(4) If a vendor is more than five days delinquent in its payment for cash sales, the privilege to accept cash for department licenses and permits shall be immediately suspended, and the department shall only reactivate the vendor's full license sale privilege once payment is received in full.

(5) A vendor that is delinquent more than three times in a license year shall be evaluated by the director, who shall determine whether to suspend, restrict or place conditions on the vendor's privileges pursuant to Subsection C of 19.30.9.8 NMAC.

(6) Any vendor that has their privileges suspended, restricted, or conditioned may request a hearing before a hearing officer to appeal the director's determination. Any vendor that does not request a hearing agrees to pay to the department the appropriate amount as specified in Paragraphs 1-3 of Subsection A of 19.30.9.8 NMAC within ten (10) working days and to comply with the director's determination. If a vendor requests a hearing as provided by this rule, the department, within 20 days of receipt of such request, shall notify the vendor of the time and place of the hearing and the name or names of the person or persons who shall conduct the hearing for the commission. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer.

(7) In the case of unusual mitigating or extraordinary circumstances, the state game commission may determine, and the hearing officer may recommend, financial obligation in an amount other than the amounts described in Paragraphs 1-3 of Subsection A of 19.30.9.8 NMAC. The decision of the state game commission shall be final.

(8) Vendors, whether active or inactive, shall meet all financial obligations due to the department. Costs to collect overdue financial obligations may be added to the total obligation.

B. Vendor eligibility, application and procedures:

(1) Each vendor must sign a current license vendor agreement with the department on a form approved by the department annually.

(2) Each vendor shall participate in the department's web-based sales system and follow the procedures set forth in the most current New Mexico department of game and fish license vendor manual and vendor agreement.

(3) Each new vendor, or any vendor who has been inactive for one year or more, shall submit a vendor application form, a current credit score (provided by a credit reporting company), and shall be subject to a background check conducted by the department.

(4) A vendor applicant's ability to meet the financial obligations herein shall be evaluated and their privileges may be subject to restrictions or conditions pursuant to Subsection C of 19.30.9.8 NMAC.

(5) A vendor applicant who has a felony conviction may be subject to restrictions or conditions placed on their vendor privileges pursuant to Subsection C of 19.30.9.8 NMAC.

(6) A vendor applicant who has their hunting, fishing or trapping license privileges currently revoked or suspended or who has an outstanding civil assessment owed to the department shall be ineligible to be a vendor.

(7) A vendor applicant who wishes to challenge any eligibility determination under this rule, may appeal to the director whose determination will be final and not subject to further appeal.

C. Director's authority: The director may suspend, restrict or place conditions, including requiring a surety bond, on a license vendor's privileges if the vendor is found to be in violation of their vendor agreement or delinquent in their financial obligation to the department. If such a determination is made, a notice of the suspension, restriction(s), or condition(s) shall be sent to the vendor within 10 days of the director's determination. A vendor may request a hearing pursuant to this rule to challenge the determination.

D. Vendor fee:

(1) The department will pay the vendor fees earned by the vendor for the previous month license sales, no later the 10th business day of the next month, to the vendor,

(2) The vendor shall be required to be registered in the state of New Mexico's central accounting system.

[19.30.9.8 NMAC - Rp, 19.30.9.8 NMAC, 4/1/2020]

19.30.9.9 ESTABLISHING CERTAIN LICENSES, PERMITS, CERTIFICATES AND FEES:

Type	Further description	Fee
Certificate of application	NM resident draw application fee	\$7.00
	Non-resident draw application fee	\$13.00
Wildlife conservation stamp	Share with wildlife	\$10.00
Duplicate license		\$6.00
Landowner authorization certificate		\$9.00
Migratory bird permit	Harvest information program (HIP)	\$0.00
Big game depredation damage stamp	NM resident	\$3.00
	Non-resident	\$10.00
Public land user stamp	Habitat stamp	\$5.00
Bait dealers		\$21.00

Commercial fishing		\$25.00
Importation fish	Annual application processing fee	\$25.00
	Additional stocking and shipment fee	\$6.00
Retention		\$1.25
Transportation		\$0.00
Triploid grass carp		\$25.00
Airborne hunting		\$10.00
Class A lake aquaculture/recirculating water system	Up to 75 fish or 750 gallons	\$20.00
	76 to 150 fish or 751 to 1500 gallons	\$40.00
	Over 150 fish or over 1500 gallons	\$100.00
Call pen		\$15.00
Class A lake		\$101.00
Class A lake	Additional lake	\$26.00
Class A park		\$501.00
Commercial collecting	Reptiles and amphibians	\$50.00
Educational use of wildlife	Application, renewal or amendment	\$15.00
Falconry	Application or renewal for 3 years	\$25.00
Field trial/importation		\$15.00
Game bird propagation		\$10.00
Protected mammal		\$10.00
Scientific use of wildlife	Application	\$15.00
	Renewal or amendment	\$15.00
Shooting preserve		\$200.00
Zoo	No fee	\$0.00
Importation non-domesticated animals per calendar year (1/1 to 12/31) except protected ungulates, game birds, fish or other	Class 1 importation of 1 to 5 animals	\$25.00
	Class 2 importation of 6 to 99 animals	\$75.00
	Class 3 importation of greater than 100 animals	\$300.00
Importation other	One time import (i.e., temporary importation, exhibition, game birds, restoration/recovery, etc.)	\$20.00
Importation protected ungulate	Initial application/source & up to 2 animals (valid 6 months)	\$500.00

	For additional animals, not to exceed 30 ungulates from the same source property/owner (if no acquisitions to source herd during 6 month period of validity)	\$50.00 per animal
	For greater than 30 ungulates from the same source property/owner (if no acquisitions to source herd during 6 months period of validity).	\$5.00 per animal

[19.30.9.9 NMAC - Rp, 19.30.9.9 NMAC, 4/1/2020]

PART 10: NEW MEXICO HUNTER-TRAPPER REPORTING SYSTEM

19.30.10.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.10.1 NMAC - Rp, 19.30.10.1 NMAC, 7-15-13]

19.30.10.2 SCOPE:

New Mexico hunters and furbearer hunters and trappers.

[19.30.10.2 NMAC - Rp, 19.30.10.2 NMAC, 7-15-13]

19.30.10.3 STATUTORY AUTHORITY:

17-1-14, 17-3-5, 17-3-7, and 17-3-12 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.30.10.3 NMAC - Rp, 19.30.10.3 NMAC, 7-15-13]

19.30.10.4 DURATION:

Permanent.

[19.30.10.4 NMAC - Rp, 19.30.10.4 NMAC, 7-15-13]

19.30.10.5 EFFECTIVE DATE:

July 15, 2013, unless a later date is cited at the end of a section.

[19.30.10.5 NMAC - Rp, 19.30.10.5 NMAC, 7-15-13]

19.30.10.6 OBJECTIVE:

Establishing a system to collect hunting and trapping information from persons buying certain hunting and trapping licenses in New Mexico.

[19.30.10.6 NMAC - Rp, 19.30.10.6 NMAC, 7-15-13]

19.30.10.7 DEFINITIONS:

A. "Confirmation code" shall mean a unique alpha-numeric code that identifies a specific transaction of information.

B. "Department" shall mean the New Mexico department of game and fish.

C. "Hunting or trapping report" shall mean the provision of required information, as determined by the department, by any person licensed or permitted to hunt deer, elk, pronghorn antelope, javelina, Barbary sheep, oryx, Persian ibex and turkey or hunt and trap furbearers in New Mexico, regarding their hunting or trapping activities.

D. "Landowner authorization" shall mean the document generated by the department and issued to a private landowner that authorizes the holder to purchase a specified license.

E. "Private land only deer hunters" shall mean persons that hunt deer during designated private land only hunts.

F. "Special entry hunt" shall mean hunts where hunter numbers are limited by rule and application for license or permit is required.

G. "Application" shall mean any form, approved by the department that requires an individual to supply information that may result in the issuance of a hunting or trapping license or permit.

I. "Application rejected" shall mean that applications for hunting licenses or permits may be rejected by the department pursuant to Subsection H of 19.31.3.8 NMAC, including hunting and trapping activity reporting requirements established herein.

J. "Customer identification number" or "CIN" shall mean that number permanently assigned by the department to uniquely identify a person purchasing a permit or license from the department.

[19.30.10.7 NMAC - Rp, 19.30.10.7 NMAC, 7-15-13]

19.30.10.8 REPORTING REQUIREMENTS FOR CERTAIN LICENSED OR PERMITTED HUNTERS AND FURBEARER HUNTERS AND TRAPPERS:

A. Individuals licensed or permitted to hunt deer, elk, pronghorn antelope, javelina, Barbary sheep, oryx, Persian ibex and turkey or hunt or trap furbearers in the same license year must submit a report for each species using procedures specified by the department. These licensed or permitted hunters and trappers must provide their customer identification number or their first name, last name, date of birth and the last four digits of their social security number at the start of the reporting procedure.

B. Individuals licensed or permitted to hunt deer, elk, pronghorn antelope, javelina, Barbary sheep, oryx, Persian ibex and turkey or hunt or trap furbearers but not engaging in any hunting or trapping activity must still submit a report.

C. The department shall make available to each hunter or trapper a toll-free telephone number and a website address that can be accessed to provide reports of hunting activities.

D. February 15 reporting deadline: All licensed or permitted deer, elk, pronghorn antelope, and turkey hunters must report the results of their hunting activities, including harvest outcome, no later than February 15th annually for licenses or permits held in that license year. For hunters of pronghorn antelope and turkey, this annual reporting requirement shall not commence until the license year beginning April 1, 2013. Licensed or permitted hunters who fail to report the results of their hunting activities by February 15 for deer, elk, pronghorn antelope, and turkey will incur a late fee pursuant to Subsection F of 19.30.10.8 NMAC.

E. April 7 reporting deadline: All licensed and permitted javelina, Barbary sheep, oryx, and Persian ibex hunters and furbearer hunters and trappers must report the results of their hunting or trapping activities, including harvest outcome, no later than April 7 annually for licenses or permits held in the previous license year. For hunters of javelina, Barbary sheep, oryx, and Persian ibex hunters, this annual reporting requirement shall not commence until the license year beginning April 1, 2013. Licensed or permitted hunters or trappers who fail to report the results of their hunting or trapping activities by April 7 for javelina, Barbary sheep, oryx, and Persian ibex hunters and furbearer hunters and trappers will incur a late fee pursuant to Subsection F of 19.30.10.8 NMAC.

F. Individuals licensed or permitted to hunt deer, elk, pronghorn antelope, javelina, Barbary sheep, oryx, Persian ibex and turkey or hunt or trap furbearers, who fail to report the results of their hunting or trapping activities by specified deadlines may submit their hunting or trapping report late with payment of a fee specified by the department not to exceed \$20 for each late report. Licensed or permitted hunters or trappers who fail to report the results of their hunting or trapping activities prior to the annual specified deadlines for any trapping license, special entry hunt application(s),

population management authorization(s) or private land authorization(s), submitted for the following license year, will have their purchase or applications rejected.

G. Upon submission of a hunting or trapping report for each species, the department shall issue the hunter or trapper a confirmation code validating a fulfillment of the reporting requirement for each species.

[19.30.10.8 NMAC - N, 7-15-13; A, 9-15-15]

19.30.10.9 TRUTH IN REPORTING:

Licensed or permitted deer, elk, pronghorn antelope, javelina, Barbary sheep, oryx, Persian ibex and turkey hunters and licensed trappers or furbearer hunters who provide false or fraudulent information regarding the results of hunting or trapping activities shall be assessed revocation points pursuant to 19.31.2 NMAC.

[19.30.10.9 NMAC - Rp, 19.30.10.11 NMAC, 7-15-13]

PART 11: CIVIL LIABILITY

19.30.11.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.11.1 NMAC - N, 10/16/2006]

19.30.11.2 SCOPE:

Establishing civil liability as allowed in Chapter 17, NMSA 1978 and its accompanying rules.

[19.30.11.2 NMAC - N, 10/16/2006]

19.30.11.3 STATUTORY AUTHORITY:

17-1-14, 17-1-26 and 17-2-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and establish civil liability.

[19.30.11.3 NMAC - N, 10/16/2006]

19.30.11.4 DURATION:

Permanent.

[19.30.11.4 NMAC - N, 10/16/2006]

19.30.11.5 EFFECTIVE DATE:

October 16, 2006, unless a later date is cited at the end of individual sections.

[19.30.11.5 NMAC - N, 10/16/2006]

19.30.11.6 OBJECTIVE:

Establishing civil liability value and basic regulation, rules and procedures governing the civil action by the department pertaining to civil damages recoverable by judgment.

[19.30.11.6 NMAC - N, 10/16/2006]

19.30.11.7 DEFINITIONS:

A. "Antlered points" shall mean the total number of points counted on a continuous antler beam. To constitute a countable point, it must be distinct. A burr at the base does not constitute an antlered point.

B. "Scoring" shall mean the method of measure adopted and utilized by Safari club international that determines the size of antlers, heads or horns of a game animal that has two antlers or two horns. If a dispute in the scoring arises, then a certified or trained scorer of the Safari club international will score the game animal in question and document their findings for the defendant and department.

[19.30.11.7 NMAC - N, 10/16/2006]

19.30.11.8 CIVIL LIABILITY ABOVE TEN THOUSAND DOLLAR (\$10,000.00) VALUE:

The director is authorized to pursue civil liability for greater than ten thousand dollars (\$10,000.00) for any bighorn sheep, elk or mule deer that scores higher than the criteria established below.

[19.30.11.8 NMAC - N, 10/16/2006]

19.30.11.9 CIVIL LIABILITY CIRCUMSTANCES:

A. Game animal and game bird: The director or any officer may file a civil action in any court of jurisdiction for the trophy value of a game animal or bird providing that evidence and information indicate that the game was killed or possessed out of season, taken with the aid of artificial light, taken without a proper license, exceeded the bag limit or resulted in waste of game.

B. Game fish: The director or any officer may file a civil action in any court of jurisdiction for the trophy value of a game fish providing that evidence and information indicate that the game fish was killed, taken or possessed exceeding the bag limit

[19.30.11.9 NMAC - N, 10/16/2006]

19.30.11.10 TROPHY DESIGNATION AND VALUE:

A. Antelope (pronghorn):

(1) Any 1 buck with at least one of two horns that is 14.0 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 buck that has a total scoring of 70.0 points - 75.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 buck that has a total scoring of 76.0 points - 79.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 buck that has a total scoring of 80.0 points or greater is valued at eight thousand dollars (\$8,000.00).

B. Barbary sheep:

(1) Any 1 ram with at least one of two horns that is 25.0 inches to 26.99 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 ram with at least one of two horns that is 27.0 inches to 28.99 inches in length is valued at four thousand dollars (\$4,000.00).

(3) Any 1 ram with a least one of two horns that is 29.0 inches or greater in length is valued at six thousand dollars (\$6,000.00).

C. Bighorn or mountain sheep:

(1) Any 1 ram, below the scoring of 150 points is valued at five thousand dollars (\$5,000.00).

(2) Any 1 ram that has a total scoring of 150 points - 180 points is valued at ten thousand dollars (\$10,000.00).

D. Deer:

(1) Any 1 mule deer buck with an inside antler spread that measures at least 20 inches is valued at two thousand dollars (\$2,000.00).

(2) Any 1 mule deer buck that has a total scoring of 150.0 points - 174.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 mule deer buck that has a total scoring of 175.0 points - 199.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 mule deer buck that has a total scoring of 200.0 points - 214.9 points is valued at ten thousand dollars (\$10,000.00).

(5) Any 1 Texas white-tailed deer buck (not Coues spp.) with an inside antler spread that measures at least 16 inches is valued at two thousand dollars (\$2,000.00).

(6) Any 1 Texas white-tailed deer buck (not Coues spp.) that has a total scoring of 125.0 points - 144.9 points is valued at four thousand dollars (\$4,000.00).

(7) Any 1 Texas white-tailed deer buck (not Coues spp.) that has a total scoring of 145.0 points - 164.9 points is valued at six thousand dollars (\$6,000.00).

(8) Any 1 Texas white-tailed deer buck (not Coues spp.) that has a total scoring of 165.0 points - 199.9 points is valued at ten thousand dollars (\$10,000.00).

(9) Any 1 Coues white-tailed deer buck with an inside antler spread that measures at least 10 inches is valued at two thousand dollars (\$2,000.00).

(10) Any 1 Coues white-tailed deer buck that has a total scoring of 85.0 points - 99.9 points is valued at four thousand dollars (\$4,000.00).

(11) Any 1 Coues white-tailed deer buck that has a total scoring of 100.0 points - 114.9 points is valued at six thousand dollars (\$6,000.00).

(12) Any 1 Coues white-tailed deer buck that has a total scoring of 115.0 points - 129.9 points is valued at ten thousand dollars (\$10,000.00).

E. Elk:

(1) Any 1 bull with at least 6 antlered points on one of two sides is valued at two thousand dollars (\$2,000.00).

(2) Any 1 bull that has a total scoring of 280.0 points - 299.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 bull that has a total scoring of 300.0 points - 319.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 bull that has a total scoring of 320.0 points - 349.9 points is valued at eight thousand dollars (\$8,000.00).

(5) Any 1 bull that has a total scoring of 350.0 points - 399.9 points is valued at ten thousand dollars (\$10,000.00).

F. Ibex:

(1) Any 1 buck or billy with at least one of two horns that is 35.0 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 buck or billy that has a total scoring of 70.0 points - 79.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 buck or billy that has a total scoring of 80.0 points - 89.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 buck or billy that has a total scoring of 90.0 points - 99.9 points is valued at eight thousand dollars (\$8,000.00).

(5) Any 1 buck or billy that has a total scoring of 100.0 points or more is valued at ten thousand dollars (\$10,000.00).

G. Oryx:

(1) Any 1 oryx with one of two horns at least 34 inches in length is valued at two thousand dollars (\$2,000.00).

(2) Any 1 oryx that has a total scoring of 84.0 points - 89.9 points is valued at four thousand dollars (\$4,000.00).

(3) Any 1 oryx that has a total scoring of 90.0 points - 100.9 points is valued at six thousand dollars (\$6,000.00).

(4) Any 1 oryx that has a total scoring of 101.0 or greater is valued at ten thousand dollars (\$10,000.00).

H. Headless game animal: Any 1 game animal designated in 19.30.11.10 shall be valued at their minimum trophy amount as set forth above.

I. Turkey:

(1) Any 1 tom that has at least a 10 inch or longer beard is valued at five hundred dollars (\$500.00).

(2) Any 1 tom that has at least one foot-spur that is 1 inch or greater in length is valued at five hundred dollars (\$500.00).

J. Wild Salmonidae: Any 1 trout or salmon that has a total length of at least 20 inches is valued at one hundred fifty dollars (\$150.00).

[19.30.11.10 NMAC - N, 10/16/2006]

PART 12: PRONGHORN LICENSE ALLOCATION SYSTEM [REPEALED]

(This rule was repealed effective 4/1/2019)

PART 13: ARTIFICIAL LIGHT PERMIT SYSTEM

19.30.13.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.13.1 NMAC - N, 11/30/07]

19.30.13.2 SCOPE:

Issue permit for the use of artificial light as provided in 17-2-31.D NMSA 1978.

[19.30.13.2 NMAC - N, 11/30/07; A, 1/31/13]

19.30.13.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.30.13.3 NMAC - N, 11/30/07]

19.30.13.4 DURATION:

Permanent.

[19.30.13.4 NMAC - N, 11/30/07]

19.30.13.5 EFFECTIVE DATE:

November 30, 2007, unless a later date is cited at the end of a section.

[19.30.13.5 NMAC - N, 11/30/07]

19.30.13.6 OBJECTIVE:

To permit, authorize and regulate any person requesting a permit for or using artificial light within New Mexico as exempted by 17-2-31.D NMSA 1978.

[19.30.13.6 NMAC - N, 11/30/07; A, 1/31/13]

19.30.13.7 DEFINITIONS:

A. "History of violation" means any one court conviction or multiple convictions totaling up to 20 administrative points against a person violating any federal or state hunting law or regulation during the three-year period immediately preceding the application for permitting, provided that the violation committed, if committed in New Mexico, would equal or exceed revocation requirements as found in 19.31.2 NMAC. It shall also include any conviction for any felony, no matter when the felony was committed. It shall include any convictions as an accessory for the described crimes.

B. "Director" shall mean the director of the department of game and fish.

C. "Division" shall mean the New Mexico department of game and fish, law enforcement division.

D. "Landowner" shall be a person who owns or controls private land in New Mexico.

E. "Permit" shall mean an official document issued by the department for purposes exempted by 17-2-31.D NMSA 1978.

F. "Department authorization" shall mean approval by the department of game and fish to use artificial light while hunting or taking a protected species as specified in this rule.

[19.30.13.7 NMAC - N, 11/30/07; A, 1/31/13]

19.30.13.8 PERMIT PROCEDURES AND REQUIREMENTS:

A. Application form and permit: Permits to use artificial light as defined in Section 17-2-31 NMSA 1978 and Title 19 Chapter 30 Part 13, shall be made only on forms provided by the department as prescribed and approved by the director.

B. Application deadlines: All applications must be received at least 5 working days before the requested period. All materials will be forwarded to the division for further background checking and processing.

C. Signature: Applications shall be signed by the applicant.

D. Provide verifiable written permission from a landowner(s).

E. Permit fee:

- (1) All permit fees shall be submitted with the application.
- (2) All permit fees are non refundable.
- (3) Each permit fee shall be \$15.00.

F. Applicant must be at least 21 years of age.

G. Applicant cannot have a history of violation of any related federal or state game and fish laws or regulations and applicant must give appropriate proof that no conviction exists.

H. A permit shall only be valid for the specified dates and area(s) listed on the permit and only valid on the private land with accompanying written permission. When participating in exemption activities, the permittee must possess a valid permit and valid written, landowner permission and produce both when requested by a conservation officer.

I. A permit shall be valid for maximum of 14 consecutive days. Permits may be extended only once and extensions are limited to 30 days. Extensions must be based on emergency or exigent circumstances and must be approved by the director.

J. A person may hold more than 1 permit provided that all of the application and permitting process is followed and approved.

[19.30.13.8 NMAC - N, 11/30/07; A, 1/31/13]

19.30.13.9 PROHIBITIONS:

A. It is unlawful to cast the ray of any artificial light in any location or area other than the area(s) specified on the permit.

B. It is unlawful for any person to attempt to take, pursue, or take protected game (17-2-3 NMSA 1978) with the use of artificial light.

[19.30.13.9 NMAC - N, 11/30/07]

19.30.13.10 PERMIT CANCELLATION:

If a landowner officially withdraws their permission in writing to the division for their property, the permit will be cancelled and the division shall contact the permittee informing them of the withdrawn permission by the landowner and cancellation of the permit.

[19.30.13.10 NMAC - N, 11/30/07]

19.30.13.11 DEPARTMENT AUTHORIZATION - RACCOON HUNTING:

A validly licensed furbearer hunter is authorized by the department to hunt for and take raccoons by use of artificial light while hunting at night with a rim-fire rifle or handgun no greater in size than a .22 caliber, shotgun, bow or crossbow during open season. The artificial light used for raccoon hunting must be a headlamp or hand held flashlight. It is unlawful for any artificial light to be cast from a vehicle while raccoon hunting.

[19.30.13.10 NMAC - N, 1/31/13]

PART 14: AQUATIC INVASIVE SPECIES

19.30.14.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.14.1 NMAC - Rp, 19.30.14.1 NMAC, 7-11-2017]

19.30.14.2 SCOPE:

Providing for the control and prevention of the spread of aquatic invasive species in New Mexico.

[19.30.14.2 NMAC - Rp, 19.30.14.2 NMAC, 7-11-2017]

19.30.14.3 STATUTORY AUTHORITY:

Chapter 17, including 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to aquatic invasive species.

[19.30.14.3 NMAC - Rp, 19.30.14.3 NMAC, 7-11-2017]

19.30.14.4 DURATION:

Permanent.

[19.30.14.4 NMAC - Rp, 19.30.14.4 NMAC, 7-11-2017]

19.30.14.5 EFFECTIVE DATE:

July 11, 2017, unless a later date is cited at the end of a section.

[19.30.14.5 NMAC - Rp, 19.30.14.5 NMAC, 7-11-2017]

19.30.14.6 OBJECTIVE:

To establish and define the procedures and restrictions for controlling or preventing aquatic invasive species.

[19.30.14.6 NMAC - Rp, 19.30.14.6 NMAC, 7-11-2017]

19.30.14.7 DEFINITIONS:

- A. "Department"** shall mean the New Mexico department of game and fish.
- B. "Director"** shall mean the director of the New Mexico department of game and fish.
- C. "Warning tag"** as used herein, shall mean a document or tag issued by the department or other state or federal agency and affixed to a conveyance or equipment that prohibits a conveyance or equipment from entering into a water body until being properly decontaminated or otherwise approved for re-entry.
- D. "Impound"** shall mean to detain or subject to temporary control of the state other than detention for purposes of inspection a conveyance or equipment until the owner or person in control thereof shall meet all conditions for release of such conveyance or equipment.
- E. "Decontaminate"** shall mean to clean, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director, including minimum standards as described in the uniform minimum protocols and standards for watercraft inspection program for dreissenid mussels in the western United States (2012) or versions thereafter in order to remove or destroy an aquatic invasive species.
- F. "Proof of decontamination"** shall mean verifiable documentary proof, official marking or tag affixed to the conveyance or equipment, or otherwise provided to the owner or person in control of a conveyance or equipment trained personnel to effect decontamination of the conveyance or equipment, or otherwise demonstrate compliance with the decontamination requirement established by the director; such certification shall be valid only until the conveyance or equipment re-enters a water body.
- G. "Trained personnel"** means individuals who have successfully completed the United States fish and wildlife service's aquatic invasive species watercraft inspection and decontamination training, level I, level II or an equivalent training recognized by the director.
- H. "Watercraft inspection and decontamination seal"** shall mean a device issued by trained personnel that attaches the conveyance or equipment to the trailer to

indicate that the conveyance or equipment has not been launched since it was last inspected or decontaminated, and is accompanied by a receipt.

[19.30.14.7 NMAC - Rp, 19.30.14.7 NMAC, 7-11-2017]

19.30.14.8 WARNING TAG:

The director shall prescribe and procure the printing of warning tags to be used for the state to identify any conveyance or equipment known or believed to contain an aquatic invasive species or a conveyance or equipment leaving an infested water body without being decontaminated.

A. Trained personnel may affix a warning tag to any conveyance or equipment known or believed to contain aquatic invasive species, based upon its point of origin or exposure to infested water, unless the person in control of such equipment or conveyance has proof of decontamination, or can otherwise demonstrate that the equipment or conveyance is not infested.

B. Trained personnel may affix a warning tag to a conveyance or equipment if they have reason to believe aquatic invasive species may be present and the person operating or in control of such conveyance or equipment refuses inspection.

C. Each warning tag shall be affixed on boats and other similar vessels within 12 inches of the boat number on the port (left) side, to the windshield of the conveyance or equipment, or in the case where a transport company is transferring the conveyance or equipment, via United States mail, electronic mail or hand delivery to both owner and transport company. In cases where no boat number is found the warning tag shall still be affixed in the same general location.

D. Each warning tag shall be individually affixed to all other conveyances and equipment in the most visible manner possible.

E. No warning tag may be removed except by trained personnel or a person or entity certified by the director and only if the respective personnel, person or entity is acting in their official capacity and has inspected the conveyance or equipment, satisfied that proper decontamination or elimination of aquatic invasive species has occurred.

[19.30.14.8 NMAC - Rp, 19.30.14.8 NMAC, 7-11-2017]

19.30.14.9 IMPOUNDMENT OF CONVEYANCE OR EQUIPMENT:

A. Any law enforcement officer may impound any conveyance or equipment if warning tagged and the conveyance or equipment is currently in or entering a water body.

B. Any law enforcement officer may impound any conveyance or equipment known or believed to contain aquatic invasive species if such conveyance or equipment is currently in a water body or the person operating or in control of such conveyance or equipment fails to follow the enforcement officer's command to immediately prevent such from entering or remaining in a water body.

C. A warning tag shall be immediately affixed to any conveyance or equipment impounded pursuant to Subsection B above.

D. Any impounded conveyance or equipment shall only be released from impoundment:

(1) upon receipt of satisfactory proof that decontamination requirements as prescribed by the director have been met; or

(2) upon receipt of a conditional release from the director wherein the owner or person responsible for the conveyance or equipment agrees to the specific terms and conditions that require immediate decontamination followed by an inspection to verify decontamination has occurred.

E. It shall be the responsibility of the owner of any impounded conveyance or equipment to pay all costs, including storage fees, decontamination charges and towing associated with the impoundment and to reimburse any agency that incurs expenditures for the impoundment.

[19.30.14.9 NMAC - Rp, 19.30.14.9 NMAC, 7-11-2017]

19.30.14.10 LIMITED TRANSPORT:

The department's employees, agents or designees, or employees of other state or federal agencies while acting in their official capacity may authorize an owner or person in control of a warning tagged conveyance or equipment to transport the conveyance or equipment to a location approved by the department or their designee.

[19.30.14.10 NMAC - Rp, 19.30.14.10 NMAC, 7-11-2017]

19.30.14.11 WAIVER AND RELEASE OF LIABILITY:

Prior to being eligible for decontamination by the state or its designee the owner or person in control of a warning tagged conveyance or equipment shall sign and deliver to the department a release of liability in a form approved by the director.

[19.30.14.11 NMAC - Rp, 19.30.14.11 NMAC, 7-11-2017]

19.30.14.12 INSPECTION AND DECONTAMINATION PROGRAM:

A. Trained personnel may establish check stations to inspect all conveyances or equipment prior to entering, being launched onto or being directly exposed to any water body of the state. It shall be unlawful for an owner or person in control of a conveyance(s) or equipment to knowingly avoid an established check station.

B. It shall be unlawful for an owner or person in control of conveyances or equipment transported into New Mexico or registered in a state other than New Mexico to knowingly introduce, launch or directly expose a conveyance(s) or equipment to any water body of the state without first receiving an inspection and/or decontamination by trained personnel. Proof of decontamination may be used in lieu of an inspection at the discretion of trained personnel.

C. The owner of a conveyance or equipment that is greater than or equal to 26 feet in length and will be transported into or within New Mexico shall notify the department aquatic invasive species program coordinator at least 14 days prior to the anticipated date of transport.

D. Upon completion of any conveyance or equipment inspection, trained personnel may require decontamination, re-inspection and additional drying time prior to the conveyance or equipment entering any water body of the state.

E. Trained personnel may affix a watercraft inspection and decontamination seal to a conveyance or equipment to serve as proof of decontamination or inspection. Conveyances or equipment with an intact watercraft inspection and decontamination seal with accompanying receipt may be allowed to enter a water body of the state without further inspection or decontamination upon verification by trained personnel.

F. It shall be unlawful for the owner or person in control of a conveyance(s) or equipment transported on a public road in New Mexico to have any plug or other barrier in place that prevents water drainage from bilge lines, ballast tanks, motor cooling systems, live wells, compartments and equipment.

G. It shall be unlawful for the owner or person in control of a conveyance(s) or equipment to fail to take reasonable measures upon exiting a waterbody to decontaminate all equipment, compartments or spaces that are wet, hold water or could transfer AIS, including aquatic vegetation.

H. Trained personnel may not self-inspect, decontaminate or attach a seal to their own conveyance or equipment.

[19.30.14.12 NMAC – Rp, 19.30.14.12 NMAC, 7-11-2017]

PART 15: WILDLIFE CONSERVATION VOLUNTEERS

19.30.15.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.15.1 NMAC - N, 07-15-2016]

19.30.15.2 SCOPE:

Providing for the use of volunteers by the New Mexico Department of Game and Fish.

[19.30.15.2 NMAC - N, 07-15-2016]

19.30.15.3 STATUTORY AUTHORITY:

Section 17-1-14B NMSA 1978, provides that the New Mexico state game commission has the authority to establish rules and regulations for volunteer service as it may deem necessary to carry out the department's statutory requirements and other acts pertaining to the department's programs.

[19.30.15.3 NMAC - N, 07-15-2016]

19.30.15.4 DURATION:

Permanent.

[19.30.15.4 NMAC - N, 07-15-2016]

19.30.15.5 EFFECTIVE DATE:

July 15, 2016, unless a later date is cited at the end of a section.

[19.30.15.5 NMAC - N, 07-15-2016]

19.30.15.6 OBJECTIVE:

Establish rule to implement a process for New Mexico department of game and fish to use volunteers to help support and promote its programs.

[19.30.15.6 NMAC - N, 07-15-2016]

19.30.15.7 DEFINITIONS:

- A. "**Commission**" means the state game commission.
- B. "**Department**" means the New Mexico department of game and fish.
- C. "**Director**" means the director of the New Mexico department of game and fish.

D. "Motorized equipment" means any machine that uses or is activated by a motor, engine, or other power source. This includes, but is not limited to, chainsaws, power drills, generators, motor boats, off highway vehicles, dirt bikes, snowmobiles, lawn mowers, and leaf blowers.

E. "Public employee" as defined in 1.6.5 NMAC, means individuals as defined in, Section 41-4-3 (F) NMSA 1978 of the Tort Claims Act.

F. "Registered volunteer" means an individual that has been officially placed into one or more of the department's volunteer positions after successfully completing all application, training and certification requirements.

G. "Special-use vehicles" means state vehicles designated as such by the director or designee, including but not limited to buses, tractors, boats, trailers, snow cats, vehicles of special design or construction that effectively limits their use for a particular purpose, and all other vehicles that are not passenger vehicles.

H. "State vehicle" as defined in 1.5.3 NMAC, means an automobile, van, sport-utility truck, pickup truck, or other vehicle with a declared gross vehicle weight of less than 10,000 pounds that is used by a state agency to transport passengers or property.

[19.30.15.7 NMAC - N, 07-15-2016]

19.30.15.8 WILDLIFE CONSERVATION VOLUNTEERS:

A. The New Mexico department of game and fish may develop a program to recruit, train, equip and accept the services of the registered volunteers that help support the programs administered by the department.

B. Registered volunteers shall comply with all the department's rules, policies and directives as prescribed by the director.

C. A registered volunteer shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation and state employee benefits.

D. A registered volunteer traveling under the authorization and direction of the New Mexico department of game and fish may receive per diem and mileage at a rate defined by the Per Diem and Mileage Act, 10-8-1 through 10-8-8 NMSA 1978 and the Travel and Per Diem Rule, 2.42.2 NMAC and reimbursement of expenses associated with the volunteers service for items such as supplies and equipment for the department's programs. Reimbursement is allowed provided that: the expense is directly related to and facilitates the implementation of the department's program(s), the incurring of the expense has been pre-approved by department staff, and the department does not authorize reimbursements in excess of the value of services

rendered to the department by the registered volunteer. Per diem, mileage and reimbursements are subject to the availability of funds, the review and pre-approval by the department, must adhere to all aspects of the Per Diem and Mileage Act, 10-8-1 through 10-8-8 NMSA 1978 and the Travel and Per Diem Rule, 2.42.2 NMAC, and all department rules, policies and procedures governing such expenses and reimbursements.

E. A registered volunteer may be authorized to use state vehicles in the performance of department assigned duties, subject to those rules, policies and directives governing the use of state vehicles by department employees. A registered volunteer that operates a state vehicle under the terms of this section shall be treated for the purposes of insurability and tort claims liability as a public employee of the state as described in the Tort Claims Act, 41-4-1 through 41-4-30 NMSA 1978 and the General Governmental Administration Risk Management Certificate of Coverage Rule, 1.6.5 NMAC.

F. A registered volunteer may be authorized to use state computers and related technology in the performance of department-assigned duties. Registered volunteers are subject to those rules, policies and directives governing the use of state computers and associated technology. Use of department computers and associated technology must be reviewed and pre-approved by the department and registered volunteers must adhere to all aspects of the Information Technology Internet, Intranet, Email, and Digital Network Usage Rule 1.12.10 NMAC, the Information Technology Enterprise Architecture Rule, 1.12.11 NMAC, and the department's information technology use policy, GP-015.

G. A registered volunteer may be authorized to use special-use vehicles and motorized equipment in the performance of department-assigned duties, subject to the department's rules, policies and directives as prescribed by the director.

[19.30.15.8 NMAC - N, 07-15-2016]

19.30.15.9 GENERAL REQUIREMENTS:

A. Background checks: Applicants must consent to and pass a formal background investigation as prescribed by the director to be eligible for consideration for placement into a registered volunteer position with the department.

B. Training and certifications: Applicants must successfully complete all training and certification requirements for each position they have applied for prior to the performance of the positions duties.

[19.30.15.9 NMAC - N, 07-15-2016]

19.30.15.10 REVIEW AND REPORTING:

A. The department shall provide to the commission an annual accounting of the wildlife conservation volunteers program.

B. The wildlife conservation volunteers program shall be included in the annual independent audit of the department and must adhere to the Audit Act, 12-6-12 NMSA 1978.

[19.30.15.10 NMAC - N, 07-15-2016]

PART 16: [RESERVED]

PART 17: PROCEDURAL RULE FOR PUBLIC RULE HEARINGS

19.30.17.1 ISSUING DEPARTMENT:

New Mexico Department of Game and Fish.

[19.30.17.1 NMAC - N, 01/30/2018]

19.30.17.2 SCOPE:

The state game commission and the department of game and fish.

[19.30.17.2 NMAC - N, 01/30/2018]

19.30.17.3 STATUTORY AUTHORITY:

Section 14-4-5.8 NMSA 1978, Sections 17-1-14 and 17-1-26 NMSA 1978.

[19.30.17.3 NMAC - N, 01/30/2018]

19.30.17.4 DURATION:

Permanent.

[19.30.17.4 NMAC - N, 01/30/2018]

19.30.17.5 EFFECTIVE DATE:

January 30, 2018, unless a later date is cited in the history note at the end of a section.

[19.30.17.5 NMAC - N, 01/30/2018]

19.30.17.6 OBJECTIVE:

To provide procedural rules for public rule hearings for use by the state game commission and the department of game and fish consistent with the State Rules Act, and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner.

[19.30.17.6 NMAC - N, 01/30/2018]

19.30.17.7 DEFINITIONS:

This rule adopts the definitions found in Section 14-4-2 NMSA 1978 and the listing in this section.

A. "Commission" shall mean the New Mexico state game commission.

B. "Department" shall mean the New Mexico department of game and fish.

[19.30.17.7 NMAC - N, 01/30/2018]

19.30.17.8 INITIATION OF THE RULEMAKING PROCESS:

The rulemaking process for purposes of this rule is initiated when the department publicly posts a notice for a rule hearing pursuant to Section 14-4-5.2 NMSA 1978.

[19.30.17.8 NMAC - N, 01/30/2018]

19.30.17.9 RULEMAKING NOTICE:

A. The department shall provide to the public notice of the proposed rulemaking as required by Section 14-4-5.2 NMSA 1978.

B. If the commission changes the date of the public rule hearing or shortens the deadline for submitting comments as stated in the notice, the department shall provide notice to the public of the change as provided above.

[19.30.17.9 NMAC - N, 01/30/2018]

19.30.17.10 WRITTEN COMMENT PERIOD:

A. The commission shall allow for public comment on the proposed rule as defined by Section 14-4-5.3 NMSA 1978.

B. The commission may decide before, during, or after the public rule hearing to extend the comment period by providing public notice, to include:

- (1)** posting on the department website;

(2) making it available by posting notice in a publicly visible location in department's headquarters and regional offices;

(3) sending notice by electronic mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceedings and provided an electronic mail address to the department; and

(4) sending notice by regular mail to persons who have participated in the rulemaking proceeding or made a written request for notice of rulemaking proceeding and provided a postal address and specifically requested notice by regular mail.

[19.30.17.10 NMAC - N, 01/30/2018]

19.30.17.11 PUBLIC HEARING:

A. Prior to adopting a proposed rule, the commission must hold a public rule hearing. The purpose of the public rule hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The commission, at its sole discretion, may determine whether more than one hearing is necessary.

B. The chair of the commission may act as the hearing officer or designate a representative or hearing officer to preside over its public rule hearing. The hearing officer may ask questions and provide comments for clarification purposes only.

C. At the start of the hearing, any pre-filed exhibits should be introduced and admitted into the rulemaking record. Pre-filed exhibits should include: copies of the public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent electronically; copies of the proposed rule in underline and strikethrough format; and copies of any written comment submitted during the comment period prior to the rule hearing. Any written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

D. Individuals from the public wishing to provide comment or submit information at the rule hearing must state their name and any relevant affiliation for the record and be recognized before presenting by the individual presiding over the hearing. Any individual who provides information or public comment at the hearing may be questioned by the hearing officer, or other members of the commission.

E. The rule hearing shall be conducted in a fair and equitable manner. The hearing officer may determine the manner in which the hearing is conducted, but the hearing should be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record. The rules of evidence do not apply to public rule hearings and the hearing officer may, in the interest of efficiency, exclude or limit comment that is deemed irrelevant, redundant, or unduly repetitious.

F. The commission must hold the hearing in a venue that reasonably accommodates all interested persons who wish to participate or observe, and appropriate audio equipment should be secured to ensure all persons in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices.

[19.30.17.11 NMAC - N, 01/30/2018]

19.30.17.12 RULEMAKING RECORD AND ADOPTION OF RULE:

A. Once the rulemaking process has been initiated, the department shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly.

B. The adoption of the proposed rule shall occur during a public meeting. The adoption date of the proposed rule shall be the date of the public meeting at which the vote occurred, unless the commission directs that a written order be issued, in which case the adoption date shall be the date the written order is signed. The commission may provide reasoning for the adopted rule through comments or discussion during its meeting, or by providing a statement of reasons in a written order.

C. The commission, through the department, shall provide a concise explanatory statement per Section 14-4-5.5 within 15 days after the date of adoption.

[19.30.17.12 NMAC - N, 01/30/2018]

19.30.17.13 FILING AND PUBLICATION; EFFECTIVE DATE:

Once the commission has adopted a rule(s), the department shall follow the procedures for final adoption as defined in Section 14-4-5 NMSA 1978.

[19.30.17.13 NMAC - N, 01/30/2018]

19.30.17.14 EMERGENCY RULES:

The commission and department shall comply with the rulemaking procedures herein and the State Rules Act unless the commission or department finds that an emergency situation exists. The commission and the department shall adhere to Section 14-4-5.6 NMSA 1978, if the need for an emergency rule is determined.

[19.30.17.14 NMAC - N, 01/30/2018]

PART 18: FAIR CHASE

19.30.18.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.30.18.1 NMAC – N, 2/11/2020]

19.30.18.2 SCOPE:

Distribution and use of wildlife location data collected by the department of game and fish or its contractors.

[19.30.18.2 NMAC – N, 2/11/2020]

19.30.18.3 STATUTORY AUTHORITY:

Section 17-2-1 NMSA 1978 provides that the New Mexico state game commission may prescribe rules that embody the principles of fair chase, including prohibitions on the use of specific wildlife location data. Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.30.18.3 NMAC – N, 2/11/2020]

19.30.18.4 DURATION:

Permanent

[19.30.18.4 NMAC – N, 2/11/2020]

19.30.18.5 EFFECTIVE DATE:

February 11, 2020, unless a later date is cited in the history note at the end of a section.

[19.30.18.5 NMAC – N, 2/11/2020]

19.30.18.6 OBJECTIVE:

To prevent the inappropriate distribution and use of wildlife location data collected by the department or its contractors that could be used to locate or assist in locating an individual animal or population.

[19.30.18.6 NMAC – N, 2/11/2020]

19.30.18.7 DEFINITIONS:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Director" shall mean the director of the New Mexico department of game and fish.

C. "Fair chase" shall mean the ethical, sportsmanlike, and lawful pursuit and taking of any free-ranging wildlife species in a manner that does not give an individual an improper advantage over such animals.

D. "Location information" shall mean any data or information derived from methods including but not limited to Global Positioning System (GPS), radio telemetry, photographs, aerial and ground surveys, and visual or aural observation. Such data includes, but is not limited to, coordinates, location description, and similar information.

[19.30.18.7 NMAC – N, 2/11/2020]

19.30.18.8 LOCATION INFORMATION TO BE WITHHELD:

A. The department shall withhold location information:

- (1)** that could be used to locate an animal(s) or be used contrary to the principles of fair chase;
- (2)** as long as a transmitter is active;
- (3)** until the transmitted animal is known, or can be reasonably be assumed, to be dead;
- (4)** during an ongoing study;
- (5)** if it could compromise the viability of a population where there is a known demand to visit, take, or disturb the species;
- (6)** if it could encourage illegal take;
- (7)** if the species has a limited distribution either continuously or at specific times;
- (8)** that has been provided to the department from other agencies, universities, or other researchers; and
- (9)** as provided in 19.33.4 NMAC.

B. The department shall withhold individual active radio frequencies.

[19.30.18.8 NMAC – N, 2/11/2020]

19.30.18.9 EXEMPTIONS FROM WITHHOLDING LOCATION INFORMATION:

The department may release location information and radio frequencies if:

A. entering into agreements for scientific, management, conservation, or educational purposes.

B. determined that the individual or population is not at risk of being compromised by releasing the location data.

C. buffered such that the location information would not compromise the individual or population.

[19.30.18.9 NMAC – N, 2/11/2020]

CHAPTER 31: HUNTING AND FISHING

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: HUNTING AND FISHING LICENSE REVOCATION

19.31.2.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.2.1 NMAC - Rp, 19.31.2.1 NMAC, 4/1/2022]

19.31.2.2 SCOPE:

Anyone who violates the provisions of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978, the Interstate Wildlife Violator Compact (Chapter 11 NMSA 1978) and the Parental Responsibility Act (Chapter 40 NMSA 1978).

[19.31.2.2 NMAC - Rp, 19.31.2.2 NMAC, 4/1/2022]

19.31.2.3 STATUTORY AUTHORITY:

Sections 11-16-5, 11-16-6, 17-1-14, 17-2-10.3, 17-3-34, 30-14-1, 40-5A-3, and 40-5A-6 NMSA 1978.

[19.31.2.3 NMAC - Rp, 19.31.2.3 NMAC, 4/1/2022]

19.31.2.4 DURATION:

Permanent.

[19.31.2.4 NMAC - Rp, 19.31.2.4 NMAC, 4/1/2022]

19.31.2.5 EFFECTIVE DATE:

April 1, 2022 unless a later date is cited at the end of a section or paragraph.

[19.31.2.5 NMAC - Rp, 19.31.2.5 NMAC, 4/1/2022]

19.31.2.6 OBJECTIVE:

To revoke, suspend or deny the privileges of any person who persistently, flagrantly or knowingly violates any of the provisions of Chapter 17 NMSA 1978, any rule adopted by the state game commission, the conditions of their agreement, license, permit or privileges, or Section 30-14-1 NMSA 1978; whose name appears on a HSD certified list of obligors not in compliance with the Parental Responsibility Act, Section 40-5A-1 NMSA 1978; who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978; who fails to appear, after proper notice, for hearings as required by law or regulation pursuant to Section 17-2-10.3 NMSA 1978; who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978 until those damages have been paid in full; whose privileges have been revoked by a wildlife violator compact member state or of any resident that fails to meet the terms of a citation issued from a compact member state pursuant to the Interstate Wildlife Violator Compact, Section 11-16-1 NMSA 1978; or, who does not comply with a department sponsored private lands agreement.

[19.31.2.6 NMAC - Rp, 19.31.2.6 NMAC, 4/1/2022]

19.31.2.7 DEFINITIONS:

A. "Commission" means the New Mexico state game commission.

B. "Conviction" means any adjudication of guilt; plea of guilty or nolo contendere accepted by the court; or payment of a fine, court cost, court order or penalty assessment; or forfeiture of collateral; regardless of whether sentencing or imposition of sentencing has been deferred or suspended.

C. "Department" means New Mexico department of game and fish.

D. "Director" means the director of the department of game and fish.

E. "HSD" means the New Mexico human services department.

F. "Notice of contemplated action" or "NCA" means a written notice that the commission is considering revoking a respondent's privileges, the basis for the action and the manner in which they can request a hearing.

G. "Notice of suspension" or "NOS" means a written notice that the department has suspended a respondent's privileges until they come into compliance with parental

responsibility obligations to HSD, compliance with criminal obligations to a court, compliance with criminal or civil obligations to the department or that the department has suspended or revoked the respondent's privileges in accordance with the Interstate Wildlife Violators Compact.

H. "Obligor" means a person who has been ordered to pay child or spousal support pursuant to a judgment and order for support.

I. "Privilege(s)" means the ability to purchase, receive, obtain or possess any license, permit, certificate, registration, authorization or agreement issued by the department, including but not limited to, hunting, fishing, trapping, private land hunting authorizations or permits, guiding and outfitting.

J. "Respondent" means any person who is subject to revocation or suspension.

K. "Revocation" means when a person's privileges are withheld by the commission or department, after notice and opportunity for a hearing, for a definite period of time.

L. "Suspension" means a person's privileges are withheld by the commission or department until the person comes into compliance.

[19.31.2.7 NMAC - Rp, 19.31.2.7 NMAC, 4/1/2022]

19.31.2.8 CRIMINAL REVOCATION CATEGORIES AND POINTS:

Each conviction or penalty assessment for a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule will result in the assessment of points. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. The tolling of time for the three consecutive years shall begin from the date of conviction or the date a penalty assessment was accepted.

A. 40-point criminal violations:

(1) hunting with the aid of an artificial light or spotlight, in violation of Section 17-2-31 NMSA 1978;

(2) felony waste of game in violation of Section 17-2-8 NMSA 1978;

(3) selling, offering for sale, offering to purchase or purchasing any game animal, game bird or game fish or parts thereof in violation of Section 17-2-7 NMSA 1978;

(4) any violation of Section 17-3-45 NMSA 1978 related to shooting from an aircraft involving any game animal, game bird or any state listed threatened or endangered animal;

- (5) applying for or receiving an outfitter or guide registration while revoked;
- (6) any violation of Section 17-3-48 NMSA 1978;
- (7) any violation of Section 17-3-49 NMSA 1978;
- (8) except as otherwise provided by Sections 17-2-37 to 17-2-46, taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping any species or subspecies of wildlife listed on the state list of endangered or threatened species or the United States' list of endangered native and foreign fish and wildlife;
- (9) knowingly or willfully introducing an aquatic invasive species, in violation of Section 17-4-35 NMSA 1978; or
- (10) accessory to any of the above violations.

B. 20-point criminal violations:

- (1) illegally taking, attempting to take, killing, capturing or possessing any big game species outside of hunting season in violation of Section 17-2-7 or 17-3-33 NMSA 1978, except for possession of head, antlers or horns found in the field penalty assessment violations;
- (2) hunting big game without a license in violation of Section 17-3-1 NMSA 1978;
- (3) misdemeanor waste of game in violation of Section 17-2-8 NMSA 1978;
- (4) hunting on public land (lands owned by the U.S. government, state of New Mexico, state land office or New Mexico game commission) with a license which was valid only on private land;
- (5) hunting in a closed area or hunting big game outside the ranch boundaries for which a ranch only license is issued or hunting big game in the wrong game management unit;
- (6) any violation of Section 17-3-45 NMSA 1978 related to shooting from an aircraft involving species other than game animals, game birds or state listed threatened or endangered animals;
- (7) exceeding the bag limit of big game;
- (8) criminal trespass, in violation of Section 30-14-1 NMSA 1978, when in connection with hunting, fishing or trapping activity; revocation to be for no less than three years;

- (9) any violation of Section 17-3-6 NMSA 1978;
- (10) any violation of Section 17-2-7.1 NMSA 1978 relating to interference with hunting, fishing or trapping;
- (11) any violation of Section 17-2-29 NMSA 1978; revocation for a period of one year as prescribed by Section 17-2-30 NMSA 1978;
- (12) outfitter allowing or using an unregistered person to perform outfitting or guiding services;
- (13) guiding or outfitting without being registered in violation of Section 17-2A-3 NMSA 1978;
- (14) using an outfitter or guide license issued to another;
- (15) hunting with a license obtained through the special drawing pool without being contracted with a New Mexico outfitter;
- (16) any violation of the provisions of any special use of wildlife permit issued by the department pursuant to Chapter 17 NMSA 1978 and its implementing rules;
- (17) procurement, possession or use of any additional big game or turkey license or tag, except as provided by rule;
- (18) any violation of Section 17-2-4.2 NMSA 1978;
- (19) selling or offering for sale any license issued to a person.
- (20) importation or possession of any species listed as group II, III or IV on the director's "species importation list" in violation of Section 17-3-32 NMSA 1978 or 19.31.10 NMAC;
- (21) any person who obtains any license, permit or stamp by falsely claiming a military discount; or
- (22) accessory to any of the above violations.

C. 10-point criminal violations:

- (1) illegally taking, attempting to take, killing, capturing or possession of any big game species during hunting season;
- (2) illegally taking, attempting to take, killing, capturing or possessing any turkey or small game in violation of Section 17-2-7 or 17-3-33 NMSA 1978;

(3) hunting, taking or attempting to take any protected game animal, game bird, game fish or furbearer on private land without written permission, in violation of 19.31.10 NMAC;

(4) harassing a game animal;

(5) use of an aircraft or drone to locate, harass, drive or rally a game animal;

(6) fail to properly tag big game species or turkey as prescribed;

(7) using an invalid or voided tag or using a tag of any other person;

(8) fishing without a license or hunting small game or turkey without a license;

(9) exceeding the bag limit of small game or turkey;

(10) retention of live game animal or game bird;

(11) refusing or failing to produce an outfitter contract or not having a signed contract prior to hunting;

(12) applying or allowing someone to apply in the special drawing pool without a contract;

(13) hunting or collecting non-game without a license or permit;

(14) applying or aiding any person in applying in the special drawing pool with an unregistered or unqualified outfitter number;

(15) hunting with a license obtained through the special drawing pool without being accompanied by a New Mexico outfitter or their guide; or

(16) accessory to any of the above violations.

D. five-point criminal violations:

(1) illegal possession of any head, horns or antlers of a game animal found in the field;

or

(2) any provision of Chapter 17 NMSA 1978 and its implementing rules not specifically

listed herein.

E. three-point criminal violations:

- (1) hunting, fishing or trapping without proper stamp(s); or
- (2) using any department issued permit without possessing the proper stamp(s).

[19.31.2.8 NMAC - Rp, 19.31.2.8 NMAC, 4/1/2022]

19.31.2.9 ADMINISTRATIVE REVOCATION CATEGORIES AND POINTS:

Any person may be assessed administrative revocation points for violations as provided below. Any person with 20 or more points accumulated within any consecutive three-year period shall have all of his or her privileges subject to revocation or suspension. An outfitter, guide or applicant's administrative revocation points shall only be against their outfitting or guiding registration unless they have accumulated 20 or more criminal revocation points. Administrative revocation points for landowners or their authorized ranch contact shall only be for the revocation or suspension of their private land program participation privileges unless they have accumulated 20 or more criminal revocation points.

A. 20 points:

- (1) outfitter or guide failure to comply with registration audit or conditions;
- (2) outfitter or guide misrepresentation;
- (3) outfitter or guide failure to disclose;
- (4) landowner's or authorized ranch contact's misrepresentation or violation of the conditions of a contract, application or agreement with the department;
- (5) any person submitting, or allowing to be submitted for them, false or fraudulent harvest reporting or pelt tagging information as required by rule; or
- (6) any person purchasing a license, permit, certificate or registration without sufficient funds to pay or who stops payment for same.

B. 10 points:

- (1) outfitting on state or federal lands without a proper permit or authorization;
- (2) outfitter breach of contract; or
- (3) outfitter, guide, landowner or authorized ranch contact failure to report illegal activity.

C. five points:

- (1) outfitter or guide violation of any conditions of a state or federal permit or authorization;
- (2) outfitter or guide failure to comply with any local, state or federal laws other than outfitting on state or federal lands without a proper permit or authorization;
- (3) outfitter failure to supervise guides; or
- (4) any outfitter or guide misconduct not otherwise specifically listed herein.

D. outfitters, guides and landowners or their authorized ranch contact shall be notified when points are assessed.

[19.31.2.9 NMAC - Rp, 19.31.2.9 NMAC, 4/1/2022]

19.31.2.10 TIMEFRAMES:

Any person found to have accumulated 20 or more points within any consecutive three-year period in violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule, after notice and opportunity to be heard by a hearing officer, shall have their privileges revoked for a definite period of time in accordance with Section 17-1-14 NMSA 1978.

A. First revocation: Any person subject to revocation for the first time may be revoked for up to three years or as provided for in statute. Stipulated agreements may only be used for first time revocations and any stipulated agreement shall be considered a first revocation for the purpose of calculating second or subsequent revocation timeframes.

B. Second revocation: Any person, who is subject to a second revocation may be revoked for up to five years.

C. Third revocation: Any person, who is subject to a third revocation, shall be revoked for no less than ten years.

D. Felony conviction: Any person convicted of a felony waste of game violation for the first time shall have their privileges revoked for no less than seven years and no more than ten years. Any person convicted of a felony waste of game violation for a second or subsequent time shall have their privileges revoked for no less than 10 years and no more than 99 years.

E. Enhancement: The department may recommend any period of revocation longer than those set in Sections A through C of this section to a hearing officer during a hearing requested by a respondent or to the commission, if no hearing was requested

by the respondent, when a respondent has accrued 40 or more revocation points within a three year period or when a respondent has accrued 20 or more revocation points and is subject to civil restitution for any animal designated as a trophy animal under 19.30.11 NMAC in connection with these points or for any person who accrues additional violation points while on revocation for a separate offense. Any such recommendation shall be supported with written justification detailing the recommendation and the egregious circumstances. Neither the hearing officer nor the commission shall be bound by the department's recommendation but shall consider it in determining the appropriate time period for a respondent's revocation.

F. Mitigation: The department may recommend any period of revocation shorter than those set in Sections A through C of this section to a hearing officer during a hearing requested by a respondent or to the commission, if no hearing was requested by the respondent, when the department believes mitigating circumstances exist. Any such recommendation shall be supported with written justification detailing the recommendation and the mitigating circumstances. Neither the hearing officer nor the commission shall be bound by the department's recommendation but shall consider it in determining the appropriate time period for a respondent's revocation.

G. Private land program violations: Any person, corporation or management authority found not complying with a department sponsored private lands agreement shall have all of their private lands program privileges revoked for up to three years for a first offense, no less than five years for a second offense and no less than 10 years for a third or subsequent offense. Such a revocation shall attach to the property associated with the violations and no change of ownership, change of authorized ranch contact nor any other change in management shall not reinstate a property which was associated with this type of revocation. The property shall remain inactive and the department shall not issue any private land authorizations for any species to any property or any portion of any property involved in a private land program revocation for the duration of the revocation time period even if the property is sold, changes management, is subdivided or otherwise altered.

H. PRA, IWVC violators and penalty assessments: Any person not in compliance with the Parental Responsibility Act (PRA) Section 40-5A-1 NMSA 1978, the Interstate Wildlife Violator Compact (IWVC) Section 11-16-1 NMSA 1978 or who has failed to pay a penalty assessment citation to the department within the amount of time allowed shall have their privileges revoked or suspended until in compliance (PRA) or for the time period designated by the original revoking state (IWVC) or until the penalty assessment citation has been paid in full.

I. Revocations shall be consecutive: All revocations shall commence consecutively to any current revocation or suspension.

J. Timeline to begin revocation process: If the department fails to initiate (initiation shall be calculated based on the post mark on the NCA or NOS letter) a revocation or suspension action against an individual within one year of the date that

the individual is either convicted of an act or accepts a penalty assessment misdemeanor, or a person is issued an administrative citation and assessed administrative points, which results in the accumulation of 20 or more points, the department shall not bring a revocation or suspension action against that individual unless and until that individual is either convicted of an additional violation or accepts an additional penalty assessment misdemeanor of any point value within three years of the most recent point accrual originally equaling or exceeding 20 points.

[19.31.2.10 NMAC - Rp, 19.31.2.10 NMAC, 4/1/2022]

19.31.2.11 REVOCATION AND SUSPENSION PROCEDURES:

A. Revocation: The department shall mail out a NCA when it determines that a person has accumulated 20 or more points, or when the commission is contemplating revoking a landowner's or authorized ranch contact's private land program privileges to participate in any department sponsored private land program or when the department determines that there has been a violation of the terms of a permit, license or authorization. An NCA shall clearly describe the proposed action and shall contain the following:

(1) Accrual of points: That the respondent has accrued 20 or more violation points within a three-year period and they are subject to having their privileges revoked.

(2) Hearing may be requested: That the respondent may secure a hearing before a hearing officer designated by the commission by mailing a request for a hearing letter to the department at 1 Wildlife Way, Santa Fe, NM 87507 and that a request for hearing shall only be deemed timely if it is postmarked within 20 calendar days after service of the department's NCA to the respondent.

(3) Rights of respondent: A person entitled to be heard under this rule shall have the right to be represented by counsel or may appear on their own behalf; to present all relevant evidence by means of witnesses, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues.

(4) Written request: Upon written request to another party, any party is entitled to:

(a) Obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) Inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

(c) The party to whom such a request is made shall comply with the request within 20 calendar days after the delivery of the request. No such request shall be made less than 20 calendar days before the hearing.

B. Suspension: The department shall mail out a NOS when it determines that there is sufficient evidence that a person is named on the wildlife violator compact, has failed to appear in court, has failed to pay a penalty assessment citation in full within the timeframe allowed, has failed to pay a civil judgement in full, or has entered into a voluntary suspension pursuant to a civil assessment. The NOS shall clearly describe the suspension of privileges and shall contain the remedy for the suspension.

C. Deadlines: If any deadline falls on a Saturday, Sunday, or state-recognized holiday, the deadline shall be extended to the next business day.

D. Department may initiate process: The commission grants approval to the department, through the director, to initiate the NCA or NOS process without commission consideration and to carry out suspensions associated with any NOS. The commission retains all authority for final revocation decisions.

[19.31.2.11 NMAC - Rp, 19.31.2.11 NMAC 4/1/2022]

19.31.2.12 NO HEARING REQUESTED:

If a respondent does not mail a request for a hearing within the time frame and in the manner required by this rule, or the notice mailed by the department is returned as undeliverable or unclaimed at the address the department has on file, the commission may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

A. The commission shall consider the department's submission of names of respondents who have not requested a hearing at a properly scheduled commission meeting and the respondent's privileges shall be automatically revoked or suspended pursuant to this rule.

B. Within 20 days after the commission's decision is rendered and signed by the chairperson of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.12 NMAC - Rp, 19.31.2.12 NMAC 4/1/2022]

19.31.2.13 HEARING REQUESTED:

If a respondent requests a hearing as provided by this rule, the department, within 20 calendar days of receipt of such request, shall notify the respondent of the time and place of the hearing, the name or names of the person or persons who shall conduct the hearing for the commission, and the statutes and rules authorizing the commission to

take the contemplated action. The hearing shall be held not more than 90 or less than 30 days from the date of service of such notice unless a continuance is granted to either party by the hearing officer. If a continuance has been requested by the department and granted by the hearing officer the hearing shall be rescheduled within 60 days from the original hearing date. If a continuance has been requested by the violator and granted by the hearing officer all timelines are waived for the hearing. Continuances may only be granted for good cause. The decision to grant or deny a continuance is at the sole discretion of the hearing officer.

[19.31.2.13 NMAC - Rp, 19.31.2.13 NMAC, 4/1/2022]

19.31.2.14 STIPULATED AGREEMENTS:

At the department's discretion, a person entitled to be heard under this rule for a first-time revocation may enter into a written stipulated agreement with the department. Signing such an agreement shall waive the person's right to a hearing and the filing of a written exception. The agreement shall be presented to the commission as the department's recommendation and the commission retains authority for the final decision.

[19.31.2.14 NMAC - Rp, 19.31.2.14 NMAC, 4/1/2022]

19.31.2.15 METHOD OF SERVICE:

A. Any NCA, notice of hearing or written decision by the commission shall be served by certified mail, return receipt requested, directed to the respondent, at their last known address as shown by the records of the department of game and fish. Notice by certified mail shall be deemed to have been served on the date born by the return receipt showing delivery or the last attempted delivery of the notice or decision to the respondent or refusal to accept delivery of the notice or decision.

B. Any NOS shall be given either by personal delivery to the person to be notified or by deposit in the United States mail, addressed to the person at the address as shown by the records of the department of game and fish. The giving of notice by mail is complete upon the expiration of seven days after deposit of the notice in the mail. Proof of the giving of notice in either manner may be made by the certificate of any officer or employee of the department, naming the person to whom the notice was given and specifying the time, place and manner of the giving of the notice. Notice is given when a person refuses to accept notice.

[19.31.2.15 NMAC - Rp, 19.31.2.15 NMAC, 4/1/2022]

19.31.2.16 VENUE:

Hearings held under this rule shall be conducted in Santa Fe county or Bernalillo county, New Mexico. Under exigent circumstances, and at the discretion of the hearing

officer, the hearing may be held in another county in New Mexico. Hearings may be conducted in person, via video conference, telephone or other equivalent electronic method with the approval of the hearing officer. Witnesses may appear in person, via video conference, telephone or other equivalent electronic method.

[19.31.2.17 NMAC - Rp, 19.31.2.17 NMAC, 4/1/2022]

19.31.2.17 HEARING OFFICER:

All hearings under this rule shall be conducted by a hearing officer who is designated by the commission. The hearing officer may be disqualified as provided for under the rules of civil procedure by filing an affidavit of disqualification with the department.

[19.31.2.18 NMAC - Rp, 19.31.2.18 NMAC, 4/1/2022]

19.31.2.18 RULES OF EVIDENCE:

The hearing officer shall consider a certified copy or a filed copy of a conviction from any court of competent jurisdiction as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule. In cases where court records associated with a conviction are not available, the official form of the records maintained by either the court or the department of game and fish shall be admissible. These records shall also stand as conclusive evidence of a violation of Chapter 17 NMSA 1978, Section 30-14-1 NMSA 1978 or commission rule. In the case of hearings in which a criminal conviction is not germane, the standard of proof shall be a preponderance of the evidence.

A. Admission of evidence: In proceedings held under this regulation, the hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, at their discretion, exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts. All parties appearing via telephone, videoconference, or other electronic method shall provide the department with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing.

B. Judicial notice: The hearing officer may take notice of judicially cognizable facts.

C. Rules of privilege: The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in district courts of the state of New Mexico.

D. Mitigating or aggravating circumstances: The hearing officer may consider mitigating, extenuating and aggravating circumstances surrounding the violations of

game and fish laws and rules to determine the recommended period of the revocation or suspension.

[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 4/1/2022]

19.31.2.19 HEARING AND POST-HEARING PROCEDURES:

A. Hearing closed to the public: All hearings conducted under this rule shall be closed to the public.

B. Hearing interpreter provided: The department shall provide technology or an interpreter for individuals requesting a hearing who provide proof of hearing impairment to the extent that they cannot understand voice communications. The respondent must give written notice of this need to the department at the time they request a hearing or no less than 30 calendar days prior to their hearing.

C. Language interpreter: A party needing language interpreter services for translation of one language into another is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter must affirm the interpreter's oath applicable in courts across this state. Any respondent who intends to bring a language interpreter shall notify the department of this at the time they request a hearing or no less than 30 calendar days prior to their hearing.

D. Record of hearing: In all hearings conducted under this rule, the hearing officer shall cause a complete record to be made by audio recording and shall preserve all evidence received. The hearing officer shall observe any standards pertaining to audio recordings established for the district courts of this state.

E. Post-hearing briefs: The hearing officer may require post-hearing briefs, proposed findings of fact and conclusions of law, or both.

F. Hearing officer's report: Within 20 calendar days of any hearing, the hearing officer shall make and submit to the department a report setting forth his or her findings of fact, conclusions of law and recommended decision.

G. Report copies to parties: The department shall serve a copy of the recommended decision on the parties by email or if specifically requested by the respondent, by certified mail with return receipt requested.

H. Filing of exceptions to hearing officer's report: The parties to the proceeding may file exceptions, or supporting briefs, to a hearing officer's recommended decision within a time period set by the hearing officer or within 30 calendar days of the hearing if not otherwise specified by the hearing officer. Exceptions shall not contain matters unrelated to or outside the scope of the hearing.

[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 4/1/2022]

19.31.2.20 FINAL DECISION OF THE COMMISSION:

A. Review and consideration of hearing officer's report and filed exceptions and briefs: After a hearing has been completed, the commission shall review and consider the hearing officer's report and any filed exceptions or briefs to the recommended decision.

B. No oral arguments; no new evidence: The commission shall not permit any oral arguments. The commission shall not consider any evidence outside of the hearing officer's report and filed exceptions or briefs.

C. Final decision: The commission's final decision shall be made by a quorum of the commission at a properly scheduled commission meeting.

D. Written decision served: Within 20 calendar days after the commission's decision is rendered and signed by the chairperson of the commission, the department shall serve upon the respondent a copy of the written decision.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 4/1/2022]

19.31.2.21 JUDICIAL REVIEW:

In accordance with Section 17-3-34 NMSA 1978, any person whose privileges have been revoked by the commission or department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside, reverse or remand the decision only if it determines:

A. the agency, commission or hearing officer acted fraudulently, arbitrarily or capriciously;

B. the final decision was not supported by substantial evidence; or

C. the agency did not act in accordance with law.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 4/1/2022]

19.31.2.22 INTERSTATE WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION:

Any person whose name appears on the Interstate Wildlife Violator Compact (IWVC) list and whose privileges have been suspended or revoked in another state and whose convictions have been verified by the department as constituting 20 or more points if committed in New Mexico shall be reciprocally suspended or revoked immediately for the time frame indicated by the originating state. Any resident who fails to comply with

the terms of a citation including failure to appear, from a member state shall have his or her privileges suspended immediately until they have complied with the court appearance or citation requirements in the other state.

A. Notice procedures: The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to suspend the violator and send the same violator a NOS in which the department will notify the violator of their right to contest the suspension or revocation.

B. Contesting procedures: A person wishing to contest their IWVC reciprocal suspension or revocation in New Mexico must provide evidence to the department which shows:

- (1) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would not have accrued 20 or more points; or
- (2) the respondent is not the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state; or
- (3) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.
- (4) If a suspension or revocation is contested and the department determines that the person suspended or revoked should be reinstated, they will do so immediately. Any person who is not satisfied with the department's determination after contesting their IWVC suspension or revocation may appeal the department's decision in writing to the director within 20 calendar days of the department's decision. The director shall consider all evidence presented by both the department and the suspended or revoked person and shall have the final decision on whether a contested IWVC reciprocal suspension or revocation will be upheld or rescinded.

C. Notification to the commission: The department shall notify the commission of the number of individuals reciprocally revoked or suspended pursuant to this subsection at a properly scheduled commission meeting.

[19.31.2.22 NMAC - Rp, 19.31.2.22 NMAC, 4/1/2022]

19.31.2.23 PARENTAL RESPONSIBILITY ACT:

Any person listed as in violation of the PRA by HSD shall have their privileges suspended until they are in compliance with the PRA and have paid the reinstatement fee to the department. In cases where the person can show the department that they were incorrectly placed on that month's list they shall not be required to pay the reinstatement fee and shall be reinstated immediately.

A. Notice procedures: When the department receives a HSD certified list of obligors not in compliance with the PRA, the department shall send a NOS to any named obligor in the department's database. The NOS shall inform the obligor that their privileges have been suspended until they are in compliance with the PRA and have paid the department reinstatement fee.

B. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to this section at a properly scheduled commission meeting after the director has acted to suspend such individuals.

C. Reinstatement fee: Any person whose privileges have been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the HSD, and having paid the department of game and fish a reinstatement fee of \$25. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.

[19.31.2.23 NMAC - Rp, 19.31.2.23 NMAC, 4/1/2022]

19.31.2.24 FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL JUDGEMENT:

In accordance with Section 17-2-10.3 NMSA 1978 the privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, a person who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978, or a person who has a civil judgment assessed against them or who has entered into a voluntary civil assessment payment plan pursuant to Section 17-2-26 NMSA 1978, shall be suspended until in compliance or the amount owed to the department has been paid in full.

A. Notice procedures: The department shall send a NOS to any person who meets the criteria listed in this section. The NOS shall inform the respondent that their privileges have been suspended until they come into compliance with the law or pays the amount owed in full.

B. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to this section at a properly scheduled commission meeting after the director has acted to suspend such individuals.

C. Reinstatement: Any person whose privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or civil judgement(s) in full or upon coming into compliance with any court order to appear and having any warrant issued resolved.

[19.31.2.24 NMAC - Rp, 19.31.2.24 NMAC, 4/1/2022]

19.31.2.25 JUDICIAL REVIEW:

In accordance with Section 17-3-34 NMSA 1978, any person whose privileges have been revoked or suspended by the commission or department, and who has requested and received a hearing, may appeal to the district court for further relief. Upon appeal, the district court shall set aside the decision only if it is found to be:

- A. arbitrary, capricious or an abuse of discretion;
- B. not supported by substantial evidence in the record; or
- C. otherwise not in accordance with law.

[19.31.2.25 NMAC - Rp, 19.31.2.25 NMAC, 4-1-2019]

19.31.2.26 WILDLIFE VIOLATOR COMPACT SUSPENSION AND REVOCATION:

Any person whose name appears on the wildlife violator compact list or who has been revoked by another wildlife violator compact member state and is in accordance with Subsection B of Section 17-2-10.3 NMSA 1978 shall have his or her privileges revoked or suspended. Any resident who fails to comply with the terms of a citation including failure to appear, from a member state shall have his or her privileges suspended until they have complied with the court appearance or citation requirements in the other state.

A. Notice procedures: The information provided by the board of wildlife violator compact administrators or their designee shall be deemed sufficient to allow the department by and through its director to send the same violator a NOI and an opportunity to request a hearing.

B. Hearing procedures: If a hearing is requested, it shall be conducted in accordance with this rule with the following limitations:

(1) The issues to be decided at the hearing, if requested, are limited to whether:

(a) the violation(s) leading to a revocation or suspension in another state, if committed in New Mexico, would have accrued 20 or more points;

(b) the respondent is the person whose name appears on the wildlife violator compact list as being revoked by another wildlife violator compact member state;

(c) the revocation or suspension in the other wildlife violator compact member state ended or has been rescinded.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

C. Default orders for failure to request a hearing: In the event a respondent does not request a hearing within 20 days of the date that notice was served, the director may administer the suspension or revocation under 19.31.2.26 NMAC without further commission consideration.

D. Notification to the commission: The department shall notify the commission of the number of individuals revoked or suspended pursuant to Subsection C of Section 19.31.2.26 NMAC at a properly scheduled commission meeting after the director has taken action to revoke or suspend such individuals.

[19.31.2.26 NMAC - Rp, 19.31.2.26 NMAC, 4-1-2019]

19.31.2.27 SUSPENSION:

The Parental Responsibility Act (PRA), Section 40-5A-1 NMSA 1978, provides that the commission shall suspend the privileges of any person not in compliance with the PRA, and allows the reinstatement of such privileges at any time that the obligor comes into compliance and pays the reinstatement fee. Chapter 17 NMSA 1978 provides that the commission shall suspend the privileges of any person who fails to pay a penalty assessment or a civil judgment, until the assessment or judgment is paid in full or who fails to appear, after proper notice, for hearings as required by law or regulation until they have made an appearance in the court.

[19.31.2.27 NMAC - Rp, 19.31.2.27 NMAC, 4-1-2019]

19.31.2.28 PARENTAL RESPONSIBILITY ACT:

Any person found to be in violation of the PRA, after notice and an opportunity to request a hearing, shall have his or her privileges suspended until he or she provides a certificate of compliance from the HSD and has paid the reinstatement fee.

A. Notice procedures: When the department receives a HSD certified list of obligors not in compliance with the PRA, the director shall send a NOI to any named obligor in the department's database. The NOI shall inform the obligor that the obligor's privileges will be suspended unless the obligor:

- (1) files a written request for a hearing within 30 days from the date that the notice is mailed; or
- (2) provides the department, within 30 days from the date the notice is mailed, a valid certificate of compliance from the HSD.

B. Hearing procedures: Hearings shall be in accordance with this rule.

- (1) The issues to be decided at the hearing, if requested, are limited to whether the respondent is:

(a) in compliance with a judgment and order for support;

(b) in compliance with a subpoena or warrant relating to paternity or child support proceedings; and

(c) the person whose name appears on the certified list sent to the department from the HSD.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

C. Default orders for failure to request a hearing: In the event an obligor does not request a hearing, or provide proof of compliance within 30 days of the date the notice was mailed, the director may administer the suspensions without further commission consideration.

D. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.28 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

E. Reinstatement fee: Any person whose privileges have been suspended in accordance with the PRA shall be reinstated after demonstrating proof of compliance from the HSD, and having paid the department of game and fish a reinstatement fee of \$25.00 and all costs associated with his or her hearing. The director has the authority to waive this fee in the case of unusual circumstances or clerical errors.

[19.31.2.28 NMAC - Rp, 19.31.2.28 NMAC, 4-1-2019]

19.31.2.29 FAILURE TO APPEAR, FAILURE TO PAY PENALTY ASSESSMENT OR CIVIL JUDGEMENT:

In accordance with Section 17-2-10.3 NMSA 1978 the privileges of a person who fails to comply with the terms of a citation including failure to appear in court after proper notice for a hearing as required by law, a person who fails to pay a penalty assessment levied pursuant to Section 17-2-10.1 NMSA 1978, or a person who has a civil judgment assessed against them pursuant to Section 17-2-26 NMSA 1978, shall be suspended until in compliance.

A. Notice procedures: Pursuant to Section 17-2-10.3 NMSA 1978, a person who has failed to appear in court for a hearing as required by law, has failed to pay a penalty assessment pursuant to Section 17-2-10.2 NMSA 1978, or a person who owes damages pursuant to a civil judgment in accordance with Section 17-2-26 NMSA 1978, the director shall send a NOI. The NOI shall inform the respondent that the respondent's privileges will be suspended unless the respondent:

(1) files a written request for a hearing within 30 days from the date that the notice is mailed; or

(2) pays the penalty assessment or civil judgement in full within 30 days from the date the notice is mailed.

B. Hearing procedures: Hearings shall be conducted in accordance with this rule with the following limitations:

(1) The issues to be decided at the hearing are limited to whether the respondent:

(a) owes an outstanding penalty assessment or civil judgement; or

(b) failed to appear for a court hearing as required by law.

(2) In any hearing under this section, relevant evidence shall be limited to documentary evidence that refutes the issues listed in this subsection.

C. Default orders for failure to request a hearing: In the event a respondent does not request a hearing, or pay their outstanding penalty assessment or civil judgement in full within 30 days of the date that notice was mailed, the commission grants approval to the department through the director to administer the suspension without further commission consideration or notice.

D. Notification to the commission: The department shall notify the commission of the number of individuals suspended pursuant to Subsection C of 19.31.2.29 NMAC at a properly scheduled commission meeting after the director has taken action to suspend such individuals.

E. Reinstatement: Any person whose privileges have been suspended in accordance with this section shall be reinstated after paying their outstanding penalty assessment(s) or civil judgement(s) in full.

[19.31.2.29 NMAC - Rp, 19.31.2.29 NMAC, 4-1-2019]

PART 3: HUNTING AND FISHING LICENSE APPLICATION

19.31.3.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.3.1 NMAC - Rp, 19.31.3.1 NMAC, 1/1/2023]

19.31.3.2 SCOPE:

Sportspersons interested in fishing, hunting and trapping and management of big game and furbearers in New Mexico. Additional requirements may be found in Chapter 17 NMSA 1978 and other Parts of Title 19, Chapter 31 NMAC.

[19.31.3.2 NMAC - Rp, 19.31.3.2 NMAC, 1/1/2023]

19.31.3.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, 17-3-2, 17-3-5, 17-3-7, 17-3-13, 17-3-14, and 17-3-14.1 NMSA 1978, which pertain to the types of licenses and permits available and grant the state game commission authority to create regulations setting the license fees and application procedure.

[19.31.3.3 NMAC - Rp, 19.31.3.3 NMAC, 1/1/2023]

19.31.3.4 DURATION:

Permanent.

[19.31.3.4 NMAC - Rp, 19.31.3.4 NMAC, 1/1/2023]

19.31.3.5 EFFECTIVE DATE:

January 1, 2023, unless a later date is cited at the end of a section.

[19.31.3.5 NMAC - Rp, 19.31.3.5 NMAC, 1/1/2023]

19.31.3.6 OBJECTIVE:

Basic regulation, rules and procedures governing the issuance of licenses, permits and stamps, as well as special draw permits and licenses issued by the department pertaining to deer, elk, pronghorn, bighorn sheep, Barbary sheep, bear, turkey, oryx, ibex, javelina, furbearers, small game and other species determined by the state game commission.

[19.31.3.6 NMAC - Rp, 19.31.3.6 NMAC, 1/1/2023]

19.31.3.7 DEFINITIONS:

[RESERVED]

19.31.3.8 PUBLIC DRAW LICENSES AND PERMITS - APPLICATION FOR:

A. Application form: Application for all public licenses and permits shall be submitted via the department website.

B. Application deadline(s): Applications for all public licenses and permits, including population management hunts, Sandhill crane, pheasant, turkey, pronghorn, elk, Barbary sheep, bighorn sheep, bear, deer, oryx, javelina, and ibex hunts must be received by 5:00 p.m. on dates set by the state game commission. If any licenses or permits are available after the drawing is completed, those licenses or permits may be sold online via secondary sale.

C. One applicant per application: No more than one person may apply under each application number for bighorn sheep, bear, and GMU 5A private land deer.

D. Two applicants per application: No more than two persons may apply under the same application number for youth-only Sandhill crane, youth-only pheasant, turkey, ibex and oryx.

E. Four applicants per application: No more than four persons may apply under the same application number for Sandhill crane, pheasant, deer, elk, pronghorn, Barbary sheep and javelina.

F. Resident and non-resident application combination: Any mixture or combination of residents and non-residents may make application for special drawing providing the number of applicants does not exceed the restriction of this section (Subsection D or E).

G. Applications rejected: Applications for licenses may be rejected by the department if an applicant did not:

- (1) apply on the proper online form as designated by the director;
- (2) submit the correct or required information;
- (3) submit the correct license or application fee, and any other required fee;
- (4) meet the deadline date; or
- (5) comply with a current statute or rule.

H. More applications than permits: If more applications for public licenses or permits are received than there are licenses or permits available, the available licenses or permits shall be allotted by means of a public drawing.

I. Increase in licenses or permits: The number of licenses or permits available may be increased to accommodate corrections or errors by the department which results in the addition of names to the successful list.

J. Additional choices: Applicants for public permits or licenses may designate additional choices for hunt periods.

K. Application categories: Applications for special drawing hunts will be placed into the appropriate categories, as specified in Section 17-3-16 NMSA 1978 by department personnel or their designee. Special drawings shall continue to draw applicants from the appropriate drawing pool progressively for each respective hunt code, starting with first choice applicants, then proceeding to second and subsequent choice applicants until the quota has been met or the pool of applicants has been exhausted.

L. Resident and non-resident applications:

(1) To be placed in the separate pool designated for guided hunts, an applicant must have a valid registration number issued to a New Mexico outfitter as prescribed in Subsection H of Section 17-3-6 NMSA 1978, on their application.

(2) For an application to be successfully drawn, there must be a sufficient number of licenses or permits available for that hunt code to accommodate all applicants from their respective drawing pools.

(3) Any licenses left over from the appropriate drawing pool will be allocated as prescribed in Subsection C of Section 17-3-16 NMSA 1978.

M. New Mexico department of game and fish customer identification number: All persons purchasing licenses, making application to the department for hunt drawings for public licenses and permits, and converting private landowner authorizations to licenses must have a "New Mexico department of game and fish (NMDGF) customer identification number."

(1) "NMDGF customer identification number" shall be obtained only from the department and must be obtained prior to the submission of any application or private landowner authorization.

(2) Each person making application for public drawing license, permit or private landowner authorization must use their own valid NMDGF customer identification number on his or her application.

(3) Any application received without a valid NMDGF customer identification number or false NMDGF customer number will be rejected.

N. Trapper license restriction: No nonresident who resides in a state that does not permit New Mexico residents to procure nonresident trapper licenses may purchase a New Mexico nonresident trapper license.

O. Director's authority to adjust licenses and permits: The director may adjust licenses or permit numbers for special drawings, by no more than one per hunt code, to comply with Chapter 17 NMSA 1978 and its corresponding rules.

[19.31.3.8 NMAC - Rp, 19.31.3.8 NMAC, 1/1/2023]

19.31.3.9 PRIVATE LAND - ELK LICENSES:

A. Private land licenses for elk will not be issued through the public draw.

B. The amount due for a private land elk license in the primary and special management zones as defined in 19.31.14 NMAC shall be composed of the "landowner authorization certificate" fee and the appropriate "certificate of application" fee as defined in 19.30.9 NMAC, and the appropriate license fees as defined in Sections 17-3-13 and 17-3-7 NMSA 1978.

C. Licenses for primary and special management zones will be issued only up to the number of authorizations allotted for each ranch and only to persons who provide a valid authorization and ranch number and pay the appropriate fees.

D. Ranch codes allowing purchase of private-land elk licenses in the secondary management zone, as defined in 19.31.14 NMAC, will be issued to landowners in accordance with 19.30.5 NMAC.

[19.31.3.9 NMAC - Rp, 19.31.3.9 NMAC, 1/1/2023]

19.31.3.10 NEW MEXICO RESIDENT MILITARY AND VETERAN DISCOUNT:

A. A New Mexico resident, as defined in Section 17-3-4 NMSA 1978, who is active duty military or a veteran of the United States military as defined by the New Mexico department of veterans' services is eligible for a fifty percent discount on all licenses, permits and stamps as defined in 19.30.9 NMAC and in Section 17-3-13 NMSA 1978. Exceptions: No discount shall apply to the resident, disabled veteran game hunting and fishing combination license, or to any administrative fee, including the "landowner authorization certificate" fee, the "certificate of application" fee, and the license vendor fee.

B. Nonresident military personnel stationed on Fort Bliss who qualify for resident prices on big-game hunts that occur on Fort Bliss are not eligible for the resident military and veteran discount.

C. The department shall conduct audits to determine eligibility for benefits as defined under 19.31.3.10 NMAC. Failure to provide requested documentation within the timeframe specified by the department shall result in the removal of the discount and suspension of any future discounts until such time as the requested documents are received and verified.

D. Any license, permit or stamp obtained by falsely claiming this discount is unlawful.

19.31.3.11 RESTRICTIONS/REQUIREMENTS:

A. One license per big game species per year: It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. Improper license and permit: Any person who attempts to capture or shoot, hunts, kills, injures or takes, in any manner any big-game, small game or fur-bearing animal, turkey or game fish other than in accordance with the specified hunt code or dates, legal sporting arm, bag limit allowance or area designated on a license or permit issued by the department to that person is deemed to be hunting, fishing or trapping without a proper license as required by Section 17-3-1 NMSA 1978 unless otherwise exempted by a valid commission rule.

C. Transfer of permits or licenses: The director may grant the transfer of a hunting license or permit once it has been determined that prior to the hunt start date, a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. Transfer requests must be submitted in writing prior to the hunt start date. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

D. Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. Refund requests must be submitted in writing prior to the hunt start date.

E. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a youth 17 years of age or younger, a New Mexico resident veteran of the United States military as approved by the New Mexico department of veterans' services, or a "first responder" who is a resident of the state of New Mexico as defined by Subsection B of Section 12-10D-2 NMSA 1978 who has been qualified through an approved nonprofit organization that promotes hunting, fishing and trapping activities. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit organizations prior to their participation in receiving, identifying or submitting recipients for donated licenses or permits. In order to be an approved

nonprofit organization, the organization must demonstrate to the state game commission their history and ability to promote hunting, fishing, and trapping activities. A once-in-a-lifetime licensee may be reinstated as eligible to participate in future drawings for the same species and hunt type if the licensee donated his or her license to an individual qualified by an approved nonprofit organization. Donation of a once-in-a-lifetime license will not prohibit the donor from applying for and receiving another license for the same species and restrictions in the future.

F. More than one application: It shall be unlawful to submit more than one application per species for any license or permit issued through a special drawing, unless otherwise permitted by regulation.

G. Handicapped fishing or handicapped game hunting license qualifications: To hold a handicapped fishing or handicapped game hunting license, the individual must be a resident of New Mexico and must attest to having a severe physical or developmental disability that substantially limits one or more major life activities. Reasonable accommodation may be made, relating to these licenses, upon request.

H. Mobility-impaired (MI) deer, elk, oryx, or pronghorn license qualifications: To hold a mobility impaired deer, elk, oryx, or pronghorn license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a permanent mobility restriction which limits their activity to a walker, wheelchair, or crutches; or one or more permanent disabilities or conditions which substantially limit the individual's ability to walk; and then obtain department approval for MI hunt eligibility. Every person qualified as MI shall have their card/eligibility expire 48 months from the issuance date, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

I. Youth-only hunts: Only applicants who are 17 years of age or younger on the opening day of the hunt are eligible to apply for or participate in any youth-only hunt, including federal youth waterfowl hunt days. Applicants must have a valid hunter education certificate number, or mentor youth number for appropriate species.

J. Required information: An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

K. Military-only hunts: Applicants must be full time active military and proof of military status must be received by the department prior to applying for any military only hunt.

L. Veteran oryx hunts: Only New Mexico resident veterans who served a minimum of 90 days active duty service in the U.S. Military, or six continuous years in the National Guard or Military Reserve Component, or who were commissioned officers

of the U.S. Public Health or National Oceanic and Atmospheric Administration are eligible to apply for Veteran oryx licenses. Applicants must have been honorably discharged from the U.S. military, and must provide a valid DD-214 prior to applying for any Veteran oryx hunt.

M. NMDGF customer identification number: It shall be unlawful for an applicant to use another person's NMDGF customer identification number or to provide false information to obtain a NMDGF customer identification number.

N. Application fee: Prior to the drawing, all applicants for special hunt drawings for public draw licenses shall pay the applicable species license fees including depredation damage stamp, the required game hunting license fee and the non-refundable draw application fee as defined by 19.30.9.9 NMAC. Disabled American veterans certified as holders of lifetime general hunting and fishing licenses are exempt from paying the application fee when applying for deer hunt drawings.

O. License, permit and stamp requirements: A game hunting or game hunting and fishing license is required to hunt any small game species, and an annual game hunting or game hunting and fishing license is required to apply for or purchase any big-game or turkey license (exception: disabled veteran card holders). A habitat management and access validation is required in conjunction with any hunting, fishing, or trapping license (exceptions: persons under age 18, free fishing license holders over age 70, and disabled veteran card holders). A habitat stamp is required in conjunction with any hunting, fishing, or trapping license on forest service or bureau of land management (BLM) properties (exceptions: anglers and trappers under age 12, free fishing license holders over age 70, and disabled veteran card holders). Migratory bird hunters must possess a Harvest Information Program (HIP) number. Waterfowl hunters must also possess a federal duck stamp. Nonresidents must have a nongame hunting license or any valid hunting license to hunt unprotected or nongame species. Draw permits must be accompanied by the appropriate hunting license(s) and stamp(s). Additional permits may be required for specific hunting and fishing activities pursuant to 19.31.6.9 NMAC, 19.31.5.8 NMAC and 19.31.4.13 NMAC.

P. Penalty assessments: When a person is issued a penalty assessment citation for fishing without a license, hunting small game without a license, or failing to possess an applicable habitat management and access validation, habitat stamp or second rod validation; the citation will serve as a license for that specific activity for 15 calendar days. The person must remit the prescribed penalty amount indicated on the face of the citation within 30 days of the date of citation issuance.

Q. Foster family fishing license: To qualify for a free fishing license pursuant to Subsection A of 32A-3A-12 NMSA 1978, proof of eligibility must be provided to the Department in person. Proof of eligibility includes documentation of New Mexico residency and status as a foster parent; a child in the custody of a foster parent, the children, youth and family department (CYFD) or tribal custody; or a young adult enrolled in the fostering connections program.

[19.31.3.11 NMAC – Rp, 19.31.3.11 NMAC, 1/1/2023; A, 4/1/2024]

19.31.3.12 DENIAL OR REVOCATION:

Any applicant for any license, permit, certificate or registration will be automatically rejected if their name and other identifying factors appears on the department's revocation list or a list of provided by the wildlife violator compact.

[19.31.3.12 NMAC - Rp, 19.31.3.12 NMAC, 1/1/2023]

PART 4: FISHERIES

19.31.4.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.31.4.1 NMAC - N, 4/1/2022]

19.31.4.2 SCOPE:

Sportfishing. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 through 34 of Title 19 NMAC.

[19.31.4.2 NMAC - N, 4/1/2022]

19.31.4.3 STATUTORY AUTHORITY:

17-1-14 and 17-1-26, and 17-2-1 NMSA 1978, provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.31.4.3 NMAC - N, 4/1/2022]

19.31.4.4 DURATION:

April 1, 2022 through March 31, 2026.

[19.31.4.4 NMAC - N, 4/1/2022]

19.31.4.5 EFFECTIVE DATE:

April 1, 2022, unless a later date is cited at the end of a section.

[19.31.4.5 NMAC - N, 4/1/2022]

19.31.4.6 OBJECTIVE:

Establishing open seasons, bag limits, and other rules pertaining to management and harvest of the fisheries resources of New Mexico.

[19.31.4.6 NMAC - N, 4/1/2022]

19.31.4.7 DEFINITIONS:

Specific terms as used in this regulation are defined.

A. "Angling" shall mean taking or attempting to take fish by hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended. "Fishing" shall be synonymous to "angling".

B. "Bait fish" is defined as those nongame fish which are not otherwise protected by statute or regulation.

C. "Barbless lure or fly" shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto a hook to resemble or simulate insects, bait fish, or other foods. A fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

D. Boundary descriptions:

(1) "U.S.", as used in boundary descriptions herein, shall mean United States highway.

(2) "N.M.", as used in boundary descriptions herein, shall mean New Mexico state road.

(3) "I", as used in boundary descriptions herein, shall mean interstate highway.

E. "Chum" as used herein, is organic material that is not injurious to aquatic life and is used to attract fish.

F. "Daily bag limit" shall mean the number of fish that can be legally harvested within a calendar day.

G. "Daylight hours" shall mean from one-half hour before sunrise to sunset.

H. "Snagging" as used herein, is the intentional taking of fish with hooks, gang hooks, or similar devices where the fish is hooked in a part of the body other than the mouth.

[19.31.4.7 NMAC - N, 4/1/2022]

19.31.4.8 [RESERVED]

[19.31.4.8 NMAC - N, 4/1/2022]

19.31.4.9 SEASON DATES:

A. General seasons: All waters in New Mexico shall be open for the taking of game fish from April 1 through March 31 of the effective years, with the following exceptions:

(1) Special waters

(a) The following waters shall be open between 12 noon March 1 through 12 noon October 31: upper and lower Charette lakes, Maxwell lakes 13 and 14, and Clayton lake.

(b) All waters in the Valle Vidal (Vermejo tract of the Carson national forest) shall be open from July 1 through December 31.

(c) Laguna del Campo at Los Ojos state fish hatchery shall be open from May 1 through October 31.

(d) Red River city ponds shall be open from March 1 through November 15.

(e) Black Canyon creek from the forest road 150 (North Star Mesa road) crossing upstream to its headwaters and Mogollon creek in Grant and Catron counties upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon shall be open from July 1 through October 31.

(f) All waters on the Valles Caldera national preserve shall be open from May 1 to October 15.

(2) Waters on national wildlife refuges waters on U.S. national wildlife refuges shall be open for the taking of game fish in accordance with regulations of the U.S. fish and wildlife service; provided that season dates shall be from April 1 through March 31, on those national refuges for which the fish and wildlife service has not regulated season dates.

B. Special Kokanee salmon seasons, dates, and location:

(1) The following waters shall be open October 1 through December 31 for the special Kokanee salmon season: Chama river from El Vado lake upstream to the west boundary of the Rio Chama wildlife and fishing area, Eagle Nest lake, El Vado lake, and Navajo lake including the Pine river except as otherwise specified in Paragraph (3) of Subsection B of 19.31.4.9 NMAC.

(2) Heron lake shall be open for the special Kokanee salmon season from November 11 through December 31.

(3) Heron lake, including the Willow creek tributary shall be closed to Kokanee salmon fishing between October 1 and November 10. The buoyed "no wake" areas, as posted by New Mexico State Parks, at the Pine boat ramp and Sims mesa boat ramp at Navajo lake, including the shoreline within the "no wake" areas, shall be closed to Kokanee salmon fishing October 1 through December 31. It shall be unlawful to fish for, snag, or possess Kokanee salmon in these areas during the closure period.

[19.31.4.9 NMAC - N, 4/1/2022]

19.31.4.10 HOURS OF FISHING:

Day and night fishing for all species of game fish shall be permitted in all waters during the open season, except it shall be unlawful to fish in any water outside of hours and dates posted by any local, state, or federal agency.

[19.31.4.10 NMAC - N, 4/1/2022]

19.31.4.11 DAILY BAG, POSSESSION LIMITS AND REQUIREMENTS OR CONDITIONS:

A. Trout:

(1) Waters with reduced bag limit: No person shall fish waters regulated for reduced limits while having in excess of that limit in possession.

(2) Brown, rainbow, cutthroat, Gila, lake, brook trout and Kokanee salmon:

(a) The daily bag limit shall be five trout and no more than 10 trout shall be in possession, unless otherwise specified in Paragraph (4) of Subsection A of 19.31.4.11 NMAC.

(b) The daily bag limit for cutthroat trout shall be two trout and no more than two cutthroat trout may in possession. Cutthroat trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A of 19.31.4.11 NMAC.

(c) The daily bag limit for lake trout shall be two trout and no more than four lake trout shall be in possession. Lake trout are included in the bag and possession limits for trout explained in Subparagraph (a) of Paragraph (2) of Subsection A of 19.31.4.11 NMAC.

(3) Special Kokanee salmon season: During the special Kokanee salmon season, the daily bag limit shall be 12 Kokanee salmon in addition to the daily bag limit for trout, and no more than 24 Kokanee salmon may be possessed in addition to the possession limit for trout. It shall be unlawful to possess Kokanee salmon at Heron lake during the closed Kokanee salmon season.

(4) On certain waters the following exceptions shall apply:

(a) Special trout waters - waters, hereafter referred to as "Special Trout Waters", the following exceptions shall apply:

(i) No fish may be kept or held in possession while fishing in the portions of the following waters:

Water name	Portion	County	Exception
Tingley beach south pond	Within the Albuquerque conservancy park	Bernalillo	
Mogollon creek	Upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon	Catron and Grant	
Cimarron river	From the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64	Colfax	
Leandro creek	Within the Valle Vidal (Vermejo tract-Carson national forest	Colfax	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited

Any stream on the Valle Vidal	Vermejo tract-Carson national forest	Colfax and Taos	
Black canyon	From the forest road 150 (North Star Mesa road) crossing upstream to its headwaters	Grant	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Pecos river	In the Pecos wilderness, above Pecos falls	Mora	
Rio Valdez	In the Pecos wilderness from the waterfall barrier 0.8 miles below FS trail 239 upstream to its headwaters	Mora	
Rito del Padre	From fish migration barrier located about 0.3 miles upstream of the confluence with the Rito Sebadilloses upstream to its headwaters including Rito de los Chimayosos	Mora	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
West fork Luna creek	From the Carson national forest property boundary upstream to its headwaters	Mora	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Jack 's creek	From the water falls located 0.25 mile downstream of NM highway 63 crossing upstream to its headwaters	Mora and San Miguel	
Canada Tio Grande	Within the Carson national forest excluding private land	Rio Arriba	bag and possession limits for rainbow trout, brown trout, and

			brook trout are unlimited
Nabor creek and Nabor lake	Within the Edward Sargent wildlife area	Rio Arriba	
Rio Chama	From the United States geological survey gaging station located 1.3 miles downstream of El Vado lake dam downstream approximately 3 miles to its confluence with the Rio Nutrias	Rio Arriba	
Rio de Las Vacas	From fish migration barrier located about 0.2 miles upstream of FS road 70 crossing to its headwaters	Rio Arriba	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Tanques creek	From FS road 93 crossing upstream to its headwaters	Rio Arriba	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Cebolla	From the Seven Springs day use area upstream to the headwaters including McKinney pond	Rio Arriba and Sandoval	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Santa Barbara	From the west fork and middle fork confluence upstream to its headwaters including the east fork	Rio Arriba and Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
San Juan river	From Navajo dam downstream approximately 3.75 miles to the	San Juan	

	Crusher Hole day use are (east side of section 16)		
Capulin creek	From its confluence with the Rio Grande to its headwaters	Sandoval	
Rio las Animas	Within the Gila national forest, Black range ranger district excluding private land	Sierra	
Cabresto creek	From Cabresto canyon upstream to its headwaters not including lake fork and Cabresto lake	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Columbine creek	From its confluence with the Red river upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Frijoles creek	From its confluence with Rito de la Olla upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Gavilan creek	From its confluence with the Rio Hondo upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Italianos creek	From its confluence with the Rio Hondo upstream its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited

Palociento creek	From its confluence with Rito de la Olla upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Costilla	From its confluence with Latir creek upstream approximately 2.4 miles to the Valle Vidal tract of the Carson national forest	Taos	
South fork Rio Hondo	From its confluence with the Rio Hondo upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Yerba creek	From the its confluence with the Rio Hondo upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Water name	Portion	County	Exception
Tingley beach south pond	Within the Albuquerque conservancy park	Bernalillo	
Mogollon creek	Upstream from waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon	Catron and Grant	
Cimarron river	From the lower end of Tolby campground downstream approximately 1.4 miles to the first bridge of N.M. 64	Colfax	
Leandro creek	Within the Valle Vidal (Vermejo tract-Carson national forest	Colfax	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited

Any stream on the Valle Vidal	Vermejo tract-Carson national forest	Colfax and Taos	
Black canyon	From the forest road 150 (North Star Mesa road) crossing to its headwaters	Grant	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Pecos river	In the Pecos wilderness, above Pecos falls	Mora	
Rio Valdez	In the Pecos wilderness from the waterfall barrier 0.8 miles below FS trail 239 upstream to its headwaters	Mora	
Rito del Padre	From fish migration barrier located about 0.3 miles upstream of the confluence with the Rito Sebadilloses upstream to its headwaters including Rito de los Chimayosos	Mora	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
West fork Luna creek	From the Carson national forest property boundary upstream to its headwaters	Mora	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Jack's creek	From the water falls located 0.25 mile downstream of NM highway 63 crossing upstream to its headwaters	Mora and San Miguel	
Canada Tio Grande	Within the Carson national forest excluding private land	Rio Arriba	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Nabor creek and Nabor lake	Within the Edward Sargent wildlife area	Rio Arriba	

Rio Chama	From the United States geological survey gaging station located 1.3 miles downstream of El Vado lake dam downstream approximately 3 miles to its confluence with the Rio Nutrias	Rio Arriba	
Rio de Las Vacas	From fish migration barrier located about 0.2 miles upstream of FS road 70 crossing to its headwaters	Rio Arriba	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Tanques creek	From FS road 93 crossing upstream to its headwaters	Rio Arriba	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Cebolla	From the Seven Springs day use area upstream to the headwaters including McKinney pond	Rio Arriba and Sandoval	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Santa Barbara	From the west fork and middle fork confluence upstream to its headwaters including the east fork	Rio Arriba and Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
San Juan river	From Navajo dam downstream approximately 3.75 miles to the Crusher Hole day use are (east side of section 16)	San Juan	
Capulin creek	From its confluence with the Rio Grande to its headwaters	Sandoval	
Rio las Animas	Within the Gila national forest, Black range ranger district excluding private land	Sierra	
Cabresto creek	From Cabresto canyon upstream to its headwaters not	Taos	bag and possession limits for rainbow trout, brown trout, and

	including lake fork and Cabresto lake		brook trout are unlimited
Columbine creek	From its confluence with the Red river upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Frijoles creek	From its confluence with Rito de la Olla upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Gavilan creek	From its confluence with the Rio Hondo upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Italianos creek	From its confluence with the Rio Hondo upstream its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Palociento creek	From its confluence with Rito de la Olla upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Costilla	From its confluence with Latir creek upstream approximately 2.4 miles to the Valle Vidal tract of the Carson national forest	Taos	
South fork Rio Hondo	From its confluence with the Rio Hondo upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited

Yerba creek	From the its confluence with the Rio Hondo upstream to its headwaters	Taos	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
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(ii) The daily bag limit shall be two trout and no more than two trout shall be in possession while fishing in the portions of the following waters. Anglers must stop fishing in those waters when the daily bag limit is reached.

Water name	Portion	County	Exception
Gilita creek and tributaries	From its confluence with Snow creek upstream to its headwaters including Willow and Little Turkey creek	Catron	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Mineral creek	From its confluence with San Francisco river to its headwaters	Catron	
Whitewater creek	From Catwalk National Recreation Trail parking area upstream to headwaters including all tributaries	Catron	
Shuree lakes	Within the Valle Vidal (Vermejo tract-Carson national forest)	Colfax	
Vermejo river and its tributaries	From the Vermejo Park ranch boundary upstream to its headwaters	Colfax	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Ruidoso	From Fridenbloom drive upstream to the boundary between the Mescalero Apache	Lincoln	

	reservation and the city of Ruidoso		
All waters within or adjacent to the Edward Sargent wildlife area	Including the Rio Chamita, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake	Rio Arriba	
Rio Chama	Within the boundaries of the Rio Chama wildlife and fishing area from Heron reservoir outlet 2.9 miles upstream to Cottonwood Flats	Rio Arriba	
Rio Chama	From the river crossing bridge on U.S. 84 at Abiquiu upstream 7.0 miles to the base of Abiquiu dam	Rio Arriba	
Rio de Los Pinos	From FS road 284 and 87A, 2.5 miles upstream to the private property boundary	Rio Arriba	
Pecos river	From approximately 0.5 mile upstream of its confluence with the Mora river (Mora-Pecos) upstream to approximately 0.2 miles downstream of the bridge crossing at Cowles	San Miguel	
All waters of the Valles Caldera national preserve		Sandoval	

Rio Guadalupe	From its confluence with Deer creek upstream 6.0 miles to Stable canyon	Sandoval	
Rio San Antonio	From the San Antonio hot springs pedestrian bridge upstream approximately 2.0 miles to the Valles Caldera National Preserve boundary	Sandoval	
Red River	From its confluence with Goose creek 1.1 miles upstream to the Carson national forest boundary	Taos	
Red River	From its confluence with the Rio Grande upstream to the lower walking bridge at Red River state fish hatchery	Taos	
Rio Grande	From the New Mexico/Colorado state line downstream to the Taos junction bridge at NM highway 567	Taos	
Water name	Portion	County	Exception
Gilita creek and tributaries	From its confluence with Snow creek upstream to its headwaters including Willow and Little Turkey creek	Catron	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Mineral creek	From its confluence with San Francisco river to its headwaters	Catron	
Whitewater creek	From Catwalk National Recreation Trail parking area upstream to headwaters including all tributaries	Catron	

Shuree lakes	Within the Valle Vidal (Vermejo tract-Carson national forest)	Colfax	
Vermejo river and its tributaries	From the Vermejo Park ranch boundary upstream to its headwaters	Colfax	bag and possession limits for rainbow trout, brown trout, and brook trout are unlimited
Rio Ruidoso	From Fridenbloom drive upstream to the boundary between the Mescalero Apache reservation and the city of Ruidoso	Lincoln	
All waters within or adjacent to the Edward Sargent wildlife area	Including the Rio Chamita, Sexton creek, and Rio Chama, excluding Nabor creek and Nabor lake	Rio Arriba	
Rio Chama	Within the boundaries of the Rio Chama wildlife and fishing area from Heron reservoir outlet 2.9 miles upstream to Cottonwood Flats	Rio Arriba	
Rio Chama	From the river crossing bridge on U.S. 84 at Abiquiu upstream 7.0 miles to the base of Abiquiu dam	Rio Arriba	
Rio de Los Pinos	From FS road 284 and 87A, 2.5 miles upstream to the private property boundary	Rio Arriba	
Pecos river	From approximately 0.5 mile upstream of its confluence with the Mora river (Mora-Pecos) upstream to approximately 0.2 miles downstream of the bridge crossing at Cowles	San Miguel	
All waters of the Valles Caldera		Sandoval	

national preserve			
Rio Guadalupe	From its confluence with Deer creek upstream 6.0 miles to Stable canyon	Sandoval	
Rio San Antonio	From the San Antonio hot springs pedestrian bridge upstream approximately 2.0 miles to the Valles Caldera National Preserve boundary	Sandoval	
Red River	From its confluence with Goose creek 1.1 miles upstream to the Carson national forest boundary	Taos	
Red River	From its confluence with the Rio Grande upstream to the lower walking bridge at Red River state fish hatchery	Taos	
Rio Grande	From the New Mexico/Colorado state line downstream to the Taos junction bridge at NM highway 567	Taos	

(b) In Sandoval county; brood pond at Seven Springs state fish hatchery, the daily bag limit shall be five cutthroat trout and no more than 10 cutthroat may be in possession.

(c) On the following waters the daily bag limit shall be three trout and no more than three trout shall be in possession; In Rio Arriba county: Laguna del Campo at Los Ojos state fish hatchery.

B. Warm-water fishes: The daily bag limit for game fish other than trout shall be as listed below and the possession limit shall be twice the daily bag limit.

- (1) striped bass one fish;
- (2) largemouth, smallmouth, and spotted bass five fish;
- (3) walleye five fish;
- (4) crappie 20 fish;

- (5) white bass and white bass x striped bass hybrid 25 fish;
- (6) northern pike 10 fish;
- (7) catfish (all species, except bullheads) 15 fish;
- (8) yellow perch 30 fish;
- (9) tiger muskie (*Esox lucius* x *E. masquinongy*) one fish
- (10) all other warm-water game species 20 fish.

C. The following exception shall apply:

(1) At Alto lake (Lincoln county); Alumni pond (Dona Ana county); Bataan lake (Eddy county); Blue Hole park pond (Guadalupe county); Bosque Redondo (De Baca county); Burn lake (Dona Ana county); Carrizozo lake (Lincoln county); Chaparral lake (Lea county); Conoco lake (Lea county); Conservancy park/Tingley beach (Bernalillo county); Corona lake (Lincoln county); Dennis Chavez pond (Curry county); Escondida lake (Socorro county); Estancia Park lake (Torrance county); Eunice lake (Lea county); Grants city pond (Cibola county); Green Meadow lake (Lea county); Greene Acres lake (Curry county); Harris Pond (San Miguel county); Jal lake (Lea county); lake Van (Chaves county); Liam Knight pond (Sandoval county); McGaffey lake (McKinley county); Ned Houk lakes (Curry county); Oasis state park (Roosevelt county); Pecos River within the Villanueva state park (San Miguel county); Perch lake (Guadalupe county); Rancho Grande ponds (Catron county); Roswell kids pond (Chavez county); Timberon ponds (Otero county); Trees lake (Luna county); and Young pond (Dona Ana county): the daily bag limit for channel catfish will be two fish and the possession limit shall be twice the daily bag limit.

(2) In San Juan county, in the San Juan and Animas rivers, not including Navajo lake, there is no daily bag limit or possession limit for channel catfish and striped bass.

(3) In Colfax county, Eagle Nest lake there is no bag or possession limit for northern pike. All northern pike caught at Eagle Nest lake must be kept in possession. No northern pike shall be intentionally returned to Eagle Nest lake.

(4) In Union county: Clayton Lake; In Grant county: Bill Evans lake; In Grant county: lake Roberts the daily bag limit for largemouth bass shall be two fish and no more than two shall be in possession.

[19.31.4.11 NMAC - N, 4/1/2022]

19.31.4.12 SIZE LIMITS:

A. Black basses:

(1) Any largemouth or spotted bass taken which is less than 14 inches long shall be immediately returned to the water.

(2) Any smallmouth bass taken which is less than 12 inches long shall be immediately returned to the water with the following exceptions:

(a) In San Miguel and Quay counties: Ute and Conchas reservoirs, any smallmouth bass taken which is less than 14 inches long shall be immediately returned to the water.

(b) In Rio Arriba and Taos counties: Rio Grande, there shall be no size limit on smallmouth bass.

B. Tiger muskie (*Esox lucius x E. masquinongy*): Any tiger muskie taken which is less than 40 inches long shall be immediately returned to the water.

[19.31.4.12 NMAC - N, 4/1/2022]

19.31.4.13 GILA TROUT PERMIT REQUIRED:

Every person angling for fish on those sections of the following waters must be in possession of a Gila trout permit, issued in their name by the department or its designee. In Grant county: Black canyon upstream of its confluence with the East fork Gila River and Sapillo creek; In Catron county: West fork Gila river, Whitewater creek from Catwalk National Recreation Trail parking area upstream to headwaters including all tributaries, Mineral creek including all tributaries, and waters upstream from the confluence of Gilita creek and Snow creek including Gilita, Willow and Little Turkey creeks; In Grant and Catron counties: the area from the Middle fork Gila river and West fork Gila river confluence downstream to the East fork Gila river confluence and Mogollon creek upstream from the waterfall barrier near intersection of FS trail 153 to confluence of Trail canyon. A photocopy, duplicate copy or computer printout of this permit will suffice as evidence of receiving such permit.

[19.31.4.13 NMAC - N, 4/1/2022]

19.31.4.14 WATERS WITH AGE OR INDIVIDUALS WITH DISABILITIES USE RESTRICTIONS:

A. Only persons 11 years of age and younger may fish in the following waters: Harris Pond; brood pond at Seven Springs state fish hatchery; Shuree kids ' pond on Valle Vidal (Vermejo tract-Carson national forest); Spring river park pond in Roswell; Conservancy park/Tingley beach kids ' pond; hatchery settling ponds located at the Rock Lake state fish hatchery; and Alto Kids ' Pond.

B. Only persons 11 years of age and younger, those 65 years and older, and individuals with disabilities may fish in the following waters: Blue Hole park pond; posted small pond at Cowles; Harry McAdams park ponds; Red River city middle kids ' pond; and Red River hatchery pond located at the Red River state fish hatchery.

C. Laguna del Campo: Only persons 14 years of age and younger, those 65 years and older, individuals with disabilities, or up to two parents/guardians in direct supervision of a child or children 14 years of age and under who are fishing, may fish in Laguna del Campo located near Los Ojos trout hatchery.

[19.31.4.14 NMAC - N, 4/1/2022]

19.31.4.15 CLOSED WATERS:

A. Waters closed to fishing:

(1) In Catron county: Big Dry creek from Golden link cabin upstream through its headwaters.

(2) In Catron county: Little creek from the "barrier" upstream through all tributaries.

(3) In Catron county: Spruce creek.

(4) In Catron and Sierra counties: Main Diamond creek above the point of confluence with south Diamond creek.

(5) In Catron and Sierra counties: South Diamond creek drainage.

(6) In Colfax county: a posted area lying within 300 feet of Eagle Nest dam, which is closed to entry.

(7) In Colfax county: a posted area of Stubblefield and Laguna Madre lakes lying within 150 feet of the outlet structures.

(8) In Grant county: east fork of Mogollon creek upstream of Trail canyon including Woodrow canyon.

(9) In Grant county: Sheep Corral creek.

(10) In Lincoln county: posted areas of Alto reservoir and Bonito lake near the outlets.

(11) In Catron county: All tributaries of the West fork of the Gila river above waterfalls between FS Trail No. 151 crossing of the West fork of the Gila river near

White creek cabin and FS Trail No. 151 crossing of the West fork of the Gila river near Liley canyon. Mainstem of the West fork of the Gila river will be open to fishing.

(12) In Catron county: Iron creek in the Gila wilderness upstream of the constructed waterfall barrier located in T12SR17WSec16NE.

B. Taking fish from hatchery waters: It is unlawful to take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned and operated by state or federal agencies. During open season, however, angling for trout shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs state fish hatchery, and Laguna del Campo at Los Ojos state fish hatchery, and settling ponds at Rock Lake state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

C. Taking fish from or through the ice: Fish may be taken from or through the ice except it is unlawful to take fish from or through the ice on the following waters: Santa Cruz lake, Monastery lake, Bonito lake, and Springer lake.

[19.31.4.15 NMAC - N, 4/1/2022]

19.31.4.16 ESTABLISHING FREE FISHING WEEKENDS:

The first consecutive Saturday and Sunday in June and the last consecutive Saturday and Sunday in September during the effective dates of this regulation, are established as free fishing weekends whereby anglers may fish public waters in New Mexico as otherwise provided by regulation without a fishing license, stamps or paying any license fees. Anglers must abide by all other fishing laws including but not limited to bag limits, tackle restrictions, age restrictions and hours during each free fishing weekend.

[19.31.4.16 NMAC - N, 4/1/2022; A, 9/12/2023]

PART 5: UPLAND GAME

19.31.5.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.5.1 NMAC - Rp, 19.31.5.1 NMAC, 4/1/2022]

19.31.5.2 SCOPE:

Sportspersons interested in upland game management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.5.2 NMAC - Rp, 19.31.5.2 NMAC, 4/1/2022]

19.31.5.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.5.3 NMAC - Rp, 19.31.5.3 NMAC, 4/1/2022]

19.31.5.4 DURATION:

April 1, 2022 through March 31, 2026.

[19.31.5.4 NMAC - Rp, 19.31.5.4 NMAC, 4/1/2022]

19.31.5.5 EFFECTIVE DATE:

April 1, 2022 unless a later date is cited at the end of a section.

[19.31.5.5 NMAC - Rp, 19.31.5.5 NMAC, 4/1/2022]

19.31.5.6 OBJECTIVE:

Establishing seasons on dusky grouse, Eurasian collared-dove, pheasant, Gambel's quail, Montezuma quail, northern bobwhite, scaled quail, tree squirrels, and setting falconry seasons.

[19.31.5.6 NMAC - Rp, 19.31.5.6 NMAC, 4/1/2022]

19.31.5.7 DEFINITIONS:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Falconry" shall mean hunting game mammals or game birds using raptors.

C. "Possession limit" shall mean the number of game mammals or game birds in a person 's possession regardless of the location stored.

D. "Tree squirrels" shall mean squirrels in the genera *Sciurus* and *Tamiasciurus*, including Abert's squirrel, red squirrel, Arizona gray squirrel, fox squirrel and eastern gray squirrel.

E. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas.

[19.31.5.7 NMAC - Rp, 19.31.5.7 NMAC, 4/1/2022]

19.31.5.8 MANNER AND METHODS FOR UPLAND GAME:

A. Season and hours: Upland game may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to one-half hour after sunset, unless otherwise allowed or restricted by rule.

(1) On Bernardo, Casa Colorada, La Joya, and W.S. Huey WMAs, hunting hours shall be from one-half hour before sunrise to 1:00 p.m.

(2) For the special permit pheasant hunts on W.S. Huey WMA, hunting hours shall be from one-half hour before sunrise to one-half hour after sunset.

B. State WMAs open, species that can be hunted, and days open for hunting:

(1) The W.S. Huey WMA shall be open for quail hunting on Mondays, Wednesdays, and Saturdays during established quail seasons.

(2) Bernardo, Casa Colorada, La Joya, and W.S. Huey WMAs shall be open to pheasant hunting by special draw permit only.

(3) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, and Elliot S. Barker WMAs shall be open for upland game hunting during established tree squirrel and dusky grouse seasons.

(4) The Water canyon, Marquez, prairie-chicken areas, and Socorro-Escondida WMAs shall be open for upland game hunting during established quail seasons.

(5) Eurasian collared-dove hunting shall be open during established mourning and white-winged dove seasons as defined in 19.31.6 NMAC Migratory Game Bird, and during established quail, tree squirrel, and dusky grouse seasons.

C. All Eurasian collared-dove must have an identifiable feathered wing attached until the bird has arrived at the person's residence, processor, or place of final storage.

[19.31.5.8 NMAC - Rp, 19.31.5.9 NMAC, 4/1/2022]

19.31.5.9 UPLAND GAME HUNTING SEASONS:

Hunting seasons shall be as indicated below.

SPECIES	OPEN AREAS	DATES	DAILY BAG (POSSESSION) LIMITS
Eurasian collared-dove	Statewide	April 1 - March 31	no bag or possession limit

dusky grouse	Statewide	Sept. 1 - Dec. 31 annually	3 (6 in possession)
pheasant	Statewide	Dec. 8-11, 2022 Dec. 7-10, 2023 Dec. 12-15, 2024 Dec. 11-14, 2025	3 males (6 in possession)
quail	Statewide	Nov. 15 - Feb. 15 annually	15, singly or in aggregate; no more than 5 shall be Montezuma quail (possession shall be 30 singly or in aggregate - no more than 10 shall be Montezuma quail)
tree squirrel	Statewide	Sept. 1 - Dec. 31 annually	8, singly or in aggregate (possession shall be 16 singly or in aggregate)

[19.31.5.9 NMAC - Rp, 19.31.5.10 NMAC, 4/1/2022]

19.31.5.10 HUNT CODES AND PERMIT NUMBERS FOR SPECIAL DRAW PHEASANT HUNTS:

HUNT LOCATION	2022 SEASON	2023 SEASON	2024 SEASON	2025 SEASON	HUNT CODE	NO. OF PERMITS	BAG LIMIT
youth-only Bernardo, Casa Colorada, and La Joya WMAs	Oct. 15	Oct. 21	Oct. 19	Oct. 18	PHE-0-001	20	3 males
youth-only W.S. Huey WMA	Dec. 3	Dec. 2	Dec. 7	Dec. 6	PHE-0-002	40	3 males
W.S. Huey WMA	Dec. 10	Dec. 9	Dec. 14	Dec. 13	PHE-0-003	40	3 males

[19.31.5.10 NMAC - Rp, 19.31.5.12 NMAC, 4/1/2022]

19.31.5.11 FALCONRY SEASONS:

A. Open areas and season dates: The season for dusky grouse, pheasants, quail and tree squirrels shall be statewide and shall be open September 1 through February 28 annually. For Eurasian collared-dove, all areas statewide are open year round, except as prohibited by rule.

B. Daily bag and possession limits: Daily bag limits for dusky grouse, pheasant, and quail shall be three birds (in the aggregate) and three tree squirrels (in the aggregate). Possession limits shall be: dusky grouse-six; pheasant-six; quail-30 (singly or in the aggregate); tree squirrels-16 (singly or in the aggregate). There is no bag or possession limit for Eurasian collared-dove.

[19.31.5.11 NMAC - Rp, 19.31.5.13 NMAC, 4/1/2022]

PART 6: MIGRATORY GAME BIRD

19.31.6.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 9/1/2024]

19.31.6.2 SCOPE:

Sportspersons interested in migratory game bird management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 9/1/2024]

19.31.6.3 STATUTORY AUTHORITY:

Section 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 9/1/2024]

19.31.6.4 DURATION:

September 1, 2024 - March 31, 2025.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 9/1/2024]

19.31.6.5 EFFECTIVE DATE:

September 1, 2024, unless a later date is cited at the end of a section.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 9/1/2024]

19.31.6.6 OBJECTIVE:

Establishing open hunting seasons, regulations, rules and procedures governing the issuance of migratory game bird licenses and permits by the department.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 9/1/2024]

19.31.6.7 DEFINITIONS:

A. "Bernardo pond unit" shall mean that portion of Bernardo wildlife management area extending approximately 3,500 feet south of U.S. 60 and 2,200 feet west of the Unit 7 drain.

B. "Bernardo youth unit" shall mean that portion of Bernardo wildlife management area immediately south of the Quagmire, west of the San Francisco ditch, and east of the unit 7 drain.

C. "Central flyway" shall mean that portion of New Mexico east of the continental divide.

D. "Dark goose" shall mean Canada goose or white-fronted goose.

E. "Department" shall mean the New Mexico department of game and fish.

F. "Director" shall mean the director of the New Mexico department of game and fish.

G. "Dove north zone" or "north zone" shall mean that portion of New Mexico north of Interstate 40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

H. "Dove south zone" or "south zone" shall mean that portion of New Mexico south of Interstate 40 from the Arizona-New Mexico border to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

I. "Eastern New Mexico sandhill crane hunt area" or "eastern" shall mean the following counties: Chaves, Curry, De Baca, Eddy, Lea, Quay and Roosevelt.

J. "Estancia valley sandhill crane hunt area" or "EV" shall mean that area beginning at Mountainair bounded on the west by N.M. 55 north to N.M. 337, north to N.M. 14, and north to Interstate 25; on the north by Interstate 25 east to U.S. 285; on

the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to N.M. 55 in Mountainair.

K. "Falconry" shall mean hunting migratory game birds using raptors.

L. "Federal youth waterfowl hunting days" shall mean the special seasons where only those 17 years of age and younger may hunt ducks, coots and gallinules in the Pacific flyway or ducks and coots in the central flyway. A supervising adult at least 18 years of age must accompany the youth hunter. The adult may not hunt ducks, coots or gallinules, but may participate in other seasons that are open on the special youth days.

M. "Light geese" shall mean snow geese, blue phase snow geese and Ross's geese.

N. "Light goose conservation order" shall mean those methods, bag and possession limits and dates approved by the U.S. fish and wildlife service towards reducing over-abundant light goose populations.

O. "Middle Rio Grande valley (MRGV) dark goose hunt area" shall mean Sierra, Socorro and Valencia counties.

P. "Middle Rio Grande valley (MRGV) sandhill crane hunt area" shall mean Valencia and Socorro counties.

Q. "Migratory game bird" shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane, American coot, gallinule, snipe, ducks, geese, sora and Virginia rail.

R. "North zone" shall mean that portion of the Pacific flyway north of Interstate 40, and that portion of the central flyway north of Interstate 40 from the continental divide to Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

S. "Pacific flyway" shall mean that portion of New Mexico west of the continental divide.

T. "Possession limit" shall mean the number of birds in a person's possession regardless of the location stored.

U. "Quagmire" shall mean that portion of Bernardo wildlife management area south of U.S. 60, west of the San Francisco ditch, and east of the unit 7 drain, excluding the Bernardo youth unit at the southern tip.

V. "South zone" shall mean that portion of the Pacific flyway south of Interstate 40, and that portion of the central flyway south of Interstate 40 from the continental divide to

Tucumcari and U.S. 54 at its junction with Interstate 40 at Tucumcari to the New Mexico-Texas border.

W. "Southwest band-tailed pigeon hunting area" or "southwest BPHA" shall mean that portion of New Mexico both south of U.S. 60 and west of Interstate 25.

X. "Southwest New Mexico sandhill crane hunt area" or "SW" shall mean that area bounded on the south by the New Mexico-Mexico border; on the west by the New Mexico-Arizona border north to Interstate 10; on the north by Interstate 10 east to U.S. 180, north to N.M. 26, east to N.M. 27, north to N.M. 152, and east to Interstate 25; on the east by Interstate 25 south to Interstate 10, west to the Luna county line, and south to the New Mexico-Mexico border.

Y. "Unit D" shall mean only the ephemeral pond or wetland portion of Bernardo WMA contained within the area extending approximately 1,700 feet north of U.S. 60, east of the railroad tracks, and west of the unit 7 drain.

Z. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 9/1/2024]

19.31.6.8 ADJUSTMENT OF SANDHILL CRANE PERMITS:

The director, with verbal concurrence of the chairperson or their designee, may adjust the number of permits to address significant changes in harvest levels. This adjustment may be applied to any or all of the entry hunt codes.

[19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 9/1/2024]

19.31.6.9 LICENSE AND APPLICATION REQUIREMENTS:

A. License: A Harvest Information Program (HIP) number shall be required. Waterfowl hunters 16 years of age and older are required to have in their possession a federal migratory bird hunting and conservation stamp (duck stamp). It shall be unlawful to take or attempt to take migratory birds without a HIP number, or duck stamp if required.

(1) Any person taking or attempting to take sandhill cranes in the eastern hunt area must have a valid license and a free sandhill crane hunting permit obtained from department offices or website.

(2) For EV sandhill crane, MRGV sandhill crane, MRGV youth-only sandhill crane and SW sandhill crane: in addition to a valid license, a special permit obtained by drawing shall be required.

(3) For the light goose conservation order: in addition to a valid license, a free light goose conservation order permit obtained from department offices or website shall be required.

(4) For band-tailed pigeon hunting: in addition to a valid license, a free band-tailed pigeon permit obtained from department offices or website shall be required.

B. Valid dates of license or permit: All permits and licenses shall be valid only for the dates, legal sporting arms, bag limit and area printed on the permit or license.

[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 9/1/2024]

19.31.6.10 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Hours: Migratory game birds may be hunted or taken only during the period from one-half hour before sunrise to sunset, unless otherwise stated in rule.

(1) Migratory bird hunting hours on the Bottomless lakes overflow, and Bernardo, Casa Colorada, Jackson lake, La Joya and W.S. Huey WMAs shall be from one-half hour before sunrise to 1:00 p.m. unless otherwise stated in rule.

(2) September teal hunting hours on Bernardo and La Joya WMAs are from one-half hour before sunrise to sunset.

(3) Light goose conservation order hunting hours, including Bernardo pond unit and Unit D, shall be from one-half hour before sunrise to one-half hour after sunset. Exceptions: Bottomless lakes overflow, Bernardo Quagmire, and Casa Colorada, Jackson lake, La Joya and W.S. Huey WMAs hunting hours shall be from one-half hour before sunrise to 1:00 p.m.

B. Lands and waters owned, administered, controlled or managed by the state game commission:

(1) State wildlife management areas open, species that can be hunted and days open for hunting:

(a) Bernardo WMA:

(i) That portion of the Bernardo WMA south of U.S. 60 is open to teal hunting each day of the September teal season and the federal youth waterfowl hunting days. That portion of the Bernardo WMA north of U.S. 60 is closed unless otherwise stated in rule.

(ii) The Quagmire shall be open only on Tuesday, Thursday and Sunday to hunt ducks, geese, Virginia rail, sora, gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) The Bernardo pond unit shall be open for general waterfowl hunting and during the light goose conservation order on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) The Bernardo youth unit shall be open for youth waterfowl hunting on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(v) Unit D shall be open for general waterfowl hunting and during the light goose conservation order on Monday, Wednesday and Saturday to hunt ducks, geese, Virginia rail, sora, gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(b) The Edward Sargent, W. A. Humphries, Rio Chama, Urraca, Colin Neblett, Water canyon, Marquez/LBar and Elliot S. Barker WMAs shall be open for hunting dove and band-tailed pigeon during established seasons.

(c) The portion of Jackson lake WMA west of N.M. 170 shall be open on Mondays, Wednesdays and Saturdays to hunt ducks, geese, Virginia rail, sora, gallinule, American coot and snipe. The portion of Jackson lake WMA east of N.M. 170 shall be open to falconry-only migratory game bird hunting during established seasons.

(d) The lesser prairie-chicken management areas, Double E and River Ranch WMAs shall be open to hunt dove during established seasons.

(e) La Joya WMA:

(i) The entire La Joya WMA shall be open to teal hunting each day of the September teal season and each day of the federal youth waterfowl hunting days.

(ii) That portion of La Joya WMA north of the main east/west entrance road and west of the railroad tracks shall be open on Saturdays, Mondays and Wednesdays to hunt ducks, geese, Virginia rail, sora, gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(iii) That portion of La Joya WMA south of the main east/west entrance road and west of the railroad tracks shall be open on Sunday, Tuesday and Thursday to hunt ducks, geese, Virginia rail, sora, gallinule, American coot and snipe during established seasons, unless otherwise specifically allowed by rule.

(iv) That portion of La Joya WMA east of the railroad tracks shall be open to hunt dove, ducks, geese, Virginia rail, sora, gallinule, American coot and snipe during established seasons.

(f) The Charette lake, McAllister lake, Wagon Mound, Tucumcari, Socorro-Escondida, Hammond tract and Retherford tract WMAs shall be open for all migratory game bird hunting during established seasons.

(g) The W.S. Huey WMA shall be open for dove hunting on Monday, Wednesday and Saturday during established seasons.

(2) All WMAs shall be open to falconry waterfowl hunting each day of the established falconry season, unless otherwise restricted by rule.

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 9/1/2024]

19.31.6.11 SPECIES, OPEN AREAS, SEASON DATES AND DAILY BAG LIMITS:

2024-2025 season, all dates are 2024 unless otherwise specified. Possession limits are three times the daily bag limit unless otherwise specified.

species	open areas	season dates	daily bag limit
mourning and white-winged dove	north zone	Sept. 1 - Nov. 29	15 (singly or in aggregate)
	south zone	Sept. 1 - Oct. 28 and Dec. 1 - Jan. 1, 2025	
band-tailed pigeon	southwest BPHA	Oct. 1 - 14	2
	statewide except southwest BPHA	Sept. 1 - 14	
regular season sandhill crane (free permit required)	eastern	Oct. 26 - Jan. 23, 2025	3 (6 in possession)
CENTRAL FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.			
species	season dates		daily bag limit
September teal: blue-winged teal, green-winged teal and cinnamon teal	Sept. 14 - 22		6 (singly or in the aggregate)
ducks	north zone: Oct. 12 - Jan. 15, 2025	6 (singly or in the aggregate) that consists of no more than 5 mallard of which only 2 may be female mallard, (Mexican ducks are included towards the mallard bag limit), 3 wood duck, 1 scaup, 2 redhead, 2 hooded merganser, 1 pintail and 2 canvasback	
	south zone: Oct. 28 - Jan. 31, 2025		

youth waterfowl days	north zone: Oct. 5 - 6	Ducks: 6 (singly or in the aggregate) that consists of no more than 5 mallard of which only 2 may be female mallard, (Mexican ducks are included towards the mallard bag limit), 3 wood duck, 1 scaup, 2 redhead, 2 hooded merganser, 1 pintail and 2 canvasback Coots: 15
	south zone: Oct. 26 – Oct. 27	
American coot	north zone: Oct. 12 - Jan. 15, 2025	15
	south zone: Oct. 28 - Jan. 31, 2025	
gallinule	Sept. 14 - Nov. 22	1
snipe	Oct. 12 - Jan. 26, 2025	8
Virginia rail & sora	Sept. 14 - Nov. 22	10 (singly or in the aggregate; 20 in possession)
dark goose: regular season closed in Sierra, Socorro and Valencia counties	Oct. 17 - Jan. 31, 2025	5
dark goose: special MRGV season	Dec. 19 - Jan. 31, 2025	2 (2 per season)
light goose	Oct. 17 - Jan. 31, 2025	50 (no possession limit)
light goose conservation order	Feb. 1 - Mar. 10, 2025	no bag or possession limit
PACIFIC FLYWAY: possession limits are three times the daily bag limit unless otherwise specified.		
Species	season dates	daily bag limit
youth waterfowl days	Oct. 12 - 13	Ducks: 7 (singly or in the aggregate) that consists of no more than 2 female mallard, 2 redhead, 1 pintail and 2 canvasback; Coots and gallinules: 25 (singly or in the aggregate)
Ducks	Oct. 19 - Jan. 31, 2025	7 (singly or in the aggregate); that consists of no more than 2 female mallard, 2 redhead, 1 pintail and 2 canvasback
Scaup	Oct. 19 - Jan. 12, 2025	2 (as part of the aggregate duck bag)
American coot and gallinule	Oct. 19 - Jan. 31, 2025	25 (singly or in the aggregate)

Snipe	Oct. 17 - Jan. 31, 2025	8
Virginia rail & sora	Sept. 14 - Nov. 22	25 (singly or in the aggregate)
Goose	north zone: Sept. 21 - Oct. 6 and Nov. 2 - Jan. 31, 2025	5 Canada geese, 10 white-fronted geese and 20 light geese
	south zone: Oct. 17 - Jan. 31, 2025	

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 9/1/2024]

19.31.6.12 FALCONRY SEASONS:

2024-2025 season, all dates are 2024 unless otherwise specified. Bag limits are three singly or in the aggregate and nine in possession unless otherwise specified.

CENTRAL FLYWAY		
species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2025
	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2025
band-tailed pigeon	southwest BPHA	Oct. 1 - 14
	statewide except southwest BPHA	Sept. 1 - 14
sora and Virginia rail	all	Sept. 14 - Dec. 28
snipe	all	Oct. 12 - Jan. 26, 2025
gallinule	all	Sept. 14 - Dec. 28
ducks and coots	north	Sept. 14 - 22 and Oct. 12 - Jan 15, 2025
	south	Sept. 14 - 22 and Oct. 28 - Jan 31, 2025
goose (light and dark)	all	Oct. 17 - Jan. 31, 2025
goose (dark)	MRGV	Dec. 19 - Jan. 31, 2025
sandhill crane	regular (eastern)	Oct. 12 - Jan. 23, 2025; 3 (6 in possession)
	Estancia valley	Nov. 2 - Dec. 31; 3 (6 in possession)
PACIFIC FLYWAY		
species	open areas	season dates
mourning and white-winged dove	north	Sept. 1 - Dec. 4 and Dec. 21 - Jan. 1, 2025

	south	Sept. 1 - Nov. 5 and Nov. 22 - Jan. 1, 2025
band-tailed pigeon	southwest BPHA	Oct. 1 - 14
	statewide except southwest BPHA	Sept. 1 - 14
ducks	all	Oct. 19 - Jan. 31, 2025
scaup	all	Oct. 19 - Jan. 12, 2025
goose (all)	north	Sept. 21 - Oct. 6 and Nov. 2 - Jan. 31, 2025
	south	Oct. 17 - Jan. 31, 2025
snipe	all	Oct. 17 - Jan. 31, 2025
coots and gallinule	all	Oct. 19 - Jan. 31, 2025
sora and Virginia rail	all	Sept. 14 - Nov. 22

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 9/1/2024]

19.31.6.13 RESERVED:

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 9/1/2022; Repealed, 9/1/2024]

19.31.6.14 REQUIREMENTS FOR THE SPECIAL BERNARDO YOUTH WATERFOWL UNIT:

Blind selection will be available on a first-come, first-serve basis from one-half hour before sunrise to 1:00 p.m. Youth hunters must be accompanied by a supervising adult who may not hunt. A maximum of four people, at least half of which must be youth hunters, is allowed per blind.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 9/1/2024]

19.31.6.15 SEASON DATES, OPEN AREAS, BAG LIMITS, HUNT CODES AND PERMIT NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. The daily bag limit is 3. The possession limit is twice the daily bag limit, except for the MRGV youth-only hunt where the daily bag and possession limit is 3. The hunting seasons for 2024-2025 are:

hunt location	hunt dates	hunt code	permits
EV	Nov. 2 - Nov. 5	SCR-0-101	65

	and Nov. 7 - Nov. 10		
MRGV	Nov. 16 - 17	SCR-0-102	85
MRGV	Nov. 30 - Dec. 1	SCR-0-103	85
MRGV	Dec. 14 - 15	SCR-0-104	85
MRGV	Jan. 4 - 5, 2025	SCR-0-105	85
MRGV	Jan. 11 - 12, 2025	SCR-0-106	85
MRGV, youth-only	Nov. 23	SCR-0-107	24
SW	Nov. 2 - Nov. 10	SCR-0-108	75
SW	Jan. 4 - 5, 2025	SCR-0-109	75

B. Hunters who participate in the MRGV season shall be required to check-out at designated check stations when they harvest any sandhill cranes.

C. The department may cancel one or more EV, MRGV or SW sandhill crane hunts if harvest is expected to exceed our federal allocation of greater sandhill cranes.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 9/1/2024]

PART 7: BIG GAME ENHANCEMENT [REPEALED]

[This part was repealed on April 1, 2007.]

PART 8: BIG GAME AND TURKEY [REPEALED]

[This duration of the part expired on March 31, 2007.]

PART 9: COMMERCIAL USE OF FISH

19.31.9.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.31.9.1 NMAC – Rp, 19.31.9.1 NMAC, 11/9/2021]

19.31.9.2 SCOPE:

Those members of the public interested in the business of selling nongame fish. License fees can be found in 19.30.9 NMAC.

[19.31.9.2 NMAC – Rp, 19.31.9.2 NMAC, 11/9/2021]

19.31.9.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and Sections 17-3-26 through 17-3-28 regarding minnows and non-game fish as bait.

[19.31.9.3 NMAC – Rp, 19.31.9.3 NMAC, 11/9/2021]

19.31.9.4 DURATION:

Permanent.

[19.31.9.4 NMAC – Rp, 19.31.9.4 NMAC, 11/9/2021]

19.31.9.5 EFFECTIVE DATE:

February 15, 1996.

[19.31.9.5 NMAC – Rp, 19.31.9.5 NMAC, 11/9/2021]

19.31.9.6 OBJECTIVE:

To establish rules pertaining to management and harvest of commercial fish resources of New Mexico.

[19.31.9.6 NMAC – Rp, 19.31.9.6 NMAC, 11/9/2021]

19.31.9.7 DEFINITIONS:

A. "Commercial fish" shall mean gizzard shad, whitesucker, carpsucker, flannemouth sucker, smallmouth buffalo, carp, gar, yellow perch and all species of bullheads.

B. "Commercial fisherman" shall mean a person who makes or intends to make income by taking and selling commercial fish.

C. "Commercial fishing permit" shall mean a permit issued by the director of the department of game and fish to authorize a commercial fisherman and their named employees to take commercial fish from specified waters by specified means.

D. "Commercial fishing water" shall mean a water that the director of the department of game and fish has designated as one for which commercial fishing permits will be available.

E. "Minnow" shall mean all non-game fish sold as bait, regardless of taxonomic classification.

F. "Bait dealers license" shall mean a license issued by the director of the department of game and fish to authorize a vendor and their named employees to sell minnows, amphibians, and crayfish for use as bait.

[19.31.9.7 NMAC – Rp, 19.31.9.7 NMAC, 11/9/2021]

19.31.9.8 AVAILABILITY OF COMMERCIAL FISHING PERMITS:

A. The director may designate the commercial waters for the following calendar year during December.

B. When the director designates commercial fishing waters, they may also designate the numbers of permits available for each water.

C. The director may also designate the number of employees that each commercial fisherman may include in the activities authorized by their commercial fishing permit.

[19.31.9.8 NMAC – Rp, 19.31.9.8 NMAC, 11/9/2021]

19.31.9.9 ISSUANCE OF COMMERCIAL PERMITS:

A. Individuals desiring commercial fishing permits shall apply on the application form provided by the department of game and fish.

B. If more applications are received than there are permits available for any water, the available permits will be allotted by public drawing.

C. No one may hold more than one commercial fishing permit during any one calendar year.

D. Applicants must include payment in accordance with 19.30.9 NMAC with completed application. License fee is nonrefundable.

[19.31.9.9 NMAC – Rp, 19.31.9.9 NMAC, 11/9/2021]

19.31.9.10 CONDITIONS OF COMMERCIAL FISHING PERMITS:

A. Each commercial fishing permit shall be valid from the date of issue to December 31 of the year in which it was issued.

B. Each permit shall state the name and address of the permittee and of all employees who may assist the permittee.

C. Each permit shall authorize the taking of commercial fish from only two waters.

D. Each permit shall specify the methods by which commercial fish may be taken.

E. A commercial fishing permittee shall report each month 's catch to the department of game and fish, no later than the 20th of the following month, on forms provided by the department.

F. A commercial fishing permittee and their employees shall permit inspection of their catch upon request by any commissioned department of game and fish officer.

[19.31.9.10 NMAC – Rp, 19.31.9.10 NMAC, 11/9/2021]

19.31.9.11 DISPOSITION OF GAME FISH:

A. The commercial fishing permittee shall immediately return to the water any game fish caught, if such fish are still alive.

B. Dead game fish which are edible shall be processed and given to the district wildlife officer for lawful disposition.

C. Dead and spoiled game fish shall be cut in half and returned to the water.

[19.31.9.11 NMAC – Rp, 19.31.9.11 NMAC, 11/9/2021]

19.31.9.12 REVOCATION OF COMMERCIAL FISHING PERMIT:

The director may, at any time, revoke in writing, a commercial permit for any of the following:

A. Violation of this or any other regulation of the state game commission;

B. Failure to abide by the conditions of the commercial fishing permit;

C. Conflicts between permitted methods for taking commercial fish and proper management of game fish;

D. Occurrence of low water levels or other natural phenomena in a commercial fishing water that would render inadvisable continued commercial fishing in that water;

E. Requests from state or federal agencies for discontinuance of commercial fishing because of conflicts with other designated uses of the water.

[19.31.9.12 NMAC – Rp, 19.31.9.12 NMAC, 11/9/2021]

19.31.9.13 ISSUANCE OF BAIT DEALERS LICENSE:

A. Individuals desiring a bait dealers license shall apply on the application form provided by the department of game and fish.

B. Applicants must include payment in accordance with 19.30.9 NMAC with completed application.

C. Application must include all sources the bait dealer will use to obtain minnows.

[19.31.9.13 NMAC – Rp, 19.31.9.13 NMAC, 11/9/2021]

19.31.9.14 PERMISSABLE SPECIES FOR SALE AS BAIT:

A. Fish: Only fathead minnow (*pimephales promelas*), red shiner (*cyprinella lutrensis*), golden shiner (*notemigonus crysoleucas*), gizzard shad (*dorosoma cepedianum*), and threadfin shad (*dorosoma petenense*) may be sold as bait fish.

B. Amphibians: Only tiger salamander larvae (*ambystoma tigrinum*), or "waterdogs", may be sold as bait.

C. Crayfish: Only native species (*orconectes deaneam*, *orconectes virilis*, *orconectes causeyi* and *procambarus simulans*) may be sold as bait.

[19.31.9.14 NMAC – Rp, 19.31.9.14 NMAC, 11/9/2021]

19.31.9.15 CONDITIONS OF BAIT DEALER LICENSES:

A. Each bait dealers license shall be valid from April 1 of the year in which it was issued until March 31 of the following year.

B. Each permit shall state the name and address of the permittee and of all employees who may assist the permittee.

C. Each permit shall authorize the taking of bait fish using only those methods specified in 19.31.10 NMAC.

(1) It shall be unlawful to collect bait fish from the mainstem Pecos river, with the exceptions of Santa Rosa, Sumner, and Brantley lakes.

(2) It shall be unlawful to collect bait fish from the mainstem Rio Grande with the exceptions of Abiquiu, Cochiti, Elephant Butte, and Caballo lakes.

(3) It shall be unlawful to collect bait fish from the mainstem Canadian river with the exceptions of Conchas and Ute lakes.

(4) It shall be unlawful to collect bait fish west of the continental divide, with the exception of Navajo lake.

E. A licensed bait dealer must comply with 19.35.7 NMAC when purchasing live bait obtained from an out-of-state source.

F. A licensed bait dealer and his employees shall permit inspection of their inventory upon request by any commissioned department of game and fish officer.

G. It is unlawful to release live fish or bait into the waters of New Mexico without first obtaining a permit from the department of game and fish (19.35.7 NMAC).

[19.31.9.15 NMAC – Rp, 19.31.9.15 NMAC, 11/9/2021]

PART 10: HUNTING AND FISHING - MANNER AND METHOD OF TAKING

19.31.10.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.10.1 NMAC - Rp, 19.31.10.1 NMAC, 4/1/2023]

19.31.10.2 SCOPE:

Hunters, anglers, trappers and the general public. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.10.2 NMAC - Rp, 19.31.10.2 NMAC, 4/1/2023]

19.31.10.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, 17-2-1, 17-2-2, 17-2-2.1, 17-2-4.2, 17-2-6, 17-2-10.1, 17-2-13, 17-2-14, 17-2-20, 17-2-32, 17-2-43, 17-3-2, 17-3-29, 17-3-31, 17-2A-3, 17-3-32, 17-3-33, 17-3-42, 17-4-33, 17-5-4, 17-5-5 and 17-6-3 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.31.10.3 NMAC - Rp, 19.31.10.3 NMAC, 4/1/2023]

19.31.10.4 DURATION:

Permanent.

[19.31.10.4 NMAC - Rp, 19.31.10.4 NMAC, 4/1/2023]

19.31.10.5 EFFECTIVE DATE:

April 1, 2023, unless a later date is cited at the end of a section.

[19.31.10.5 NMAC - Rp, 19.31.10.5 NMAC, 4/1/2023]

19.31.10.6 OBJECTIVE:

To establish general rules, restrictions, requirements, definitions, and regulations governing lawful hunting, fishing, or trapping and the lawful taking or killing of game animals, furbearers, game birds, and game fish, water pollution, possession of wildlife, permits and licenses issued, importation, intrastate transportation, release of wildlife, manner and methods of hunting and fishing and use of department lands.

[19.31.10.6 NMAC - Rp, 19.31.10.6 NMAC, 4/1/2023]

19.31.10.7 DEFINITIONS:

A. "Angling" shall mean taking or attempting to take fish by angling hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.

B. "Angling hook" shall mean a single, double, or treble (triple) point attached to a single shank.

C. "Any sporting arm" shall mean any firearm, muzzle-loader, compressed air gun, shotgun, bow or crossbow. All firearms, except handguns, must be designed to be fired from the shoulder.

D. "Arrow" or "Bolt" shall mean only those arrows or bolts having broadheads with cutting edges except that "judo", "blunt" or similar small game points may be used for upland game and migratory game bird hunting and arrows for bow fishing must have barbs to prevent the loss of fish.

E. "Bag limit" shall mean the protected species, qualified by species, number, sex, age, antler/horn requirement, or size allowed by state game commission rule that a legally licensed person may attempt to take or take.

F. "Bait" as used in 19.31.10.15 NMAC shall mean the flesh, hide, fur or viscera of any animal. Bones free of flesh are not considered bait.

G. "Bait" as used in 19.31.10.12 NMAC and 19.31.10.13 NMAC shall mean any salt, mineral, grain, feed, commercially produced game attractant or any other organic material which is attractive to wildlife.

H. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any bait on or over areas where any person is attempting to take protected game mammals or game birds as defined in Section 17-2-3 NMSA 1978.

I. "Bait fish" is defined as those nongame fish which are not otherwise protected by statute or regulation.

J. "Barbless lure or fly" shall mean an artificial lure made of wood, metal, or plastic or an artificial fly made from fur, feathers, other animal or man-made materials to resemble or simulate insects, bait fish, or other foods. A barbless fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids or other foods are not considered barbless lures or flies.

K. "Big-game species" shall mean Barbary sheep, bear, bighorn sheep, cougar, deer, elk, javelina, oryx Persian ibex, and pronghorn.

L. "Big-game sporting arms" shall mean any centerfire firearm at least .22 caliber or larger, any muzzle-loading firearm at least .45 caliber or larger, any shotgun .410 caliber or larger firing a single slug (including muzzle-loading shotguns), any bow or any crossbow. All firearms, except handguns, must be designed to be fired from the shoulder.

M. "Body-grip trap" shall mean a rotating jaw trap designed to capture a furbearer by the body.

N. "Bow" shall mean compound, recurve, or long bow, which is not equipped with a mechanical device (draw lock) which locks the bow string at full draw. Sights on bows shall not project light, however, illuminated pins/reticles and scopes of any magnification are allowed.

O. "Bow fishing" shall mean taking or attempting to take game fish with arrows/bolts that are discharged above the surface of the water by a bow or crossbow. Arrows/bolts must be attached by string, line, or rope to facilitate fish retrieval.

P. "Bullet" shall mean a single projectile fired from a firearm which is designed to expand or fragment upon impact. Tracer or full metal jacket ammunition is not legal for the take or attempted take of any big game species.

Q. "Cellular", "Wi-Fi" or "satellite camera" shall mean any remote camera which transmits or is capable of transmitting images or video wirelessly via a cellular, Wi-Fi or satellite connection.

R. "Chumming" is defined as a means of attracting fish by placing organic materials, non-injurious to aquatic life, into the water.

S. "Compressed air gun" shall mean any kind of gun that launches a single non-spherical projectile, pneumatically with compressed air or other gases that are pressurized mechanically without involving any chemical reaction.

T. "Crossbow" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light, however, illuminated pins/reticles and scopes of any magnification are allowed.

U. "Department" shall mean the New Mexico department of game and fish.

V. "Director" shall mean the director of the New Mexico department of game and fish.

W. "Drainage" shall mean all waters within a watershed including tributaries, headwaters, lakes, ponds, and other water bodies.

X. "Drone" is defined as any device used or designed for navigation or flight in the air that is unmanned and guided remotely or by an onboard computer or onboard control system. Drones may also be referred to as "unmanned aerial vehicle (UAV)" or "unmanned aerial vehicle systems (UAVS)".

Y. "Established road" is defined as follows:

(1) a road, built or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures; or

(2) a two-track road which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

Z. "Foothold trap" shall mean a trap designed to capture a furbearer by the foot, but does not include foot encapsulating traps.

AA. "Foot encapsulating trap" shall mean any trap with a push or pull-activated trigger located inside an enclosure recessed from an opening of no more than two inches in diameter, as measured across the opening from side to side, not corner to corner. Foot encapsulating traps include "dog proof" and "egg" traps.

BB. "Furbearer" shall mean any quadruped defined as a fur-bearing animal in Section 17-5-2 NMSA 1978.

CC. "Game management unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC, Boundary Descriptions for Game Management Units.

DD. "Jaw spread" shall mean the distance between the jaws when measured across the center of the trap and perpendicular to a line drawn through the pivot points of the jaws when the trap is set.

EE. "Laminated" shall mean any modification to the jaw thickness of a foothold trap by fastening a strip of metal (rod or flat stock) to the trap jaw, or a trap that is manufactured with cast jaws, which increases the contact surface area of the jaw.

FF. "Land set" shall mean any foothold trap or snare set on land.

GG. "License year" shall mean the period from April 1 through March 31.

HH. "Locate" shall mean any act or activity, in which any person is searching for, spotting or otherwise finding a protected species from or with the aid of any aircraft or drone.

II. "Migratory game bird" shall mean band-tailed pigeon, mourning dove, white-winged dove, sandhill crane, American coot, common moorhen, common snipe, ducks, geese, sora and Virginia rail.

JJ. "Muzzle-loader" or "muzzle-loading firearms" shall mean those sporting arms in which the charge and projectile(s) are loaded through the muzzle. Only blackpowder or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited.

KK. "Nets" shall mean cast nets, dip nets, and seines which shall not be longer than 20 feet and shall not have a mesh larger than three-eighths of an inch.

LL. "Non-toxic shot" shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

MM. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 NMSA 1978;

(2) all animals defined as furbearing animals under Section 17-5-2 NMSA 1978;

(3) all animals listed as endangered or threatened species or subspecies as stated in 19.33.6 NMAC: and

(4) all animals listed under Sections 17-2-13, 17-2-14 or 17-2-4.2 NMSA 1978.

NN. "Retention" or "retain" shall mean the holding of live protected species in captivity.

OO. "Restricted muzzle-loading rifle" shall mean any muzzle-loading rifle using open sights, black powder or equivalent propellant and firing a full bore diameter

bullet or patched round ball. The use of in-line ignition, scopes and smokeless powder are prohibited.

PP. "Shotgun" shall mean any centerfire shotgun or muzzle-loading shotgun not larger than 10 gauge.

QQ. "Snagging" is the repeated or exaggerated jerking or pulling of the fishing line or angling hooks in any attempt to impale fish, whether or not it results in physically snagging a fish.

RR. "Snare" shall mean a wire or cable with a single closing device designed to capture a furbearer.

SS. "Spear fishing" shall mean taking or attempting to take game fish with spears, gigs and arrows with barbs.

TT. "Sporting-arm types" shall be designated in the hunt code as follows unless further restricted or allowed by state game commission rule:

(1) all hunt codes denoted with -0- shall authorize use of any shotgun firing shot (ex. SCR-0-XXX);

(2) all hunt codes denoted with -1- shall authorize use of any big game sporting arm (ex. ELK-1-XXX);

(3) all hunt codes denoted with -2- shall authorize use of bows only (ex. ELK-2-XXX);

(4) all hunt codes denoted with -3- shall authorize use of bows, crossbows and muzzle-loading firearms with open or "iron" sights only (ex. ELK-3-XXX).

UU. "Take" shall mean to hunt, fish, kill or capture any protected species or parts thereof.

VV. "Trap" shall mean any foothold trap, foot encapsulating trap, cage trap or body-grip trap set to capture a furbearer.

WW. "Trotline" shall be synonymous with "**set line**" or "**throw line**" or "**jug**", "**Yo-Yo line**" or "**limb line**", and shall mean a fishing line that is used without rod or reel and that need not be held in the hand or closely attended.

XX. "Upland game" shall mean dusky grouse, Eurasian collared-dove, all protected squirrel species, all quail species, chukar and pheasant.

YY. "Water set" shall mean any trap or snare set fully in water.

ZZ. "Wildlife management area" or "WMA" shall mean those areas as described in 19.34.5 NMAC.

AAA. "Written permission" shall mean a document (which may include a valid hunting, trapping or fishing license) that asserts the holder has permission from the private land owner or their designee to hunt, fish, trap or drive off road on the landowner's property. The information on the document must be verifiable and include the name of the person(s) receiving permission, activity permitted, property's location and name (if applicable), name of person granting permission, date and length of time the permission is granted, and phone number or e-mail of the person granting the permission. Licenses issued for private land which have the ranch name printed on them constitute written permission for that property and no other permission is required except for private land elk licenses in the secondary management zone pursuant to 19.30.5 NMAC and 19.31.14 NMAC.

BBB. "Zone" shall mean those bear or cougar hunt areas, consisting of one or more GMUs, as described in 19.31.11 NMAC.

[19.31.10.7 NMAC - Rp, 19.31.10.7 NMAC, 4/1/2023]

19.31.10.8 UNLAWFUL SUBSTANCE IN PUBLIC WATERS:

It is unlawful for any person, firm, corporation or municipality to introduce, directly or indirectly, into any public water of this state any substance that may stupefy, injure, destroy or drive away from such water any protected species or may be detrimental to the growth and reproduction of those protected species except as exempted in Section 17-2-20 NMSA 1978.

[19.31.10.8 NMAC - Rp, 19.31.10.8 NMAC, 4/1/2023]

19.31.10.9 POSSESSION OR SALE OF PROTECTED SPECIES:

It is unlawful to possess, sell or offer for sale all or part of any protected species except as provided below:

A. License or permit: A person may possess protected species or parts thereof that they have lawfully taken under a license or permit, in any jurisdiction, or for which they possess a valid possession certificate, permit or invoice from the department or department permitted facility.

B. Game taken by another "Possession certificate": It is unlawful for any person to possess any protected species, or parts thereof, taken by another person except as follows: Any person may have in their possession or under their control any protected species or parts thereof that have been lawfully taken by another person, if they possess a possession certificate which shall be provided by the lawful possessor of the

protected species, or parts thereof, to the person receiving the animal or parts and which shall contain the following:

- (1) the first and last name of the person receiving the protected species or parts;
- (2) the kind and number of game or furbearer parts donated or provided to a taxidermist, meat processor or any other similar business;
- (3) the date and GMU where the game or furbearer was lawfully taken;
- (4) the lawful possessor's name, phone number, address, and the hunting, fishing or trapping license number, or the permit, certificate or invoice number under which the protected species was lawfully taken;
- (5) the date and place of the donation or transaction;
- (6) the reason the lawful possessor transferred the animal or parts to the receiver (i.e., donation, transportation, taxidermy, meat processing etc). Any possession certificate which only authorizes temporary possession (ie. taxidermist or meat processor) shall have a date of estimated return to the original lawful possessor; and
- (7) the signature of both the person receiving and the person transferring the animal or parts.

C. Retention of live animals: It is unlawful to retain protected species in a live condition except under permit or license issued by the director. It is unlawful to sell, attempt to sell or possess live protected species in New Mexico, including captive raised animals, except as allowed by permit issued by the director or while in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected animal being transported.

D. Sale of protected species parts: Only skins, heads, antlers, horns, rendered fat, teeth or claws of legally taken or possessed protected species, all parts of furbearers, and feathers from non-migratory game birds may be bartered or sold (internal organs of big game species may not be sold). The disposer must supply to the recipient a written statement which shall contain the following:

- (1) the first and last name of the person receiving the protected species or parts;
- (2) description of the parts involved;
- (3) the date and GMU where the game was taken;

(4) the disposer's name, phone number, address, and the number of either the hunting license, permit, certificate or invoice under which the game was taken;

(5) the date and place of the transaction or sale; and

(6) the signature of both the person selling and the person purchasing the parts.

E. Possession of game animal parts found in the field: It is unlawful to possess heads, horns, antlers, or other parts of protected species found in the field without an invoice or permit from the department, with the exception of obviously shed antlers. All shed antlers collected in violation of any state or federal land closure, in violation of criminal trespass, in violation of the habitat protection act, while driving off road on public land or on a closed road on public land remain property of the State of New Mexico and shall be seized.

[19.31.10.9 NMAC - Rp, 19.31.10.9 NMAC, 4/1/2023]

19.31.10.10 PERMITS AND LICENSES ISSUED:

A. Proof of license: Each licensee or permittee must have a copy of their hunting, fishing or trapping license or their department issued collection permit in their possession while hunting, fishing, trapping or collecting protected species in New Mexico. Licenses or permits may be in electronic or paper format. The authorization number for fishing or game hunting is also valid pursuant to Subsection C of Section 17-3-5 NMSA 1978. The license, authorization or permit must be produced upon request by any law enforcement officer authorized to enforce Chapter 17 NMSA 1978.

B. Permits and licenses, other than hunting, fishing or trapping licenses, which authorize the holder to import, collect, handle, purchase, possess, barter, transfer, transport, sell or offer to sell species listed as group II, III or IV on the directors "species importation list" or any protected species may only be issued by the director or their designee as authorized by Chapter 17 NMSA 1978 and 19.35 NMAC.

C. Permit or license provisions: Specific provisions for applications, conditions, reporting and other stipulations for permits or licenses will be provided by the department with each permit and license.

D. Violation of permit or license provisions or importation/possession of un-permitted wildlife:

(1) It is unlawful for any person receiving any permit or license pursuant to state game commission rule to violate any provision of state game commission rule or any provision listed on the permit or license.

(2) Any violation of Chapter 17 NMSA 1978, state game commission rule or any permit provision shall render that permit or license invalid. If such an invalidated permit or license authorized possession of any species listed as group II, III or IV on the directors "species importation list" or any protected species, the animals shall be subject to seizure by any officer authorized to enforce the provisions of Chapter 17 NMSA 1978.

(3) It is unlawful to import, collect, handle, purchase, possess, barter, transfer, transport, sell or offer to sell any live animal listed as group II, III or IV on the directors "species importation list" or any protected species without a department issued permit or license or contrary to the provisions of Chapter 17 NMSA 1978, state game commission rule or any department issued permit.

(4) Any animal possessed contrary to this section shall be subject to seizure by any officer authorized to enforce the provisions of Chapter 17 NMSA 1978. Any dangerous, venomous, invasive species or any diseased animals may be destroyed to protect human safety, native wildlife populations or livestock.

(5) Any person who has had an animal seized from them shall have no more than 30 days to arrange for the illegal animal to be transported out of New Mexico and pay for the care and transportation rendered. Failure to make these arrangements within 30 days will result in the animal being considered abandoned. Abandoned animals will be disposed of at the discretion of the department.

E. Release of wildlife: It is unlawful for any person or persons to release, intentionally or otherwise; or cause to be released in this state any mammal, bird, fish, reptile or amphibian, except domestic mammals, domestic fowl, or fish from government hatcheries, without first obtaining a permit from the department except department employees while performing their official duties or those individuals working on behalf of the department when directed by a department employee.

[19.31.10.10 NMAC - Rp, 19.31.10.10 NMAC, 4/1/2023]

19.31.10.11 USE OF VEHICLES, BOATS, AIRCRAFT AND ROADS IN HUNTING:

A. Shooting from the road: It is unlawful to shoot at, wound, take or attempt to take any protected species on, from, across or from within the right-of-way fences of any graded, paved or maintained public road. In the absence of a right-of-way fence it is unlawful to shoot at, wound, take or attempt to take any protected species from any part of the graded, paved or maintained surface of the public road. "Public road" as used herein shall mean any road, street or thoroughfare which is open to the public or which the public has a right of access and which has been paved, graded, maintained or any road, street or thoroughfare which has been paved, graded or maintained using public funds.

B. Shooting at artificial wildlife from the road: It is unlawful to shoot at artificial wildlife on, from, across or from within the right-of-way fences of any graded, paved or

maintained public road. In the absence of a right-of-way fence it is unlawful to shoot at any artificial wildlife from any part of the graded, paved or maintained surface of the public road. "Public road" as used herein shall mean any road, street or thoroughfare which is open to the public or which the public has a right of access and which has been paved, graded, maintained or any road, street or thoroughfare which has been paved, graded or maintained using public funds.

C. Shooting from within or upon a vehicle, boat or aircraft: It is unlawful to shoot at any protected species from within or upon a motor vehicle, motor-driven boat, sailboat or aircraft except as allowed by a department issued permit. A person may shoot from any motor-driven boat when, the motor has been completely shut off and its progress therefrom has ceased.

D. Harassing protected species: It is unlawful, at any time, to pursue, harass, harry, drive or rally any protected species by any means except as allowed while legally hunting, or as otherwise allowed by Chapter 17 NMSA or state game commission rule.

E. Hunting after air travel: It shall be unlawful for anyone to hunt for or take any protected species until after the start of legal hunting hours on the day following any air travel except by regularly scheduled commercial airline flights or legitimate direct flight to the final destination.

F. Use of aircraft for spotting game: It shall be unlawful to use aircraft or drone to spot or locate and relay the location of any protected species to anyone on the ground by any means of communication or signaling device or action.

G. Using information gained from air flight:

(1) It shall be unlawful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use of any aircraft until 48 hours after such aircraft use.

(2) It shall be unlawful to hunt for or to take, or assist in the hunting for or taking of, any protected species with the use of information regarding location of any protected species gained from the use of any drone at any time.

H. Aircraft, drone and vehicle exemptions to this rule: The Director may exempt a person from the prohibition of utilizing an aircraft, drone or vehicle for management purposes.

I. Vehicle off of established road or driving on a closed road:

(1) During the seasons established for any protected species, it is unlawful to drive or ride in a motor vehicle which is driven off an established road on public land or

to drive or ride in a motor vehicle on a closed road on public land, when the vehicle bears a licensed hunter, angler or trapper.

(2) During the seasons established for any protected species, it is unlawful to drive or ride in a motor vehicle which is driven off an established road on private land without written permission, when the vehicle bears a licensed hunter, angler or trapper.

(3) It is unlawful to drive or ride in a motor vehicle which is being driven off an established road when gathering or searching for shed antlers on public land or to drive or ride in a motor vehicle on a closed road when gathering or searching for shed antlers on public land.

(4) Exception: Snowmobiles and to retrieve lawfully taken game in an area not closed to vehicular traffic.

(5) Public land as used in this section shall mean any federally owned or managed property, any state owned or managed property, any private property which is part of a unitization hunting agreement, ranch wide agreement or unit wide agreement for the species being hunted, any private property which the department has paid for public access for the species being hunted or any New Mexico state game commission owned or managed property.

J. Mobility-Impaired (MI) hunters:

(1) Shooting from a vehicle: The holder of a MI card is authorized to shoot at, take or attempt to take protected species during their respective open seasons, with the appropriate license, from a stationary motor-driven vehicle only if the vehicle has been parked completely off of the established road's surface and only when the established road has no right-of-way fence. The holder of a MI card may not shoot at, take or attempt to take any protected species from within the right-of-way fence on any established road.

(2) Crossbow use: The holder of a MI card may use a crossbow during any bow hunt.

(3) Assistance for MI hunters: The holder of a MI card may be accompanied by another person, who is designated in writing, to assist in taking or attempting to take any big game animal which has clearly been wounded by the licensed MI hunter. The person so designated must carry that written authorization from the MI hunter at all times while in the field in order to act as their assistant. A MI hunter may only designate one person at a time to assist them. Any person assisting a MI hunter must follow the sporting arm type designated for that hunt and all other laws and rules which apply to a licensed hunter.

19.31.10.12 BIG GAME AND TURKEY:

A. Legal hunting hours: A person may only take or attempt to take any big game species or turkey during the period from one-half hour before sunrise to one-half hour after sunset. It is unlawful to take or attempt to take big game or turkey outside of legal hunting hours.

B. Killing out of season: It is unlawful to take or attempt to take any big game species or turkey outside of the established hunting season.

C. Bag limit: It is unlawful for any person to take any big game species or turkey other than the legal bag limit as specified on their big game or turkey license or as indicated by the hunt code, or for any bear hunter to take a sow with cub(s), or any cub less than one year old, or for any cougar hunter to take a spotted cougar kitten or any female accompanied by spotted kitten(s).

D. Exceeding the bag limit on big game:

(1) It is unlawful for any person to hunt for or take more than one animal of any big game species per year unless otherwise allowed by state game commission rule.

(2) It is unlawful for any person to hunt for or take more than two cougars per year unless otherwise allowed by state game commission rule.

E. Exceeding the bag limit on turkey: It is unlawful for any person to hunt for or take more than two bearded turkeys during the spring turkey season or more than one turkey during the fall turkey season unless otherwise specifically allowed by 19.31.16 NMAC.

F. Proof of sex or bag limit: It is unlawful for anyone to transport or possess the carcass of any big game species or turkey without proof of sex or bag limit (except donated parts when accompanied by a proper possession certificate). Proof of sex or bag limit shall be:

(1) Bear and cougar – External genitalia of any bear or cougar killed shall remain naturally attached to the pelt and be readily visible until the pelt has been inspected and pelt-tagged by a department official.

(2) Barbary sheep. The horns of any Barbary sheep taken shall remain naturally attached to the skull or skull plate. If the horns of any female Barbary sheep are 18 inches or longer the external genitalia shall remain naturally attached to the hide/carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(3) Deer – The antlers of any buck deer taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage. The scalp and both ears of any antlerless deer or the naturally attached female genitalia shall accompany the carcass in the same manner.

(4) Elk – The antlers of any bull elk taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage. The scalp and both ears of any antlerless elk or the naturally attached female genitalia shall accompany the carcass in the same manner.

(5) Pronghorn - The horns, scalp and both ears of any pronghorn taken shall remain naturally attached to the skull or skull plate and must accompany the carcass until arriving at a residence, taxidermist, meat processing facility or place of final storage. If the horns of a female pronghorn are longer than its ears, and the bag limit is F/IM, the external genitalia must remain naturally attached to the hide/carcass, as appropriate, and be visible to provide proof of legal bag limit until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(6) Bighorn sheep - The horns of any ram shall remain naturally attached to the skull or skull plate and the external genitalia of any ewe taken shall remain naturally attached to the hide/carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(7) Persian ibex - The horns of any ibex shall remain naturally attached to the skull or skull plate. If the horns of any female ibex are 20 inches or longer the external genitalia shall remain naturally attached to the hide/carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(8) Turkey – When the bag limit is a bearded turkey, the beard and a small patch of feathers surrounding the beard shall remain with the carcass, and be visible until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(9) Javelina – The skull of each javelina shall be proof of bag limit and must be retained until arriving at a residence, taxidermist, meat processing facility or place of final storage.

(10) Oryx - The horns of any oryx taken shall remain naturally attached to the skull or skull plate until arriving at a residence, taxidermist, meat processing facility or place of final storage.

G. Tagging of harvested game:

(1) Physical Tagging of harvested game: Licensed hunters of any big game species or turkey, who have chosen to receive a department issued tag at application or purchase, upon harvesting an animal, shall immediately and completely notch out the

appropriate month and day on the carcass tag. Prior to moving any part of the carcass from the kill site, the licensed hunter shall remove the entire backing material from the carcass tag and adhere it to the appropriate location on the carcass leaving the entire face of the tag visible. If the species or sex harvested requires the use of an antler or horn tag the licensed hunter shall, prior to moving any part of the carcass from the kill site, remove the entire backing material from the antler/horn tag and adhere it to the appropriate location on the antler or horn leaving the entire face of the tag visible. All tags shall remain attached to the carcass, antlers or horns until it is delivered to a meat processing facility, taxidermist, placed in final cold storage or if required, is inspected and documented or pelt tagged by a department official. The antler/horn tag is not required to be attached or used on antlerless/hornless animals.

(2) Electronic Tagging of harvested game: Licensed hunters of any big game species or turkey, who have chosen to electronically tag their game at application or purchase, upon harvesting an animal, shall immediately access the department's electronic tagging (e-tag) application to receive an e-tag number specific to the license. The licensed hunter will legibly write the e-tag number, customer identification number, and the date of harvest on any durable material using permanent ink and shall attach one piece to the big game species or turkey on the appropriate location on the carcass and another piece to the antler or horns as required prior to moving any part of the carcass from the kill site. All e-tag pieces shall remain attached to the carcass, antlers or horns until it is delivered to a meat processing facility, taxidermist, placed in final cold storage or if required, is inspected and documented or pelt tagged by a department official. An antler/horn e-tag is not required to be attached or used on antlerless/hornless animals.

(3) The proper location to attach all carcass tags and e-tags:

(a) The proper location to attach the carcass tag or e-tag on any game species is to attach it conspicuously on the hock tendon on either hind leg.

(b) The proper location to attach the carcass tag or e-tag on javelina is to adhere it to the head/skull around the nose.

(c) The proper location to attach the carcass tag or e-tag on a turkey is to adhere it around the leg above the foot and below the feathers on the thigh.

(d) The proper location to attach the carcass tag or e-tag on a bear or cougar is to adhere it around the ankle area of the hide above the foot. Bear and cougar carcass tags authorize possession of those animals until pelt tagged in accordance with state game commission rule or for five days from date of kill, whichever comes first.

(i) Any bear or cougar killed shall be tagged with a pelt tag furnished free of charge by the department.

(ii) The hunter who kills the bear or cougar or the hunter's designee must present the unfrozen skull and pelt to a department official for tooth removal and pelt tagging within five calendar days from the date of harvest, before the pelt can be frozen, processed, tanned or salted by a taxidermist, or before taking the pelt out of New Mexico, whichever comes first.

(iii) Any hunter who appoints a designee to present the skull and pelt for pelt tagging is required to contact a conservation officer prior to having the pelt inspected and tagged.

(iv) The pelt tag shall remain attached until the pelt is tanned.

(v) Skulls with mouths closed may not be accepted until the mouth is opened by the hunter or designee.

(vi) Licensed bear or cougar hunters or their designees who provide false or fraudulent information regarding the required information including, but not limited to, sex, date or location of harvest shall be assessed 20 revocation points pursuant to 19.31.2 NMAC.

(e) The proper location to attach an antler tag or e-tag is to adhere the tag around the main beam of the antler between any of the points or tines as close to the base as possible to prevent the tag from coming off.

(f) The proper location to attach a horn tag or e-tag is to adhere the tag around the horn as close to the base as possible to prevent the tag from coming off.

H. It is unlawful:

(1) for any licensed hunter to fail to properly tag their big game species or turkey with the carcass and antler tag or e-tag as prescribed;

(2) to possess any portion of a big game or turkey carcass that does not have a properly notched carcass tag attached to it or a completed e-tag attached to it, except lawfully taken game that is accompanied by a proper possession certificate or department invoice;

(3) to possess any bear or cougar or parts thereof which has not been pelt tagged within five days of kill, has been taken out of state prior to pelt tagging or has not otherwise been pelt tagged in accordance with state game commission rule;

(4) for any person to transport or possess the carcass of any big game species or turkey without proof of sex naturally attached or proof of legal bag limit until the carcass arrives at a residence, taxidermist, meat processing facility, place of final storage or if required, is inspected and documented or pelt tagged by a department

official, except lawfully taken game that is accompanied by a proper possession certificate or department invoice;

(5) to use a carcass or antler tag that is cut, torn, notched or mutilated. Cut, torn, notched or mutilated tags are no longer valid for the take of a big game species or turkey; or

(6) to use a previously issued carcass or antler tag once a duplicate has been obtained or to use the carcass, antler tag or e-tag of any other person. Any previous carcass or antler tag assigned to a license which is replaced by a duplicate is void and no longer valid for the take of a big game species or turkey.

I. Once-in-a lifetime hunts: It is unlawful for any person to apply for, receive or use any once-in-a lifetime license if they have ever held a once-in-a lifetime license for that species which has the same bag limit or eligibility requirements.

J. Youth-only (YO), mobility-impaired (MI), veteran and military-only (MO) hunts or military discounted licenses: It is unlawful for anyone to apply for or receive or use any YO, MI, veteran or MO license or any military discounted license except as allowed by state game commission rule.

K. License sale: It is unlawful for anyone to sell or offer for sale any hunting, fishing or trapping license, permit or tag which has been issued by the department, or to sell or offer for sale any commercial collection permit or scientific collection permit.

L. Use of dogs in hunting:

(1) It is unlawful to use dogs to hunt or pursue big game species or turkey, except for bear and cougar.

(2) Dogs may be used only to hunt bear and cougar during open seasons unless otherwise restricted. It is unlawful to:

(a) hunt for or pursue bear or cougar with dog(s) on the Valle Vidal except holders of bear entry permits for the hunting of bear only;

(b) hunt for or pursue bear or cougar with dog(s) during any September big game bow season statewide except as otherwise allowed by state game commission rule;

(c) release dog(s) to pursue or hold bear or cougar outside of legal hunting hours or during closed season or in a closed area or zone;

(d) to pursue bear or cougar with dog(s) without the licensed hunter, who intends to kill or who kills the bear or cougar, present continuously from the initial release of any dog(s).

(3) It is unlawful to use dog(s) to assist in the recovery of wounded or dead big game or turkey except as follows:

(a) Dog(s) may be used to assist in the recovery of wounded game provided that no more than two dogs may be used at any one time to locate a wounded or dead deer, elk, pronghorn, bighorn sheep, Barbary sheep, oryx, Persian ibex, javelina or turkey.

(b) Dog(s) used to assist in the recovery of deer, elk, pronghorn, bighorn sheep, Barbary sheep, oryx, Persian ibex, javelina or turkey shall be leashed and under the control of the handler at all times and cannot be used to pursue or harass wildlife. No person assisting in the recovery of a wounded animal may shoot or kill the animal being tracked unless they are a licensed hunter for that species, season and area and they intend to tag the animal as their own.

M. Use of bait: It is unlawful for any person to take or attempt to take any big game species or turkey by use of baiting or for any person to take or attempt to take big game or turkey from an area which has not been completely free of bait (including in feeders) for at least 10 days. Preexisting legitimate livestock salt and mineral and natural attractants such as cultivated fields, water, orchards, natural kills, carrion or offal are not considered bait unless they have been moved or placed there from another location. It is unlawful to create, maintain or use any bait station in hunting bear or cougar. It is unlawful to use any scent attractant in hunting bears.

N. Live animals: It is unlawful to use live protected species as a decoy in taking or attempting to take any big game species or turkey.

O. Hunting captive big game species: It is unlawful to take or attempt to take any big game species within any fence or enclosure, or by use of any fence or enclosure, which significantly restricts or limits the free ingress or egress of that big game species except as allowed by permit from the department. Any fence which is 7.5 feet tall or taller shall be considered game proof and hunting within any such enclosure, even if there are open gate(s), is unlawful. Exception: Net wire fencing commonly used as sheep or goat fencing which is not taller than four feet is not considered to significantly restrict or limit the free ingress or egress of any protected species.

P. Use of calling devices: It is unlawful to use any electronically or mechanically recorded calling device in taking or attempting to take any big game species or turkey, except javelina, bear and cougar.

Q. Automatic firearms: It is unlawful to take or attempt to take any big game species or turkey with a fully automatic firearm.

R. Bullets: It is unlawful to take or attempt to take any big game species or turkey by the use of a prohibited bullet.

S. Drugs and explosives: It is unlawful to use any form of drug to capture, take or attempt to take any big game species or turkey unless specifically authorized by the department, or to use arrows driven by explosives, gunpowder or compressed air.

T. Legal sporting arm types:

(1) It is unlawful to use any sporting arm type for big game species other than those defined under big game sporting arms except for cougar and javelina which may be taken with those defined under any sporting arm. For cougar and javelina, compressed air guns must be .22 caliber or larger and shotguns must fire a single slug or #4 buckshot or larger.

(2) It is unlawful to use any sporting arm type for a big game species which does not correspond with the hunt code authorized sporting arm type.

(3) It is unlawful to use sporting arms for turkey other than a shotgun firing shot, bow or crossbow.

U. Hunting on the wrong ranch, in the wrong area or in the wrong GMU: It is unlawful for any person to hunt in any location, GMU or ranch other than that area specified on their license or permit unless otherwise allowed by state game commission rule.

(1) A landowner whose contiguous deeded property extends into an adjacent GMU(s) may enter into a written agreement with the department to hunt big game on the contiguous deeded property of the ranch. This permission shall be requested annually, at the local department office, in person or in writing by the landowner at least one week prior to the desired hunt dates. The landowner must show proof of ownership and property location. The season dates, bag limit and sporting arm type will be determined by the GMU where the majority of the deeded property lies. Landowners who enter into this agreement may not hunt the GMU where the minority of the contiguous property lies during that minority GMU's season dates if different from the majority dates. Unit-wide and ranch-wide properties are not eligible for this agreement for those species for which the unit-wide or ranch-wide agreement applies.

(2) A licensed big game hunter may hunt a landowner's contiguous private property which extends into an adjoining GMU(s) only when a department agreement exists and must adhere to the department issued agreement unless otherwise restricted by state game commission rule.

V. Restricted areas on White Sands missile range:

(1) It is unlawful to drive or ride in a motor vehicle into an area signed "no hunting" or otherwise restricting hunting or as documented on a map or as presented during the hunt's briefing, except if the hunter or driver is escorted by official personnel;

(2) It is unlawful for a licensed hunter to enter an area signed "no hunting" or otherwise restricting hunting except if the hunter is escorted by official personnel; and

(3) It is unlawful for a licensed security badged hunter to hunt or take any oryx in an area other than their "to be assigned" area.

W. Validity of licenses and unitizations: All big game and turkey licenses shall be valid only for the specified dates, eligibility requirements or restrictions, legal sporting arms, bag limit, and area specified by the hunt code printed on the license including those areas designated as public or private land per a current unitization agreement between the department and U. S. bureau of land management, state land office or other public land holding entity.

X. Hunting on public land with a private land only license: It is unlawful to hunt big game on any public land with a private land only license. Public land as used in this section shall mean any federally owned or managed property, any state owned or managed property, or any private property which is part of a unitization hunting agreement, ranch wide agreement or unit wide agreement for the species being hunted, any private property which the department has paid for public access for the species being hunted or any New Mexico state game commission owned or managed property.

Y. Collars or tracking devices: It is unlawful to attach any collar or electronic tracking device to any big game species or turkey except as specifically authorized by the department.

Z. License purchase: Bear or cougar hunters must purchase their bear or cougar license at least two calendar days prior to taking or attempting to take any bear or cougar. It is unlawful for any bear or cougar hunter to take or attempt to take a bear or cougar within two calendar days of purchasing their license.

AA. Zones: It is unlawful to pursue, take or attempt to take a bear or cougar in a closed zone. Zones will close pursuant to 19.31.11 NMAC.

BB. Valle Vidal: It is unlawful to hunt bear or cougar on the Valle Vidal except for properly licensed bear or cougar hunters that also possess a Valle Vidal elk hunting license (only during the dates and with the sporting arm type specified on their elk license) and holders of a Valle Vidal bear entry permit (only during their entry permit hunt dates).

CC. Cougar ID: It is unlawful for any person to hunt for cougar without having completed the department's cougar ID course and having the verification code printed on their license.

DD. Use of cellular, Wi-Fi or satellite cameras: It is unlawful for any person to use any cellular, Wi-Fi or satellite camera for the purpose of hunting or scouting for any big game animal. Exception: This section does not apply to cellular or satellite

phones which are kept on one's person and not used remotely or department employees and their designees while performing their official duties.

EE. It shall be illegal to shoot any turkey on a roost.

[19.31.10.12 NMAC - Rp, 19.31.10.12 NMAC, 4/1/2023]

19.31.10.13 UPLAND GAME AND MIGRATORY GAME BIRDS:

A. Upland game hunting hours: Upland game species may be hunted or taken only during the period from one-half hour before sunrise to one-half hour after sunset. It is unlawful to take or attempt to take upland game outside of legal hunting hours.

B. Killing out of season: It is unlawful to kill any migratory game bird or upland game out of season.

C. Exceeding the bag limit: It is unlawful for any person to take or attempt to take more than one daily bag limit of any migratory game bird species or upland game species allowed by state game commission rule. There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

D. Possession limit: It is unlawful for any person to possess more than one possession limit of any migratory game bird or upland game species.

E. Proof of species or sex: It is unlawful for any person to possess any migratory bird or upland game without proof of species or sex as required below:

(1) One foot shall remain attached to each quail taken until the bird has arrived at a residence, taxidermist, meat processing facility or place of final cold storage.

(2) The head or one leg of each pheasant taken must remain attached to the bird until the bird arrived at a residence, taxidermist, meat processing facility or place of final cold storage.

(3) One fully feathered wing must remain attached to all migratory game birds, except dove and band-tailed pigeon, until the bird has arrived at a residence, taxidermist, meat processing facility or place of final cold storage.

F. Youth-only (YO), mobility-impaired (MI) and military-only (MO) hunts or military discounted licenses: It is unlawful for anyone to apply for or receive or use any YO, MI, or MO license or any military discounted license except as allowed by state game commission rule.

G. License sale: It is unlawful for anyone to sell or offer for sale any hunting, fishing or trapping license, permit or tag which has been issued by the department, or to sell or offer for sale any commercial collection permit or scientific collection permit.

H. Use of dogs in hunting: Dog(s) may be used to hunt migratory game bird species and upland game. It is unlawful to pursue migratory game birds or upland game with dog(s) outside of the hunting seasons established except in conjunction with a permitted event.

I. Use of bait: It is unlawful for any person to take or attempt to take any migratory game bird species or upland game by use of baiting or for any person to take or attempt to take migratory game birds or upland game from an area which has not been completely free of bait (including in feeders) for at least 10 days. Preexisting legitimate livestock salt and mineral and natural attractants such as cultivated fields, water, orchards, carrion or offal are not considered bait unless they have been moved there from another location.

J. Live animals: It is unlawful to use live protected species as a decoy in taking or attempting to take any migratory game bird species or upland game species.

K. Use of calling devices: It is unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any migratory game bird or upland game species. During the light goose conservation order hunt dates, electronic calling devices are allowed for the take of light geese.

L. Automatic firearms: It is unlawful to take or attempt to take any migratory game bird or upland game species with a fully automatic firearm.

M. Non-toxic shot: It is unlawful for any person to use or possess any shotgun shell loaded with anything other than non-toxic shot or for any person using a muzzle-loading shotgun to possess anything other than non-toxic shot while hunting for any migratory game bird species, except when hunting dove, band-tailed pigeon or eastern sandhill crane. Non-toxic shot is required for all migratory game birds and upland game species on Bernardo WMA, La Joya WMA, and Huey WMA.

N. Drugs and explosives: It is unlawful to use any form of drug to capture, take or attempt to take any migratory game bird or upland game species unless specifically authorized by the department, or to use arrows driven by explosives, gunpowder or compressed air.

O. Legal sporting arms and ammunition: It is unlawful to use sporting arms other than those listed below to take or attempt to take of any migratory game bird or upland game species.

- (1) The following are legal sporting arms for pheasants and quail:

(a) shotguns firing shot;

(b) bows; and

(c) crossbows.

(2) The following are legal sporting arms for dusky grouse, chukar, Eurasian collared-dove, Abert's squirrels, Arizona gray squirrels, fox squirrels, eastern gray squirrels and red squirrels:

(a) shotguns firing shot;

(b) rimfire firearms;

(c) muzzle-loading firearms;

(d) bows;

(e) crossbows; and

(f) compressed air guns, .177 caliber or larger.

(3) The following are legal sporting arms for migratory game birds:

(a) shotguns firing shot, shotguns shall not be capable of holding more than three shells except while hunting light geese during the light goose conservation order hunt dates, as defined in 19.31.6 NMAC;

(b) bows; and

(c) crossbows.

P. Areas closed to migratory game bird hunting: It shall be unlawful to hunt migratory game birds in that portion of the stilling basin below Navajo dam lying within a line starting from N.M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately one-quarter mile downstream, southwest along the fence to N.M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

Q. Collars or tracking devices: It is unlawful for any person to attach any collar or electronic tracking device to any migratory game bird or upland game except as specifically authorized by the department.

R. Use of traps and snares: It is unlawful for any person to intentionally set any trap, snare, cage, box or other device to capture or attempt to capture any migratory game bird or upland game or for any person to intentionally capture or attempt to

capture any migratory game bird or upland game unless specifically allowed by license or permit.

[19.31.10.13 NMAC - Rp, 19.31.10.13 NMAC, 4/1/2023]

19.31.10.14 FISHING:

A. Angling: Game fish may be taken by angling in all waters that are open for fishing.

B. Season and hours: It is unlawful to fish in any water during a closed season or to fish in any water outside of the legal fishing hours as prescribed in 19.31.4 NMAC.

C. Closed waters: It is unlawful to fish in any water closed by state game commission rule.

D. Ice fishing: It is unlawful to take fish from or through the ice on the following waters: Santa Cruz lake, Bonito lake, and Springer lake. Ice fishing is legal on all other waters unless otherwise prohibited.

E. Hatchery waters: It is unlawful to take or attempt to take fish from the waters of any fish hatchery or rearing ponds owned or operated by state or federal agencies. Exception: During open season, angling shall be permitted in the Glenwood pond at the Glenwood state fish hatchery, Red River hatchery pond at the Red River state fish hatchery, Brood pond at Seven Springs state fish hatchery, Laguna del Campo at Los Ojos state fish hatchery, and settling ponds at Rock Lake state fish hatchery. Additionally, the director may expressly authorize other limited fishing at the state's fish hatcheries based on management needs.

F. Trotlines: Game fish may be taken by use of trotlines in any water except those listed below, however:

- (1) It is unlawful for any person to set more than one trotline at a time.
- (2) It is unlawful to tie or join together trotlines belonging to two or more persons.
- (3) It is unlawful for any trotline to have more than 25 angling hooks.
- (4) It is unlawful for a person who has set or maintained a trotline to not personally visit and inspect it at least once every calendar day and remove or release all game fish which are caught.
- (5) It is unlawful for anyone to check, pull up or otherwise tamper with another's trotline.

(6) It is unlawful for anyone to set, check or maintain a trotline which is not tagged or marked as follows:

(a) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the angler's department issued customer identification number (CIN).

(b) An unlicensed angler 11 years of age and younger shall list their department issued customer identification number (CIN) or their name and date of birth.

(7) It is unlawful to set or use a trotline in any public water with the following exceptions:

Drainage:	Rivers:	Lakes:
Rio Grande drainage	Rio Grande mainstem from its confluence with the Chama river downstream to New Mexico/Texas state line and Chama river mainstem from the northern boundary of the Monastery of Christ in the Desert downstream to Abiquiu lake	Abiquiu lake, Cochiti lake, Elephant Butte lake, and Caballo lake
Pecos river drainage	Pecos river mainstem downstream of I-25 (excluding Villanueva state park) to the New Mexico/Texas state line and all tributaries within Chavez, De Baca, Eddy, Guadalupe, and San Miguel (downstream of I-25) counties	Santa Rosa lake, Sumner lake, lake Avalon, Brantley lake, Six Mile lake, Ten Mile reservoir, and Red Bluff reservoir
Canadian river drainage	Canadian river mainstem and all tributaries downstream and east of I-25 to the New Mexico/Texas state line	Stubblefield lake, Laguna Madre, Maxwell lake 14, Springer lake, Conchas lake, and Ute lake
San Juan river drainage	San Juan river mainstem from U.S. 64 bridge at Blanco downstream to the Navajo Nation boundary at the Hogback canal diversion	Navajo lake

Gila river and San Francisco river drainage	Gila river mainstem from its confluence with the east fork downstream to the New Mexico/Arizona state line and San Francisco river mainstem from U.S. 180 bridge at Alma downstream to the New Mexico/Arizona state line	None
Statewide	As described above	Class A lakes and lakes, ponds, and ranch tanks not fed by public waters and not open to public fishing

(8) Any officer authorized to enforce Chapter 17 NMSA 1978 and state game commission rules may seize and destroy any trotlines not set or checked in accordance with this subsection.

G. Spearfishing and bow fishing:

(1) Game fish may be taken by spearfishing and bow fishing only in lakes and reservoirs open to fishing. It is unlawful to spearfish or bow fish in any special trout water as designated in 19.31.4 NMAC or in any river or stream.

(2) It is unlawful to take any largemouth bass by spearfishing or bow fishing in the following waters: Bill Evans lake, Clayton lake, and lake Roberts.

H. Noodling or hand fishing: It is unlawful to catch any game fish by hand without the use of angling equipment.

I. Use of nets: It is unlawful to use cast nets, dip nets, seines or gill nets to capture and retain any protected species of fish from any water unless specifically allowed by permit or state game commission rule. Dip nets may be used to assist in landing fish taken by legal angling methods.

J. Illegal device or substance: It is unlawful to use any device or substance capable of catching, stupefying or killing fish except as permitted by state game commission rule.

K. Bait:

(1) It is unlawful to use protected game fish or the parts thereof as live or dead bait, except the genus *Lepomis* (sunfish), taken by legal means may be used as

live or dead bait in the water from which they were taken, and the roe, viscera and eyes of any legally taken game fish may be used.

(2) It is unlawful to use bullfrogs or bullfrog tadpoles as bait, or to possess any live bullfrogs or live bullfrog tadpoles while fishing.

L. Use of bait fish: It is unlawful to use or possess any baitfish while angling except as follows:

(1) The following baitfish species can be used live or dead unless otherwise prohibited:

Water:	Approved bait fish species:
Rio Grande drainage	Fathead minnow, red shiner and shad
Elephant Butte and Caballo reservoirs	Fathead minnow, red shiner, shad and golden shiner
Pecos river drainage except for Bitter lake national wildlife refuge and Bottomless lakes state park	Fathead minnow red shiner, and shad
Canadian river drainage	Fathead minnow, red shiner, white sucker and shad
San Juan river drainage	Fathead minnow and red shiner
Gila river and San Francisco river drainages	Fathead minnow

(2) The following bait fish species can only be used as dead bait unless otherwise prohibited:

Water:	Approved dead baitfish species:
Statewide	Common carp

Heron reservoir	White sucker
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(3) Commercially packaged and processed species of fish which are dead or products thereof are not considered bait fish and are legal in all regular waters.

M. Methods for taking bait fish for personal use: Licensed anglers and children 11 years of age and younger may take bait fish for personal use only in waters containing game fish by angling, nets, traps, spears, arrows and seines. All protected species of fish taken in seines, nets and traps shall be immediately returned to the water.

N. Illegal taking of bait fish:

(1) It is unlawful for any person, except children 11 years of age and younger, to take bait fish from any water without having a valid fishing license.

(2) It is unlawful for any person to take bait fish from any water for commercial use without a permit issued from the department.

(3) It is unlawful for licensed minnow dealers to violate any of the provisions of their license or permit.

O. Permits for taking bait fish: The director may issue permits for the use of nets, seines, traps or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking and duration of the permit. The permittee shall report monthly, to the department, the species, numbers and poundage of bait fish taken during the preceding month.

P. Limit on angling hooks: It is unlawful to angle with more than two barbless lures or flies with single point angling hooks on a single line when fishing the special trout water on the San Juan river designated in Subsection A of 19.31.4.11 NMAC.

Q. Eradication of fish: In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers the director may permit licensed anglers and children 11 years of age and younger to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission the director may specify bag and possession limits and manner and method of taking for such waters.

R. Possession and release of live game fish:

(1) It is unlawful to release any live game fish into any water in the state, except for fish which were legally caught from that water, without a permit issued by the department.

(2) It is unlawful to possess or transport any live game fish away from the water from which they were caught without a permit issued by the department.

(3) Exception: Department employees or federal employees while performing their official duties or those individuals working on behalf of the department when directed by a department employee.

S. Possession of undersized fish: It is unlawful for any person to have game fish in their possession which do not meet the minimum length requirements as specified in 19.31.4 NMAC.

T. Number of fishing poles or lines: It is unlawful to angle with more than one pole or line without having purchased a current two rod validation during the current license year. It is unlawful under any circumstance to angle with more than two poles or lines. A trotline shall not count toward an anglers limit on fishing poles or lines.

U. Exceeding daily bag limit: It is unlawful to exceed the daily bag limit of any protected fish species, as specified in 19.31.4 NMAC.

V. Exceeding possession limit: It is unlawful to exceed the possession limit of any protected fish species, as specified in 19.31.4 NMAC.

W. Exceeding daily bag limit or possession limit - Penalty Assessment: Any person exceeding the daily bag limit or the possession limit by two fish or less shall be offered a penalty assessment.

X. Snagging game fish: It is unlawful to snag game fish or to keep any snagged game fish except Kokanee salmon during the special Kokanee salmon season as specified in 19.31.4 NMAC.

Y. Special trout waters: Only barbless lures or flies may be used in the special trout waters designated in 19.31.4 NMAC, except in the following waters any legal angling gear and legal bait may be used: the Vermejo river system within Vermejo Park ranch boundaries, Gilita, Little Turkey, and Willow creeks, Mineral creek, Red River from its confluence with the Rio Grande upstream to the lower walking bridge at Red River state fish hatchery, Rio Chama from the river crossing bridge on U.S. 84 at Abiquiu upstream 7.0 miles to the base of Abiquiu dam, Rio Grande, Rio Ruidoso, and Whitewater creek from Catwalk National Recreation Trail parking area upstream to headwaters. It is unlawful to use tackle which does not meet these restrictions in the designated special trout waters.

Z. Attracting or concentrating fish:

(1) Artificial lights: Use of artificial lights is permitted for attracting game fish.

(2) Disturbing the bottom: It is unlawful in all special trout waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

(3) Chumming: Chumming is legal in all waters which have no tackle restrictions.

AA. Violation of age or disability restrictions: It is unlawful for any person to fish in any water with age or disability restrictions when that person does not meet the requirements as specified in 19.31.4 NMAC.

[19.31.10.14 NMAC - Rp, 19.31.10.14 NMAC, 4/1/2023]

19.31.10.15 FURBEARERS:

A. Shooting hours:

(1) Hunting and falconry – Restricted to the period one-half hour before sunrise to one-half hour after sunset except that a licensed furbearer hunter is authorized by the department to hunt for and take raccoons by use of artificial light while hunting at night with a rim-fire rifle or handgun no greater in size than a .22 caliber, shotgun, bow or crossbow during open season. The artificial light used for raccoon hunting must be a headlamp or hand-held flashlight. It is unlawful for any artificial light to be cast from a vehicle while raccoon hunting.

(2) Trapping – There are no restrictions on shooting hours for trapping.

B. Legal methods of taking furbearers shall include any sporting arm, falconry, traps and snares.

C. Dogs are allowed for hunting all furbearers during open season.

D. It is unlawful to kill any mink, otter, black-footed ferret, coatimundi or Pacific (pine) marten.

E. It is unlawful to kill any furbearer outside of the seasons established for that species, except as authorized by state statute or otherwise allowed by game commission rule.

F. Raccoon may be hunted or trapped during the extended season with a current trapper license. Only cage traps and foot encapsulating traps are allowed for raccoon trapping during this period. It is unlawful to hunt or trap raccoon during the extended season contrary to this section.

G. All land sets must be visually checked every calendar day. Water sets must be checked at least once every other calendar day. A licensed trapper may designate an agent to check their set traps and snares on alternating check days, but the licensed trapper must personally check the traps every other check day. Any person may be designated as an agent for any licensed trapper, but the agent must possess written permission from the trapper and a valid trapper license. The permission must include the licensed trapper's full name, contact information, and the agent must know the location of traps.

H. It is unlawful for any person to trap for any furbearer without having successfully completed a department approved trapper education course.

I. It is unlawful for any person to hunt for any furbearer without having successfully completed either the New Mexico trapper education course or a New Mexico law and species identification course.

J. No person may hunt furbearers or nongame, or set any trap or snare on any wildlife management area (WMA), except prairie-chicken wildlife management areas (PCWMA), without a trapper license, habitat management access validation (HMAV) stamp and written permission from the department. Restrictions may be placed on this permission, and this permission may be rescinded at any time for violations of the restrictions. All PCWMA are open to furbearer, coyote and skunk hunting and trapping from November 1 to March 15 annually, without written permission, provided that every person hunting or trapping for any furbearer, coyote or skunk on a PCWMA must have a trapper license and HMAV stamp. It is unlawful to take or attempt to take any furbearer, coyote or skunk on any WMA contrary to this section, contrary to the restrictions written on any department issued permission or without a current trapper license and HMAV stamp.

K. It is unlawful to place or use restricted-use pesticides for the take of any furbearer.

L. The following restrictions shall apply to traps that could reasonably be expected to catch a furbearer:

(1) Each trap or snare must be either permanently marked with, or have a tag securely attached with, a department issued user-identification number or the name and address of the trapper using the trap or snare.

(2) No foothold trap with an outside jaw spread larger than six and one-half inches, or seven inches maximum if laminated above the jaw surfaces, or tooth-jawed trap may be used in making a land set.

(3) No body-grip trap with an inside jaw spread greater than seven inches may be set on land. Body-grip traps with inside jaw spreads of between six and seven inches set on land must be recessed in a cubby at least eight inches from the entrance.

(4) All foothold traps with an inside jaw spread equal to or greater than five and one-half inches used in making a land set shall be off-set a minimum of three-sixteenths of an inch between the contact surfaces of the closed jaws, unless they have been constructed or modified so that a portion of the jaw is padded with a soft material such as rubber or canvas.

(5) No land set shall be placed on public land within one-half mile of:

(a) an established and maintained public campground or boat-launching area;

(b) a designated and signed roadside rest area, public picnic area or trailhead. "Trailhead" as used herein shall mean an officially designated, mapped, maintained and marked terminus of any trail closed to all vehicles having three or more wheels, and is published on the most current map issued by the state or federal land management agency responsible for that property;

(c) an occupied dwelling without written permission of the occupant of the dwelling.

(6) It shall be unlawful to make a land set within 75 feet of the edge of any public road or trail (including any culvert or structure located beneath it) if no right of way fence is present, except on private land. No land set shall be made within any right of way fence on any public road. "Public road" as used herein shall mean any road, street or thoroughfare open to motorized vehicle travel which was constructed and is maintained with public funds and is open to the public; or any road, street or thoroughfare open to motorized vehicle travel that is officially numbered or named on the most current published map issued by a municipal, state or federal agency and is open to the public. "Trail" as used herein shall mean any officially designated, mapped, maintained, and marked path open for public use and published on the most current map issued by a state or federal land management agency.

(7) No land set may be placed within 150 feet of any man-made livestock or wildlife catchment, pond or tank containing water, except on private land.

(8) It is unlawful to place, set or maintain any land set within 30 feet of any bait over two ounces in weight which is visible to airborne raptors. Bones that are entirely free of bait are legal.

(9) No foothold trap with an inside jaw spread larger than seven and one-half inches or body-grip trap with a jaw spread greater than 12 inches shall be used in making a water set.

(10) Body-grip traps used in water sets with a jaw spread of eight inches or more must be submerged in water to their jaw pivot or deeper.

(11) Any snare set on land must have a lock or break-away device which is designed to release or fail when a maximum of 350 pounds of pressure is applied to it. Locks or break-away devices must be attached in a way which leaves no part of the snare attached to an animal when it releases or fails. All snares must be securely anchored and cannot be attached to a drag. Exception: foot snares.

(12) Each foothold trap set on land must have at least two separate swivel points in the anchor chain. At least one of these swivel points must be within six inches of the trap.

M. A release device or catchpole shall be carried by trappers, and all captured animals must be removed or released from any trap or snare at the time of check. In cases where assistance is required for safe release of the animal, or when biological data is sought by the department, the department must be notified as soon as possible.

N. It is unlawful to set any trap or snare on land without stakes, chains, drags or other anchoring such that any furbearer, coyote or wolf caught will be prevented from escaping with the trap.

O. No person may kill any species listed in 19.33.6 NMAC - LIST OF THREATENED AND ENDANGERED SPECIES, including by the use of any body-grip trap or snare.

P. As long as the Mexican wolf is listed as a federally threatened or endangered species in the United States, any trapper who captures a Mexican wolf must report the capture to the U.S. fish and wildlife interagency field team:

(1) as soon as possible to arrange for radio-collaring and release of the wolf;
or

(2) within 24 hours if the wolf is released or has pulled out of the trap.

Q. Tagging:

(1) Every person who takes a bobcat in New Mexico shall present the pelt for tagging in New Mexico prior to transporting the pelt out of the state, prior to selling the pelt, or no later than April 14, annually; whichever occurs first.

(2) Every person who presents a bobcat for tagging shall display a current New Mexico trapper license except residents 11 years of age or younger. Tags may be obtained from any conservation officer or any department office. In addition, pelts may be tagged by New Mexico licensed fur dealers following policies set forth by the department.

(3) It is unlawful for any person to transport across state lines, sell, barter, otherwise dispose of, or possess any bobcat pelt taken in New Mexico that has not been tagged in accordance with this rule.

(4) It is unlawful to present for tagging, or to have tagged with a New Mexico tag, any pelt from a bobcat taken outside of New Mexico.

(5) It is unlawful for any licensed fur dealer to charge a fee for tagging any bobcat. It is unlawful for a licensed fur dealer to refuse to tag a bobcat unless the licensed fur dealer has cause to believe the bobcat was taken in another state or jurisdiction, or the bobcat was unlawfully taken in New Mexico. Licensed fur dealers who believe a bobcat has been taken illegally, or has been presented for pelt tagging in New Mexico when it was taken in another state or jurisdiction, shall report the event to their local conservation officer immediately.

(6) It is unlawful for licensed fur dealers to tag any bobcat contrary to this rule, purchase any bobcat pelt which has not been tagged, or is not immediately pelt tagged at the time of purchase.

R. Tampering with traps: It is unlawful to destroy, damage, disturb, steal or remove any trap, snare or trapped wildlife without permission of the owner of the trap or snare. Nothing in this subsection shall prohibit a person from releasing any domestic animal from a trap or snare.

S. Exemptions: The provisions of this section shall not apply to personnel of the department of game and fish or designated agents who are acting in their official capacity in the control of depredating animals, for law enforcement purposes, to protect human health and safety, or for research or management purposes.

[19.31.10.15 NMAC - Rp, 19.31.10.15 NMAC, 4/1/2023]

19.31.10.16 LANDS AND WATERS OWNED, ADMINISTERED, CONTROLLED, OR MANAGED BY THE STATE GAME COMMISSION:

A. Posting of signs: The state game commission may prohibit, modify, condition or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

B. Violating provisions of posted signs: It is unlawful to violate the provisions of posted signs on areas under the control of, leased by or managed by the state game commission.

C. Trespass on state game commission owned lands: It is unlawful to enter upon state game commission owned lands unless licensed or as otherwise allowed by state game commission rule or as posted by the department.

[19.31.10.16 NMAC - Rp, 19.31.10.16 NMAC, 4/1/2023]

19.31.10.17 BOATS, OTHER FLOATING DEVICES, AND MOTORS:

It is unlawful to operate, control or ride in any boat or other floating device contrary to sections A-D below.

A. Electric or gas motors allowed: On the following lakes controlled by the department, boats and other floating devices with electric or gas motors shall be permitted only during the season and hours when fishing is permitted. Boats or floating devices on these lakes shall not be operated at greater than normal trolling speed: Clayton lake WMA, and McAllister lake WMA.

B. Electric motors only: On the following lakes controlled by the department, only boats and other floating devices using electric motors or with gas motors that are not in use shall be permitted: Bear canyon lake WMA, Bill Evans lake WMA, Green Meadow, Fenton lake WMA, Hopewell, Lake Roberts WMA, Morphy, Quemado, Snow, Conoco lakes and Tucumcari lake WMA.

C. No motors allowed: On the following lakes controlled by the department, only boats and other floating devices using no motors shall be permitted: Bernardo WMA, La Joya WMA, Jackson lake WMA, McGaffey, San Gregorio, Shuree ponds and Wagon Mound WMA.

D. No boats or floating devices allowed: On the following lakes controlled by the department, no boats or other floating devices shall be permitted: Bonito lake, Monastery lake, and Red River hatchery pond.

E. Department personnel or persons authorized by the director may use gasoline powered motors on all waters in the state while performing official duties.

[19.31.10.17 NMAC - Rp, 19.31.10.17 NMAC, 4/1/2023]

19.31.10.18 HUNTING ON PRIVATE LAND WITHOUT WRITTEN PERMISSION AND SEIZURE OF GAME ANIMALS, FURBEARERS, GAME BIRDS, OR SHED ANTLERS:

A. It is unlawful to knowingly enter upon any private property to take or attempt to take any game animal, furbearer, game bird or game fish without possessing written permission from the landowner or person in control of the land or trespass rights unless otherwise permitted in rule or statute.

B. Any game animal, furbearer or game bird taken in violation of this section or Section 30-14-1 NMSA 1978 is unlawfully taken and shall be subject to seizure.

C. All shed antlers collected in violation of any New Mexico state game commission, state or federal land closure, in violation of Section 30-14-1 NMSA 1978 or in violation of any of the provisions of Chapter 17 NMSA 1978 or state game commission rule remain property of the State of New Mexico and shall be seized.

D. Exception: Written permission is not required on any property which is participating in a unitization, receives compensation for allowing public access, receives unit-wide authorizations or has agreed to a ranch-wide agreement when species being harvested is part of any of these agreements.

[19.31.10.18 NMAC - Rp, 19.31.10.18 NMAC, 4/1/2023]

19.31.10.19 MANNER AND METHOD PENALTY ASSESSMENTS:

Individuals who commit the following violations shall be offered penalty assessments:

A. No habitat management and access validation stamp (HMAV), contrary to Section 17-4-34 NMSA 1978;

B. No habitat stamp (Sikes Act), contrary to 19.31.10 NMAC;

C. Size limit violations on fish, contrary to 19.31.10 NMAC;

D. Trotline violations, contrary to 19.31.10 NMAC;

E. Use of bait or prohibited lure or fly in a special trout water or noodling, contrary to 19.31.10 NMAC;

F. Disturbing the bottom "shuffling" in a special trout water, contrary to 19.31.10 NMAC;

G. Use of bait fish, contrary to 19.31.10 NMAC;

H. Release of bait fish, contrary to Section 17-3-28 NMSA 1978;

I. More than two lines or two lines without stamp, contrary to 19.31.10 NMAC;

J. Exceeding the daily bag limit or the possession limit of fish by two fish or less, contrary to 19.31.10 NMAC;

K. Snagging or keeping snagged game fish, contrary to 19.31.10 NMAC;

L. Spearfishing and bow fishing violations, contrary to 19.31.10 NMAC;

M. Unlawfully fishing in waters with age or individuals with disabilities use restrictions, contrary to 19.31.10 NMAC;

- N.** Boat or other floating device violation, contrary to 19.31.10 NMAC;
- O.** Use of live protected species as a decoy, contrary to 19.31.10 NMAC;
- P.** Use of an electronic calling device, contrary to 19.31.10 NMAC;
- Q.** Use of unapproved shot or shotgun capable of holding more than three shells while hunting migratory game birds, contrary to 19.31.10 NMAC;
- R.** Unlawful ammunition/ bullet/ shot or unlawful caliber, contrary to 19.31.10 NMAC;
- S.** Hunting hours violations, contrary to 19.31.10 NMAC;
- T.** Possession of game animal parts found in field, contrary to 19.31.10 NMAC;
- U.** Shooting at artificial wildlife from the road, contrary to 19.31.10 NMAC;
- V.** Harassing protected species, contrary to 19.31.10 NMAC;
- W.** Driving off road or on a closed road, contrary to 19.31.10 NMAC;
- X.** Violation of posted signs, contrary to 19.31.10 NMAC;
- Y.** Unlawful use of dogs, contrary to 19.31.10 NMAC;
- Z.** Unlawful use of cellular, Wi-Fi or satellite camera, contrary to 19.31.10 NMAC;
- AA.** Angling with more than two flies in the San Juan, contrary to 19.31.10 NMAC: or
- BB.** Any violation of section 15 of 19.31.10 NMAC.

[19.31.10.19 NMAC - Rp, 19.31.10.19 NMAC, 4/1/2023]

19.31.10.20 SEIZURE:

Any officer authorized to enforce Chapter 17 NMSA 1978 and state game commission rules shall seize unlawfully possessed or imported species, or any protected species or the carcass or parts of any protected species that is taken or possessed contrary to Chapter 17 NMSA 1978 or state game commission rule.

[19.31.10.20 NMAC - Rp, 19.31.10.20 NMAC, 4/1/2023]

19.31.10.21 DIRECTOR'S AUTHORITY TO ACCOMMODATE DISABILITY OR MEDICAL IMPAIRMENT:

The director may authorize reasonable modifications to the manner and method of take for any licensee who has a verifiable medical condition that, in the director's sole discretion, necessitates such accommodation. This includes allowing the use of a scope of not greater than 1X magnification on muzzle-loading firearms by a person with a visual disability which substantially limits a major life activity and cannot be corrected by glasses or contact lenses. In order to apply for such accommodation, the licensee shall complete and submit any form, information and records required by the director. Any licensee granted an accommodation must adhere to all other state game commission rules as to manner and method of take that are not specifically waived by such accommodation; and shall adhere to any restrictions imposed by the director and shall carry a copy of any director granted accommodations on their person while hunting, fishing or trapping.

[19.31.10.21 NMAC - Rp, 19.31.10.21 NMAC, 4/1/2023]

PART 11: BEAR AND COUGAR

19.31.11.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.31.11.1 NMAC - Rp, 19.31.11.1 NMAC, 4/1/2024]

19.31.11.2 SCOPE:

Sportspersons interested in bear and cougar management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.31.11.2 NMAC - Rp, 19.31.11.2 NMAC, 4/1/2024]

19.31.11.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.11.3 NMAC - Rp, 19.31.11.3 NMAC, 4/1/2024]

19.31.11.4 DURATION:

April 1, 2024 through March 31, 2028.

[19.31.11.4 NMAC - Rp, 19.31.11.4 NMAC, 4/1/2024]

19.31.11.5 EFFECTIVE DATE:

April 1, 2024, unless a later date is cited at the end of a section.

[19.31.11.5 NMAC - Rp, 19.31.11.5 NMAC, 4/1/2024]

19.31.11.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules and procedures governing the distribution and issuance of bear and cougar licenses and permits by the department.

[19.31.11.6 NMAC - Rp, 19.31.11.6 NMAC, 4/1/2024]

19.31.11.7 DEFINITIONS:

A. "Bear entry permit" shall mean a permit awarded through a public drawing which entitles the holder of an over-the-counter bear license to hunt in a limited entry area during season dates established in rule.

B. "Bear zones" shall mean hunt areas consisting of one or more game management units as described in 19.30.4 NMAC.

C. "Cougar zones" shall mean hunt areas consisting of one or more game management units as described in 19.30.4 NMAC.

D. "Department" shall mean the New Mexico department of game and fish.

E. "Director" shall mean the director of the New Mexico department of game and fish.

F. "Game management unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC.

G. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC.

[19.31.11.7 NMAC - Rp, 19.31.11.7 NMAC, 4/1/2024]

19.31.11.8 ADJUSTMENT OF LICENSES, PERMITS AND HARVEST LIMITS:

A. The director, with verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits or harvest limits, up or down by no more than twenty percent within a bear zone or cougar zone, to address critical department management needs, significant changes in population levels or habitat availability. This adjustment may be applied within the specified zones to any or all of: the specific hunt codes; total harvest limits; or female harvest sub-limits.

B. The director, with verbal concurrence of the chairperson or their designee, may take management actions independent of seasons and restrictions, harvest limits or female sub-limits for population management, or to address critical situations including ungulate population protection, depredation, human health and safety or other wildlife management issues. The decision to take management actions pursuant to this subsection shall be reported to the commission.

[19.31.11.8 NMAC - Rp, 19.31.11.8 NMAC, 4/1/2024]

19.31.11.9 [RESERVED]

[19.31.11.9 NMAC - Repealed, 4/1/2024]

19.31.11.10 BEAR AND COUGAR ZONE CLOSURES, BAG LIMITS AND RESTRICTIONS:

A. Zone closures: Bear and cougar may be hunted or taken only in zones designated as open on the department hotline or website. Zones will close within 72 hours of when the reported number of bears or cougars harvested is within ten percent of the total limit or female sub-limit for that zone, whichever occurs first.

B. Bag limit: The bag limit for bear is one; the bag limit for cougar is two. It is unlawful to kill a bear sow with cub(s) or any bear cub less than one year old, or to kill a spotted cougar kitten or any female cougar accompanied by spotted kitten(s).

C. Limited entry hunt areas: It shall be unlawful to hunt bear or cougar in designated WMAs or other specifically designated special entry hunt areas with the following exceptions:

(1) Legally licensed bear hunters possessing a valid bear entry hunt permit may hunt bears in the area(s) specified on the permit, or as otherwise allowed by rule. Bear entry hunters shall be allowed to hunt in any other open bear zone provided they have a valid bear license.

(2) Legally licensed deer and elk hunters whose license is valid on a WMA or the Valle Vidal and are in possession of a valid over-the-counter bear or cougar license, may hunt bear or cougar in the WMA or the Valle Vidal as specified on their deer or elk license. Deer or elk hunters choosing to hunt bear or cougar under this provision may not use dogs, may hunt only in open bear or cougar zones, and must adhere to the weapon type restriction and season dates as specified by their deer or elk licenses.

D. Cougar hunting requirements and restrictions:

(1) All persons shall complete the mandatory cougar identification course offered on the department's website prior to purchasing a cougar license.

(2) Cougar hunting is closed in the Florida mountains hunt area during any open Persian ibex season, except by legally licensed Persian ibex hunters in possession of a valid cougar license. Persian ibex hunters may hunt cougar only if the cougar zone is open, and must adhere to the weapon type restrictions and season dates as specified by their Persian ibex license.

[19.31.11.10 NMAC - Rp, 19.31.11.10 NMAC, 4/1/2024]

19.31.11.11 BEAR HUNTING SEASONS:

A. Over-the-counter bear hunts for the 2024-25 through 2027-28 seasons: The following table lists bear zones, open GMUs, sporting arm restrictions, season dates, total harvest limits and female harvest sub-limits.

Bear zone	open GMUs	bow only	any big game sporting arms	2024-25 total limit (female)	2025-26 total limit (female)	2026-27 total limit (female)	2027-28 total limit (female)
1	4, 5, 6, 7, 51, 52	9/1 - 24	9/25 - 11/15	168 (67)	168 (67)	168 (67)	168 (67)
2	2	9/1 - 24	9/25 - 11/15	15 (6)	15 (6)	15 (6)	15 (6)
3	49, 50, 53	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	65 (26)	65 (26)	65 (26)	65 (26)
4	45, 46, 48	9/1 - 24	8/16 - 8/31 and 9/25 - 11/30	109 (43)	109 (43)	109 (43)	109 (43)
5	54, 55, 57	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	108 (43)	108 (43)	108 (43)	108 (43)
6	39, 40, 41, 42, 43, 47, 56, 58, 59	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	51 (20)	51 (20)	51 (20)	51 (20)
8	8	9/1 - 24	10/15 - 11/15	11 (4)	11 (4)	11 (4)	11 (4)
9	9, 10	9/1 - 24	8/16 - 8/31 and 9/25 - 11/15	36 (14)	36 (14)	36 (14)	36 (14)
10	12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 26, 27	9/1 - 24	9/25 - 12/15	197 (79)	197 (79)	197 (79)	197 (79)
11	37, 38	9/1 - 24	8/16 - 8/31 and 9/25 - 11/30	36 (14)	36 (14)	36 (14)	36 (14)
12	34	9/1 - 24	8/16 - 8/31 and	33 (13)	33 (13)	33 (13)	33 (13)

			9/25 - 12/15				
13	36	9/1 - 24	8/16 - 8/31 and 9/25 - 11/30	16 (6)	16 (6)	16 (6)	16 (6)
14	14	9/1 – 24	10/15 - 11/15	19 (7)	19 (7)	19 (7)	19 (7)

B. Entry hunts for the 2024-25 through 2027-28 seasons shall be as indicated below, listing the open GMUs and areas, eligibility requirements or restrictions, hunt dates, hunt codes, legal sporting arms and number of permits.

open GMUs and areas	2024-25 hunt dates	2025-26 hunt dates	2026-27 hunt dates	2027-28 hunt dates	hunt code	permits
2: youth only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-100	5
4: Sargent WMA only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-101	10
4: Humphries WMA only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-102	5
9: Marquez/LBar WMA only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-103	10
54:55: Uracca, E.S. Barker, and Colin Neblett WMAs, and Valle Vidal	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-1-104	60
55: Valle Vidal	4/15-5/20	4/15-5/20	4/15-5/20	4/15-5/20	BER-1-105	20
57: Sugarite Canyon State Park/ bow only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	BER-2-106	5

[19.31.11.11 NMAC - Rp, 19.31.11.11 NMAC, 4/1/2024]

19.31.11.12 COUGAR HUNTING SEASONS:

A. Over-the-counter cougar hunting season shall be from April 1 through March 31, or until the total harvest limit or female sub-limit, whichever comes first, is met in any given cougar zone.

B. The following table lists cougar zones, open GMUs, total harvest limits and female harvest sub-limits for the 2024-25 to 2027-28 seasons.

zone	open GMUs	2024-25 total limit (female)	2025-26 total limit (female)	2026-27 total limit (female)	2027-28 total limit (female)
A	2, 7	42 (13)	42 (13)	42 (13)	42 (13)
B	5, 6, 50, 51	25 (8)	25 (8)	25 (8)	25 (8)

C	43, 45, 46, 48, 49, 53	57 (17)	57 (17)	57 (17)	57 (17)
D	41, 42, 47, 59	15 (5)	15 (5)	15 (5)	15 (5)
E	9, 10	43 (13)	43 (13)	43 (13)	43 (13)
G	13, 17	50 (15)	50 (15)	50 (15)	50 (15)
H	18, 19, 20	29 (9)	29 (9)	29 (9)	29 (9)
I	36, 37, 38	24 (7)	24 (7)	24 (7)	24 (7)
J	15, 16, 21	84 (25)	84 (25)	84 (25)	84 (25)
K	22, 23, 24	45 (14)	45 (14)	45 (14)	45 (14)
L	25, 26, 27	19 (6)	19 (6)	19 (6)	19 (6)
M	31, 32, 33, 39, 40	25 (7)	25 (7)	25 (7)	25 (7)
N	4, 52	13 (4)	13 (4)	13 (4)	13 (4)
O	12	17 (5)	17 (5)	17 (5)	17 (5)
P	56, 57, 58	14 (7)	14 (7)	14 (7)	14 (7)
Q	28, 29, 30, 34	17 (6)	17 (6)	17 (6)	17 (6)
R	54, 55	26 (8)	26 (8)	26 (8)	26 (8)
S	8, 14	17 (5)	17 (5)	17 (5)	17 (5)

[19.31.11.12 NMAC - Rp, 19.31.11.12 NMAC, 4/1/2024]

PART 12: BARBARY SHEEP, ORYX, AND PERSIAN IBEX

19.31.12.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.12.1 NMAC - Rp, 19.31.12.1 NMAC, 4/1/2023]

19.31.12.2 SCOPE:

Sportspersons interested in Barbary sheep, oryx and Persian ibex management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978, and Title 19 NMAC.

[19.31.12.2 NMAC - Rp, 19.31.12.2 NMAC, 4/1/2023]

19.31.12.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.12.3 NMAC - Rp, 19.31.12.3 NMAC, 4/1/2023]

19.31.12.4 DURATION:

April 1, 2023 through March 31, 2027.

[19.31.12.4 NMAC - Rp, 19.31.12.4 NMAC, 4/1/2023]

19.31.12.5 EFFECTIVE DATE:

April 1, 2023, unless a later date is cited at the end of an individual section.

[19.31.12.5 NMAC - Rp, 19.31.12.5 NMAC, 4/1/2023]

19.31.12.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules and procedures governing the distribution and issuance of Barbary sheep, oryx and Persian ibex licenses by the department.

[19.31.12.6 NMAC - Rp, 19.31.12.6 NMAC, 4/1/2023]

19.31.12.7 DEFINITIONS:

A. "Broken-horned oryx" or "BHO" shall mean an oryx of either sex that possesses at least one horn missing at least twenty-five percent of its normal growth. This may be determined by comparing the broken horn's length to the remaining horn or where it is readily apparent the terminal end would not taper to a point for another twenty-five percent of growth.

B. "Department" shall mean the New Mexico department of game and fish.

C. "Director" shall mean the director of the New Mexico department of game and fish.

D. "Either sex" or "ES" shall mean any one animal of the species.

E. "Female or immature Barbary sheep" or "F-IM" shall mean any female Barbary sheep, or a male Barbary sheep with horns less than 18 inches long.

F. "Female or immature Persian ibex" or "F-IM" shall mean any female Persian ibex, or a male Persian ibex with horns less than 20 inches long.

G. "Game management units" or "GMUs" shall mean those areas as described in state game commission rule 19.30.4 NMAC, Boundary Descriptions for Game Management Units.

H. "McGregor Range" shall mean all areas within GMU 28.

I. "Off-range" shall mean those areas outside of White Sands Missile Range, Holloman Air Force Base, Fort Bliss/McGregor Range areas in GMUs 19, 28, and other lands closed to hunting.

J. "Veteran" shall refer to New Mexico resident veteran as described in 19.31.3 NMAC.

K. "White Sands missile range" or "WSMR" shall mean that portion of GMU 19 controlled by the department of defense.

L. "Wildlife management areas" or "WMAs" shall mean those areas as described in state game commission rule 19.34.5 NMAC Wildlife Management Areas.

[19.31.12.7 NMAC - Rp, 19.31.12.7 NMAC, 4/1/2023]

19.31.12.8 ADJUSTMENT OF LICENSES:

The director, with the verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may adjust the number of licenses for oryx, Barbary sheep or Persian ibex up or down to address significant changes in population levels or to address critical department management needs. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.12.8 NMAC - Rp, 19.31.12.8 NMAC, 4/1/2023]

19.31.12.9 BARBARY SHEEP, ORYX, AND PERSIAN IBEX LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. Veteran hunts: It shall be unlawful for anyone who is not qualified for the veteran oryx hunt to apply for or hold a veteran oryx license.

B. Persian ibex once-in-a-lifetime: It shall be unlawful for anyone to apply for a once-in-a-lifetime Persian ibex license if he or she has held a once-in-a-lifetime license to hunt Persian ibex. Persian ibex hunts for population management, incentive hunts, once-in-a-youth, muzzle-loading rifles, bows, year-round off-mountain hunts, and hunts for female or immature Persian ibex are not considered once-in-a-lifetime and anyone may apply for these hunts or hold these licenses even if they have held a once-in-a-lifetime Persian ibex license.

C. Persian ibex once-in-a-youth: It shall be unlawful for any youth (under age 18) to apply for a once-in-a-youth Persian ibex license if he or she has ever held a Persian ibex youth license.

D. Oryx once-in-a-lifetime: It shall be unlawful, beginning April 1, 1993, for anyone to apply for a once-in-a-lifetime oryx license if he or she has held a once-in-a-lifetime license to hunt oryx. Oryx hunts for population management, broken-horned, once-in-a-youth and incentive hunts are not considered once-in-a-lifetime and anyone may apply for these hunts or hold these licenses even if they have held a once-in-a-lifetime license.

E. Oryx once-in-a-youth: It shall be unlawful for any youth (under age 18) to apply for a once-in-a-youth GMU 19 WSMR ES oryx license if he or she has held a once-in-a-youth license.

[19.31.12.9 NMAC - Rp, 19.31.12.9 NMAC, 4/1/2023]

19.31.12.10 POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for oryx, Barbary sheep or Persian ibex when justified in writing by department personnel.

B. The director or their designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.12.10 NMAC - Rp, 19.31.12.11 NMAC, 4/1/2023]

19.31.12.11 BARBARY SHEEP HUNTING SEASONS:

Barbary sheep hunts shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms, number of licenses, and bag limit. Public draw Barbary sheep licenses for GMUs 29, 30, 32, 36, and 37 are available only through application in the special entry draw. Private land-only licenses for GMUs 29, 30, 32, 36, and 37 shall be issued over-the-counter and shall be valid only on deeded private lands. All Barbary sheep licenses listed in Subsections A and B of Section 19.31.12.11 NMAC (with the exception of hunts on McGregor range when the license holder claimed residency as allowed by 17-3-4.A.5 NMSA 1978) shall also be valid for over-the-counter hunt areas with any legal sporting arm. The department shall issue military-only Barbary sheep hunting licenses for McGregor range to full time military personnel providing a valid access authorization issued by Fort Bliss.

A. Public draw hunts:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
32, 36, 37	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	BBY-2-100	75	ES
32, 36, 37	10/10-10/16	10/10-10/16	10/10-10/16	10/10-10/16	BBY-1-101	50	ES
32, 36, 37	12/4-12/10	12/4-12/10	12/4-12/10	12/4-12/10	BBY-1-102	50	ES
32, 36, 37	12/15-12/21	12/15-12/21	12/15-12/21	12/15-12/21	BBY-1-103	75	ES
32, 36, 37	1/20-1/26	1/20-1/26	1/20-1/26	1/20-1/26	BBY-1-104	150	ES
32, 36, 37	2/1-2/7	2/1-2/7	2/1-2/7	2/1-2/7	BBY-1-105	150	ES
32, 36, 37	2/12-2/18	2/12-2/18	2/12-2/18	2/12-2/18	BBY-1-106	150	ES
32, 36, 37	2/21-2/27	2/21-2/27	2/21-2/27	2/21-2/27	BBY-1-107	150	ES
29, 30	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	BBY-2-108	75	ES
29, 30	10/10-10/16	10/10-10/16	10/10-10/16	10/10-10/16	BBY-1-109	75	ES
29, 30	12/4-12/10	12/4-12/10	12/4-12/10	12/4-12/10	BBY-1-110	75	ES
29, 30	12/15-12/21	12/15-12/21	12/15-12/21	12/15-12/21	BBY-1-111	75	ES
29, 30	1/20-1/26	1/20-1/26	1/20-1/26	1/20-1/26	BBY-1-112	200	ES
29, 30	2/1-2/7	2/1-2/7	2/1-2/7	2/1-2/7	BBY-1-113	200	ES
29, 30	2/12-2/18	2/12-2/18	2/12-2/18	2/12-2/18	BBY-1-114	200	ES
29, 30	2/21-2/27	2/21-2/27	2/21-2/27	2/21-2/27	BBY-1-115	200	ES
28 McGregor range	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	BBY-1-116	10	ES
28 McGregor range, military only	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	BBY-1-117	10	ES
28 McGregor range	12/30-12/31	12/28-12/29	12/27-12/28	12/26-12/27	BBY-1-118	80	F-IM

28 McGregor range, military only	12/30-12/31	12/28-12/29	12/27-12/28	12/26-12/27	BBY-1-119	10	F-IM
28 McGregor range	1/6-1/7	1/4-1/5	1/3-1/4	1/2-1/3	BBY-1-120	50	F-IM
28 McGregor range, military only	1/6-1/7	1/4-1/5	1/3-1/4	1/2-1/3	BBY-1-121	10	F-IM

B. Private land-only hunts: Private land-only Barbary sheep licenses shall be restricted to the hunt dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the draw hunt code listed in Subsection A of Section 19.31.12.11 NMAC for the GMU where the private landowner's property lies. Private land-only Barbary sheep licenses shall be unlimited and available from any license vendor and the department's web site. Private land-only Barbary sheep licenses are valid only on deeded private property where the licensee has written permission to hunt.

C. Over-the-counter hunts: The hunt area shall be statewide except on WMAs during closures, WSMR, Fort Bliss portions of GMU 19 and the draw areas of GMUs 28, 29, 30, 32, 36 and 37.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
statewide, restrictions listed above	4/1/2023-3/31/2024	4/1/2024-3/31/2025	4/1/2025-3/31/2026	4/1/2026-3/31/2027	BBY-1-300	unlimited	ES

D. Special management properties: For private lands within GMUs 29, 30, 32, 36 and 37, the department may work with interested landowners to develop appropriate bag limits, weapon types, season dates and authorization numbers for private land hunting needed to achieve the proper harvest on the deeded private land of the participating ranches.

[19.31.12.11 NMAC - Rp, 19.31.12.12 NMAC, 4/1/2023]

19.31.12.12 ORYX HUNTING SEASONS:

A. Oryx once-in-a-lifetime and once-in-a-youth hunts for any legal sporting arms type shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses and bag limit.

open GMUs or areas	2023-2024	2024-2025	2025-2026	2026-2027	hunt code	licenses	bag limit
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	hunt dates	hunt dates	hunt dates	hunt dates			
19 WSMR	9/8-9/10	9/6-9/8	9/5-9/7	9/4-9/6	ORX-1-100	70	ES
19 WSMR	9/22-9/24	9/20-9/22	9/19-9/21	9/18-9/20	ORX-1-101	70	ES
19 WSMR, veteran	10/20-10/22	10/18-10/20	10/17-10/19	10/16-10/18	ORX-1-102	75	ES
19 WSMR	11/3-11/5	11/1-11/3	10/31-11/2	10/30-11/1	ORX-1-103	70	ES
19 WSMR	12/1-12/3	11/29-12/1	11/28-11/30	11/27-11/29	ORX-1-104	70	ES
19 WSMR	1/12-1/14	1/10-1/12	1/9-1/11	1/8-1/10	ORX-1-105	70	ES
19 WSMR	1/26-1/28	1/24-1/26	1/23-1/25	1/22-1/24	ORX-1-106	70	ES
19 WSMR	2/9-2/11	2/7-2/9	2/6-2/8	2/5-2/7	ORX-1-107	70	ES
19 WSMR	2/23-2/25	2/21-2/23	2/20-2/22	2/19-2/21	ORX-1-108	70	ES
19 WSMR	3/8-3/10	3/7-3/9	3/6-3/8	3/5-3/7	ORX-1-109	70	ES
19 WSMR, mobility impaired	10/6-10/8	10/4-10/6	10/3-10/5	10/2-10/4	ORX-1-110	20	ES
19 WSMR, once-in-a-youth	10/6-10/8	10/4-10/6	10/3-10/5	10/2-10/4	ORX-1-111	40	ES

B. Oryx broken-horned on-range hunts for any legal weapon shall be as indicated below, listing the hunt dates, hunt codes, number of licenses and bag limit.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
19 WSMR	9/8-9/10	9/6-9/8	9/5-9/7	9/4-9/6	ORX-1-112	15	BHO
19 WSMR	9/22-9/24	9/20-9/22	9/19-9/21	9/18-9/20	ORX-1-113	15	BHO
19 WSMR	11/3-11/5	11/1-11/3	10/31-11/2	10/30-11/1	ORX-1-114	15	BHO
19 WSMR	12/1-12/3	11/29-12/1	11/28-11/30	11/27-11/29	ORX-1-115	15	BHO
19 WSMR	1/12-1/14	1/10-1/12	1/9-1/11	1/8-1/10	ORX-1-116	15	BHO

19 WSMR	1/26-1/28	1/24-1/26	1/23-1/25	1/22-1/24	ORX-1-117	15	BHO
19 WSMR	2/9-2/11	2/7-2/9	2/6-2/8	2/5-2/7	ORX-1-118	15	BHO
19 WSMR	2/23-2/25	2/21-2/23	2/20-2/22	2/19-2/21	ORX-1-119	15	BHO
19 WSMR	3/8-3/10	3/7-3/9	3/6-3/8	3/5-3/7	ORX-1-120	15	BHO

C. Off-range oryx hunts or hunts on McGregor Range shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses and bag limit. The department shall issue military only oryx hunting licenses for McGregor range to full time military personnel providing a valid access authorization issued by Fort Bliss (McGregor range, military only).

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
statewide, off-range	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-204	96	ES
statewide, off-range, youth only	6/1-6/30	6/1-6/30	6/1-6/30	6/1-6/30	ORX-1-205	24	ES
statewide, off-range	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-206	96	ES
statewide, off-range, youth only	7/1-7/31	7/1-7/31	7/1-7/31	7/1-7/31	ORX-1-207	24	ES
statewide, off-range	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-208	96	ES
statewide, off-range, youth only	8/1-8/31	8/1-8/31	8/1-8/31	8/1-8/31	ORX-1-209	24	ES
statewide, off-range	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-210	96	ES
statewide, off-range, youth only	9/1-9/30	9/1-9/30	9/1-9/30	9/1-9/30	ORX-1-211	24	ES
statewide, off-range	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-212	96	ES
statewide, off-range, youth only	10/1-10/31	10/1-10/31	10/1-10/31	10/1-10/31	ORX-1-213	24	ES
statewide, off-range	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-214	96	ES
statewide, off-range, youth only	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	ORX-1-215	24	ES

statewide, off-range	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-216	96	ES
statewide, off-range, youth only	12/1-12/31	12/1-12/31	12/1-12/31	12/1-12/31	ORX-1-217	24	ES
statewide, off-range	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-218	96	ES
statewide, off-range, youth only	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	ORX-1-219	24	ES
statewide, off-range	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-220	80	ES
statewide, off-range, youth only	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-221	20	ES
statewide, off-range, age 70 and older	2/1-2/29	2/1-2/28	2/1-2/28	2/1-2/28	ORX-1-222	40	ES
statewide, off-range	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-223	96	ES
statewide, off-range, youth only	3/1-3/31	3/1-3/31	3/1-3/31	3/1-3/31	ORX-1-224	24	ES
28 McGregor range	12/16-12/17	12/21-12/22	12/20-12/21	12/19-12/20	ORX-1-225	25	ES
28 McGregor range, military only	12/16-12/17	12/21-12/22	12/20-12/21	12/19-12/20	ORX-1-226	25	ES
28 McGregor range	1/6-1/7	1/4-1/5	1/3-1/4	1/2-1/3	ORX-1-227	25	ES
28 McGregor range, military only	1/6-1/7	1/4-1/5	1/3-1/4	1/2-1/3	ORX-1-228	25	ES

D. Private land-only oryx hunts: Private land-only oryx licenses shall be valid only on deeded private land and restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the statewide public draw hunt codes listed in Subsection C of Section 19.31.12.12 NMAC above. Hunts on private land for April and May are restricted to the season dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the hunt codes listed below. The number of private land-only oryx licenses shall be unlimited.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	bag limit
statewide, private land	4/1-4/30	4/1-4/30	4/1-4/30	4/1-4/30	ORX-1-2000	ES

	5/1-5/31	5/1-5/31	5/1-5/31	5/1-5/31	ORX-1-2020	ES
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E. Oryx incentive authorizations: The director may annually allow up to two oryx authorizations to be issued by drawing for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorizations to purchase the license may be used either by the applicant or any individual of the selected applicant's choice and may be transferred through sale, barter, or gift. Oryx incentive hunts shall be any one hunt selected from Subsection A of Section 19.31.12.12 NMAC. Bag limit shall be either sex with any legal sporting arms and hunt area of the selected hunt.

F. Oryx hunt for injured service men and women: The department shall annually issue up to 10 authorizations for hunting by injured service men and women on White Sands missile range. The director shall determine the procedures for issuing the authorizations, and the dates for each hunt.

[19.31.12.12 NMAC - Rp, 19.31.12.13 NMAC, 4/1/2023]

19.31.12.13 PERSIAN IBEX HUNTING SEASONS:

Persian ibex hunts shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses and bag limit. Holders of the off-mountain license (IBX-1-528) may apply for any Florida mountains ibex hunt unless otherwise restricted by rule. Any valid Persian ibex license shall be valid during the off-mountain (IBX-1-528) hunts. Holders of a valid ibex license may take an unlimited number of ibex for the year-long off-mountain hunt. The Florida mountain hunt area is that portion of GMU 25 bounded by interstate 10 on the north, U.S.-Mexico border on the south, NM 11 on the west and the Dona Ana-Luna county line on the east. The year-long off-mountain hunt area is any public land open for hunting and private lands with written permission outside the Florida mountain hunt area.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
25 Florida mountains	10/1-10/15	10/1-10/15	10/1-10/15	10/1-10/15	IBX-2-100	100	ES
25 Florida mountains, once-in-a-lifetime	11/15-11/29	11/15-11/29	11/15-11/29	11/15-11/29	IBX-1-101	15	ES
25 Florida mountains	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	IBX-1-102	20	F-IM
25 Florida mountains,	12/27/2023-1/10/2024	12/27/2024-1/10/2025	12/27/2025-1/10/2026	12/27/2026-1/10/2027	IBX-1-103	5	ES

once-in-a-youth							
25 Florida mountains	1/15-1/29	1/15-1/29	1/15-1/29	1/15-1/29	IBX-2-104	100	ES
25 Florida mountains	2/3-2/7	2/1-2/5	2/7-2/11	2/6-2/10	IBX-1-105	20	F-IM
25 Florida mountains	2/17-2/23	2/22-2/28	2/21-2/27	2/20-2/26	IBX-3-106	15	ES
Statewide, off-mountain, over-the-counter	4/1/2023-3/31/2024	4/1/2024-3/31/2025	4/1/2025-3/31/2026	4/1/2026-3/31/2027	IBX-1-528	unlimited	ES

[19.31.12.13 NMAC - Rp, 19.31.12.14 NMAC, 4/1/2023]

PART 13: DEER

19.31.13.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.13.1 NMAC - Rp, 19.31.13.1 NMAC, 4/1/2023]

19.31.13.2 SCOPE:

Sportspersons interested in deer management and deer hunting. Additional requirements may be found in Chapter 17 NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.31.13.2 NMAC - Rp, 19.31.13.2 NMAC, 4/1/2023]

19.31.13.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.13.3 NMAC - Rp, 19.31.13.3 NMAC, 4/1/2023]

19.31.13.4 DURATION:

April 1, 2023 through March 31, 2027.

[19.31.13.4 NMAC - Rp, 19.31.13.4 NMAC, 4/1/2023]

19.31.13.5 EFFECTIVE DATE:

April 1, 2023, unless a later date is cited at the end of an individual section.

[19.31.13.5 NMAC - Rp, 19.31.13.5 NMAC, 4/1/2023]

19.31.13.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules and procedures governing the distribution and issuance of deer licenses by the department.

[19.31.13.6 NMAC - Rp, 19.31.13.6 NMAC, 4/1/2023]

19.31.13.7 DEFINITIONS:

A. "Antlerless deer" or "A" shall mean a deer without antlers.

B. "Deer" as used herein, shall mean any wild cervid of the genus *Odocoileus*.

C. "Deer enhancement program" as used herein, shall mean the department activity that allows the issuance of not more than two authorizations for the taking of one fork-antlered deer per license, with the purpose of raising funds for programs and projects to benefit deer.

D. "Department" shall mean the New Mexico department of game and fish.

E. "Director" shall mean the director of the New Mexico department of game and fish.

F. "Either sex" or "ES" shall mean any one deer.

G. "Either sex white-tailed deer" or "ESWTD" shall mean any one white-tailed deer (*Odocoileus virginianus*).

H. "Fork-antlered deer" or "FAD" shall mean a deer possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

I. "Fork-antlered mule deer" or "FAMD" shall mean a mule deer (*Odocoileus hemionus*) possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

J. "Fork-antlered white-tailed deer" or "FAWTD" shall mean a white-tailed deer (*Odocoileus virginianus*) possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.

K. "Game management unit", "GMU", "hunt area" or "management area" shall mean those areas as described in 19.30.4 NMAC Boundary Descriptions for Game Management Units.

L. "High demand hunt" shall mean a special draw hunt where the total number of non-resident applicants for a deer hunt exceeds twenty-two percent of the total applicants based on data for the two immediately preceding years.

M. "Quality hunt" shall mean a hunt designed to provide a hunter with an opportunity to achieve one or more of the following: an enhanced experience based on timing and length of hunt season; lower hunter density; or an increased opportunity for success.

N. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.13.7 NMAC - Rp, 19.31.13.7 NMAC, 4/1/2023]

19.31.13.8 ADJUSTMENT OF LICENSES:

The director, with the verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may adjust the number of licenses for deer up or down by no more than twenty percent of the total licenses available in the GMU to address significant changes in population levels or to address critical department management needs. This adjustment may be applied to any or all of the specific hunt codes for deer. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.13.8 NMAC - Rp, 19.31.13.8 NMAC, 4/1/2023]

19.31.13.9 GMUs 2A, 2B, 2C, 4 AND 5A PRIVATE LAND-ONLY HUNTS:

A. Persons applying for private-land only deer licenses in GMUs 2A, 2B, 2C, 4 and 5A must obtain an authorization number from participating landowners in these GMUs.

B. Participating landowners in GMUs 2A, 2B, 2C, 4 and 5A are required to provide proof of land ownership to obtain authorization numbers from the department.

[19.31.13.9 NMAC - Rp, 19.31.13.9 NMAC, 4/1/2023]

19.31.13.10 CHRONIC WASTING DISEASE (CWD):

The director has the authority to designate possession criteria to any deer hunter where CWD is a concern. It is unlawful to transport dead deer, or their parts, taken from any GMU or area identified by the director in which the presence of, or possibility of,

exposure to CWD has been identified to any location outside that GMU except for the following:

- A.** meat that is cut and wrapped (either commercially or privately);
- B.** quarters or other portions of meat with no part of the spinal column or head attached;
- C.** meat that has been boned out;
- D.** hides with no heads attached;
- E.** clean skull plates with antlers attached; clean is defined as having been immersed in a bath of at least one part chlorine bleach and two parts water with no meat or tissue attached;
- F.** antlers with no meat or tissue attached;
- G.** finished taxidermied heads; or
- H.** by prior arrangement to a department office.

[19.31.13.10 NMAC - Rp, 19.31.13.10 NMAC, 4/1/2023]

19.31.13.11 QUALITY DEER HUNTS:

Quality hunts for deer are as follows:

- A.** Hunt codes DER-1-115, DER-1-116, DER-2-121, DER-2-122, DER-2-123, DER-2-420.
- B.** All hunts in GMUs 2C, 5B, 8, 17, 23-Burro mountains hunt area, 27, 33, 41, the Valle Vidal, all private land deer incentive program hunts and all hunts on the Humphries/Rio Chama/Sargent WMAs.

[19.31.13.11 NMAC - Rp, 19.31.13.11 NMAC, 4/1/2023]

19.31.13.12 SPECIAL DEER HUNTING OPPORTUNITIES:

A. Deer enhancement program:

(1) Program description: The director shall collect all proceeds generated through the auction and lottery of special deer authorizations, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit deer and for direct costs incurred in carrying out these programs. These monies shall be used to

augment, and not replace, monies appropriated from existing funds available to the department for the conservation, restoration, utilization and management of deer.

(2) Requirements for issuance of special deer authorizations:

(a) The state game commission shall authorize the director to issue not more than two special deer authorizations in any one license year to take one fork-antlered deer per license. The director shall allow the sale of one authorization through auction to the highest bidder and one authorization to a person selected through a random drawing of a lottery ticket by the department or an incorporated, nonprofit organization dedicated to the conservation of deer.

(b) Unless their hunting privileges have been revoked pursuant to law, any person is eligible to submit a bid for the special deer auction authorization or purchase lottery tickets in an attempt to be selected for the special deer lottery authorization.

(c) The special deer authorizations issued through auction and lottery may be transferred through sale, barter or gift by the successful individuals only to other individuals qualified to hunt.

(3) Enhancement hunts: Deer enhancement licenses shall be valid from September 1 through January 31 for any big-game sporting arms. These licenses shall be valid statewide where hunting is allowed. The bag limit shall be one fork-antlered deer. The authorization to obtain a deer enhancement license may be used either by the applicant or any individual.

B. Deer incentive programs:

(1) CWD reporting incentive: The director may annually allow up to two deer authorizations to be issued through a random drawing for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorizations awarded pursuant to this rule may be transferred through sale, barter or gift. Deer incentive hunts shall be valid only for the dates, big-game sporting arms, bag limit and area specified by the director.

(2) Private-land deer incentive program: Private landowners who are conducting and maintaining substantial habitat improvements or land management practices on their deeded lands that directly and significantly benefit deer may be considered for special recognition. Only those projects as determined by the department to be relevant and beneficial to deer will be considered. Landowners must develop a deer conservation and management plan and submit an application including a map delineating the legal property boundary to the department. Upon completion of approved habitat improvement projects the landowner may be granted authorizations for alternative season dates as approved by the department. Licenses obtained using the authorizations will be valid only on deeded property for the ranch to which they were awarded. Landowners receiving incentive authorizations are required to continue

habitat improvement projects and submit an update as directed by the department to be considered for continued participation.

C. Premium hunt opportunity: One premium deer draw hunt will be issued each license year through the draw. The hunt area will be statewide on any public land open to hunting, including WMAs, and private land with written permission.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
statewide	9/1/2023-1/31/2024	9/1/2024-1/31/2025	9/1/2025-1/31/2026	9/1/2026-1/31/2027	DER-1-700	1	FAD

[19.31.13.12 NMAC - Rp, 19.31.13.12 NMAC 4/1/2023]

19.31.13.13 POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for deer when justified in writing by department personnel.

B. The director or their designee shall designate the big-game sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.13.13 NMAC - Rp, 19.31.13.13 NMAC, 4/1/2023]

19.31.13.14 DEER HUNTS:

A. Public draw (and private lands in GMUs 2A, 2B, 2C, 4 and 5A) deer hunts, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, big-game sporting arms, number of licenses and bag limit shall be as indicated below. The state game commission owned Double E WMA, Navajo WMA, Pine River WMA, prairie-chicken areas, River Ranch WMA and Water Canyon WMA shall be open to licensed public draw deer hunters during established seasons. Hunters holding a valid

bow deer license for GMUs 23 or 24 who do not harvest a deer during their hunt will be allowed to obtain permission from the department to hunt antlerless deer from January 16 through February 5 within the Silver City deer management area as delineated by the department.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	b li
2A: youth only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-100	25	F
2A	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-101	150	F
2A: private land only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-102	40	F
2A: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-103	15	F
2A	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-104	40	F
2A: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-105	15	F
2A	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-106	80	F
2A: private land only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-107	15	F
2A	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-108	50	F

2A: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-109	10	F
2B	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-110	275	F
2B: youth only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-111	125	F
2B: private land only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-112	25	F
2B	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-113	350	F
2B: private land only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-114	25	F
2B	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-115	400	F
2B: private land only	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-116	75	F
2B: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-117	25	F
2B	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-118	130	F
2B: youth only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-119	20	F
2B: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-120	10	F

2B	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-121	180	F
2B: youth only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-122	50	F
2B: private land only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-123	30	F
2B	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-124	175	F
2B: youth only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-125	20	F
2B: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-126	10	F
2C	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1-127	30	F
2C: private land only	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1-128	8	F
2C	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-129	50	F
2C: private land only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-130	15	F
2C	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-131	20	F
2C: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-132	9	F

4: Humphries/Rio Chama/Sargent WMAs only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1- 133	20	F
4: Humphries/Rio Chama/Sargent WMAs only, youth only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1- 134	10	F
4: private land only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1- 135	175	F
4: Humphries/Rio Chama/Sargent WMAs only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1- 136	20	F
4: private land only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1- 137	175	F
4: Humphries/Rio Chama/Sargent WMAs only	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1- 138	10	F
4: private land only	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1- 139	10	F
4: Humphries/Rio Chama/Sargent WMAs only, youth only	11/22-11/26	11/27-12/1	11/26-11/30	11/25-11/29	DER-1- 140	5	F
4: Humphries/Rio	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2- 141	10	F

Chama/Sargent WMAs only							
4: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-142	150	F
4: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-143	100	F
5A: public land only	11/7-11/13	11/5-11/11	11/11-11/17	11/10-11/16	DER-1-144	40	F
5A: private land only	11/7-11/13	11/5-11/11	11/11-11/17	11/10-11/16	DER-1-145	220	F
5A: public land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-146	30	F
5A: private land only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-147	220	F
5A: public land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-148	10	F
5A: private land only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-149	50	F
5B	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	DER-1-150	30	F
5B: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-151	10	F
5B	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-152	10	F

5B	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-153	10	F
6A and 6C: mobility impaired	10/14-10/18	10/12-10/16	10/11-10/15	10/10-10/14	DER-1-154	20	F
6A and 6C	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	DER-1-155	110	F
6A and 6C	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-156	100	F
6A and 6C	9/30-10/4	9/28-10/2	10/4-10/8	10/3-10/7	DER-3-157	115	F
7	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	DER-1-158	30	F
7	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-159	10	F
7	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-160	15	F
7	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-161	25	F
8: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-2-162	65	F
8	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-163	65	F
9	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1-164	15	F

9: Marquez/LBar WMAs only	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1- 165	10	F
9: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1- 166	10	F
9	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2- 167	10	F
9	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2- 168	15	F
9: restricted muzzleloader only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3- 169	10	F
10: mobility impaired	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1- 170	20	F
10	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1- 171	70	F
10	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1- 172	65	F
10	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1- 173	90	F
10: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1- 174	25	F
10	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2- 175	100	F
10	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3- 176	90	F

12	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-177	85	F
12	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-178	20	F
12	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-179	40	F
13	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-180	150	F
13	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-181	150	F
13: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-182	50	F
13	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-183	125	F
13	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-184	75	F
13	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-185	200	F
14	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-186	55	F
14	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-187	35	F
14	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-188	25	F

14	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-189	55	F
15	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-190	75	F
15	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-191	25	F
15	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-192	165	F
15: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-3-193	100	F
16	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-194	300	F
16: mobility impaired	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-195	25	F
16	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-196	300	F
16: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-197	100	F
16	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-198	230	F
16	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-199	175	F
16	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-200	300	F

17	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-201	80	F
17	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-202	80	F
17: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-203	80	F
17	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-204	75	F
17	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-205	75	F
17	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-206	80	F
18	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-207	70	F
18	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-208	70	F
18	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-209	50	F
18	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-210	40	F
18	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-211	75	F
19: White Sands missile range only, mandatory	12/1-12/3	11/29-12/1	11/28-11/30	11/27-11/29	DER-1-212	5	F

check-in/check-out							
19: White Sands missile range only, mandatory check-in/check-out	1/12-1/14	1/10-1/12	1/9-1/11	1/8-1/10	DER-1-213	5	F
19: except the White Sands missile range portion	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-214	10	F
19: except the White Sands missile range portion	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	DER-3-215	10	F
20	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-216	90	F
20	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-217	90	F
20	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-218	45	F
20	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-219	25	F
20	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-220	85	F
21	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-221	425	F

21	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-222	425	F
21: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-223	100	F
21	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-224	300	F
21	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-225	200	F
21	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-226	350	F
21	12/2-12/10	12/7-12/15	12/6-12/14	12/5-12/13	DER-1-227	25	F
22	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-228	70	F
22	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-229	70	F
22: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-230	20	F
22	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-231	30	F
22	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-232	25	F
22	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-233	65	F

23: except the Burro mountains hunt area	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-234	450	F
23: except the Burro mountains hunt area	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-235	450	F
23: except the Burro mountains hunt area	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	DER-1-236	100	F
23: except the Burro mountains hunt area	12/2-12/10	12/7-12/15	12/6-12/14	12/5-12/13	DER-1-237	55	F
23: except the Burro mountains hunt area, youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-238	75	F
23: except the Burro mountains hunt area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-239	205	F
23: except the Burro mountains hunt area	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-240	50	F
23: except the Burro mountains hunt area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-241	100	F
23: except the Burro mountains hunt area	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-242	50	F

23: except the Burro mountains hunt area	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-243	225	F
23: except the Burro mountains hunt area	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-244	75	F
23: Burro mountains hunt area only	11/4-11/12	11/2-11/10	11/8-11/16	11/7-11/15	DER-1-245	35	F
23: Burro mountains hunt area only	12/2-12/10	12/7-12/15	12/6-12/14	12/5-12/13	DER-1-246	40	F
23: Burro mountains hunt area only, youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-247	25	F
23: Burro mountains hunt area only	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-248	40	F
23: Burro mountains hunt area only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-249	20	F
23: Burro mountains hunt area only	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-250	50	F
23: Burro mountains hunt area only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-251	40	F

23: Burro mountains hunt area only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-252	40	F
24: including Fort Bayard management area, youth only	9/30-10/8	9/28-10/6	9/27-10/5	9/26-10/4	DER-1-253	50	F
24: excluding Fort Bayard management area	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-254	400	F
24: excluding Fort Bayard management area	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-255	400	F
24: excluding Fort Bayard management area	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	DER-1-256	100	F
24: including Fort Bayard management area, youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-257	50	F
24: excluding Fort Bayard management area	12/2-12/10	12/7-12/15	12/6-12/14	12/5-12/13	DER-1-258	50	F
24: excluding Fort Bayard management area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-259	135	F

24: excluding Fort Bayard management area	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-260	85	F
24: excluding Fort Bayard management area	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-261	60	F
24: excluding Fort Bayard management area	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-262	40	F
24: excluding Fort Bayard management area	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-263	280	F
24: excluding Fort Bayard management area	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-264	75	F
25	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-265	100	F
25	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-266	100	F
25	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-267	45	F
25	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-268	30	F

25	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-269	45	F
26	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-270	100	F
26	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-271	100	F
26	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-272	25	F
26	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-273	15	F
26	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-274	60	F
26	12/2-12/10	12/7-12/15	12/6-12/14	12/5-12/13	DER-1-275	25	F
27	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-276	50	F
27	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-277	50	F
27	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	DER-1-278	40	F
27: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-279	25	F
27	12/2-12/10	12/7-12/15	12/6-12/14	12/5-12/13	DER-1-280	25	F

27	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-281	30	F
27	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-282	15	F
27	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-283	30	F
27	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-2-284	40	F
27	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-285	40	F
27	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-3-286	50	F
28: McGregor range only	12/16-12/17	12/21-12/22	12/20-12/21	12/19-12/20	DER-1-287	25	F
28: McGregor range only, military only	12/16-12/17	12/21-12/22	12/20-12/21	12/19-12/20	DER-1-288	25	F
29	10/28-11/1	10/26-10/30	10/25-10/29	10/31-11/4	DER-1-289	150	F
29	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1-290	150	F
29	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-291	100	F
29	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-292	50	F

29	10/21-10/25	10/19-10/23	10/18-10/22	10/24-10/28	DER-3-293	70	F
30	10/28-11/1	10/26-10/30	10/25-10/29	10/31-11/4	DER-1-294	720	F
30	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1-295	720	F
30: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-296	250	F
30	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-297	200	F
30	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-298	100	F
30	10/21-10/25	10/19-10/23	10/18-10/22	10/24-10/28	DER-3-299	325	F
31	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	DER-1-300	440	F
31	11/18-11/22	11/16-11/20	11/15-11/19	11/21-11/25	DER-1-301	435	F
31	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-302	175	F
31	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-303	100	F
31	10/21-10/25	10/19-10/23	10/18-10/22	10/24-10/28	DER-3-304	175	F

32	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-305	565	F
32	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	DER-1-306	560	F
32: Roswell and Ft. Sumner hunt areas only, youth only	12/16-12/31	12/16-12/31	12/16-12/31	12/16-12/31	DER-1-307	15	A
32: Roswell and Ft. Sumner hunt areas only	1/16-1/31	1/16-1/31	1/16-1/31	1/16-1/31	DER-1-308	15	A
32	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-309	150	F
32	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-310	100	F
32	10/21-10/25	10/19-10/23	10/18-10/22	10/24-10/28	DER-3-311	175	F
33	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	DER-1-312	150	F
33	11/18-11/22	11/16-11/20	11/15-11/19	11/21-11/25	DER-1-313	150	F
33	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-314	60	F
33	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-315	50	F

33: restricted muzzleloader only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-316	140	F
33: Huey WMA only, youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-3-317	5	E
33: Huey WMA only, youth only	12/26/2023-1/1/2024	12/26/2024-1/1/2025	12/26/2025-1/1/2026	12/26/2026-1/1/2027	DER-3-318	5	A
34: mobility impaired	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-319	50	F
34: youth only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-320	45	F
34	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-321	650	F
34	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	DER-1-322	650	F
34	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-323	450	F
34	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-324	350	F
34	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-3-325	340	F
36	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-326	300	F
36	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	DER-1-327	300	F

36: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-328	25	F
36	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-329	225	F
36	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-330	125	F
36	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-331	115	F
36: youth only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-332	25	F
37	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-333	365	F
37	11/18-11/22	11/16-11/20	11/15-11/19	11/21-11/25	DER-1-334	360	F
37	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-335	100	F
37	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-336	80	F
37	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-337	125	F
38	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-338	160	F
38	11/18-11/22	11/16-11/20	11/15-11/19	11/21-11/25	DER-1-339	155	F

38	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-340	65	F
38	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-341	40	F
38	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-342	100	F
39	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-343	35	F
39	11/18-11/22	11/16-11/20	11/15-11/19	11/21-11/25	DER-1-344	35	F
39	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-345	25	F
39	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-346	15	F
39	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-347	40	F
40	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	DER-1-348	50	F
40	11/18-11/22	11/16-11/20	11/15-11/19	11/21-11/25	DER-1-349	50	F
40	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-350	20	F
40	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-351	15	F

40	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-352	30	F
41	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-353	40	F
41	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-354	40	F
41: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-355	5	F
41: youth only	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	DER-1-356	15	E
41	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	DER-1-357	10	E
41	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-358	10	F
41	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-359	10	F
41	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-360	25	F
42	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-361	40	F
42	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-362	40	F
42	11/22-11/26	11/27-12/1	11/26-11/30	11/25-11/29	DER-1-363	10	E

42	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-364	15	F
42	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-365	15	F
43	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-366	35	F
43	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-367	10	F
43	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-3-368	15	F
45	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-369	250	F
45: mobility impaired	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-370	25	F
45	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-371	250	F
45: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-372	25	F
45	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-373	165	F
45	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-374	160	F
47	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-375	25	F

47	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-376	20	F
47	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-377	10	F
47	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-378	20	F
48	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-379	50	F
48	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-380	50	F
48	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-381	45	F
48	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-382	30	F
49	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-383	100	F
49	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-384	100	F
49	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-385	105	F
50	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-386	50	F
50	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-387	50	F

50	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-388	5	F
51A	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-389	145	F
51A	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-390	65	F
51B	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-391	20	F
51B	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-392	15	F
51B	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-393	15	F
52	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-394	90	F
52	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-395	90	F
52	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-396	80	F
52: restricted muzzleloader only	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-397	25	F
53	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-398	85	F
53	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	DER-1-399	85	F

53	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-400	100	F
54/55: Colin Neblett WMA only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-401	10	F
54/55: Colin Neblett WMA only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-402	10	F
54/55: Colin Neblett WMA only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-403	10	F
55: ES Barker WMA only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-404	5	F
55: ES Barker WMA only, youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-405	5	F
55: Urraca WMA only	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-406	5	F
55: Urraca WMA only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-407	5	F
55: Valle Vidal only	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-408	10	F
56	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-409	15	F
56	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-410	15	F

56: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-411	10	F
56: youth only	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	DER-1-412	10	E
56	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-413	10	F
56	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-414	15	F
57	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-415	25	F
57	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-416	25	F
57: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-417	10	F
57	11/22-11/26	11/27-12/1	11/26-11/30	11/25-11/29	DER-1-418	10	E
57	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-419	20	F
57: Sugarite canyon state park only	11/1-11/30	11/1-11/30	11/1-11/30	11/1-11/30	DER-2-420	20	F
57	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-421	15	F
58	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-422	40	F

58	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-423	35	F
58: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-424	10	F
58: youth only	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	DER-1-425	15	E
58	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	DER-1-426	15	E
58	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-427	10	F
58	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-428	25	F
59	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	DER-1-429	40	F
59	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	DER-1-430	40	F
59: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-431	5	F
59: youth only	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	DER-1-432	15	E
59	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	DER-1-433	15	E
59	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-434	10	F

59	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-435	25	F
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B. Private-land only deer hunts: Private-land only deer licenses shall only be valid on deeded private land and are restricted to the hunt dates, eligibility requirements, big-game sporting arms and bag limit that corresponds to the draw hunt code listed in Subsection A of 19.31.13.14 NMAC for the GMU where the private landowner's property lies. Private-land only deer licenses shall be unlimited and available from any license vendor and the department's web site. Private-land only hunts in GMUs 8, 46, 54 and 55 shall be as indicated below:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
8	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	DER-1-500	unlimited	FAD
8	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-501	unlimited	FAD
8	1/1-1/15	1/1-1/15	1/1-1/15	1/1-1/15	DER-2-502	unlimited	FAD
8	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-503	unlimited	FAD
46	10/21-10/25	10/19-10/23	10/18-10/22	10/24-10/28	DER-1-504	unlimited	FAD
46	10/28-11/1	10/26-10/30	10/25-10/29	10/31-11/4	DER-1-505	unlimited	FAD
46	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-506	unlimited	FAD

46	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-507	unlimited	FAD
54	10/21-10/25	10/19-10/23	10/18-10/22	10/24-10/28	DER-1-508	unlimited	FAD
54	10/28-11/1	10/26-10/30	10/25-10/29	10/31-11/4	DER-1-509	unlimited	FAD
54	11/22-11/26	11/27-12/1	11/26-11/30	11/25-11/29	DER-1-510	unlimited	ESWTD
54: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-511	unlimited	FAD
54	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-512	unlimited	FAD
54	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-513	unlimited	FAD
55	10/21-10/25	10/19-10/23	10/18-10/22	10/24-10/28	DER-1-514	unlimited	FAD
55	10/28-11/1	10/26-10/30	10/25-10/29	10/31-11/4	DER-1-515	unlimited	FAD
55: youth only	11/18-11/26	11/23-12/1	11/22-11/30	11/21-11/29	DER-1-516	unlimited	FAD
55	9/1-9/24	9/1-9/24	9/1-9/24	9/1-9/24	DER-2-517	unlimited	FAD
55	9/27-10/3	9/27-10/3	9/27-10/3	9/27-10/3	DER-3-518	unlimited	FAD

55	11/22- 11/26	11/27- 12/1	11/26- 11/30	11/25- 11/29	DER-1- 519	unlimited	ESWTD
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[19.31.13.14 NMAC - Rp, 19.31.13.14 NMAC, 4/1/2023]

PART 14: ELK

19.31.14.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.14.1 NMAC - Rp, 19.31.14.1 NMAC, 4/1/2023]

19.31.14.2 SCOPE:

Sportspersons interested in elk management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.31.14.2 NMAC - Rp, 19.31.14.2 NMAC, 4/1/2023]

19.31.14.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.14.3 NMAC - Rp, 19.31.14.3 NMAC, 4/1/2023]

19.31.14.4 DURATION:

April 1, 2023 through March 31, 2027.

[19.31.14.4 NMAC - Rp, 19.31.14.4 NMAC, 4/1/2023]

19.31.14.5 EFFECTIVE DATE:

April 1, 2023, unless a later date is cited at the end of a section.

[19.31.14.5 NMAC - Rp, 19.31.14.5 NMAC, 4/1/2023]

19.31.14.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules and procedures governing the issuance of elk licenses by the department.

[19.31.14.6 NMAC - Rp, 19.31.14.6 NMAC, 4/1/2023]

19.31.14.7 DEFINITIONS:

- A. "Antlerless elk" or "A"** shall mean any one elk without antlers.
- B. "Antler point restricted elk" or "APRE/6"** shall mean any bull elk with a minimum of six antler points on one side. A brow tine or eye guard constitutes a point; a burr at the base does not.
- C. "Department"** shall mean the New Mexico department of game and fish.
- D. "Director"** shall mean the director of the New Mexico department of game and fish.
- E. "Elk"** shall mean any wild cervid of the genus Cervus.
- F. "Elk enhancement program"** shall mean the department activity that allows the issuance of not more than two authorizations for the taking of one bull elk per license, with the purpose of raising funds for programs and projects to benefit elk.
- G. "Elk region"** shall mean a portion of the state designated by the department to administer elk management activities. An elk region describes an assemblage of one or more herd units and encompasses one or more GMUs.
- H. "Either sex" or "ES"** shall mean any one elk.
- I. "Game management unit", "GMU", "hunt area", "Cerro portion" or "management area"** shall mean those areas as described in 19.30.4 NMAC Boundary Descriptions for Game Management Units.
- J. "High-demand hunt"** shall mean a special draw hunt where the total number of non-resident applicants for an elk hunt exceeds twenty-two percent of the total applicants based on data for the two immediately preceding years.
- K. "Mature bull" or "MB"** shall mean a male elk with at least one brow tine extending six or more inches from the main beam or at least one forked antler with both branches six or more inches long.
- L. "Primary management zone"** shall mean designated areas of the state upon which elk management goals and subsequent harvest objectives are based.

M. "Private land authorization" shall mean the document generated by the department and issued to a private landowner that authorizes the holder to purchase a specified license to hunt elk.

N. "Quality hunt" shall mean a hunt designed to provide a hunter with an opportunity to achieve one or more of the following: an enhanced experience based on timing and length of hunt season; lower hunter density; or an increased opportunity for success.

O. "Secondary management zone" shall mean areas of the state that are not part of the primary management zone or special management zone.

P. "Special management zone" shall mean areas of the state not within the primary management zone or secondary management zone and where private land authorization issuance includes eligibility requirements or restrictions.

Q. "Wildlife management area" or "WMA" shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.14.7 NMAC - Rp, 19.31.14.7 NMAC, 4/1/2023]

19.31.14.8 ADJUSTMENT OF LICENSES AND AUTHORIZATIONS:

The director, with the verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may adjust the number of licenses or authorizations up or down by no more than twenty percent to address significant changes in population levels or to address critical department management needs. GMU 34 elk licenses and authorizations may be adjusted beyond this amount as necessary to meet management objectives. These adjustments may be applied to any or all authorizations or licenses for elk in a specific GMU or designated area.

[19.31.14.8 NMAC - Rp, 19.31.14.8 NMAC, 4/1/2023]

19.31.14.9 ELK LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

A. Validity of license: In the primary management zones, except GMUs 4 and 5A, private-land ranch-only (as defined in 19.30.5 NMAC) elk licenses shall not be valid on any other private lands. In GMUs 4, 5A, and secondary and special management zones, private-land licenses are valid on any other private lands within the GMU and the same zone designation only if accompanied by written permission; unless otherwise restricted in a department issued agreement.

B. Valle Vidal elk once-in-a-lifetime hunts: No person shall apply for a license to hunt bull elk on the Valle Vidal if he or she has held a license since 1983 allowing them to take a bull elk on the Valle Vidal. Persons that have held a youth-only license may apply for non-youth-only licenses as long as they are eligible. No person shall apply for

a license to hunt antlerless elk on the Valle Vidal if he or she has held a license since 1983 allowing them to take an antlerless elk on the Valle Vidal. Persons that have held a youth-only antlerless license may apply for non-youth-only antlerless licenses as long as they are eligible. Either sex or mature bull/antlerless shall be considered as a "bull elk" license, and shall not be considered as an "antlerless" license for this restriction. Persons who have held a Valle Vidal elk license through any incentive program are exempt from this restriction.

[19.31.14.9 NMAC - Rp, 19.31.14.9 NMAC, 4/1/2023]

19.31.14.10 CHRONIC WASTING DISEASE (CWD):

The director has the authority to designate possession criteria to any elk hunter where CWD is a concern. It is unlawful to transport dead elk, or their parts, taken from any GMU or area identified by the director in which the presence of, or possibility of, exposure to CWD has been identified, to any location outside that GMU, except for the following:

- A.** meat that is cut and wrapped (either commercially or privately);
- B.** quarters or other portions of meat with no part of the spinal column or head attached;
- C.** meat that has been boned out;
- D.** hides with no heads attached;
- E.** clean skull plates with antlers attached; clean is defined as having been immersed in a bath of at least one part chlorine bleach and two parts water with no meat or tissue attached;
- F.** antlers with no meat or tissue attached;
- G.** upper canine teeth, also known as "ivories";
- H.** finished taxidermied heads; or
- I.** by prior arrangement to a department office.

[19.31.14.10 NMAC - Rp, 19.31.14.10 NMAC, 4/1/2023]

19.31.14.11 QUALITY ELK HUNTS:

Quality hunts for elk are as follows:

- A.** all Valle Vidal hunts;

B. the first three mature bull hunts and both bow hunts on the Sargent WMA as follows: ELK-1-165, ELK-1-166, ELK-1-167, ELK-2-163 and ELK-2-164;

C. elk hunts in GMUs 13, 15, 16A, 16B/22, 16C, 16D, 16E and 17 as follows: ELK-2-257, ELK-3-259, ELK-2-265, ELK-3-267, ELK-2-273, ELK-1-274, ELK-1-275, ELK-2-280, ELK-1-281, ELK-1-282, ELK-2-285, ELK-1-287, ELK-2-292, ELK-1-293, ELK-1-294, ELK-2-299, ELK-3-301, ELK-2-306, and ELK-3-308;

D. all GMU 6B hunts that allow the hunter to take a bull;

E. quality hunt fees for licenses listed in Subsection C above shall also apply to the conversion of any mature bull or either-sex private-land authorization (excluding youth-only) for private lands that lie within the primary management zone. This includes any hunt dates from September 15 through October 15.

[19.31.14.11 NMAC - Rp, 19.31.14.11 NMAC, 4/1/2023]

19.31.14.12 SPECIAL ELK HUNTING OPPORTUNITIES:

A. Elk enhancement program:

(1) Program description: The director shall collect all proceeds generated through the auction and lottery of special bull elk authorizations, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit elk and for direct costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the conservation, restoration, utilization, and management of elk.

(2) Requirements for issuance of special elk authorizations:

(a) The state game commission shall authorize the director to issue not more than two special elk authorizations in any one license year to take one mature bull elk per license. The director shall allow the sale of one authorization through auction to the highest bidder and one authorization to a person selected through a random drawing of a lottery ticket by the department or an incorporated, non-profit organization dedicated to the conservation of elk.

(b) Unless their hunting privileges have been revoked pursuant to law, any person is eligible to submit a bid for the special elk auction authorization or purchase lottery tickets in an attempt to be selected for the special elk lottery authorization.

(c) The special elk authorizations issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals only to other individuals qualified to hunt.

(d) Special elk licenses granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime'.

(3) Enhancement hunts: Elk enhancement licenses shall be valid from September 1 through January 31 for any big-game sporting arms. These licenses shall be valid statewide where hunting is allowed; bag limit shall be one mature bull elk. The elk enhancement authorizations may be used by the recipient or transferred through sale, barter or gift by the successful individuals to other individuals qualified to hunt.

B. Elk incentive programs: The director may annually allow up to two elk authorizations to be issued for deer and elk hunters submitting their legally harvested animal for CWD testing. Authorizations to purchase an incentive license may be used either by the applicant or transferred through sale, barter or gift by the successful individuals to any individual qualified to hunt. Elk incentive hunts shall be valid only for the dates, big-game sporting arms, bag limit and area specified by the director.

C. Encouragement hunts:

(1) Only resident youth hunters as defined by 19.31.3 NMAC who have submitted a valid application for a draw hunt for deer, elk, pronghorn, ibex, oryx, Barbary sheep or bighorn sheep in the current license year and were unsuccessful in drawing any license will be eligible to purchase a license for these hunts for the first 14 days of availability on the department website. Licenses remaining after 14 days shall be available to any youth hunter eligible to purchase an elk license.

(2) The director, with concurrence of the chairperson of the state game commission, may adjust the number of licenses available in all encouragement hunts listed below based on management objectives.

(3) These hunts will be administered by the department through a web sale. The open GMUs, hunt dates, hunt codes, big-game sporting arms, number of licenses and bag limits shall be as indicated below:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
5B	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-100	20	A
6A	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-101	50	A
6A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-102	50	A

6C	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-103	50	A
6C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-104	50	A
10	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-105	35	A
13	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-3-106	60	A
13	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-107	60	A
15	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-3-108	75	A
15	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-109	75	A
16A	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-110	75	A
16A	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-111	75	A
16C	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-112	75	A
16C	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-113	75	A
16D	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-114	75	A
16D	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-115	75	A
16E	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-116	75	A
16E	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-117	75	A

17	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-3-118	60	A
17	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-3-119	60	A
34	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-120	125	A
36	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-121	80	A
36	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-122	80	A
49	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-123	50	A
51	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-124	105	A
51	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-125	105	A
52	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-126	50	A
53	11/25-11/29	11/30-12/4	11/29-12/3	11/28-12/2	ELK-1-127	60	A
53	12/26-12/30	12/26-12/30	12/26-12/30	12/26-12/30	ELK-1-128	60	A

D. Premium hunt opportunity: One premium elk hunt will be issued each license year through the draw. The hunt area will be statewide on any public land open to hunting, including wildlife management areas, and private land with written permission.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
statewide	9/1/2023-1/31/2024	9/1/2024-1/31/2025	9/1/2025-1/31/2026	9/1/2026-1/31/2027	ELK-1-700	1	MB

[19.31.14.12 NMAC - Rp, 19.31.14.12 NMAC, 4/1/2023]

19.31.14.13 POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for elk when justified in writing by department personnel.

B. The director or their designee shall designate the big-game sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.14.13 NMAC - Rp, 19.31.14.13 NMAC, 4/1/2023]

19.31.14.14 ELK HUNTS IN PRIMARY MANAGEMENT ZONES:

This section lists elk management information and subsequent hunting opportunities for GMUs in elk regions where a primary management zone has been established. The listed information includes regional elk population information, management goals, harvest objectives, total number of hunting opportunities, GMUs or areas open for hunting, season dates, hunt codes, bag limits, big-game sporting arms, number of licenses available in the public draw and the number and type of authorizations available for private lands within the primary management zone of each GMU.

A. Elk management goals:

(1) Quality hunt management (QHM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below thirty-five percent.

(b) Seasons should be designed to ensure timing and length of hunts are desirable.

(c) At least two-thirds of all hunters are "satisfied" with the experience.

(2) Optimal opportunity management (OOM):

(a) Elk harvest in regional populations, herd units or GMUs within a region results in the trend of annual bull mortality rates to be below forty-five percent and harvest near optimal sustainable yield.

(b) Season structure should be designed to ensure timing and length of hunts provides significant opportunity.

(c) At least one-third of all hunters are "satisfied" with the experience.

B. Northwest region: primary management zones in GMUs 2, 5A, 9 and 10.

(1) Optimal opportunity management within primary management zones in GMUs 2, 5A, 9 and 10.

(2) Foundational resource information for the northwest region is indicated below:

northwest region population information			sustainable harvest pursuant to goals	
herd unit	population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows
San Juan (GMU 2)	2300-2900	35:100:32	140-200	180-220
Lindrith (GMU 5A)	2200-2500	35:100:32	140-180	170-200
Mt. Taylor (GMU 9)	1000-2100	26:100:28	40-100	0
Zuni (GMU 10)	1500-1800	35:100:32	110-150	140-160

GMU	management goals	total licenses by bag limit			
		MB, ES-1, ES-3	A	ES-2	total licenses
2	OOM	259	323	282	864
5A	OOM	250	250	65	565
9	OOM	228	0	281	509
10	OOM	206	324	368	898
Total		943	897	996	2836

(3) Public draw elk hunts listing the eligibility requirements or restrictions, GMUs or areas, hunt dates, hunt codes, number of licenses, bag limits and big-game sporting arms shall be as indicated below. The state game commissioned owned Water

Canyon WMA shall be open to licensed public draw elk hunters during established seasons.

open GMUs or areas	2023- 2024 hunt dates	2024- 2025 hunt dates	2025- 2026 hunt dates	2026- 2027 hunt dates	hunt code	licenses	bag limit
2	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-129	120	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-130	120	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-131	135	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-132	85	MB
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-133	125	A
2 youth only	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-134	75	A
2C	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-135	75	A
5A public land only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-136	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-137	5	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-138	10	MB
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-139	10	A
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-140	10	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-141	10	A
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-142	10	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-143	10	A
	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	ELK-1-144	10	MB
	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	ELK-1-145	10	A
9 Marquez/LBar WMA only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-146	15	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-147	15	ES

	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-148	15	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-149	15	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-3-150	15	MB
9	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-151	82	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-152	82	ES
9 mobility impaired	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-153	21	MB
9	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-154	35	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-3-155	35	MB
	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	ELK-3-156	21	MB
10	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-157	125	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-158	125	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-159	70	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-160	70	MB
10 youth only	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-161	120	A
10	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-162	100	A

(4) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits, and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023-24, 2024-25, 2025-26, 2026-27 hunt seasons			
	MB, ES-1, ES-3	A	ES -2	Total
2	39	48	42	129
5A	210	210	55	475
9	71	0	87	158
10	66	104	118	288
Total	386	362	302	1050

(5) Private land elk hunts for ranches designated as "ranch-only" shall be limited to the following eligibility requirements or restrictions, season dates and big-game sporting arms. All private land mobility-impaired and youth-only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility-impaired" or "youth-only" hunt periods.

Big-game sporting arms	open GMUs or area	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
bows only	2, 5A, 9, 10	9/1-9/14 9/15-9/24	9/1-9/14 9/15-9/24	9/1-9/14 9/15-9/24	9/1-9/14 9/15-9/24
muzzle loading rifles and bows	2, 10	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
	9, mobility impaired	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
	9	any 5 consecutive days, 10/14-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31
any big-game sporting arms	2, 10	any 5 consecutive days, 10/14-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31
any big-game sporting arms	5A	any 5 consecutive days, 10/7-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/11-12/31	any 5 consecutive days, 10/10-12/31

C. North central region: primary management zones in GMUs 4, 5B, 50, 51 and 52.

(1) Optimal opportunity management within primary management zones in GMUs 4, 5B, 50, 51 and 52.

(2) Foundational resource information for the north central region shall be as indicated below:

north central region population information			sustainable harvest pursuant to goals	
herd unit	population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows

Chama-San Antonio (GMUs 4, 5B, 50, 51 and 52)		25300-29000	38:100:35	1690-2200	2070-2370
GMU	management goals	total licenses by bag limit			
		MB, ES-1, ES-3, MB/A	A	ES-2	total licenses
4	OOM	1060	665	475	2200
5B	OOM	367	188	160	715
50	OOM	331	117	156	604
51	OOM	970	909	434	2313
52	OOM	685	406	500	1591
Total		3413	2285	1725	7423

(3) Public draw elk hunts listing the eligibility requirements or restrictions, GMU or area, hunt dates, hunt codes, number of licenses, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023- 2024 hunt dates	2024- 2025 hunt dates	2025- 2026 hunt dates	2026- 2027 hunt dates	hunt code	licenses	bag limit
4:Sargent WMA only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2- 163	10	ES
	9/15- 9/24	9/15- 9/24	9/15- 9/24	9/15- 9/24	ELK-2- 164	10	ES
	10/7- 10/11	10/5- 10/9	10/11- 10/15	10/10- 10/14	ELK-1- 165	10	MB/A
	10/14- 10/18	10/12- 10/16	10/18- 10/22	10/17- 10/21	ELK-1- 166	10	MB/A
	10/21- 10/25	10/19- 10/23	10/25- 10/29	10/24- 10/28	ELK-1- 167	10	MB/A
	10/28- 11/1	10/26- 10/30	11/1- 11/5	10/31- 11/4	ELK-1- 168	10	MB/A
	11/4- 11/8	11/2- 11/6	11/1- 11/5	11/7- 11/11	ELK-1- 169	10	A
4:Sargent WMA only, youth only	11/4- 11/8	11/2- 11/6	11/1- 11/5	11/7- 11/11	ELK-1- 170	10	A
4:Humphries/ Rio Chama WMAs only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2- 171	10	ES
	9/15- 9/24	9/15- 9/24	9/15- 9/24	9/15- 9/24	ELK-2- 172	10	ES
	10/7- 10/11	10/5- 10/9	10/11- 10/15	10/10- 10/14	ELK-1- 173	15	MB/A

	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-174	15	MB/A
	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	ELK-1-175	10	A
4:Humphries/ Rio Chama WMAs only, youth only	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	ELK-1-176	15	A
4: Rio Chama WMA only	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	ELK-1-177	20	A
5B	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-178	76	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-179	75	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-180	86	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-181	59	A
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-182	86	MB
	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	ELK-1-183	59	A
	11/4-11/8	11/2-11/6	11/1-11/5	11/7-11/11	ELK-1-184	87	MB
	11/11-11/15	11/9-11/13	11/8-11/12	11/14-11/18	ELK-1-185	59	A
	12/16-12/20	12/21-12/25	12/20-12/24	12/19-12/23	ELK-1-186	87	MB
50	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-187	60	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-188	55	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-189	120	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-190	125	MB
	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	ELK-1-191	42	A
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-1-192	45	A
51	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-193	180	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-194	180	ES

	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-195	220	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-196	220	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-197	220	MB
	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	ELK-1-198	251	A
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-199	251	A
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-1-200	252	A
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-3-201	145	ES
52	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-202	230	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-203	230	ES
52 mobility impaired	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-204	50	MB
52	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-205	120	MB
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-206	50	A
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-207	230	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-208	230	MB
52 youth only	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-209	80	A
52 mobility impaired	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-1-210	56	A
52	11/18-11/22	11/16-11/20	11/15-11/19	11/21-11/25	ELK-1-211	73	A
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-212	115	A

(4) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023-24, 2024-25, 2025-26, 2026-27 hunt seasons			
	MB, ES-1, ES-3, MB/A	A	ES-2	Total
4	990	600	435	2025
5B	21	11	9	41
50	86	30	41	157

51	165	155	74	394
52	55	32	40	127
Total	1317	828	599	2744

(5) Private land elk hunts for ranches designated as "ranch-only" shall be limited to the following eligibility requirements or restrictions, season dates and big-game sporting arms. All private land mobility-impaired and youth-only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility-impaired" or "youth-only" hunt periods.

Big-game sporting arms	open GMUs or area	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
bows only	4, 5B, 50, 51, 52	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles and bows	52	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
Big-game sporting arms	4	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31
	5B, 50, 51	any 5 consecutive days, 10/7-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/11-12/31	any 5 consecutive days, 10/10-12/31
	52	any 5 consecutive days, 10/14-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31

D. Jemez region: primary management zones in GMUs 6A, 6B, 6C and 7.

(1) Quality hunt management goals for primary management zones in GMUs 6A and 6B.

(2) Optimal opportunity management within primary management zones in GMUs 6C and 7.

(3) Foundational resource information for the Jemez region shall be as indicated below:

Jemez region population information			sustainable harvest pursuant to goals	
Jemez herd unit	population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows
GMUs 6A, 6B, 6C, and 7	6100-7100	48:100:27	360-475	440-510

GMU	management goal	total licenses by bag limit			
		MB, ES-1, ES-3	A	ES-2	total licenses
6A	QHM	361	117	297	775
6B	QHM	50	250	50	350
6C	OOM	429	259	300	988
7	OOM	68	62	36	166
Total		908	688	683	2279

(4) Public draw elk hunts listing the eligibility requirements or restrictions, GMUs or areas, hunt dates, hunt codes, number of licenses, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
6A	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-213	150	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-214	102	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-215	104	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-216	100	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-217	103	MB
	10/28-11/1	10/26-10/30	11/8-11/12	10/31-11/4	ELK-1-218	99	A
6B:	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-219	25	ES
	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-220	10	A
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-221	25	ES

	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-222	10	A
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-223	15	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-224	20	A
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-225	15	ES
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-226	20	A
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-227	20	ES
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-228	15	A
6B youth only	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	ELK-1-229	35	A
6B	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	ELK-1-230	35	A
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-1-231	35	A
6B youth only	11/25-11/29	11/23-11/27	11/29-12/3	11/28-12/2	ELK-1-232	35	A
6B	12/2-12/6	11/30-12/4	12/6-12/10	12/5-12/9	ELK-1-233	35	A
6C	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-234	150	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-235	105	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-236	155	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-237	105	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-238	105	MB
	10/28-11/1	10/26-10/30	11/8-11/12	10/31-11/4	ELK-1-239	110	A
	11/25-11/29	11/23-11/27	11/22-11/26	11/21-11/25	ELK-1-240	110	A
7	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-241	15	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-242	14	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-243	24	MB

	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-244	30	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-245	50	A

(5) Private land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023-24, 2024-25, 2025-26, 2026-27 hunt seasons			
	MB, ES-1	A	ES-2	Total
6A	54	18	45	117
6C	64	39	45	148
7	14	12	7	33
Total	132	69	97	298

(6) Private land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and big-game sporting arms. All private land mobility-impaired and youth-only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility-impaired" or "youth-only" hunt periods.

Big-game sporting arms	open GMUs or area	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
bows only	6A, 6C, 7	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles & bows	6A, 6C, 7	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
any big-game sporting arms	6A, 6C, 7	any 5 consecutive days, 10/14-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31

E. Southwest region:

(1) Quality hunt management for primary management zones in GMUs 12, 13, 15, 16A, 16B/22, 16C, 16D, 16E and 17.

(2) Optimal opportunity management for primary management zones in GMUs 21A, 21B, 23 and 24.

(3) Foundational resource information for the southwest region shall be as indicated below:

southwest region population information			sustainable harvest pursuant to goals	
herd unit	population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows
Fence Lake (GMU 12)	4000-5900	41:100:46	320-550	400-590
Datil (GMU 13)	3000-3900	40:100:37	210-310	250-330
Greater Gila (GMUs 15, 16A, 16B/22, 16C-E)	21200-23300	33:100:27	1100-1400	1300-1400
Lesser Gila (GMUs 21A, 21B, 23, 24)	1300-4400	33:100:27	80-280	70-280
San Mateo (GMU 17)	1600-2400	51:100:38	110-180	130-200

GMU	management goals	total licenses by bag limit			
		MB, ES-1, ES-3	A	ES-2, MB-2, APRE/6	total licenses
12	QHM	593	428	224	1245
13	QHM	583	370	556	1509
15	QHM	923	641	769	2333
16A	QHM	206	155	412	773
16B/22	QHM	222	0	394	616
16C	QHM	149	118	294	561
16D	QHM	148	114	171	433
16E	QHM	187	217	217	621
Greater Gila Totals (15, 16A, 16B/22, 16C-E)		1835	1245	2257	5337
17	QHM	301	271	241	813
21A	OOM	107	31	117	255
21B	OOM	127	167	166	460
23	OOM	195	42	207	444
24	OOM	39	5	28	72
Lesser Gila Totals (21A, 21B, 23, 24)		468	245	518	1231
southwest region total		3780	2559	3796	10135

(4) Public draw elk hunts listing the eligibility requirements or restrictions, hunt dates, hunt codes, number of licenses, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023- 2024 hunt dates	2024- 2025 hunt dates	2025- 2026 hunt dates	2026- 2027 hunt dates	hunt code	licenses	bag limit
12	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-246	36	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-247	35	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-248	35	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-249	60	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-250	80	MB
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-251	80	MB
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-1-252	60	A
	11/25-11/29	11/23-11/27	11/29-12/3	11/28-12/2	ELK-1-253	60	A
	12/2-12/6	11/30-12/4	12/6-12/10	12/5-12/9	ELK-1-254	64	A
	12/9-12/13	12/7-12/11	12/13-12/17	12/12-12/16	ELK-2-255	25	APRE/6
13	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-256	202	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-257	148	ES
13 youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-258	30	ES
13	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-259	86	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-3-260	126	MB
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-3-261	126	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-3-262	117	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-3-263	116	A

15	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-264	350	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-265	250	ES
15 youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-266	25	ES
15	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-267	200	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-3-268	245	MB
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-3-269	250	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-3-270	250	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-3-271	250	A
16A	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-272	250	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-273	150	ES
16A mobility impaired	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-274	25	MB
16A	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-275	75	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-276	100	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-277	75	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-278	75	A
16B/22	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-279	225	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-280	165	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-281	25	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-282	80	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-283	120	MB
16C	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-284	144	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-285	100	ES

16C youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-286	25	ES
16C	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-287	35	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-288	65	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-289	50	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-290	48	A
16D	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-291	90	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-292	60	ES
16D mobility impaired	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-293	25	MB
16D	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-294	55	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-295	50	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-296	50	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-297	50	A
16E	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-298	90	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-299	60	ES
16E youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-300	25	ES
16E	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-301	70	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-302	53	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-303	75	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-304	75	A
17	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-305	125	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-306	75	ES
17 youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-307	25	ES

17	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-308	100	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-3-309	100	MB
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-3-310	25	MB
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-3-311	25	A
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-3-312	100	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-3-313	100	A
21A	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-314	50	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-315	50	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-316	15	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-317	35	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-318	55	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-319	30	A
	12/16-12/20	12/21-12/25	12/20-12/24	12/19-12/23	ELK-2-320	15	MB
21B	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-321	25	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-322	25	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-323	10	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-324	15	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-325	25	MB
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-1-326	15	A
	11/25-11/29	11/23-11/27	11/29-12/3	11/28-12/2	ELK-1-327	15	A
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-328	15	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-329	20	A

	12/16-12/20	12/21-12/25	12/20-12/24	12/19-12/23	ELK-2-330	15	MB
23	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-331	125	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-332	75	ES
23 youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-333	25	ES
23	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-334	75	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-335	75	MB
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-336	20	A
	12/16-12/20	12/21-12/25	12/20-12/24	12/19-12/23	ELK-2-337	15	MB
23: south of NM 78	12/16-12/24	12/21-12/29	12/20-12/28	12/19-12/27	ELK-1-338	20	A
24: excluding Ft. Bayard management area	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-339	15	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-340	10	ES
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-341	15	MB
	12/16-12/20	12/21-12/25	12/20-12/24	12/19-12/23	ELK-1-342	15	MB
24: including Ft. Bayard management area, youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-343	5	ES
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-344	5	A

(5) Private-land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023-24, 2024-25, 2025-26, 2026-27 hunt seasons			
	MB, ES-1, ES-3	A	ES-2, MB-2, APRE/6	total
12	338	244	128	710
13	215	137	206	558
15	203	141	169	513
16A	6	5	12	23
16B/22	2	0	4	6
16C	24	20	50	94
16D	18	14	21	53

16E	65	67	67	199
17	51	46	41	138
21A	2	1	2	5
21B	77	102	101	280
23	5	2	7	14
24	4	0	3	7
Total	1010	779	811	2600

(6) Private-land elk hunts for ranches designated as "ranch-only" shall be limited to the following eligibility requirements or restrictions, season dates and big-game sporting arms. All private land mobility-impaired and youth-only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility-impaired" or "youth-only" hunt periods.

Big-game sporting arms	open GMUs or area	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
bows only	12, 13, 15, 16A, 16B/22, 16C, 16D, 16E, 17, 21A, 21B, 23, 24	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles and bows	16E, 23, 24	10/14-10/18	10/12-10/16	10/11-10/15	10/10-10/14
	youth only: 13, 15, 17	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
	13, 15, 17	any 5 consecutive days 10/14-12/31	any 5 consecutive days 10/12-12/31	any 5 consecutive days 10/18-12/31	any 5 consecutive days 10/17-12/31
muzzle loading rifles only with approval of director or designee and state game commission chairperson	13: antlerless elk only	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31
Big-game sporting arms	12, 16B/22, 21A	any 5 consecutive days, 10/7-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/11-12/31	any 5 consecutive days, 10/10-12/31

	21B	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31	any 5 consecutive days, 10/1-12/31
	16E, 23, 24	any 5 consecutive days, 10/21-12/31	any 5 consecutive days, 10/19-12/31	any 5 consecutive days, 10/25-12/31	any 5 consecutive days, 10/24-12/31
	16A, 16C, 16D	any 5 consecutive days, 10/14-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31
	youth only: 16C, 16E, 23, 24	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
	mobility impaired: 16A, 16D	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14

F. Southeast region: GMUs 34 and 36.

- (1) Quality hunt management for primary management zones in GMU 36.
- (2) Optimal opportunity management goals for primary management zones in GMU 34.
- (3) Foundational resource information for the southeast region shall be as indicated below:

southeast region population information			sustainable harvest pursuant to goals	
herd unit	population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows
Sacramento (GMU 34)	7400-8600	52:100:39	500-660	610-710
Ruidoso (GMU 36)	5400-8500	66:100:43	370-640	450-690
GMU	management goal	total licenses by bag limit		
		MB, ES-1, ES-3	A	ES-2, APRE/6/A

34	OOM	633	1892	723	3248
36	QHM	583	417	389	1389
Total		1216	2309	1112	4637

(4) Public-draw elk hunts listing the hunt dates, hunt codes, number of licenses, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023- 2024 hunt dates	2024- 2025 hunt dates	2025- 2026 hunt dates	2026- 2027 hunt dates	hunt code	licenses	bag limit
34	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-345	200	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-346	200	ES
34 youth only	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-347	75	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-348	120	A
34 mobility impaired	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-349	50	ES
34	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-3-350	250	ES
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-351	150	ES
	11/25-11/29	11/23-11/27	11/29-12/3	11/28-12/2	ELK-1-352	350	A
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-353	350	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-354	350	A
	12/16-12/20	12/21-12/25	12/20-12/24	12/19-12/23	ELK-2-355	200	APRE/6/A
	1/27-1/31	1/25-1/29	1/24-1/28	1/23-1/27	ELK-1-356	200	A
	2/3-2/7	2/1-2/5	2/7-2/11	2/6-2/10	ELK-1-357	200	A
36	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-358	140	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-359	140	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-360	140	ES

	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-361	140	ES
	10/28-11/1	10/26-10/30	11/1-11/5	10/31-11/4	ELK-1-362	140	ES
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-363	100	A
	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-364	100	A
	1/27-1/31	1/25-1/29	1/24-1/28	1/23-1/27	ELK-1-365	100	A

(5) Private-land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023-24, 2024-25, 2025-26, 2026-27 hunt seasons			
	MB, ES-1, ES-3	A	ES-2, APRE/6/A	total
34	108	322	123	553
36	163	117	109	389
Total	271	439	232	942

(6) Private-land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and big-game sporting arms. All private-land mobility-impaired and youth-only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during the "mobility-impaired" or "youth-only" hunt periods.

Big-game sporting arms	open GMUs or area	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
bows only	34, 36	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
any big-game sporting arms	youth only & mobility impaired: 34	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
muzzle loading rifles and bows	34	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21
	36	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14
any big game sporting arms	34	any 5 consecutive days, 10/21-12/31	any 5 consecutive days, 10/19-12/31	any 5 consecutive days, 10/25-12/31	any 5 consecutive days, 10/24-12/31

	36	any 5 consecutive days, 10/14-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31
any big-game sporting arms	34: antlerless elk only	any 5 consecutive days 10/21/2023-2/7/2024	any 5 consecutive days 10/19/2024-2/5/2025	any 5 consecutive days 10/25/2025-2/11/2026	any 5 consecutive days 10/24/2026-2/10/2027
any big-game sporting arms	36: antlerless elk only	any 5 consecutive days 10/14/2023-1/31/2024	any 5 consecutive days 10/12/2024-1/31/2025	any 5 consecutive days 10/18/2025-1/31/2026	any 5 consecutive days 10/17/2026-1/31/2027

G. Northeast region:

- (1) Quality hunt management for primary management zones in GMU 45.
- (2) Optimal opportunity management goals for primary management zones in GMUs 48, 49 and 53.
- (3) Foundational resource information for the northeast region shall be as indicated below:

northeast region population information				sustainable harvest pursuant to goals	
herd unit		population estimate (rounded to nearest 100)	bull:cow:calf ratio	bulls	cows
Pecos (GMU 45)		1100-2100	35:100:32	80-150	90-160
Whites peak (GMU 48)		1200-2000	35:100:32	70-140	90-150
Penasco (GMU 49)		1100-2400	35:100:32	70-200	40-100
Ute-Midnight-San Cristobal (GMU 53)		1400-2900	34:100:24	70-160	90-180
GMU	management goal	total licenses by bag limit			
		MB, ES-1, ES-3	A	ES-2	total licenses
45	QHM	457	54	163	674
48	OOM	286	170	304	760

49	OOM	161	162	125	448
53	OOM	362	261	174	797
Total		1266	647	766	2679

(4) Public-draw elk hunts listing the hunt dates, hunt codes, number of licenses, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023- 2024 hunt dates	2024- 2025 hunt dates	2025- 2026 hunt dates	2026- 2027 hunt dates	hunt code	licenses	bag limit
45	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-366	75	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-367	73	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-368	136	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-369	140	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-370	140	MB
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-3-371	49	A
48	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-372	80	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-373	80	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-374	60	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-375	75	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-376	64	MB
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-377	50	A
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-1-378	54	A
49	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-379	60	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-380	59	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-381	77	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-382	76	MB

	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	ELK-1-383	77	A
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-384	77	A
53	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-385	65	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-386	60	ES
53: excluding Cerro portion	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-387	50	ES
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-388	80	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-389	131	MB
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-390	94	A
	11/18-11/22	11/16-11/20	11/22-11/26	11/21-11/25	ELK-1-391	94	A

(5) Private-land elk authorizations for qualifying ranches listing the number of authorizations, bag limits and big-game sporting arms shall be as indicated below:

open GMUs or areas	2023-24, 2024-25, 2025-26, 2026-27 hunt seasons			
	MB, ES-1, ES-3	A	ES-2	Total
45	41	5	15	61
48	112	66	119	297
49	8	8	6	22
53	101	73	49	223
Total	262	152	189	603

(6) Private-land elk hunts for ranches designated as "ranch only" shall be limited to the following eligibility requirements or restrictions, season dates and big-game sporting arms. All private-land mobility-impaired and youth-only hunters must satisfy licensing requirements as stated in 19.31.3 NMAC in order to hunt during "mobility-impaired" or "youth-only" hunt periods.

Big-game sporting arms	open GMUs or area	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
bows only	45, 48, 49, 53	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14
		9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24
muzzle loading rifles and bows	45, 48, 53	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14

big-game sporting arms	45, 48, 53	any 5 consecutive days, 10/14-12/31	any 5 consecutive days, 10/12-12/31	any 5 consecutive days, 10/18-12/31	any 5 consecutive days, 10/17-12/31
	49	any 5 consecutive days, 10/7-12/31	any 5 consecutive days, 10/5-12/31	any 5 consecutive days, 10/11-12/31	any 5 consecutive days, 10/10-12/31
big-game sporting arms. Must have approval of director or designee and state game commission chairperson.	48: antlerless elk only	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31	any 5 consecutive days 1/1-1/31

[19.31.14.14 NMAC - Rp, 19.31.14.14 NMAC, 4/1/2023]

19.31.14.15 ELK HUNTS IN SECONDARY MANAGEMENT ZONES:

This section includes eligibility requirements or restrictions, GMUs or areas open for hunting, season dates, hunt codes, big-game sporting arms, number of available licenses and bag limits.

A. Public draw elk hunts in GMUs where no primary or special management zones are established:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
14	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-392	10	ES
18	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-393	25	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-394	25	ES

	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-395	10	ES
28: McGregor range only, military only	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-396	10	ES
28: McGregor range only	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-397	10	ES
29, 30	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-398	20	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-399	20	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-400	20	ES
	10/14-10/18	10/12-10/16	10/11-10/15	10/10-10/14	ELK-1-401	30	ES
37	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-402	40	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-403	30	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-404	30	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-405	30	MB
	11/25-11/29	11/23-11/27	11/22-11/26	11/28-12/2	ELK-1-406	45	A
	12/2-12/6	12/7-12/11	12/6-12/10	12/5-12/9	ELK-2-407	50	APRE/6
38	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-408	10	ES

	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-409	10	ES
39, 43	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-410	30	ES
42, 47, 59	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-411	13	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-412	13	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-413	13	ES
56	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-414	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-415	5	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-416	10	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-417	10	A
57: Sugarite canyon state park only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-418	3	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-419	2	ES
57, 58	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-420	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-421	5	ES
	10/1-10/5	10/1-10/5	10/1-10/5	10/1-10/5	ELK-1-422	5	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-423	10	MB

	12/9-12/13	12/14-12/18	12/13-12/17	12/12-12/16	ELK-1-424	10	A
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B. Private-land only elk hunting: For private lands within secondary management zones, unlimited private-land licenses are available over-the-counter. Bow-only either-sex hunts will be limited to 9/1 – 9/24 each year. Any big-game sporting arms hunts that are antlerless or either-sex will be limited to five consecutive days from 10/1 – 12/31 each year, except as allowed by 19.30.5 NMAC.

[19.31.14.15 NMAC - Rp, 19.31.14.15 NMAC, 4/1/2023]

19.31.14.16 ELK HUNTS IN SPECIAL MANAGEMENT ZONES:

This section includes eligibility requirements or restrictions, GMUs or areas open for hunting, season dates, hunt codes, big-game sporting arms, number of available licenses and bag limits.

A. Public draw elk hunts:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
54: Colin Neblett WMA only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-425	10	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-426	10	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-427	20	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-428	20	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-429	20	MB
	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	ELK-1-430	20	A

55A: ES Barker WMA only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-431	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-432	5	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-1-433	10	MB
55A: Urraca WMA only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-434	5	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-435	5	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-436	10	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-437	10	MB
	11/4-11/8	11/2-11/6	11/8-11/12	11/7-11/11	ELK-1-438	10	MB
	11/11-11/15	11/9-11/13	11/15-11/19	11/14-11/18	ELK-1-439	15	A
	11/25-11/29	11/23-11/27	11/22-11/26	11/28-12/2	ELK-1-440	15	A
55A: Valle Vidal only	9/1-9/14	9/1-9/14	9/1-9/14	9/1-9/14	ELK-2-441	25	ES
	9/15-9/24	9/15-9/24	9/15-9/24	9/15-9/24	ELK-2-442	25	ES
	10/7-10/11	10/5-10/9	10/11-10/15	10/10-10/14	ELK-3-443	20	MB
	10/14-10/18	10/12-10/16	10/18-10/22	10/17-10/21	ELK-1-444	35	MB
	10/21-10/25	10/19-10/23	10/25-10/29	10/24-10/28	ELK-1-445	30	MB

55A: Valle Vidal only, youth only	10/28- 11/1	10/26- 10/30	11/1- 11/5	10/31- 11/4	ELK-1- 446	20	MB
55A: Valle Vidal only, youth only	11/4- 11/8	11/2- 11/6	11/1- 11/5	11/7- 11/11	ELK-1- 447	30	A
55A: Valle Vidal only	11/11- 11/15	11/9- 11/13	11/8- 11/12	11/14- 11/18	ELK-1- 448	30	A
	11/18- 11/22	11/16- 11/20	11/15- 11/19	11/21- 11/25	ELK-1- 449	30	A

B. Private-land only elk hunting: For private lands that lie within GMUs designated as special management zones (GMUs 54 west of NM 199 and 55A), the department may work with landowners to develop bag limits, big-game sporting arms, season dates and authorization numbers for private-land hunting on participating ranches. Bow-only either-sex hunts will be limited to 9/1 – 9/24 each year. Any big-game sporting arms hunts that are antlerless, mature bull, or either-sex will be limited to five consecutive days from 10/1 – 12/31 each year, except as allowed by 19.30.5 NMAC.

[19.31.14.16 NMAC - Rp, 19.31.14.16 NMAC, 4/1/2023]

PART 15: PRONGHORN ANTELOPE

19.31.15.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.15.1 NMAC - Rp, 19.31.15.1 NMAC, 4/1/2023]

19.31.15.2 SCOPE:

Sportspersons interested in pronghorn antelope hunting and management. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.31.15.2 NMAC - Rp, 19.31.15.2 NMAC, 4/1/2023]

19.31.15.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17, NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.15.3 NMAC - Rp, 19.31.15.3 NMAC, 4/1/2023]

19.31.15.4 DURATION:

April 1, 2023 through March 31, 2027.

[19.31.15.4 NMAC - Rp, 19.31.15.4 NMAC, 4/1/2023]

19.31.15.5 EFFECTIVE DATE:

April 1, 2023, unless a later date is cited at the end of a section.

[19.31.15.5 NMAC - Rp, 19.31.15.5 NMAC, 4/1/2023]

19.31.15.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules, and procedures governing the distribution and issuance of pronghorn licenses by the department.

[19.31.15.6 NMAC - Rp, 19.31.15.6 NMAC, 4/1/2023]

19.31.15.7 DEFINITIONS:

- A. **"Department"** shall mean the New Mexico department of game and fish.
- B. **"Director"** shall mean the director of the New Mexico department of game and fish.
- C. **"Either sex" or "ES"** shall mean any one pronghorn.
- D. **"Female or immature pronghorn" or "F-IM"** shall mean any female pronghorn or any pronghorn with both horns shorter than its ears.
- E. **"Game management unit" or "GMU"** shall mean those areas as described in 19.30.4 NMAC Game Management Units.

F. "Mature buck pronghorn" or "MB" shall mean a pronghorn with at least one horn longer than its ears.

G. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.15.7 NMAC - Rp, 19.31.15.7 NMAC, 4/1/2023]

19.31.15.8 ADJUSTMENT OF LICENSES, PERMITS, AUTHORIZATIONS AND HARVEST LIMITS:

The director, with the verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may adjust the number of licenses, or authorizations for pronghorn up or down to address significant changes in population levels or to address critical department management needs. This adjustment may be applied to any or all of the specific hunt codes for pronghorn, and may include a limit to the number of private land-only licenses by hunt code. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.15.8 NMAC - Rp, 19.31.15.8 NMAC, 4/1/2023]

19.31.15.9 PRONGHORN POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for pronghorn when justified in writing by department personnel.

B. The director or their designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses or permits to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.15.9 NMAC - Rp, 19.31.15.11 NMAC, 4/1/2023]

19.31.15.10 SPECIAL PRONGHORN HUNTING OPPORTUNITIES:

A. Pronghorn conservation recognition program: Private landowners who are conducting and maintaining substantial habitat improvements and/or land management practices on their deeded lands that directly and significantly benefit pronghorn may be considered for special recognition. Only those projects as determined by the department to be relevant and beneficial to pronghorn will be considered. Landowners must submit an application and once approved, develop a pronghorn conservation and management plan in cooperation with the department. Upon approval of the plan the landowner may be granted alternative season dates as approved by the department. Landowners receiving special recognition are required to submit an update as directed by the department to be considered for continued participation. The hunt code for any unique hunt season approved pursuant to this program shall be ANT-1-600.

B. Ranch-wide agreements: Properties consisting of deeded and leased public lands deemed by the department to have pronghorn hunting opportunities may enter into an agreement with the department to create a pronghorn hunting ranch. The boundaries would include both the deeded and leased public lands. The department will negotiate with the landowner the number of private licenses to be issued to landowners with ranch-wide agreements. These private licenses shall have access to the deeded and leased public land within the hunting ranch boundary during the respective pronghorn hunt. The landowner shall allow access to the deeded and leased public land to all legally licensed public draw hunters pursuant to Subsection A of Section 19.31.15.11 NMAC for the respective game management unit. Any ranch entered into such an agreement shall be issued one authorization valid for a free pronghorn license pursuant to 17-3-14 NMSA 1978.

[19.31.15.10 NMAC - N, 4/1/2023]

19.31.15.11 PRONGHORN HUNTS:

Numbers of licenses are evaluated annually based upon population dynamics, weather conditions, sustainable harvest, and department management objectives.

A. Public land pronghorn hunts: Pronghorn draw hunts, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms type, number of licenses and bag limit shall be as indicated below. Pronghorn draw hunt licenses are valid on all open public lands and any private land the licensee has written permission to hunt within the GMU or area. All WMAs are open to pronghorn hunts in respective GMUs listed in this section unless specifically closed by rule.

Open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	Hunt code	Licenses	Bag limit
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2, 7, 9, 10	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-100	10	MB
2, 7, 9, 10: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-101	3	ES
2, 7, 9, 10	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-102	5	MB
12	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-103	10	MB
12: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-104	3	ES
12	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-105	10	MB
12: mobility impaired only	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-106	10	MB
12	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-107	10	MB
13	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-108	10	MB
13: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-109	2	ES
13	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-110	10	MB

13: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 111	10	MB
13	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 112	5	MB
15	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT- 2- 113	20	MB
15: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 114	5	ES
15	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 115	10	MB
15: mobility impaired only	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 117	3	MB
15	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 118	10	MB
16	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT- 2- 119	20	MB
16: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 120	5	ES
16	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 121	15	MB
16: mobility impaired only	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 123	3	MB

16	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-124	25	MB
17	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-125	20	MB
17: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-126	5	ES
17	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-127	5	MB
17	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-128	5	MB
17: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-129	3	MB
17	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-130	10	MB
18	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-131	25	MB
18	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-132	15	MB
18	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-133	15	MB
19: WSMR only, youth only	10/6-10/8	10/4-10/6	10/3-10/5	10/2-10/4	ANT-1-134	5	ES

20	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-135	10	MB
20: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-136	2	ES
20	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-137	10	MB
21, 24	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-138	25	MB
21, 24: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-139	10	ES
21, 24	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-140	5	MB
21, 24	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-141	10	MB
21, 24: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-142	8	MB
21, 24	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-143	15	MB
22, 23	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-144	10	MB
22, 23: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-145	5	ES

22, 23	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-146	5	MB
22, 23	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-147	10	MB
22, 23: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-148	3	MB
25, 26, 27	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-149	10	MB
25, 26, 27: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-150	5	ES
25, 26, 27	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-151	5	MB
25, 26, 27	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-152	10	MB
25, 26, 27: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-153	3	MB
28 McGregor Range only	9/2-9/3	8/31-9/1	8/30-8/31	9/5-9/6	ANT-3-154	7	MB
28: McGregor Range only, military only	9/2-9/3	8/31-9/1	8/30-8/31	9/5-9/6	ANT-3-155	7	MB

29: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-3-156	5	ES
29	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-3-157	15	MB
29	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-3-158	25	MB
30	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-159	25	MB
31 north of US 380	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-160	25	MB
31 north of US 380: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-161	5	ES
31 north of US 380	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-162	5	MB
31 north of US 380	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-163	10	MB
31 north of US 380: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-164	5	MB
31 north of US 380	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-165	15	MB
31 south of US 380	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-166	50	MB

31 south of US 380: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-167	5	ES
31 south of US 380	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-168	10	MB
31 south of US 380	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-169	10	MB
31 south of US 380: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-170	5	MB
31 south of US 380	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-171	20	MB
32 east of Pecos River	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-172	25	MB
32 east of Pecos River: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-173	5	ES
32 east of Pecos River	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-174	10	MB
32 east of Pecos River	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-175	5	MB
32 east of Pecos River: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-176	5	MB

32 east of Pecos River	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-177	15	MB
32 west of Pecos River	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-178	20	MB
32 west of Pecos River	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-179	15	MB
32 west of Pecos River	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-180	10	MB
32 west of Pecos River: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-181	5	MB
32 west of Pecos River	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-182	15	MB
32 (Roswell, hunt area)	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15	ANT-1-183	15	F-IM
33	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-184	30	MB
33: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-185	5	ES
33	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-186	25	MB
33	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-187	20	MB

33: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 188	5	MB
33	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 189	25	MB
36, 37	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT- 2- 190	20	MB
36, 37: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 191	5	ES
36, 37	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 192	10	MB
36, 37	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 193	10	MB
36, 37: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 194	5	MB
36, 37	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 195	15	MB
38	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT- 2- 196	20	MB
38: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 197	10	ES
38	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 198	15	MB

38	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-199	20	MB
38: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-200	10	MB
38	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-201	30	MB
39	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-202	5	MB
39: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-203	5	ES
39	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-204	10	MB
39	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-205	10	MB
39: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-206	5	MB
39	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-207	10	MB
40	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-208	5	MB
40	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-209	10	MB

40: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 210	5	MB
40	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 211	10	MB
41	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT- 2- 212	35	MB
41: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 213	5	ES
41	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 214	30	MB
41	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 215	30	MB
41: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 216	5	MB
41	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 217	35	MB
41, youth only	10/14- 10/16	10/12- 10/14	10/11- 10/13	10/10- 10/12	ANT- 1- 218	10	F-IM
42	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT- 2- 219	5	MB
42: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 220	10	ES

42	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-221	10	MB
42	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-222	10	MB
8, 43	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-223	5	MB
8, 43	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-224	10	MB
47	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-225	10	MB
47: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-226	5	ES
47	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-227	25	MB
47	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-228	30	MB
47: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-229	5	MB
47	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-230	35	MB
47: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-231	20	F-IM

50, 52: youth only	8/5-8/7	8/3-8/5	8/2-8/4	8/1-8/3	ANT- 3- 232	40	ES
50, 52	8/8-8/16	8/6-8/14	8/5-8/13	8/4-8/12	ANT- 2- 233	20	MB
50, 52	8/19-8/21	8/17-8/19	8/16-8/18	8/15-8/17	ANT- 1- 234	20	MB
50, 52	8/26-8/28	8/24-8/26	8/23-8/25	8/22-8/24	ANT- 3- 235	40	MB
56	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT- 2- 236	50	MB
56: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 237	50	ES
56	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT- 1- 238	5	MB
56	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 239	45	MB
56: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT- 1- 240	5	MB
56	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT- 1- 241	50	MB
56: youth only	10/14- 10/16	10/12- 10/14	10/11- 10/13	10/10- 10/12	ANT- 1- 242	40	F-IM

57	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-243	5	MB
57: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-244	5	ES
57	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-245	5	MB
57: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-246	5	F-IM
58	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-247	40	MB
58: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-248	20	ES
58	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-249	30	MB
58	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-250	30	MB
58: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-251	5	MB
58	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-252	40	MB
58: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-253	35	F-IM

59	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-254	50	MB
59: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-255	45	ES
59	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-256	5	MB
59	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-257	40	MB
59: mobility impaired only	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-258	10	MB
59	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-259	50	MB
59: youth only	10/14-10/16	10/12-10/14	10/11-10/13	10/10-10/12	ANT-1-260	40	F-IM

B. Private land-only pronghorn hunts: Private land-only pronghorn licenses shall be restricted to the hunt dates, eligibility requirements or restrictions, sporting arms type, and bag limit that corresponds to the draw hunt code listed in Subsection A of Section 19.31.15.11 NMAC for the GMU where the private landowner's property lies. Private land-only pronghorn licenses shall be unlimited, except the any legal sporting arms hunt in GMUs 4, 50 and 52 shall be limited to 15 licenses, or as otherwise provided in 19.31.15.8 NMAC, and available from any license vendor and the department's web site. These licenses are not valid for ranch-wide agreement properties as described in Subsection B of Section 19.31.15.10 NMAC. Private land-only pronghorn licenses are valid only on deeded private property where the licensee has written permission to hunt, and within the GMU or area allowed by hunt code, except ranch-wide agreement properties. Private land-only pronghorn licenses are not restricted to only one ranch or property. In those GMUs where there is no pronghorn draw hunt (GMUs 4, 14, 46, 48, 54, and 55), hunt dates, eligibility requirements or restrictions, sporting arms type, and bag limit will be:

open GMUs or areas	2023- 2024 hunt dates	2024- 2025 hunt dates	2025- 2026 hunt dates	2026- 2027 hunt dates	hunt code	licenses	bag limit
4: youth only	8/5-8/7	8/3-8/5	8/2-8/4	8/1-8/3	ANT-3- 300	unlimited	ES
4	8/8-8/16	8/6-8/14	8/5-8/13	8/4-8/12	ANT-2- 301	unlimited	MB
4, 50, 52	8/19-8/21	8/17-8/19	8/16-8/18	8/15-8/17	ANT-1- 302	15	MB
4	8/26-8/28	8/24-8/26	8/23-8/25	8/22-8/24	ANT-3- 303	unlimited	MB
14	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2- 304	unlimited	MB
14	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1- 305	unlimited	MB
14	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1- 306	unlimited	MB
14	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1- 307	unlimited	MB
46	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2- 308	unlimited	MB
46: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1- 309	unlimited	ES
46	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1- 310	unlimited	MB
46	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1- 311	unlimited	MB
46	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1- 312	unlimited	MB

48	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-313	unlimited	MB
48: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-314	unlimited	ES
48	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-315	unlimited	MB
48	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-316	unlimited	MB
48	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-317	unlimited	MB
54	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-318	unlimited	MB
54: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-319	unlimited	ES
54	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-320	unlimited	MB
54	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-321	unlimited	MB
54	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-322	unlimited	MB
55	8/12-8/20	8/10-8/18	8/9-8/17	8/15-8/23	ANT-2-323	unlimited	MB
55: youth only	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-324	unlimited	ES
55	8/26-8/28	8/24-8/26	8/23-8/25	8/29-8/31	ANT-1-325	unlimited	MB
55	9/30-10/2	9/28-9/30	9/27-9/29	9/26-9/28	ANT-1-326	unlimited	MB

55	10/7-10/9	10/5-10/7	10/4-10/6	10/3-10/5	ANT-1-327	unlimited	MB
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C. Private land-only F-IM pronghorn hunts: The department will work with interested landowners with sufficient pronghorn populations to authorize F-IM hunts on private deeded land. Sporting arms type, hunt dates, eligibility requirements or restrictions and authorization numbers for private deeded land F-IM hunts will be negotiated to maintain appropriate harvest within the exterior boundaries of participating ranches.

D. Pronghorn hunt for injured service men and women: The department may annually issue up to 15 authorizations for hunting by injured service men and women on Melrose Air Force Range. The director shall determine the procedures for issuing the authorizations, and the dates for each hunt.

[19.31.15.11 NMAC - Rp, 19.31.15.12 NMAC, 4/1/2023]

PART 16: TURKEY

19.31.16.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.16.1 NMAC - Rp, 19.31.16.1 NMAC, 4/1/2023]

19.31.16.2 SCOPE:

Sportspersons interested in turkey management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978, and Title 19 NMAC.

[19.31.16.2 NMAC - Rp, 19.31.16.2 NMAC, 4/1/2023]

19.31.16.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, 17-3-16.4 and 17-3-16.5 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.16.3 NMAC - Rp, 19.31.16.3 NMAC, 4/1/2023]

19.31.16.4 DURATION:

April 1, 2023 through March 31, 2027.

[19.31.16.4 NMAC - Rp, 19.31.16.4 NMAC, 4/1/2023]

19.31.16.5 EFFECTIVE DATE:

April 1, 2023, unless a later date is cited at the end of a section.

[19.31.16.5 NMAC - Rp, 19.31.16.5 NMAC, 4/1/2023]

19.31.16.6 OBJECTIVE:

Establishing open hunting seasons, rules and procedures governing the distribution and issuance of turkey permits and licenses by the department.

[19.31.16.6 NMAC - Rp, 19.31.16.6 NMAC, 4/1/2023]

19.31.16.7 DEFINITIONS:

A. "Bearded turkey" shall mean a turkey with a visible beard.

B. "Department" shall mean the New Mexico department of game and fish.

C. "Director" shall mean the director of the New Mexico department of game and fish.

D. "Entry permit" shall entitle the holder of a valid turkey license to hunt areas otherwise closed to turkey hunting.

E. "Game management unit" or "GMU" shall mean those areas described 19.30.4 NMAC Boundary Descriptions for Game Management Units.

F. "Wildlife management areas" or "WMAs" shall mean those areas described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.16.7 NMAC - Rp, 19.31.16.7 NMAC, 4/1/2023]

19.31.16.8 ADJUSTMENT OF LICENSES, PERMITS AND AUTHORIZATIONS:

The director, with the verbal concurrence of the chairperson or their designee, may adjust the number of licenses, permits or authorizations for turkey up or down by no more than twenty percent to address significant changes in population levels or habitat availability. This adjustment may be applied to any or all entry hunt codes for turkey.

[19.31.16.8 NMAC - Rp, 19.31.16.8 NMAC, 4/1/2023]

19.31.16.9 TURKEY ONCE-IN-A-LIFETIME-HUNTS:

It shall be unlawful for anyone to apply for or hold a once-in-a-lifetime turkey entry permit if he or she has held a once-in-a-lifetime entry permit to hunt turkey.

[19.31.16.9 NMAC - Rp, 19.31.16.9 NMAC, 4/1/2023]

19.31.16.10 TURKEY HUNTING SEASONS:

The 2023-24 through 2026-27 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes, legal sporting arms, number of permits and bag limits. All WMAs, except as listed in Subsection A of 19.31.16.10 NMAC, are open to over-the-counter turkey hunting if the GMU where they are located is open to turkey hunting or are restricted to entry permit holders as listed in Subsection B of 19.31.16.10 NMAC.

A. Over-the-counter hunts: All over-the-counter turkey licenses shall be valid for any legal sporting arms, except turkey hunting in the Sandia ranger district portion of GMU 14 and Sugarite canyon state park in GMU 57 are restricted to bow and crossbow only. The number of licenses for these hunts shall be unlimited.

(1) Spring seasons:

Open GMUs or areas	hunt dates	bag limit
Statewide except the following GMUs or areas are closed to over-the-counter turkey hunting: GMU: 2A areas east of US 550 and north of NM 173, 2B areas in the Carson national forest, 2C areas in the Carson national forest, 6B, 8, 19, 25, 26, 27, 28, 30, 31 Bernardo WMA, Jackson lake WMA, La Joya WMA, Marquez/LBar WMA, Prairie Chicken WMAs, Red Rock WMA, Valle Vidal, W.S. Huey WMA	4/15-5/15	2 turkeys with visible beards
Statewide except as listed above, youth only	4/7-9/2023 4/12-14/2024 4/11-13/2025	2 turkeys with visible beards

	4/10-12/2026	
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(2) Fall seasons:

Open GMUs or areas	hunt dates	bag limit
Statewide except the following GMUs or areas are closed to over the counter turkey hunting: G MU: 2A areas east of US 550 and north of NM 173, 2B areas in the Carson national forest, 2C areas in the Carson national forest, 6B, 8, 14, 18, 19, 25, 26, 27, 28, 30, 31, 33, 38, 49, 50, 53 Bernardo WMA, Bill Evans WMA, Edward Sargent WMA, Jackson lake WMA, La Joya WMA, Lake Roberts WMA, Marquez/LBar WMA, Prairie Chicken WMAs, Red Rock WMA, Rio Chama WMA, Sugarite canyon state park, Valle Vidal, W.S. Huey WMA	bow only: 9/1-30 any legal sporting arms: 11/1-30	any 1 turkey

B. Entry permit hunts: All entry permits shall be valid for any legal sporting arms except turkey hunting in the Sandia ranger district portion of G MU 8. An entry permit authorizes the holder to hunt in the area, for the bag limit, and for the season dates listed on the permit. In addition, holders of a turkey entry permit may hunt in any open over-the-counter area during the spring season for a second turkey (if applicable) or if unsuccessful in their entry hunt area. In no circumstance may any turkey hunter take or attempt to take more than two bearded turkeys during the spring season. Holders of an entry hunt permit must also purchase a turkey hunting license prior to hunting.

	2023-2024	2024-2025	2025-2026	2026-2027			
Open GMUs or areas	hunt dates	hunt dates	hunt dates	hunt dates	hunt code	permits	bag limit
2B (Carson national forest)	4/15-5/15	4/15-5/15	4/15-5/15	4/15-5/15	TUR-1-100	115	1 turkey with visible beard

2C (Carson national forest)							
2B (Carson national forest)							
2C (Carson national forest), youth only	4/15-5/15	4/15-5/15	4/15-5/15	4/15-5/15	TUR-1-101	50	1 turkey with visible beard
2A (areas east of US 550 and north of NM 173), youth only	4/15-5/15	4/15-5/15	4/15-5/15	4/15-5/15	TUR-1-102	5	1 turkey with visible beard
6B Valles Caldera national preserve	4/15-4/30	4/15-4/30	4/15-4/30	4/15-4/30	TUR-1-103	20	1 turkey with visible beard
8 (bow and crossbow only in Sandia ranger district)	4/15-5/15	4/15-5/15	4/15-5/15	4/15-5/15	TUR-1-104	15	2 turkeys with visible beard
9 Marquez/LBar WMA	4/15-5/15	4/15-5/15	4/15-5/15	4/15-5/15	TUR-1-105	15	1 turkey with visible beard
26 and 27 once-in-a-lifetime	5/1-5/30	5/1-5/30	5/1-5/30	5/1-5/30	TUR-1-106	up to 5	1 turkey with visible beard
30 Washington ranch (private land) and Black river management	4/28-4/30	4/26-4/28	4/25-4/27	4/24-4/26	TUR-1-107	up to 4	1 turkey with visible beard

area (BLM), youth only							
30 Washington ranch (private land) and Black river management area (BLM), youth only	5/5-5/7	5/3-5/5	5/2-5/4	5/1-5/3	TUR-1- 108	up to 4	1 turkey with visible beard
55 Valle Vidal (only the east side is open from 5/1-15)	4/15- 5/15	4/15- 5/15	4/15- 5/15	4/15- 5/15	TUR-1- 109	20	1 turkey with visible beard

[19.31.16.10 NMAC - Rp, 19.31.16.9 NMAC, 4/1/2023]

19.31.16.11 TURKEY POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for turkey when justified in writing by department personnel.

B. The director or their designee shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner-identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.16.11 NMAC - Rp, 19.31.16.10 NMAC, 4/1/2023]

19.31.16.12 GOULD'S TURKEY ENHANCEMENT PROGRAM:

A. The director shall collect all proceeds generated through the auction or lottery or both, of not more than two special Gould's turkey enhancement entry permits annually, and such monies shall be deposited into the game protection fund. These monies shall

be available for expenditure by the department to be used exclusively for activities, projects and programs aimed at benefitting Gould's turkeys and Gould's turkey habitat, and for costs incurred in carrying out these programs.

B. Requirements for issuance, sale and use of Gould's turkey enhancement permits:

(1) Issuance: The director may issue up to two Gould's turkey enhancement entry permits annually.

(2) Sale: The auction or lottery or both shall be conducted by an incorporated non-profit organization dedicated to the conservation of wildlife, in cooperation with and overseen by the department.

(3) Use:

(a) The successful recipient(s) shall be allotted an authorization for a Gould's turkey enhancement entry permit, which may be transferred through sale, barter, donation or gift to other individuals qualified to obtain a license and hunt. Once an authorization is converted to a permit, the permit will be non-transferable.

(b) Individuals hunting pursuant to a Gould's turkey enhancement entry permit must obtain and have in their possession a valid turkey hunting license and any other stamps, tags or permits required by rule.

(c) Unless their hunting privileges have been revoked pursuant to law, any person is eligible to bid on and purchase a Gould's turkey enhancement entry permit.

(d) Individuals holding a Gould's turkey enhancement entry permit shall not be prohibited from hunting other subspecies of turkeys in New Mexico as allowed in 19.31.16 NMAC.

(e) The entry permit shall be valid for any legal sporting arms, and the bag limit shall be one bearded Gould's turkey.

(f) The season dates for each entry permit shall be no more than 30 consecutive days between April 1 and May 31 as specified by the entry permit each license year.

(g) The harvest of one bearded Gould's turkey shall count against the license holder's spring turkey bag limit.

(h) The hunt area for each entry permit shall be any legally accessible public lands in GMUs 26 and 27 where hunting is allowed, and private land with written permission.

(i) Gould's turkey enhancement entry permits granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' permits.

[19.31.16.12 NMAC -Rp, 19.31.16.11 NMAC, 4/1/2023]

PART 17: BIGHORN SHEEP

19.31.17.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.17.1 NMAC - Rp, 19.31.17.1 NMAC, 4/1/2025]

19.31.17.2 SCOPE:

Sportspersons interested in bighorn sheep management and hunting. Additional requirements may be found in Chapter 17 NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.31.17.2 NMAC - Rp, 19.31.17.2 NMAC, 4/1/2025]

19.31.17.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.17.3 NMAC - Rp, 19.31.17.3 NMAC, 4/1/2025]

19.31.17.4 DURATION:

April 1, 2025 through March 31, 2027.

[19.31.17.4 NMAC - Rp, 19.31.17.4 NMAC, 4/1/2025]

19.31.17.5 EFFECTIVE DATE:

April 1, 2025 unless a later date is cited at the end of a section.

[19.31.17.5 NMAC - Rp, 19.31.17.5 NMAC, 4/1/2025]

19.31.17.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules, and procedures governing the distribution and issuance of bighorn sheep licenses by the department.

[19.31.17.6 NMAC - Rp, 19.31.17.6 NMAC, 4/1/2025]

19.31.17.7 DEFINITIONS:

- A. **"Department"** shall mean the New Mexico department of game and fish.
- B. **"Director"** shall mean the director of the New Mexico department of game and fish.
- C. **"Either sex"** or **"ES"** shall mean any one animal of the species.
- D. **"Ewe"** shall mean any female bighorn sheep.
- E. **"Game management unit"** or **"GMU"** shall mean those areas as described in 19.30.4 NMAC Boundary Descriptions for Game Management Units.
- F. **"Ram"** shall mean any male bighorn sheep.
- G. **"Wildlife management areas"** or **"WMAs"** shall mean those areas as described in 19.34.5 NMAC Wildlife Management Areas.

[19.31.17.7 NMAC - Rp, 19.31.17.7 NMAC, 4/1/2025]

19.31.17.8 ADJUSTMENT OF LICENSES:

The director, with the verbal concurrence of the New Mexico state game commission chairperson or their designee, may adjust the number of bighorn licenses to address significant changes in population levels or to address critical department management needs. The director may change or cancel any or all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.17.8 NMAC - Rp, 19.31.17.8 NMAC, 4/1/2025]

19.31.17.9 BIGHORN SHEEP LICENSE APPLICATION REQUIREMENTS AND RESTRICTIONS:

- A. **Rocky mountain bighorn sheep ram once-in-a-lifetime hunts:** It shall be unlawful for anyone to apply for a Rocky mountain bighorn sheep ram license if one has previously held a license to hunt a Rocky mountain bighorn sheep ram in New Mexico, except those who have held a youth-only, private land-only (not obtained through the public draw), population management license for ram or ES that the director, with verbal concurrence of the chairperson or their designee, has decided does not qualify as once-in-a-lifetime, auction, and/or raffle bighorn ram license(s). A person that has received the youth-only ram license is eligible for this hunt only once as a youth (under age 18),

but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible.

B. Desert bighorn sheep ram once-in-a-lifetime hunts: It shall be unlawful for anyone to apply for a desert bighorn sheep ram license if one has previously held a license to hunt a desert bighorn sheep ram in New Mexico, except those who have held a youth-only, private land-only (not obtained through the public draw), population management license for ram or ES that the director, with verbal concurrence of the chairperson or their designee, has decided does not qualify as once-in-a-lifetime, auction, and/or raffle bighorn ram license(s). A person that has received the youth-only ram license is eligible for this hunt only once as a youth (under age 18), but may apply for the other Rocky mountain and desert bighorn once-in-a lifetime hunts as long as they are eligible.

C. Rocky mountain bighorn sheep ewe hunts: This hunt is not a once-in-a-lifetime hunt. A person that has previously held a license to hunt Rocky mountain bighorn rams or ewes is eligible to apply for this hunt.

[19.31.17.9 NMAC - Rp, 19.31.17.9 NMAC, 4/1/2025]

19.31.17.10 SEALING OF RAM HORNS:

A seal shall be affixed to a horn of every bighorn sheep ram head taken in New Mexico, imported into New Mexico, or found in the field in New Mexico subsequent to August 17, 1973. Bighorn sheep heads found in the field within New Mexico shall remain the property of the state until disposed of by permit from the director. The seal shall authorize possession and transportation of the head within New Mexico.

A. Such sealing shall be done within ten days after the bighorn sheep ram head is taken, imported, or found in the field and before the bighorn sheep head is exported from New Mexico. Bighorn sheep ram heads not so declared shall be seized. Only legally taken and possessed bighorn sheep ram heads from New Mexico shall be sealed.

B. Bighorn sheep ram heads legally sealed in other countries, states, tribal entities, provinces, and territories, and possessing a valid visible seal attached, are exempted.

C. It shall be unlawful to possess any bighorn sheep ram head which has not been sealed as described in this section.

[19.31.17.10 NMAC - Rp, 19.31.17.10 NMAC, 4/1/2025]

19.31.17.11 BIGHORN SHEEP HUNTING SEASONS:

The 2023-24 through 2026-27 hunting seasons shall be as indicated below, listing the GMUs or areas open, eligibility requirements or restrictions, hunt dates, hunt codes,

sporting arms, number of licenses, and bag limit. Additional eligibility requirements and restrictions are defined in Section 9 of 19.31.17 NMAC above.

A. Rocky mountain bighorn ram hunt for any big game sporting arms (BHS-1-201). Hunters applying for BHS-1-201 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-201 will be up to 60 with a bag limit of one ram.

open GMUs or areas for BHS-1-201	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
6	8/10-8/24	8/10-8/24	8/10-8/24	8/10-8/24
	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
14, 18	TBD	TBD	TBD	TBD
16B, 22, 23, 24: including Double E WMA	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31
45	8/4-8/13	8/9-8/18	8/8-8/17	8/7-8/16
	8/18-8/27	8/23-9/1	8/22-8/31	8/21-8/30
45, youth only	8/18-8/27	8/23-9/1	8/22-8/31	8/21-8/30
53 south of NM 38 and east of NM 522	8/6-8/15	8/6-8/15	8/6-8/15	8/6-8/15
	9/1-9/10	9/1-9/10	9/1-9/10	9/1-9/10
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	8/4-8/13	8/9-8/18	8/8-8/17	8/7-8/16
	8/18-8/27	8/23-9/1	8/22-8/31	8/21-8/30
49, 50, 53 west of NM 522	8/10-8/24	8/10-8/24	8/10-8/24	8/10-8/24
	9/1-9/15	9/1-9/15	9/1-9/15	9/1-9/15
	11/1-11/15	11/1-11/15	11/1-11/15	11/1-11/15
55 north of NM 196/FS Rd 1950	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027
58	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027

B. Private land Rocky mountain bighorn ram hunt for any big game sporting arms. The number of licenses available will be up to 6 with a bag limit of one ram.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
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55 north of NM 196/FS Rd 1950	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027
58	8/15/2023-1/15/2024	8/15/2024-1/15/2025	8/15/2025-1/15/2026	8/15/2026-1/15/2027

C. Rocky mountain bighorn ewe hunt for any big game sporting arms (BHS-1-202). Hunters applying for BHS-1-202 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-202 will be up to 150 with a bag limit of one ewe.

open GMUs or areas for BHS-1-202	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
45	9/16-9/20	9/21-9/25	9/20-9/24	9/19-9/23
	9/30-10/4	10/5-10/9	10/4-10/8	10/3-10/7
45, youth only	9/30-10/4	10/5-10/9	10/4-10/8	10/3-10/7
49, 50, 53 west of NM 522	10/14-10/22	10/12-10/20	10/11-10/19	10/10-10/18
	11/18-11/26	11/16-11/24	11/15-11/23	11/21-11/29
	12/9-12/17	12/14-12/22	12/13-12/21	12/12-12/20
49, 50, 53 west of NM 522, youth only	11/18-11/26	11/16-11/24	11/15-11/23	11/21-11/29
53 south of NM 38 and east of NM 522	9/23-9/27	9/21-9/25	9/20-9/24	9/19-9/23
	10/7-10/11	10/5-10/9	10/4-10/8	10/3-10/7
53 south of NM 38 and east of NM 522, youth only	9/23-9/27	9/21-9/25	9/20-9/24	9/19-9/23
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	9/16-9/20	9/21-9/25	9/20-9/24	9/19-9/23
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, youth only	9/16-9/20	9/21-9/25	9/20-9/24	9/19-9/23

D. Rocky mountain bighorn ewe hunt for bow only (BHS-2-203). Hunters applying for BHS-2-203 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-2-203 will be up to 60 with a bag limit of one ewe.

open GMUs or areas for BHS-2-203	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
45	9/1-9/10	9/6-9/15	9/5-9/14	9/4-9/13
49, 50, 53 west of NM 522	9/16-9/30	9/16-9/30	9/16-9/30	9/16-9/30
53 south of NM 38 and east of NM 522	9/11-9/17	9/11-9/17	9/11-9/17	9/11-9/17
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950	9/2-9/15	9/7-9/20	9/6-9/19	9/5-9/18
53 north of NM 38 and east of NM 522; 55 south of NM 196/FS Rd 1950, youth only	9/2-9/15	9/7-9/20	9/6-9/19	9/5-9/18

E. Desert bighorn ram hunt for any big game sporting arms (BHS-1-204). Hunters applying for BHS-1-204 will be allowed to select and rank up to three open areas/hunt dates. The number of licenses available for BHS-1-204 will be up to 60 with a bag limit of one ram.

open GMUs or areas for BHS-1-204	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
13, 17	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15
	12/16-12/31	12/16-12/31	12/16-12/31	12/16-12/31
19	12/14-12/21	12/14-12/21	12/14-12/21	12/14-12/21
	12/27/2023-1/3/2024	12/27/2024-1/3/2025	12/27/2025-1/3/2026	12/27/2026-1/3/2027
20: south of NM 51	11/16-11/30	11/16-11/30	11/16-11/30	11/16-11/30
	12/1-12/15	12/1-12/15	12/1-12/15	12/1-12/15
20: north of NM 51	8/18-8/27	9/13-9/22	8/15-8/24	9/11-9/20
		10/11-10/20		10/9-10/18
20: north of NM 51, youth only	11/17-11/26		11/21-11/30	
26, west of NM 81	9/15-9/30	9/15-9/30	9/15-9/30	9/15-9/30
	10/1-10/15	10/1-10/15	10/1-10/15	10/1-10/15

26, east of NM 81	9/15-9/30	9/15-9/30	9/15-9/30	9/15-9/30
	10/1-10/15	10/1-10/15	10/1-10/15	10/1-10/15
27	11/1-11/15	11/1-11/15	11/1-11/15	11/1-11/15
	11/16-11/30	11/16-11/30	11/16-11/30	11/16-11/30

F. Private land desert bighorn ram hunt for any big game sporting arms. The number of licenses available will be up to 6 with a bag limit of one ram.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates
20: north of NM 51	9/15-9/24	8/16-8/25	9/12-9/21	8/14-8/23
	10/13-10/22	11/22-12/1	10/10-10/19	11/20-11/29

[19.31.17.11 NMAC - Rp, 19.31.17.11 NMAC, 4/1/2025]

19.31.17.12 SPECIAL BIGHORN SHEEP HUNTING OPPORTUNITIES:

Bighorn sheep enhancement program:

A. Program description: The director shall collect all proceeds generated through the auction and lottery of special bighorn sheep permits, and such monies shall be deposited in the game protection fund. These monies shall be made available for expenditure by the department solely for programs and projects to benefit bighorn sheep and for costs incurred in carrying out these programs. These monies shall be used to augment, and not replace, monies appropriated from existing funds available to the department for the conservation, restoration, utilization, and management of bighorn sheep.

B. Requirements for issuance of special bighorn sheep licenses:

(1) The state game commission authorizes the director to issue not more than four special bighorn sheep licenses in any one license year to take one ram per license. The director shall allow the sale of one Rocky Mountain bighorn sheep authorization and one desert bighorn sheep authorization through auction to the highest bidder, and one Rocky Mountain bighorn sheep authorization and one desert bighorn sheep authorization to a person selected through a random drawing of a lottery ticket. The drawing will be conducted by the department or an incorporated, non-profit organization dedicated to the conservation of bighorn sheep.

(2) Unless their hunting privileges have been revoked pursuant to law, any person is eligible to submit a bid for the special bighorn sheep auction authorization or purchase lottery tickets in an attempt to be selected for the special bighorn sheep lottery authorization.

(3) The special bighorn sheep authorizations issued through auction and lottery may be transferred, through sale, barter or gift by the successful individuals only to other individuals qualified to hunt.

(4) Special bighorn sheep licenses granted through auction or lottery, as described above, shall not be considered 'once-in-a-lifetime' licenses.

C. Enhancement hunts: These licenses shall be valid for any big game sporting arms statewide where hunting is allowed. The bag limit shall be one ram.

(1) Holders of the auction licenses must declare their exclusive hunt area by June 30 annually to hunt the designated subspecies in one of the open hunt areas. Each holder of the raffle license must declare their exclusive hunt area by July 20 annually to hunt the designated subspecies in one of the open hunt areas not declared by the auction hunter.

(2) The remaining hunt units open to bighorn hunting not declared by the auction or raffle hunter as their exclusive hunt area, may be hunted by either the auction or raffle hunter.

(3) The hunt dates for the auction and raffle licenses shall be 8/1-12/31 annually, except GMU 53 south of NM 38 and east of NM 522 is closed 8/16 to 8/31 annually to all bighorn sheep hunters.

[19.31.17.12 NMAC - Rp, 19.31.17.12 NMAC, 4/1/2025]

19.31.17.13 BIGHORN SHEEP POPULATION MANAGEMENT HUNTS:

A. The director, with verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may authorize population management hunts for bighorn sheep when justified in writing by department personnel and must be based on biological information or a potential to compromise population viability.

B. The director shall designate the sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunters' names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

E. The director, with verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may deem some ram or either sex population management licenses not once-in-a-lifetime; a person that has held a once-in-a-lifetime ram license(s) is not disqualified from this hunt.

[19.31.17.13 NMAC - Rp, 19.31.17.13 NMAC, 4/1/2025]

PART 18: BIG GAME ENHANCEMENT AUTHORIZATION PACKAGES

19.31.18.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.31.18.1 NMAC - N, 9-28-2007]

19.31.18.2 SCOPE:

Big game hunters. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.

[19.31.18.2 NMAC - N, 9-28-2007]

19.31.18.3 STATUTORY AUTHORITY:

17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.18.3 NMAC - N, 9-28-2007]

19.31.18.4 DURATION:

Permanent.

[19.31.18.4 NMAC - N, 9-28-2007]

19.31.18.5 EFFECTIVE DATE:

September 28, 2007, unless later date is cited at the end of individual sections.

[19.31.18.5 NMAC - N, 9-28-2007]

19.31.18.6 OBJECTIVE:

To establish and define the procedures and restrictions for the sale, issuance, and use of not more than two big game enhancement authorization packages which will allow for the taking of one each; deer, elk, oryx, ibex, and pronghorn.

[19.31.18.6 NMAC - N, 9-28-2007]

19.31.18.7 DEFINITIONS:

- A. **"Department"** shall mean the New Mexico department of game and fish.
- B. **"Director"** shall mean the director of the New Mexico department of game and fish.
- C. **"Big game enhancement authorization package,"** as used herein, shall mean a package of 5 authorizations, 1 deer, 1 elk, 1 oryx, 1 ibex, and 1 pronghorn antelope that allows for the holder of each authorization to purchase a license to hunt for and take the species listed on each authorization.
- D. **"MB or mature bull"** shall mean a male elk with at least one brow tine extending six or more inches from the main beam or at least one forked antler with both branches six or more inches long.
- E. **"MB or mature buck pronghorn antelope"** shall mean a pronghorn antelope with at least one horn longer than its ears.
- F. **"FAD or forked antlered deer"** shall mean a deer possessing antlers, one of which shall have a definite fork showing two or more distinct points. A burr at the base does not constitute a point or fork.
- G. **"ES or either sex"** shall mean any one animal of the species.
- H. **"Authorization certificate"** shall mean a document issued by the department that authorizes the holder to purchase a license or permit, or participate in the activity as specified on the certificate.

[19.31.18.7 NMAC - N, 9-28-2007]

19.31.18.8 BIG GAME HABITAT ENHANCEMENT PROGRAM:

The director of the department shall collect all proceeds generated through the auction of not more than 2 enhancement authorization packages annually. Money collected shall be deposited into the game protection fund and shall be used exclusively for big game habitat enhancement, conservation, and protection.

[19.31.18.8 NMAC - N, 9-28-2007]

19.31.18.9 REQUIREMENTS FOR ISSUANCE, SALE, AND USE:

A. Issuance: The state game commission shall authorize the director of the department to issue not more than 2 big game enhancement authorization packages in any one license year. Each authorization package shall consist of 1 authorization certificate for each of the following species; deer, elk, ibex, oryx, and pronghorn. Each authorization certificate will allow the holder to purchase a license for the species, bag limit, weapon type, season dates, and hunt area defined on the authorization.

B. Sale:

(1) The director shall allow the sale of the two big game enhancement authorization packages through auction to the highest bidder. The auction may be conducted by the department or by an incorporated, nonprofit organization dedicated to the conservation of wildlife.

(2) Selection of an organization to administer the auction of the wildlife enhancement authorization packages shall be pursuant to 1.4.1 NMAC, Sections 31-44 Procurement Code Regulations described in New Mexico Administrative Code (NMAC).

C. Use:

(1) Each authorization issued with a package may be transferred through sale, barter, donation, or gift by the successful purchaser of the package to other individuals qualified to purchase a license and hunt.

(2) Hunting licenses that result from the conversion of any big game enhancement authorization pursuant to this rule shall not be considered "once-in-a-lifetime".

(3) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit bids for the big game enhancement authorization packages.

(4) The bag limit for authorizations contained in each package shall be as follows:

(a) deer - FAD or forked antler deer

- (b) elk - MB or mature bull
- (c) oryx - ES or either sex
- (d) ibex - ES or either sex
- (e) pronghorn - MB or mature buck

(5) The season dates for authorizations contained in each package shall be as follows:

- (a) deer - September 1 through January 31 each license year.
- (b) elk - September 1 through January 31 each license year.
- (c) oryx - April 1 through March 31 each license year.
- (d) ibex - April 1 through March 31 each license year.
- (e) pronghorn - August 1 through November 1 each license year.

(6) The hunt area for authorizations contained in each package shall be as follows:

(a) deer - any legally accessible public lands where hunting is allowed and private land with written permission.

(b) elk - any legally accessible public lands where hunting is allowed and private land with written permission.

(c) oryx - any legally accessible public lands where hunting is allowed and private land with written permission. The holder of an oryx authorization or license must contact the department 2 weeks in advance of proposed hunt start date to schedule access to WSMR and must be accompanied by a badged department employee or a WSMR escort when on WSMR lands.

(d) ibex - any legally accessible public lands where hunting is allowed and private land with written permission.

(e) pronghorn - any legally accessible public lands where hunting is allowed and private land with written permission.

(7) The weapon type for all authorizations in each package shall be "any legal weapon" unless specific weapon restrictions exist pursuant to public land management agency regulations.

(8) The hunt code for authorizations in each package shall be as follows:

- (a) deer - DER-1-501
- (b) elk - ELK-1-501
- (c) oryx - ORX-1-501
- (d) ibex - IBX-1-501
- (e) pronghorn - ANT-1-501

[19.31.18.9 NMAC - N, 9-28-2007]

PART 19: GOVERNOR'S SPECIAL EVENTS AUTHORIZATIONS

19.31.19.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.31.19.1 NMAC - N, 9-28-2007]

19.31.19.2 SCOPE:

Big game hunters, game bird hunters, and fishermen. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19.

[19.31.19.2 NMAC - N, 9-28-2007]

19.31.19.3 STATUTORY AUTHORITY:

17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.19.3 NMAC - N, 9-28-2007]

19.31.19.4 DURATION:

Permanent.

[19.31.19.4 NMAC - N, 9-28-2007]

19.31.19.5 EFFECTIVE DATE:

September 28, 2007, unless later date is cited at the end of individual sections.

[19.31.19.5 NMAC - N, 9-28-2007]

19.31.19.6 OBJECTIVE:

To establish procedures and restrictions for the provision, sale, issuance, and use of no more than 12 big game special authorizations and 12 game bird or trophy fish special authorizations available to the governor each license year in conjunction with special events to raise money for fish and wildlife conservation in New Mexico.

[19.31.19.6 NMAC - N, 9-28-2007]

19.31.19.7 DEFINITIONS:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Director," shall mean the director of the New Mexico department of game and fish.

C. "Special authorization certificate" shall mean a document issued by the department that authorizes the holder to purchase a license or permit, or participate in the activity as specified on the certificate.

D. "Big game" shall mean deer, bear, cougar, elk, antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, and Persian ibex.

E. "Small game" shall mean blue grouse, dove, pheasant, quail, band-tailed pigeon, sandhill crane, teal, ducks, geese, coots, moorhen, sora, rails, snipe, and squirrel.

F. "Trophy fish" shall mean an enhanced angling opportunity as defined on a special authorization certificate issued by the department.

[19.31.19.7 NMAC - N, 9-28-2007]

19.31.19.8 GOVERNOR'S HUNTING AND FISHING AUTHORIZATION PROGRAM:

The director of the department shall collect all proceeds generated through the auction of not more than 12 big game special authorizations and 12 game bird or trophy fish special authorizations annually. All authorizations shall be auctioned in conjunction with special events called by the governor and all money collected shall be deposited into the game protection fund to be used exclusively for fish and wildlife conservation activities or projects in New Mexico.

[19.31.19.8 NMAC - N, 9-28-2007]

19.31.19.9 REQUIREMENTS AND RESTRICTIONS:

A. Requirements for the provision of governor's hunting and fishing authorizations:

(1) The director shall, upon notification from the governor, ensure that the requested hunting or fishing opportunity complies with rules adopted by the state game commission. Upon confirmation the director shall initiate the development of a special authorization certificate that designates the allowable season dates, bag limits, weapon types, hunting or fishing areas and any other manner or method restrictions as may be appropriate to the species noted on the authorization. Each special authorization certificate auctioned will allow the holder to purchase a license for the species and allowances listed on the authorization certificate, and will allow the holder to participate in the activity as listed or allowed on the authorization certificate.

(2) Upon ensuring that the requested hunting or fishing opportunity is in compliance with rules adopted by the state game commission and establishing the specific allowances and restrictions for each special authorization certificate, the director may issue the special authorization certificate(s) to the special event coordinator as designated by the governor or may hold the authorization certificate(s) for delivery to the successful high bidder(s).

(3) No more than 3 special authorization certificates shall be issued for any one big game species each license year.

B. Requirements for sale of governor's hunting and fishing authorizations:

(1) The sale of all special authorization certificates issued pursuant to this rule shall be through auction to the highest bidder and only in association with special events called by the governor to raise money for fish and wildlife conservation.

(2) Each special authorization certificate shall have an associated minimum bid, determined by the director with concurrence of the chairman of the state game commission. In no case shall the special authorization certificate be sold for less than this established minimum.

(3) In no case shall any auction-associated administration or other costs become the responsibility of the department of game and fish.

(4) All proceeds collected pursuant to the sale at auction of special authorization certificates shall be forwarded to the department within 30 days of sale as well as the auction purchaser's name and contact information.

C. Restrictions for the use of governor's hunting and fishing authorizations:

(1) Each special authorization certificate auctioned may be transferred through sale, barter, donation, or gift by the successful auction purchaser of the special authorization certificate to other individuals qualified to purchase a license and hunt or fish. If a special authorization certificate is transferred via sale, the sale price may not exceed the original purchase price paid at auction.

(2) Big game hunting licenses that result from the conversion of any big game special authorization certificate pursuant to this rule shall not be considered "once-in-a-lifetime".

(3) Unless his/her hunting privileges have been revoked pursuant to law, any resident of New Mexico, nonresident, or alien is eligible to submit bids for special authorization certificates pursuant to this rule.

(4) All big game special authorizations provided for auction shall allow for hunt specifics exactly as listed, by hunt code, in the associated species rule for the applicable license year. (NoValles Caldera national preserve or private land only hunts will be available to auction unless arrangements with the Valles Caldera national preserve or specific private landowners are made prior to issuance of authorization.)

(5) Requests for extended hunt dates, alternative hunt dates, or expanded hunt areas may be allowed pursuant to evaluation by the director and concurrence by the chairman of the state game commission.

(6) The provision of extended hunt dates, alternative hunt dates, or expanded hunt areas should minimize the allowance of hunting during the rut or critical breeding period of the species involved except as is consistent with public hunt periods specified in rule for that license year or as approved by the director with concurrence of the chairman. The provision of extended hunt dates, alternative hunt dates, or expanded hunt areas for migratory birds shall not exceed or violate federal frameworks established by the United States fish and wildlife service annually.

(7) The provision of extended hunt dates, alternative hunt dates, or expanded hunt areas should not result in conflict with the quality of opportunities intended for the holder of any "big game enhancement authorization package", "lieutenant governor's deer enhancement permits", "elk enhancement permits", "Gould's turkey enhancement permits", or "bighorn sheep enhancement permits", as allowed for in statute.

(8) Any individual who hunts or fishes pursuant to this rule must adhere to all manner and method and licensing restrictions and requirements established by commission rule, including any specifications or limitations printed on the special authorization certificate or associated license.

(9) No special authorization certificates for bighorn sheep or ibex shall be made available for auction until such time as the department determines that

populations can sustain additional harvest that will not conflict with current level of available hunting opportunities.

(10) The director, with concurrence of the chairman of the state game commission, may consider any governor's requests for specific game bird or trophy fishing opportunities, and provide authorization listing specifics that are consistent with sound and appropriate fish and wildlife management.

[19.31.19.9 NMAC - N, 9-28-2007]

PART 20: GOULD'S TURKEY ENHANCEMENT PERMITS [REPEALED]

[This Part was repealed effective 4/1/2015. See, 19.31.16.14 NMAC -- GOULD'S TURKEY ENHANCEMENT PERMITS.]

PART 21: JAVELINA

19.31.21.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.31.21.1 NMAC - Rp, 19.31.21.1 NMAC, 4/1/2023]

19.31.21.2 SCOPE:

Sportspersons interested in javelina hunting and management. Additional requirements may be found in Chapter 17, NMSA 1978, and Chapters 30, 31, 32 and 33 of Title 19 NMAC.

[19.31.21.2 NMAC - Rp, 19.31.21.2 NMAC, 4/1/2023]

19.31.21.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds and fish.

[19.31.21.3 NMAC - Rp, 19.31.21.3 NMAC, 4/1/2023]

19.31.21.4 DURATION:

April 1, 2023 through March 31, 2027.

[19.31.21.4 NMAC - Rp, 19.31.21.4 NMAC, 4/1/2023]

19.31.21.5 EFFECTIVE DATE:

April 1, 2023, unless a later date is cited at the end of a section.

[19.31.21.5 NMAC - Rp, 19.31.21.5 NMAC, 4/1/2023]

19.31.21.6 OBJECTIVE:

Establishing open hunting seasons and regulations, rules and procedures governing the distribution and issuance of javelina licenses by the department.

[19.31.21.6 NMAC - Rp, 19.31.21.6 NMAC, 4/1/2023]

19.31.21.7 DEFINITIONS:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Director" shall mean the director of the New Mexico department of game and fish.

C. "Either sex" or "ES" shall mean any one javelina.

D. "Game management unit" or "GMU" shall mean those areas as described in 19.30.4 NMAC Boundary Descriptions for Game Management Units.

E. "Wildlife management areas" or "WMAs" shall mean those areas as described in 19.34.5 NMAC, Wildlife Management Areas.

[19.31.21.7 NMAC - Rp, 19.31.21.7 NMAC, 4/1/2023]

19.31.21.8 ADJUSTMENT OF LICENSES, AUTHORIZATIONS AND HARVEST LIMITS:

The director, with the verbal concurrence of the chairperson of the New Mexico state game commission or their designee, may adjust the number of licenses for javelina up or down by no more than twenty percent of the total licenses available in the area or GMU to address significant changes in population levels or habitat availability. The director may change or cancel all hunts on military lands to accommodate closures on those lands; if changed, the season length and bag limit shall remain the same as assigned on the original hunt code.

[19.31.21.8 NMAC - Rp, 19.31.21.8 NMAC, 4/1/2023]

19.31.21.9 JAVELINA HUNTING SEASONS:

Javelina hunts for the 2023-24 through 2026-27 hunt seasons shall be as indicated below, listing the open GMUs or areas, eligibility requirements or restrictions, hunt dates, hunt codes, sporting arms, number of licenses, and bag limit. All WMAs shall remain closed to javelina hunting, except the prairie-chicken areas, Heart Bar, Double E, River Ranch, Red Rock (outside of the high-fence bighorn sheep enclosure only), and Socorro-Escondida WMAs are open to javelina hunting.

A. Draw hunts:

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
Statewide except GMU 28, youth only	2/1-3/31	2/1-3/31	2/1-3/31	2/1-3/31	JAV-1-100	180	ES
GMUs 19, 23, 24, 25, 26 and 27	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	JAV-2-101	330	ES
	2/1-3/31	2/1-3/31	2/1-3/31	2/1-3/31	JAV-1-102	1100	ES
GMU 28 McGregor range, military only	12/30-12/31	12/28-12/29	12/27-12/28	12/26-12/27	JAV-1-105	5	ES
GMU 28 McGregor range	12/30-12/31	12/28-12/29	12/27-12/28	12/26-12/27	JAV-1-106	5	ES

B. Over-the-counter hunts: The hunt area shall be statewide except GMUs 19, 23, 24, 25, 26, 27 and 28.

open GMUs or areas	2023-2024 hunt dates	2024-2025 hunt dates	2025-2026 hunt dates	2026-2027 hunt dates	hunt code	licenses	bag limit
Statewide except GMUs 19, 23, 24, 25, 26, 27 and 28	1/1-1/31	1/1-1/31	1/1-1/31	1/1-1/31	JAV-2-103	360	ES
	2/1-3/31	2/1-3/31	2/1-3/31	2/1-3/31	JAV-1-104	1200	ES

[19.31.21.9 NMAC - Rp, 19.31.21.9 NMAC, 4/1/2023]

19.31.21.10 POPULATION MANAGEMENT HUNTS:

A. The director or their designee may authorize population management hunts for javelina when justified in writing by department personnel.

B. The director or their designee shall designate the legal sporting arms, season dates, season lengths, bag limits, hunt boundaries, specific requirements or restrictions, and number of licenses to be issued.

C. In the event that an applicant is not able to hunt on the dates specified, the applicant's name shall be moved to the bottom of the list and another applicant may be contacted for the hunt.

D. In those instances where a population management hunt is warranted on deeded private lands, the landowner may suggest eligible hunters of their choice by submitting a list of prospective hunter's names to the department for licensing consideration. No more than one-half of the total number of licenses authorized shall be available to landowner identified hunters. The balance of prospective hunters shall be identified by the department.

[19.31.21.10 NMAC - N, 4/1/2023]

PART 22: LAND OWNER CERTIFICATION OF NON-NAVIGABLE WATER [REPEALED]

[19.31.22 NMAC, filed 1/2/2018 was repealed. Landowner Certification of Non-Navigable Water, repealed due to the N.M. Supreme Court decision in *Adobe Whitewater Club v. N.M. State Game Comm'n*, (S-1-SC-38195), effective 3/2/2022. Permanently repealed by the State Game Commission, effective 8/19/2022.]

CHAPTER 32: TRAPPING AND FURBEARERS

PART 1: [RESERVED]

PART 2: FURBEARERS

19.32.2.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.32.2.1 NMAC - Rp, 19.32.1.1 NMAC, 4/1/2024]

19.32.2.2 SCOPE:

Sportspersons interested in furbearer hunting and management. Additional requirements may be found in Chapter 17 NMSA 1978 and Title 19 NMAC.

[19.32.2.2 NMAC - Rp, 19.32.1.2 NMAC, 4/1/2024]

19.32.2.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, 17-5-3, 17-5-4, and 17-5-5 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.32.2.3 NMAC - Rp, 19.32.1.3 NMAC, 4/1/2024]

19.32.2.4 DURATION:

Permanent.

[19.32.2.4 NMAC - Rp, 19.32.1.4 NMAC, 4/1/2024]

19.32.2.5 EFFECTIVE DATE:

April 1, 2024, unless a later date is cited at the end of a section.

[19.32.2.5 NMAC - Rp, 19.32.1.5 NMAC, 4/1/2024]

19.32.2.6 OBJECTIVE:

Establishing open hunting seasons and regulation, rules and procedures governing the distribution and issuance of trapping licenses by the department.

[19.32.2.6 NMAC - Rp, 19.32.1.6 NMAC, 4/1/2024]

19.32.2.7 DEFINITIONS:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Foothold trap" shall mean a trap designed to capture a furbearer by the foot, but does not include foot encapsulating traps.

C. "Foot encapsulating trap" shall mean any trap with a push or pull-activated trigger located inside an enclosure recessed from an opening of no more than two inches in diameter, as measured across the opening from side to side, not corner to corner. Foot encapsulating traps include "dog proof" and "egg" traps.

D. "Furbearer" shall mean any quadruped defined as a fur-bearing animal in 17-5-2 NMSA 1978.

E. "Land set" shall mean any foothold trap or snare set on land.

F. "Public land" means state-owned land, state-leased land, lands held in trust by the state, lands administered by the United States fish and wildlife service, the United States forest service, the federal bureau of land management, the national park service, the United States department of defense, state parks and any county or municipality, but does not include the interior of physical structures or land belonging to or held in trust for an Indian nation, tribe or pueblo.

G. "Snare" shall mean a wire or cable with a single closing device designed to capture a furbearer.

H. "Trap" shall mean any foothold trap, foot encapsulating trap, cage trap or body-grip trap set to capture a furbearer.

[19.32.2.7 NMAC - Rp, 19.32.1.7 NMAC, 4/1/2024]

19.32.2.8 OPEN SEASONS:

A. Badger, weasel, fox, ringtail and bobcat: November 1-March 15 statewide.

B. Raccoon:

(1) April 1-May 15 and September 1-March 31, statewide.

(2) Extended season: May 16-August 31 statewide, method restrictions per 19.31.10 NMAC.

C. Beaver and muskrat: April 1-April 30 and November 1-March 31, statewide.

D. Nutria: April 1-March 31 statewide.

[19.32.2.8 NMAC - Rp, 19.32.1.8 NMAC, 4/1/2024]

19.32.2.9 CLOSED AREAS:

All public lands in New Mexico are closed to the use of traps and snares except as allowed by 17-11-4 NMSA 1978.

[19.32.2.9 NMAC - Rp, 19.32.1.9 NMAC, 4/1/2024]

19.32.2.10 MANDATORY FURBEARER EDUCATION:

A. Every person must successfully complete a department approved trapper education course before setting any trap or snare in New Mexico. Proof of successful completion of a trapper education course in any other state will also be accepted, but the person must pass a New Mexico law and species identification course.

B. Every person hunting furbearers must successfully complete either the New Mexico trapper education course, or a New Mexico law and species identification course.

C. Trapper education shall be offered free of charge to all residents. The department may charge a fee of not more than \$35 for each non-resident who takes a New Mexico trapper education course. The New Mexico law and species identification course shall be free for everyone.

[19.32.2.10 NMAC - Rp, 19.32.1.10 NMAC, 4/1/2024]

19.32.2.11 BAG LIMIT:

Annual bag limits may be set by the director, with the verbal concurrence of the chairperson of the game commission or their designee, for any furbearer species to address significant changes in statewide populations or to address critical department management needs. Annual bag limits, if set, shall expire March 31st annually.

[19.32.2.11 NMAC - Rp, 19.32.1.11 NMAC, 4/1/2024]

19.32.2.12 EXEMPTIONS:

The provisions of this rule shall not apply to department of game and fish personnel or designated agents who are acting in their official capacity in the control of depredating animals, for law enforcement purposes, to protect human health and safety, or for research or management purposes, unless otherwise restricted by 17-11-1 to 17-11-5 NMSA 1978.

[19.32.2.12 NMAC - Rp, 19.32.1.12 NMAC, 4/1/2024]

CHAPTER 33: ENDANGERED AND PROTECTED SPECIES

PART 1: [RESERVED]

PART 2: REMOVAL, CAPTURE OR DESTRUCTION OF ENDANGERED SPECIES

19.33.2.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[1-13-96; Recompiled 12/31/01]

19.33.2.2 SCOPE:

All persons who may remove, capture or destroy an endangered species, without a specific permit.

[1-13-96; Recompiled 12/31/01]

19.33.2.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26, 17-2-3, 17-2-13, 17-2-14, 17-2-15, 17-2-16, 17-2-42, 17-3-1, 17-3-29 and 17-5-2 NMSA provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[1-13-96; Recompiled 12/31/01]

19.33.2.4 DURATION:

Permanent.

[1-13-96; Recompiled 12/31/01]

19.33.2.5 EFFECTIVE DATE:

January 13, 1996 [unless a later date is cited at the end of a section]

[1-13-96; Recompiled 12/31/01]

19.33.2.6 OBJECTIVE:

To provide for, and require, reporting of the removal, capture or destruction of threatened or endangered species; including when these species are removed, captured, or destroyed in emergency situations involving immediate threat to human life or private property.

[2-13-75, 1-13-96; Recompiled 12/31/01]

19.33.2.7 DEFINITIONS:

A. "Remove" means to take out of natural habitat.

B. **[RESERVED]**

[1-13-96; Recompiled 12/31/01]

19.33.2.8 REPORTING REQUIREMENTS:

Whenever any person removes, captures or destroys without permit as authorized by Section 17-2-42 NMSA, any species classified as threatened or endangered by the state game commission regulation (Title 19, Chapter 33, Part 1), other than those species listed as threatened or endangered in 50 CFR Part 17; that person shall, within 30 days, report such removal, capture or destruction to the New Mexico department of game and fish, stating the species involved and the date, location and circumstances of the removal, capture or destruction.

[2-13-75, 1-13-96; Recompiled 12/31/01]

PART 3: PROCEDURES FOR ACTIONS ON THE BIENNIAL REVIEW: CONTINUING LISTING, UPGRADING, DOWNGRADING SPECIES

19.33.3.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[1/31/96; Recompiled 12/31/01]

19.33.3.2 SCOPE:

The New Mexico state game commission, regarding certain procedures for maintaining a list of wildlife indigenous to New Mexico that are determined to be threatened or endangered within the state. Additional requirements may be found in 19 NMAC 33.1 [now 19.33.6 NMAC], 19 NMAC 33.2 [now 19.33.2 NMAC], and 19 NMAC 33.4 [now 19.33.4 NMAC].

[1/31/96; Recompiled 12/31/01]

19.33.3.3 STATUTORY AUTHORITY:

Section 17-2-41(B) NMSA, 1978 Comp., directs the state game commission to adopt procedures for this purpose.

[1/31/96; Recompiled 12/31/01]

19.33.3.4 DURATION:

Permanent.

[1/31/96; Recompiled 12/31/01]

19.33.3.5 EFFECTIVE DATE:

January 31, 1996 [unless a later date is cited at the end of a section]

[1/31/96; Recompiled 12/31/01]

19.33.3.6 OBJECTIVE:

To provide procedures for commission actions on recommendations from the director to continue listing species as threatened or endangered, or to upgrade or downgrade species between the threatened and endangered categories. (Commission actions to delist a species is not required in this act, as specified by 17-2-40(K-L) NMSA 1978 Compilation.)

[1/31/96; Recompiled 12/31/01]

19.33.3.7 DEFINITIONS:

A. "Endangered" means any species listed as endangered in 19 NMAC 33.1 [now 19.33.6 NMAC].

B. "Threatened" means any species listed as threatened in 19 NMAC 33.1 [now 19.33.6 NMAC].

C. "Commission" means the New Mexico state game commission.

D. "Director" means the director of the New Mexico department of game and fish.

[1/31/96; Recompiled 12/31/01]

19.33.3.8 PROCEDURES:

A. In order to provide for an extended public comment period, the director shall, at least 90 days prior to the initial formal commission hearing on his recommendations, announce his intention to conduct the biennial review of New Mexico threatened and endangered species (Section 17-2-41B, NMSA 1978 Compilation). The announcement shall include the means by which interested persons may obtain draft copies of his recommendations to threatened and endangered species; the opening of a repository for public comment on the biological and ecological evidence and the economic and social impacts pertaining to the recommendations; the location of the repository; and the means by which comment may be submitted. The recommendations, including any revisions to the draft, shall be presented to the state game commission for an initial, formal hearing during which public comments shall be limited to the biological and ecological evidence pertaining to the recommendations (Section 17-2-40, Paragraphs G and L and Section 17-2-38, Paragraphs D and M, NMSA 1978 Compilation).

B. Upon receipt of the director's recommendations, the commission shall announce that written comments regarding the biological and ecological evidence and the economic and social impacts, pertaining to the director's recommendations may be submitted and will be included in the public repository established under the Wildlife

Conservation Act (Section 17-2-40(G) NMSA 1978 Compilation). Written comments pertaining to the biological and ecological evidence, submitted within 14 days of the announcement shall be considered by the commission in taking action on the director's recommendations. Written comments pertaining to the economic and social impacts of a listing decision shall be preserved in the repository for consideration in the development, if practicable, of any recovery plans (Section 17-2-40(G) NMSA 1978 Compilation).

C. Based upon the relevant and reliable (17-2-40(L) NMSA 1978 Compilation) biological and ecological evidence, the commission shall act on the director's recommendations to continue to list a species, or to upgrade or downgrade a species, at its next regularly scheduled meeting following receipt of the recommendations (Section 17-2-41(B) NMSA 1978 Compilation).

(1) The commission may accept the director's recommendations, in whole or part.

(2) When the commission believes there is documented, relevant and reliable evidence, in public comments or in the repository, regarding the biological or ecological status of a species, the commission may instruct the director to conduct further study of one or more species.

D. The commission's decision to continue to list, to upgrade or downgrade a species shall be announced by a news release to the major newspapers of the state and published in a newspaper in circulation in the area most affected by the decision.

E. If at any time other than the biennial review of the New Mexico threatened and endangered species, the director recommends upgrading or downgrading a species on the state list of threatened and endangered species, the commission shall follow these procedures.

[1/31/96, 7/15/96; Recompiled 12/31/01]

PART 4: CONFIDENTIAL DATA REGARDING ENDANGERED SPECIES

19.33.4.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[1-31-96; 19.33.4.1 NMAC - Rn, 19 NMAC 33.4.1, 4/14/00]

19.33.4.2 SCOPE:

All persons or entities who may seek to obtain information from the Department of Game and Fish on the distribution and location of species of wildlife listed as threatened or endangered, or being investigated for possible listing as threatened or endangered.

Other requirements may be found in 19.33.1 NMAC, 19.33.2 NMAC, and 19.33.3 NMAC.

[1-31-96; 19.33.4.2 NMAC – Rn & A, 19 NMAC 33.4.2, 4/14/00]

19.33.4.3 STATUTORY AUTHORITY:

Section 17-2-40(H) provides the Commission with authority to create regulations protecting the confidentiality of data from an investigation. Section 17-2-45 (B) NMSA 1978 provides criminal penalties for the taking of an endangered species. Section 17-2-42 (B) NMSA 1978 provides the Director with the authority to enter into agreements. 17-2-40-H NMSA 1978 requires the State Game Commission to adopt regulations governing the confidentiality of data. 17-2-43 authorizes the commission to enact regulations necessary to carry out all the provisions and purposes of the Wildlife Conservation Act.

[1-31-96; 19.33.4.3 NMAC – Rn & A, 19 NMAC 33.4.3, 4/14/00]

19.33.4.4 DURATION:

Permanent.

[1-31-96; 19.33.4.4 NMAC – Rn, 19 NMAC 33.4.4, 4/14/00]

19.33.4.5 EFFECTIVE DATE:

January 31, 1996, unless a later date is cited at the end of a Section.

[1-31-96; 19.33.4.5 NMAC - Rn, 19 NMAC 33.4.5, 4/14/00]

19.33.4.6 OBJECTIVE:

To prevent the inappropriate distribution of data on threatened or endangered species, or data generated by a study or investigation of species that may be listed as threatened or endangered; to clarify which data in possession of the Department are confidential, and to specify procedures and conditions for the dissemination of confidential data.

[1-31-96; 19.33.4.6 NMAC - Rn, 19 NMAC 33.4.6, 4/14/00]

19.33.4.7 DEFINITIONS:

A. "Data," as used herein, means facts or information generated by a study or investigation of species that may be considered for listing or delisting and/or facts or information concerning a listed species.

B. "Confidential Data," as used herein, means:

(1) Data on the distribution and location of listed or proposed species, received or obtained by the Department of Game and Fish, from individuals or agencies, under a written agreement of confidentiality.

(2) Data on the distribution and location of species, identified by the Director as data which, if publicly disseminated, may result in the taking of, or otherwise harm, a species being investigated for listing as threatened or endangered, and/or a listed species.

(3) "Confidential data regarding private property," as used herein, means distribution and location of listed or proposed species on private property received or generated by the Department during a listing study or investigation as defined in 17-2-40 NMSA 1978. This shall include listed or proposed species distribution and locations recorded as map coordinates, maps, GPS coordinates, property owner names, property/ranch names, or other data that may identify, or lead to the identification of specific locations on private property. Stipulations in this section will apply to data collected after the section modification becomes effective.

(4) "Coded confidential data regarding private property", as used herein means Confidential Data, as described in 19.33.4.7.B3 that is coded in a manner that allows a description of location and distribution by county or other appropriate geographic unit which does not represent a single parcel of private land. This county-wide, or other unit-wide, information may be included in reports or documents as necessary to meet reporting requirements or for management of the species.

C. "Investigation", as used herein, means a process pursuant to Subsections B through L of Section 17-2-40 NMSA 1978.

D. "Listed Species", as used herein, means any species listed as threatened or endangered pursuant to 17-2-41 (A) NMSA 1978.

E. "Proposed Species" as used herein, means any species for which a listing investigation has been formally initiated under the Wildlife Conservation Act as described in 17.2.40 Section A, NMSA 1978.

F. "Department" as used herein means, the New Mexico Department of Game and Fish.

G. "Director" as used herein means, the Director of the New Mexico Department of Game and Fish.

[1-31-96; 19.33.4.7 NMAC – Rn & A, 19 NMAC 33.4.7, 4/14/00]

19.33.4.8 RELEASE OF CONFIDENTIAL DATA:

A. Subject to the restrictions applicable to private property, confidential data may only be released to persons, organizations or agencies upon submission to the Director of a written application describing a legitimate need for scientific or management purposes consistent with the objectives of the Wildlife Conservation Act.

B. Confidential data will not be submitted to any public repository established under the Wildlife Conservation Act, except as coded in 19.33.4.7.B4.

C. Confidential data regarding private property, or which would identify or lead to the identification of any private property, will not be released under any circumstances without specific written agreement from the private property owner or their designee.

D. The Department may use confidential data for the purpose of species management and species management planning.

E. Coded Confidential Data regarding private land as described in 19.33.4.7.B4 as county-wide, or other unit-wide, information may be included in reports, public repository or documents as necessary to meet reporting requirements from funding sources or for management of the listed or proposed species.

F. Any confidential data, which is contained in any Department documents which would otherwise be released pursuant to a request for inspection of public records, shall be redacted from those documents prior to release of those documents.

G. If the Department is involved with an assessment of a project proposed on private property that indicates potential impacts to a listed or proposed species covered under this regulation the Director may release that confidential data necessary to address the potential impact.

H. Pursuant to the New Mexico Mining Act (Chapter 69 NMSA 1978 and 19 NMAC 10.2) and Surface Coal Mining Regulations (19 NMAC 18.2) the Department may use confidential data to assess potential impacts of mining operations on private land and the Director may release that confidential data necessary to address potential impacts to listed or proposed species covered under this regulation.

I. The classification of data as "confidential" shall not prevent the release of data to appropriate law enforcement officials if there is reason to believe that violations of laws or regulations regarding listed species protected under this confidentiality regulation are occurring or have recently occurred. The Director or his designee will make a determination of whether to release information on a case by case basis.

[1-31-96; 19.33.4.8 NMAC – Rn & A, 19 NMAC 33.4.8, 4/14/00]

PART 5: ADDING A SPECIES TO THE STATE LIST OF THREATENED AND ENDANGERED SPECIES BY ADOPTING A SPECIES ON THE FEDERAL LIST

19.33.5.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[8/15/96; Recompiled 12/31/01]

19.33.5.2 SCOPE:

The director of the department of game and fish, and the New Mexico state game commission regarding procedures for adding a species to the state list of threatened and endangered species through adoption of species on the United States list of endangered fish and wildlife as set forth in the Endangered Species Act of 1973.

[8/15/96; Recompiled 12/31/01]

19.33.5.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species, and Sections 17-2-37 through 17-2-46, the "Wildlife Conservation Act."

[8/15/96; Recompiled 12/31/01]

19.33.5.4 DURATION:

Permanent.

[8/15/96; Recompiled 12/31/01]

19.33.5.5 EFFECTIVE DATE:

August 15, 1996, unless a later date is cited at the end of a Section or a Paragraph.

[8/15/96; Recompiled 12/31/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

19.33.5.6 OBJECTIVE:

To provide procedures for the director and commission for developing and acting upon a recommendation to add a species to the state list of threatened and endangered species through adoption of a species from the United States list set forth under the federal Endangered Species Act.

[8/15/96; Recompiled 12/31/01]

19.33.5.7 DEFINITIONS:

A. "Endangered" means any species listed as endangered in 19 NMAC 33.1 [now 19.33.6 NMAC].

B. "Threatened" means any species listed as threatened in 19 NMAC 33.1 [now 19.33.6 NMAC].

C. "Commission" means New Mexico state game commission.

D. "Director" means the director of the New Mexico department of game and fish.

[8/15/96; Recompiled 12/31/01]

19.33.5.8 PROCEDURES:

A. The director shall present, in writing, any recommendation to add a species to the New Mexico list of threatened and endangered species, through adoption of a species on the United States list of endangered fish and wildlife as set forth in the Endangered Species Act of 1973 (Section 17-2-40 NMSA 1978), at a properly scheduled meeting. Upon receipt of the recommendation, the commission shall establish a date and location, within six months, for a public hearing on the recommendation (Section 17-2-40 L NMSA 1978).

B. At least 90 days before the public hearing, notice of the hearing shall be mailed to federal and state agencies, local and tribal governments, and individuals and organizations that have requested notification of department actions regarding threatened and endangered species; and a legal notice shall be published in a newspaper of general circulation in the area affected by the recommendation (Section 17-2-40 K NMSA 1978).

C. Notice of the public hearing shall:

(1) include the date, time and location of the hearing (Section 17-2-40 K1 NMSA 1978);

(2) include a statement of the recommendation (Section 17-2-40 K2 NMSA 1978);

(3) indicate the location and availability of the public repository for the recommendation, and for the hearing record (Section 17-2-40 K3 NMSA 1978);

(4) indicate where and by what date written comments and written testimony may be filed for inclusion in the hearing record (Section 17-2-40 K4 NMSA 1978);

(5) indicate that written comments and testimony may address biological and ecological evidence and any economic and social impacts of the recommendation (Section 17-2-40 E 5 6 NMSA 1978);

(6) indicate that written comments pertaining to any economic and social impacts of the listing decision shall be preserved in the repository for consideration in developing, if practicable, any recovery plan (Section 17-2-40 G NMSA 1978);

(7) indicate that views, data and comments pertaining to the biological and ecological evidence in the recommendation may be presented orally or in writing at the hearing (Section 17-2-40 G L NMSA 1978);

(8) specify that notice of intent to present technical and scientific testimony on the biological and ecological evidence, and a written copy of the testimony to be presented, shall be submitted to the commission not less than 30 days prior to the hearing (Section 17-2-40 K6 NMSA 1978);

(9) and specify that the public record shall remain open for written comments for 30 days after the date of the hearing (Section 17-2-40 K7 NMSA 1978).

D. The commission shall make its decision and take action, based on the relevant and reliable evidence, to add or not to add a species to the New Mexico list of threatened and endangered species at its next regularly scheduled meeting within no more than 30 days after the close of the hearing record (Section 17-2-40 L NMSA 1978). The commission shall:

(1) list a species as endangered in New Mexico if it finds that the species prospects for survival or recruitment within the state are in jeopardy based upon the biological and ecological evidence in the public repository and based upon biological and ecological evidence received in the public hearing (Section 17-2-40 L1 NMSA 1978); or

(2) list a species as threatened in New Mexico if it finds that the species' prospects for survival or recruitment within the state are likely within the foreseeable future to be in jeopardy based upon the biological and ecological evidence in the public repository and biological and ecological evidence received in the public hearing (Section 17-2-40 L2 NMSA 1978); or

(3) find that there is sufficient documented, relevant and reliable, contrary evidence, in the public repository, or received in the public hearing, regarding the biological and ecological status of the species; and instruct the director to conduct further study of the species.

E. The commission's decision on the director's recommendation to add a species to the New Mexico list of threatened and endangered species, through adoption of a species on the United States list of endangered fish and wildlife as set forth in the

Endangered Species Act of 1973, shall be announced by a news release to the major newspapers of the state.

[8/15/96; Recompiled 12/31/01]

PART 6: LIST OF THREATENED AND ENDANGERED SPECIES

19.33.6.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[1-31-96; 19.33.1.1 NMAC - Rn, 19 NMAC 33.1.1, 4/14/00; 19.33.6.1 NMAC - Rn, 19.33.1.1 NMAC, 11/30/00]

19.33.6.2 SCOPE:

The department of game and fish and all persons who may affect wildlife in New Mexico. The department collects biological information for managing threatened and endangered species. Except as otherwise provided in the Wildlife Conservation Act (17-2-37 to 17-2-46 NMSA 1978), it is unlawful for any person to take, possess, transport, export, sell or offer for sale or ship any threatened or endangered species or subspecies. The department may authorize such activities, by permit, for scientific or educational purposes, for propagation in captivity, or to protect private property.

[1-31-96; 19.33.1.2 NMAC - Rn, 19 NMAC 33.1.2, 4/14/00; 19.33.6.2 NMAC - Rn, 19.33.1.2 NMAC, 11/30/00; A, 12/31/12]

19.33.6.3 STATUTORY AUTHORITY:

17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species. 17-2-38 and 17-2-40 NMSA 1978 provide that the commission may list threatened and endangered, native and foreign wildlife.

[1-11-91, 1-31-96; 19.33.1.3 NMAC - Rn, 19 NMAC 33.1.3, 4/14/00; 19.33.6.3 NMAC - Rn, 19.33.1.3 NMAC, 11/30/00]

19.33.6.4 DURATION:

Permanent.

[1-31-96; 19.33.1.4 NMAC - Rn, 19 NMAC 33.1.4, 4/14/00; 19.33.6.4 NMAC - Rn, 19.33.1.4 NMAC, 11/30/00]

19.33.6.5 EFFECTIVE DATE:

January 31, 1996, unless a later date is cited at end of a section.

[1-31-96, 12-31-96; 19.33.1.5 NMAC - Rn, 19 NMAC 33.1.5, 4/14/00; 19.33.6.5 NMAC - Rn, 19.33.1.5 NMAC, 11/30/00]

19.33.6.6 OBJECTIVE:

To provide a list of the threatened or endangered wildlife of New Mexico.

[1-11-91, 1-31-96; 19.33.1.6 NMAC - Rn, 19 NMAC 33.1.6, 4/14/00; 19.33.6.6 NMAC - Rn, 19.33.1.6 NMAC, 11/30/00; A, 12/31/12]

19.33.6.7 DEFINITIONS:

A. "Endangered", as used herein, means any species or subspecies whose prospects of survival or recruitment in New Mexico are in jeopardy.

B. "Threatened", as used herein, means any species or subspecies that is likely to become endangered within the foreseeable future throughout all or a significant portion of its range in New Mexico.

C. "Identification format", Where both threatened or endangered, and non-endangered, subspecies occur in the state, the former are identified by being listed by common name (in parentheses) and trinomial.

[1-11-91, 1-31-96; 19.33.1.7 NMAC - Rn, 19 NMAC 33.1.7, 4/14/00; 19.33.6.7 NMAC - Rn, 19.33.1.7 NMAC, 11/30/00; A, 12/31/12]

19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

A. MAMMALS

(1) Endangered:

- (a) Arizona shrew, *Sorex arizonae*
- (b) Mexican long-nosed bat, *Leptonycteris nivalis*
- (c) (Penasco) least chipmunk, *Neotamias minimus atristriatus*
- (d) meadow jumping mouse, *Zapus hudsonius*
- (e) (Arizona) montane vole, *Microtus montanus arizonensis*
- (f) gray wolf, *Canis lupus*

(2) Threatened:

- (a) North American least shrew, *Cryptotis parva*
- (b) lesser long-nosed bat, *Leptonycteris yerbabuenae*
- (c) spotted bat, *Euderma maculatum*
- (d) western yellow bat, *Lasiurus xanthius*
- (e) white-sided jackrabbit, *Lepus callotis*
- (f) (Organ mountains) Colorado chipmunk, *Neotamias quadrivittatus australis*
- (g) southern pocket gopher, *Thomomys umbrinus*
- (h) American marten, *Martes Americana*

B. BIRDS

(1) Endangered:

- (a) brown pelican, *Pelecanus occidentalis*
- (b) aplomado falcon, *Falco femoralis*
- (c) white-tailed ptarmigan, *Lagopus leucura*
- (d) whooping crane, *Grus americana*
- (e) least tern, *Sterna antillarum*
- (f) common ground-dove, *Columbina passerina*
- (g) buff-collared nightjar, *Caprimulgus ridgway*
- (h) elegant trogon, *Trogon elegans*
- (i) northern beardless-tyrannulet, *Camptostoma imberbe*
- (j) (southwestern) willow flycatcher, *Empidonax traillii extimus*
- (k) thick-billed kingbird, *Tyrannus crassirostris*
- (l) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammoregus*

(2) Threatened:

- (a) neotropic cormorant, *Phalacrocorax brasilianus*
- (b) bald eagle, *Haliaeetus leucocephalus*
- (c) common black-hawk, *Buteogallus anthracinus*
- (d) peregrine falcon, *Falco peregrinus*
- (e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*
- (f) piping plover, *Charadrius melodus*
- (g) whiskered screech-owl, *Megascops trichopsis*
- (h) boreal owl, *Aegolius funereus*
- (i) broad-billed hummingbird, *Cynanthus latirostris*
- (j) white-eared hummingbird, *Hylocharis leucotis*
- (k) violet-crowned hummingbird, *Amazilia violiceps*
- (l) lucifer hummingbird, *Calothorax lucifer*
- (m) Costa's hummingbird, *Calypte costae*
- (n) Gila woodpecker, *Melanerpes uropygialis*
- (o) Bell's vireo, *Vireo bellii*
- (p) gray vireo, *vireo vicinior*
- (q) Abert's towhee, *Melezone aberti*
- (r) Baird's sparrow, *Ammodramus bairdii*
- (s) yellow-eyed junco, *Junco phaeonotus*
- (t) varied bunting, *Passerina versicolor*

C. REPTILES

(1) Endangered:

- (a) Gila monster, *Heloderma suspectum*
- (b) sand dune lizard, *Sceloporus arenicolus*
- (c) gray-checkered whiptail *Aspidoscelis dixonii*
- (d) gray-banded kingsnake, *Lampropeltis alterna*
- (e) Mexican gartersnake, *Thamnophis eques*
- (f) plain-bellied water snake, *Nerodia erythrogaster*
- (g) (New Mexico) ridgenosed rattlesnake, *Crotalus willardi obscurus*

(2) Threatened:

- (a) western river cooter, *Pseudemys gorzugi*
- (b) Slevin's bunch grass lizard, *Sceloporus slevini*
- (c) canyon spotted whiptail, *Aspidoscelis burti*
- (d) mountain skink, *Plestiodon callicephalus*
- (e) green ratsnake, *Senticolis triaspis*
- (f) narrow-headed gartersnake, *Thamnophis rufipunctatus*
- (g) western ribbonsnake, *Thamnophis proximus*
- (h) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

D. AMPHIBIANS

(1) Endangered:

- (a) Jemez mountains salamander, *Plethodon neomexicanus*
- (b) lowland leopard frog, *Lithobates yavapaiensis*
- (c) boreal toad, *Anaxyrus boreas*
- (d) Great Plains narrow-mouthed toad, *Gastrophryne olivacea*

(2) Threatened:

- (a) Sacramento mountain salamander, *Aneides hardii*
- (b) Sonoran desert toad, *Ollotis alvaria*

E. FISHES

(1) Endangered:

- (a) Gila chub, *Gila intermedia*
- (b) Headwater chub, *Gila nigra*
- (c) Chihuahua chub, *Gila nigrescens*
- (d) roundtail chub, *Gila robusta*
- (e) Rio Grande silvery minnow, *Hybognathus amarus*
- (f) spikedace *Meda fulgia*
- (g) Arkansas river shiner, *Notropis girard*
- (h) (Pecos) bluntnose shiner, *Notropis simus pecosensis*
- (i) southern redbelly dace, *Phoxinus erythrogaster*
- (j) Colorado pikeminnow, *Ptychocheilus lucius*
- (k) loach minnow, *Tiaroga cobitis*
- (l) (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*
- (m) blue sucker, *Cycleptus elongates*
- (n) gray redhorse, *Moxostoma congestum*
- (o) Pecos gambusia, *Gambusia nobilis*

(2) Threatened:

- (a) Gila trout, *Oncorhynchus gilae*
- (b) Mexican tetra, *Astyanax mexicanus*
- (c) peppered chub, *Macrhybopsis tetranema*

- (d) suckermouth minnow, *Phenacobius mirabilis*
- (e) Pecos pupfish, *Cyprinodon pecosensis*
- (f) White Sands pupfish, *Cyprinodon Tularosa*
- (g) Gila topminnow, *Poeciliopsis occidentalis*
- (h) greenthroat darter, *Etheostoma lepidum*
- (i) bigscale logperch, *Percina macrolepida*

(3) Listing exceptions: Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner- excludes the population in the Pecos river drainage; bigscale logperch- excludes the population in the Canadian river drainage

F. CRUSTACEANS:

(1) Endangered:

- (a) Socorro isopod, *Thermosphaeroma thermophilum*
- (b) Noel's amphipod, *Gammarmarus desperatus*

G. MOLLUSKS

(1) Endangered:

- (a) paper pondshell, *Utterbackia imbecillis*
- (b) Texas hornshell, *Popenaias popeii*
- (c) Koster's springsnail, *Juturnia kosteri*
- (d) Alamosa springsnail, *Pseudotryonia alamosae*
- (e) Chupadera springsnail, *Pyrgulopsis chupaderae*
- (f) Socorro springsnail, *Pyrgulopsis neomexicana*
- (g) Roswell springsnail, *Pyrgulopsis roswellensis*
- (h) Pecos assiminea, *Assiminea pecos*,
- (i) wrinkled marshsnail, *Stagnicola caperata*

(j) Florida mountainsnail, *Oreohelix florida*

(2) Threatened:

(a) lake fingernailclam, *Musculium lacustre*

(b) swamp fingernailclam, *Musculium partumeium*

(c) long fingernailclam, *Musculium transversum*

(d) Lilljeborg's peaclam, *Pisidium lilljeborgi*

(e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*

(f) Gila springsnail, *Pyrgulopsis gilae*

(g) Pecos springsnail, *Pyrgulopsis pecosensis*

(h) New Mexico springsnail, *Pyrgulopsis thermalis*

(i) star gyro, *Gyraulus crista*

(j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*

(k) ovate vertigo, *Vertigo ovata*

(l) Hacheta Grande woodlandsnail, *Ashmunella hebardi*

(m) Cooke's peak woodlandsnail, *Ashmunella macromphala*

(n) Mineral creek mountainsnail, *Oreohelix pilsbryi*

(o) Doña Ana talussnail, *Sonorella todseni*

[1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05; A, 10/16/06; A, 12/29/06; A, 1/15/10; A, 1/31/12; A, 2/15/12; A, 12/31/12]

19.33.6.9 [RESERVED]

[8-6-91, 8-15-98; 19.33.1.8 NMAC - Rn, 19 NMAC 33.1.9, 4/14/00; 19.33.6.9 NMAC - Rn, 19.33.1.9 NMAC, 11/30/00; A, 9/15/05; A, 1/31/12; Repealed, 12/31/12]

19.33.6.10 SPECIES FORMERLY LISTED:

These species have been removed from the above list since 1997; because they have been determined to be not indigenous to New Mexico, or they have been extirpated from New Mexico, or they have recovered and are no longer threatened or endangered.

- A. spotted chorus frog, *Pseudacris clarkii*
- B. phantom shiner, *Notropis orca*
- C. (Rio Grande) bluntnose shiner, *Notropis simus simus*
- D. brook stickleback, *Culaea inconstans*
- E. (desert) bighorn sheep, *Orvis canadensis mexicana*

[8-15-98; 19.33.1.8 NMAC - Rn, 19 NMAC 33.1.10, 4/14/00; 19.33.6.10 NMAC - Rn, 19.33.1.10 NMAC, 11/30/00; A, 2/15/12]

CHAPTER 34: WILDLIFE HABITAT AND LANDS

PART 1: [RESERVED]

PART 2: HABITAT PROTECTION

19.34.2.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[1-31-96; 19.34.2.1 NMAC - Rn, 19 NMAC 34.2.1, 7-31-12]

19.34.2.2 SCOPE:

The department of game and fish and all persons who may hunt, fish and/or trap on U.S. forest service and bureau of land management lands.

[1-31-96; 19.34.2.2 NMAC - Rn, 19 NMAC 34.2.2, 7-31-12]

19.34.2.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[6-4-87, 1-31-96; 19.34.2.3 NMAC - Rn, 19 NMAC 34.2.3, 7-31-12]

19.34.2.4 DURATION:

Permanent.

[1-31-96; 19.34.2.4 NMAC - Rn, 19 NMAC 34.2.4, 7-31-12]

19.34.2.5 EFFECTIVE DATE:

January 31, 1996

[1-31-96; 19.34.2.5 NMAC - Rn, 19 NMAC 34.2.5, 7-31-12]

19.34.2.6 OBJECTIVE:

To provide a description of lands closed to vehicle travel under the Habitat Protection Act and to describe prohibited activities on said lands.

[1-31-96; 19.34.2.6 NMAC - Rn, 19 NMAC 34.2.6, 7-31-12]

19.34.2.7 DEFINITIONS:

A. "Road", as used herein, means any maintained or unmaintained right-of-way that has been utilized by the public and includes roads, streets, highways and state scenic recreational or historical trails.

B. "Vehicle", as used herein, means any motor-powered mechanical device used for conveyance.

[1-31-96; 19.34.2.7 NMAC - Rn, 19 NMAC 34.2.7, 7-31-12]

19.34.2.8 VEHICLE USE CLOSURE:

A. Restrictions.

(1) No vehicle shall be operated on the Carson national forest areas described in Paragraphs (1) through (4) of Subsection A of 19.34.2.9 NMAC, Paragraphs (6) through (10) of Subsection A of 19.34.2.9 NMAC, and San Simon canyon recreation area as described in Subsection C of 19.34.2.9 NMAC except on those roads therein that have been posted with arrows as open.

(2) No vehicle shall be operated on the Carson national forest area described in Paragraph (5) of Subsection A of 19.34.2.9 NMAC below between the dates of January 1 and August 15 of each year except on those roads therein that have been posted with arrows as open.

(3) No vehicle shall be operated on the Cibola national forest area described in Subsection B of 19.34.2.9 NMAC below between the dates of December 15 of each year and March 31 of the following year except on those roads therein that have been posted with arrows as open.

B. Exceptions.

(1) For the purposes of camping and parking, motor vehicles shall be allowed up to 300 feet on each side of those roads that are posted with arrows as open.

(2) The restrictions imposed by this regulation shall not apply to private land nor landowner access thereto within the prescribed areas.

(3) Restrictions and prohibitions imposed by this regulation shall not apply to public employees acting in the scope of their employment nor to grazing permittees, mineral claimants, special use permittees, or their assignees or designees, when traveling in the restricted areas for the specific purpose for which their permits or leases were issued or granted.

(4) The restrictions and prohibitions imposed by this regulation shall not apply in emergency situations such as fire or other disasters or where necessary to protect life or property.

(5) Snowmobiles only may be used in Carson national forest area described in Paragraph (9) of Subsection A of 19.34.2.9 NMAC and in portions of those areas described in Paragraphs (2), (3) and (4) of Subsection A of 19.34.2.9 NMAC that are marked as open to snowmobiles use by signs.

(6) In the Valle Vidal area described in Paragraph (10) of Subsection A of 19.34.2.9 NMAC below, unattended motor vehicle parking shall be allowed only during the day and within twenty feet of the roadway along roads that are posted with arrows as open. Unattended motor vehicle parking shall be allowed overnight and during the day on designated parking areas and vehicular camping shall be allowed only in designated campgrounds.

[3-5-85, 6-4-87, 1-31-96; 19.34.2.8 NMAC - Rn, 19 NMAC 34.2.8, 7-31-12]

19.34.2.9 ROAD CLOSURE AREAS:

A. Carson national forest.

(1) That portion of the Jicarilla division of the Carson national forest beginning at the northwest corner of the Jicarilla division at its junction with the New-Mexico-Colorado-Jicarilla Indian reservation boundaries, thence south along the Jicarilla division-Jicarilla Indian reservation boundary for approximately 9.25 miles to the section line separating Sections 25 and 36 in township 31 north, range 4 west, thence west

along this section line to its junction with forest service road 310, thence west along forest service road 310 to its junction with forest service road 309, thence west along forest service road 309 to its junction with the west boundary to the Jicarilla division, thence north along the west boundary of the Jicarilla division for approximately 9.75 miles to its junction with the New Mexico-Colorado boundary, thence east along the New Mexico-Colorado boundary for approximately 10 miles to the beginning.

(2) That portion of the Tres Piedras division of the Carson national forest beginning at the northeast corner of the Tres Piedras division at its junction with the New Mexico-Colorado boundary, thence south and east along the eastern boundary of the Tres Piedras division to its junction with U.S. Highway 64 at the Village Tres Piedras, New Mexico, thence west along U.S. Highway 64 to its junction with the Tres Piedras division-Tierra Amarilla land grant boundary, thence north and west along the Tres Piedras division-Tierra Amarilla land grant boundary to its junction with the New Mexico-Colorado boundary, thence east along the New Mexico-Colorado boundary for approximately 18 miles to the beginning.

(3) Those portions of the Camino Real division of the Carson national forest beginning at the northeast corner of the Camino Real division at its junction with the Taos Indian reservation, thence south and east along the eastern boundary of the Camino Real division to its junction with the Colfax-Mora county lines, thence west along the Colfax-Mora county lines for approximately 2 miles to its junction with Forest Service Road 76, thence southwest along service road 76 for approximately 3 miles to its junction with forest service trail 124, thence due south from this point for approximately 4 miles to the Camino Real division-Mora land grant boundary, thence south along the Camino Real division-Mora land grant boundary for approximately 5.5 miles to the section line separating sections 23 and 26 in township 22 north, range 14 east, thence west along this section line to its junction with New Mexico highway 518, thence southeast for approximately 1 mile to the village of Angostura, New Mexico, thence south from Angostura for approximately 4.75 miles to the Taos-Mora county line thence southwest along the Taos-Mora county line to their junction with the Pecos wilderness boundary, thence north, west and south along the Pecos wilderness boundary to its junction with the Carson-Santa Fe forest boundary, thence northwest along the Carson-Santa Fe Forest boundary, thence along the Carson-Santa Fe forest boundary to the section line separating sections 29 and 30 in township 20 north, range 12 east, thence northeast from this point in a straight line to the common corner of sections 25, 26, 35 and 36 in township 22 north, range 12 east, thence due east from this point to the common corner of sections 27, 28, 33 and 34 in township 22 north, range 13 east, thence due north from this point for approximately 3 miles to the common corner of sections 9, 10, 14 and 16 in township 22 north, range 13 east, thence northwest for approximately 1 mile to state highway 518, thence due north from this point for approximately 2 miles to forest service trail 4, thence west along forest service trail 4 to New Mexico highway 518, thence northwest from this point to the common corners of sections 22, 23, 26 and 27 in township 23 north, range 12 east, thence northeast from this point to the junction of forest service road 114 and the Cristobal de la Serna land Grant boundary, thence north and northeast along the east boundary of

the Cristobal de la Serna land grant to its junction with the Taos Indian reservation boundary, thence east and north along the south boundary of the Taos Indian reservation to the beginning.

(4) That portion of the Questa division of the Carson national forest beginning at the northeast corner of the Questa division at its junction with the Sangre de Cristo Land Grant boundary, thence south and east along the Questa division-Sangre de Cristo land grant boundary to the common corner of sections 9, 10, 15 and 16 in township 29 north, range 15 east, thence due west for approximately 3.5 miles to the common corner of sections 12 and 13, township 29 north, range 14 east and section 7 and 18 township 29 north, range 15 east thence due north for approximately 1 mile to forest service road 134, thence southwest along forest service road 134 to its junction with the west boundary of the Questa division, thence north along the west boundary of the Questa division for approximately 9 miles to the beginning.

(5) That portion of the Questa division of the Carson national forest beginning at the junction of the west boundary of the Questa division with New Mexico highway 38, thence south and east along New Mexico highway 38 to its junction with the Columbine-Hondo proposed wilderness area, thence south and west along the boundary of the Columbine-Hondo proposed wilderness area to its junction with the common corner of Sections 17, 18, 19 and 20 in township 28 north, range 13 east, thence north along the boundary of the Questa division for approximately 5 miles to the common corner of sections 7, 8, 17 and 18 in township 28 north, range 13 east, thence due south for 1 mile to the section line separating sections 16 and 17 in township 28 north, range 13 east, thence north along this section line to its junction with Largo canyon, thence northwest along Largo canyon to its junction with the west boundary of the Questa division, thence northeast along the west boundary of the Questa division to the beginning.

(6) That portion of the Questa division of the Carson national forest beginning at the junction of forest service road 109 and the New Mexico highway 38, thence east along New Mexico 38 to its junction with forest service road 58, thence south along forest service road 58 to the junction of the Red river and the east fork of the Red river, thence southeast along the east fork of the Red river for approximately 1 mile to its junction with the section line separating section 31 in township 28 north, range 15 east, and section 1 in township 27 north, range 15 east, thence east along this section line for approximately .5 miles to its junction with the Wheeler peak wilderness boundary, thence north, east, south and west along the Wheeler peak wilderness boundary to its junction with the Taos Pueblo grant and state highway 150, thence north along state highway 150 for approximately .5 miles to its junction with the boundary of the Columbine-Hondo proposed wilderness, thence north, west and east along the boundary of the Columbine-Hondo proposed wilderness to the beginning.

(7) That portion of the Tres Piedras division of the Carson national forest beginning at the common corner of section 14, 15, 22 and 23 in township 24 north, range 6 east, thence east for approximately 2 miles to the common corner of sections

13 and 24 in township 24 north, range 6 east, and sections 18 and 19 in township 24 north, range 7 east, thence south and west from this point for approximately 2 miles along an unnamed creek to the middle of section 25 in township 24 north, range 6 east, thence northeast to Arroyo del Perro, thence along Arroyo del Perro to Alamitos springs, thence due east to the common corner of sections 33 and 34 in township 24 north, range 7 east, and sections 3 and 4 in township 23 north, range 7 east, thence due south for approximately 1.5 miles to the Tres Piedras division-Lobato grant boundary, thence west and south along the Lobato grant boundary to its junction with state highway 554, thence southwest along state highway 554 for approximately .5 miles to its junction with the south boundary of the Tres Piedras division, thence west along the south boundary of the Tres Piedras division to its junction with the east boundary of the Plaza Blanca grant, thence north along the east boundary of the Plaza Blanca Grant to the beginning.

(8) That portion of the Tres Piedras division of the Carson national forest beginning at the northeast corner of the Piedra Lumbre grant, thence west along the north boundary of the Piedra Lumbre grant to the common corner of sections 2, 3, 9 and 10 in township 24 north, range 4 east, thence due north for approximately 1 mile to the common corner of sections 34 and 35 in township 25 north, range 4 east, and sections 2 and 3 in township 24 north, range 4 east, thence northeast in a straight line to the common corner of sections 25, 26, 35 and 36 in township 25 north, range 4 east, thence due east for approximately 3 miles to the common corner of sections 28, 29, 32 and 33 in township 25 north, range 5 east, thence due south approximately 1 mile to the common corner of sections 32 and 33 in township 25 north, range 5 east, and sections 4 and 5 in township 24 north, range 5 east, thence due east for approximately 1 mile to the common corner of sections 33 and 34 in township 25 north, range 5 east, and sections 3 and 4 in township 24 north, range 5 east, thence due north for approximately 1 mile to the common corner of sections 27, 28, 33 and 34 in township 25 north, range 5 east, thence due east for approximately 3 miles to the common corner of sections 25 and 36 in township 25 north, range 5 east, and sections 30 and 31 in township 25 north, range 6 east, thence due south along the section line for approximately .5 miles, thence east, south and west encompassing the SW 1/4 of section 31 of township 25 north, range 6 east, thence west-southwest in a straight line until this line intersects Comanche canyon, thence southwest along Comanche canyon for approximately 1 mile to the common corner of sections 2, 3, 10 and 11 in township 24 north, range 5 east, thence south-southwest in a straight-line for approximately 1.5 miles to marker post 5 on the east boundary of the Piedra Lumbre grant, thence north along the east boundary of the Piedra Lumbre grant to the beginning.

(9) That portion of the Tres Piedras division of the Carson national forest beginning at the junction of the Tierra Amarilla grant, Jarosita canyon and the Tres Piedras division boundary, thence southeast for approximately 2 miles along Jarosita canyon to the common corner of sections 2, 3, 10 and 11 in township 27 north, range 6 east, thence due south in a straight line to the common corner of sections 10, 11, 14 and 15 in township 27 north, range 6 east, thence southwest in a straight line for approximately 2 miles to the common corner of sections 24 and 25 in township 27 north, range 6 east, and sections 19 and 30 in township 27 north, range 7 east, thence

southwest from this point in a straight line to its intersection with Salvador canyon, thence southeast along Salvador canyon to its junction with El Rito creek, thence north along El Rito creek to its junction with canyon de Chacon, thence west along canyon de Chacon to its junction with forest service road 274, thence northwest from this point in a straight line to the common corner of sections 17, 18, 19 and 20 in township 27 north, range 6 east, thence due west for approximately 1.5 miles to the common corner of sections 13, 14, 23 and 24 in township 27 north, range 5 east, thence north-northeast in a straight line to the common corner of sections 1 and 12 in township 27 north, range 5 east, and sections 6 and 7 in township 27 north, range 6 east, thence southwest to the common corner of sections 11, 12, 13 and 14 in township 27 north, range 5 east, thence due west for approximately 1 mile to the common corner of sections 10, 11, 14 and 15 in township 27 north, range 5 east, thence northwest in a straight line for approximately 1.25 miles to its intersection with forest service road 125, thence north and east along forest service road 125 to its end at Trout lakes, thence northwest in a straight line to its intersection with the Tres Piedras division-Tierra Amarilla Grant boundary, thence east along the Tres Piedras division-Tierra Amarilla grant boundary to the beginning.

(10) That portion of the Questa division of the Carson national forest known as the Valle Vidal addition.

B. Cibola national forest. That portion of the Mount Taylor district of the Cibola national forest lying within the boundary line starting at the junction of state highway 400 and the Cibola national forest boundary in section 9, township 14 north, range 16 west, and running west and thence north along the forest boundary to the southern boundary of the Fort Wingate army depot, thence southwest, south and west along the southern boundary of the Fort Wingate army depot to its intersection with Hogback ridge in section 2, township 13 north, range 17 west, thence south along Hogback ridge to its intersection with forest service road 191, thence east along forest service road 191 to its intersection with state highway 400, thence east along the section line between sections 3 and 10 and 2 and 11 in township 13 north, range 16 west to its intersection with forest service road 50, thence south and east along forest service road 50 to its junction with forest service road 166, thence north on forest service road 166 to its junction with forest service road 418, thence northeast along forest service road 418 to its intersection with the forest boundary in section 20, township 13 north, range 14 west, thence north and west along the forest boundary to the beginning.

C. Simon Canyon recreation area. Those portions of sections 9, 10 and 15 in township 30 north, range 8 west lying north of the San Juan river but below the Simon canyon rim (6,200 feet elevation) and within that area designated and administered by the bureau of land management as the Simon canyon recreation area.

[12-15-82, 6-5-85, 6-4-87, 1-31-96; 19.34.2.9 NMAC - Rn, 19 NMAC 34.2.9, 7-31-12]

19.34.2.10 CLOSURE TO ENTRY:

A. Summer closure.

(1) The elk calving area described in Paragraph (2) of Subsection A of 19.34.2.10 NMAC, below will be closed to public entry during the period of May 1 through June 30 of each year except on those roads therein that have been posted with arrows as open or as allowed by rule.

(2) Beginning at the west boundary of the Valle Vidal addition of the Questa district of the Carson national forest at the Costilla river, thence north along the Valle Vidal boundary to the north boundary of the Valle Vidal, thence east along the Valle Vidal boundary to the Taos-Colfax county line, thence south and west along the county line to its intersection with the south boundary of Valle Vidal, thence west and north along the Vidal boundary to the beginning.

B. Winter closure.

(1) The elk wintering area described in Paragraph (2) of Subsection B of 19.34.2.10 NMAC below will be closed to public entry during the period January 1 through March 31 of each year except on those roads therein that have been posted with arrows as open.

(2) Beginning on the north boundary of the Valle Vidal addition of the Questa district of the Carson national forest at its intersection with the Taos-Colfax county line, thence east, south, west and north along the Valle Vidal boundary to its intersection with the Taos-Colfax county line, thence east and north along the county line to the beginning.

[3-5-85, 6-5-85, 1-31-96; 19.34.2.10 NMAC - Rn & A, 19 NMAC 34.2.10, 7-31-12]

PART 3: USE OF STATE GAME COMMISSION LANDS

19.34.3.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.34.3.1 NMAC - Rp, 19.34.3.1 NMAC, 6-30-2016]

19.34.3.2 SCOPE:

Department staff; licensed hunters, anglers, and trappers; and habitat management and access validation (HMAV) holders.

[19.34.3.2 NMAC - Rp, 19.34.3.2 NMAC, 6-30-2016]

19.34.3.3 STATUTORY AUTHORITY:

Sections 17-1-1, 17-1-14, 17-1-26, 17-4-1, and 17-4-33 NMSA 1978, provide the New Mexico state game commission with the authority to acquire lands, to provide for use of

game and fish for use and development for public recreation, and to establish rules that it may deem necessary to carry out the purposes of Chapter 17, NMSA 1978.

[19.34.3.3 NMAC - Rp, 19.34.3.3 NMAC, 6-30-2016]

19.34.3.4 DURATION:

Permanent.

[19.34.3.4 NMAC - Rp, 19.34.3.4 NMAC, 6-30-2016]

19.34.3.5 EFFECTIVE DATE:

June 30, 2016, unless a later date is cited at the end of a section.

[19.34.3.5 NMAC - Rp, 19.34.3.5 NMAC, 6-30-2016]

19.34.3.6 OBJECTIVE:

To establish terms and conditions for use of land owned, controlled or operated by the commission.

[19.34.3.6 NMAC - Rp, 19.34.3.6 NMAC, 6/30/16]

19.34.3.7 DEFINITIONS:

A. "Access" shall mean consent for an individual to enter upon and use designated lands for hunting, fishing, trapping, or gaining access into nature activities. Access excludes commercial activity.

B. "Access rules" shall mean restrictions or prohibitions on access applicable to designated land pursuant to 19.34.3.10 NMAC.

C. "Big game" shall mean deer, elk, pronghorn antelope, bighorn sheep, ibex, Barbary sheep, oryx, turkey, javelina, bear, and cougar.

D. "Commercial activity" means any activity conducted within land for which a fee is charged or compensation or anything else of value is received by the person or business conducting the activity, except for hunting activities conducted by an outfitter registered with the department.

E. "Commission" shall mean the New Mexico state game commission.

F. "Director" shall mean the director of the New Mexico department of game and fish.

G. "Department" shall mean the New Mexico department of game and fish.

H. "Designated area(s)" shall mean those areas within designated land where access is either allowed or restricted.

I. "Designated land(s)" shall mean land on which access is allowed for hunting, fishing, trapping, gaining access into nature activities, or activities authorized by the director pursuant to 19.34.3.9 NMAC

J. "Gaining access into nature" or " GAIN" shall mean a program to provide broadly based wildlife-associated recreation opportunity, not to include hunting, trapping, or fishing, pursuant to 17-4-33 NMSA 1978.

K. "GAIN activities" shall mean activities that provide broadly based wildlife-associated recreation, not to include hunting, trapping, or fishing..

L. "Group" shall mean at least one (1) individual in possession of a hunting license, fishing license, trapping license, or habitat management and access validation (HMAV) valid for the current license year and up to three (3) accompanying individuals. Youth under the age of 18 are exempt from this definition.

M. "Land(s)" shall mean property owned, operated, or controlled by the commission except property upon which state parks are located and operated by the state parks division of the energy, minerals, and natural resources department. Activities on commission-owned land within state parks operated by the state parks division of the energy, minerals and natural resources department shall be subject to state parks division rules.

N. "License year" shall mean the period of April 1 through March 31.

O. "Operator" shall mean any person or entity that conducts commercial activity on land pursuant to a commercial permit issued by the department and that person's or entity's agents.

[19.34.3.7 NMAC - Rp, 19.34.3.7 NMAC, 6-30-2016]

19.34.3.8 PROHIBITION OF DISCRIMINATION:

No one shall be denied use of lands on the basis of race, color, religion, sex, disability, family status or national origin.

[19.34.3.8 NMAC - Rp, 19.34.3.10 NMAC, 6-30-2016]

19.34.3.9 AUTHORITY OF DIRECTOR:

The director shall have the authority to specify designated lands, specify access rules, and to close, in whole or in part, or otherwise restrict the use of land when in the opinion of the director such closure or restriction is reasonably necessary for the protection of such land, wildlife, habitat, the public or otherwise, to respond to circumstances concerning such land. The director shall have the authority to authorize an activity prohibited or restricted by access rules or not otherwise specified on land when in the opinion of the director such activity is not detrimental to the land, wildlife or purpose(s) for which the land is managed and will not result in any expenditure from the game protection fund that is inconsistent with Sections 17-1-28 and 17-1-29 NMSA 1978.

[19.34.3.9 NMAC - Rp, 19.34.3.12 NMAC, 6-30-2016]

19.34.3.10 ACCESS RULES:

A. It shall be unlawful for any individual to enter upon land not designated for access.

B. It shall be unlawful to operate any vehicle off of established roads or on closed roads within land, except as allowed by the director through permit or commission rule, or any county, state or federal law enforcement officer in the discharge of his/her official duties.

C. It shall be unlawful for an individual or group to enter upon designated land without possessing at least one (1) hunting license, fishing license, trapping license, or habitat management and access validation (HMAV) valid for the current license year. Youth under the age of 18 are exempt from this access rule.

D. It shall be unlawful to deface or remove rocks, minerals, plants (including fruits, nuts, and berries), animals, firewood, or man made feature from any land unless specifically allowed by commission rule.

E. It shall be unlawful for any person to excavate, injure, destroy, or remove any cultural resource or artifact from any land.

F. It shall be unlawful for any individual to access designated land, outside designated areas, during published big game and waterfowl hunting seasons for the respective designated land.

G. It shall be unlawful to camp in excess of fourteen (14) consecutive days, except by licensed hunters and their guests concurrent with their licensed hunt and scouting period.

H. It shall be unlawful to have an open fire unless safely contained.

I. It shall be unlawful to use or possess any hay or feed for domestic livestock use on land other than pelleted or grain feed, or hay certified as weed free.

J. It shall be unlawful to conduct a commercial activity on land without first obtaining a commercial permit as described in 19.34.3.12 NMAC.

K. Nothing in this rule shall prevent state employees or contract workers from performing administrative duties on land.

L. It shall be unlawful to possess unleashed dogs or other pets on land. Exceptions: dogs may be unleashed for permitted field trial or hunting purposes during established seasons only and only on land where use of dogs for hunting purposes is allowed by rule; dogs may be unleashed when allowed for authorized department personnel; and dogs may be unleashed for authorized wildlife management activities.

M. Properly-licensed big game hunters and up to three (3) guests are exempt from closures during a seven (7) day scouting period prior to the start of the licensed hunt period on the respective designated land.

N. It shall be unlawful to violate any access rule specified by the director for specific designated land and disseminated by posting or notice provision by the department (e.g. posted signs, New Mexico fishing and hunting rules and information, or the department website).

[19.34.3.10 NMAC - N, 6-30-2016]

19.34.3.11 USE OF LAND:

Designated land for hunting, fishing, or trapping access shall be specified by the department and shall be disseminated through the annual publication of New Mexico hunting and fishing rules and information. Designated land for GAIN activities shall be specified by the director and shall be posted on the department website (www.wildlife.state.nm.us). Access to designated land is allowed unless otherwise restricted or prohibited by access rules pursuant to 19.34.3.10 NMAC. Land not designated for access shall remain closed. Applications for the Jamie Koch community shelter shall be accepted only at the department office in Santa Fe. Reservations are made on a first come first serve basis. The fee shall cover the day use shelter for a 24 hour period up to four (4) consecutive days. The permit fee shall be established by the director.

[19.34.3.11 NMAC - Rp, 19.34.3.13 NMAC, 6-30-2016]

19.34.3.12 COMMERCIAL PERMITS:

A. A commercial permit is required for any person or business to conduct a commercial activity on designated land and must be in the possession of the permittee while the permittee is on designated land.

B. Requests for commercial permits may be submitted to the department office in Santa Fe for review.

C. Each commercial permit shall specify the number of employees or agents authorized to conduct activities on behalf of the permittee pursuant to said permit. A copy of the commercial permit must be in the possession of the operator and every employee or agent while on designated land.

D. No commercial permit shall be issued until the applicant has provided proof of insurance or bond in the amount of not less than \$1,000,000 naming the department, the commission and state of New Mexico as additional insureds.

E. Operators and their clients are subject to all applicable state and federal regulations.

F. Commercial permits are not transferable. A commercial permit cannot be sold or transferred for any reason. The department will not refund any portion of the commercial permit fee for any reason.

G. The director may limit the number and type of commercial permits in order to protect resources. The director may prescribe special requirements and conditions for commercial permits when, in his sole discretion, it is in the best interests of the state to do so. Special requirements may include, but are not limited to: limitations on use of designated land, grounds and facilities; designation of a specific area within the designated land in which an operator is allowed to operate; designation of specific days or hours during which an operator is allowed to operate; number of participants, requirements for submission of use and price data; and training requirements.

H. No operator shall violate any condition of the commercial permit or restriction of the designated land. Violation of the commercial permit or a restriction may result in the immediate revocation of the commercial permit. Operators shall be subject to the procedural provisions of Section 17-3-34 NMSA 1978 and Subsection C of 19.31.2.10 NMAC, and 19.31.2.11 NMAC through 19.31.2.24 NMAC.

I. The director may deny any application for a commercial permit.

J. The department shall establish the fee for each individual commercial permit it issues.

K. The department reserves the right to cancel or modify any commercial permit in emergency circumstances as determined by the director.

[19.34.3.12 NMAC - Rp, 19.34.3.14 NMAC, 6-30-2016]

PART 4: PROTECTION OF DEPARTMENT OF GAME AND FISH LANDS

19.34.4.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[1/13/96; Recompiled 12/31/01]

19.34.4.2 SCOPE:

General public.

[1/13/96; Recompiled 12/31/01]

19.34.4.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, and 17-4-1, NMSA 1978, provide the New Mexico state game commission with the authority to acquire land and to establish rules and regulations that it may deem necessary to carry out the purposes of Chapter 17, NMSA 1978.

[1/13/96; Recompiled 12/31/01]

19.34.4.4 DURATION:

Permanent.

[1/13/96; Recompiled 12/31/01]

19.34.4.5 EFFECTIVE DATE:

January 13, 1996 [unless a later date is cited at the end of a section]

[1/13/96; Recompiled 12/31/01]

19.34.4.6 OBJECTIVE:

To establish rules to prevent damage to wildlife and wildlife habitat on lands owned or controlled by the department of game and fish.

[1/13/96; Recompiled 12/31/01]

19.34.4.7 DEFINITIONS:

A. "Established road" means any maintained or unmaintained right-of-way that has been utilized by the public and includes roads, streets, and highways.

B. "Motorized vehicle" means any motor-powered mechanical device used for conveyance.

[1/13/96; Recompiled 12/31/01]

19.34.4.8 PROHIBITED ACTIVITIES:

It shall be unlawful for any person or persons to operate any motorized vehicle off of established roads on lands owned or controlled by the department of game and fish.

[1/13/96; Recompiled 12/31/01]

19.34.4.9 EXCEPTIONS:

A. Any county, state or federal law enforcement officer may drive off of established roads on these lands in the discharge of his official duties.

B. The director of the department of game and fish may permit other designated personnel to drive off of established roads when it is deemed necessary to provide proper maintenance and service upon these lands.

[8/16/72, 1/13/96; Recompiled 12/31/01]

PART 5: WILDLIFE MANAGEMENT AREAS

19.34.5.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.34.5.1 NMAC - Rp, 19.34.5.1 NMAC, 4/1/2023]

19.34.5.2 SCOPE:

Department staff, licensed hunters, anglers and trappers and other users as allowed by rule.

[19.34.5.2 NMAC - Rp, 19.34.5.2 NMAC, 4/1/2023]

19.34.5.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to identify game refuges and to establish rules and regulations that it may deem necessary to carry out the purposes of Chapter 17 NMSA 1978.

[19.34.5.3 NMAC - Rp, 19.34.5.3 NMAC, 4/1/2023]

19.34.5.4 DURATION:

Permanent.

[19.34.5.4 NMAC - Rp, 19.34.5.4 NMAC, 4/1/2023]

19.34.5.5 EFFECTIVE DATE:

April 1, 2023, unless a different date is cited at the end of a section.

[19.34.5.5 NMAC - Rp, 19.34.5.5 NMAC, 4/1/2023]

19.34.5.6 OBJECTIVE:

To identify wildlife management areas created by the state game commission.

[19.34.5.6 NMAC - Rp, 19.34.5.6 NMAC, 4/1/2023]

19.34.5.7 DEFINITION:

A. "Department" shall mean the New Mexico department of game and fish.

B. "Wildlife management area" shall mean an area of land owned or controlled by the state game commission and designated by the commission or department as a wildlife management area.

[19.34.5.7 NMAC - Rp, 19.34.5.7 NMAC, 4/1/2023]

19.34.5.8 WILDLIFE MANAGEMENT AREAS:

A. Bear Canyon lake wildlife management area is located approximately 2 miles north of Mimbres and is more fully described in deeds on file in Grant county and with the department.

B. Belen wildlife management area is part of the Ladd S. Gordon complex and is located approximately 2 miles south of Belen and is more fully described in deeds on file in Valencia county and with the department.

C. Bernardo wildlife management area, part of the Ladd S. Gordon complex, is located approximately 15 miles south of Belen and is more fully described in deeds on file in Socorro county and with the department.

D. Bernardo wildlife management area, Simms donation, part of the Ladd S. Gordon complex, is located approximately 16 miles south of Belen and is more fully described in deeds on file in Socorro county and with the department.

E. Bert Clancy wildlife management area is located between Pecos and Cowles and is more fully described in deeds on file in San Miguel county and with the department.

F. Bill Evans lake wildlife management area is located approximately 8 miles south of Cliff and is more fully described in deeds on file in Grant county and with the department.

G. Bluebird wildlife management area is located approximately 6 miles southeast of Cuba on state road 126 and is more fully described in deeds on file in Sandoval county and with the department.

H. Casa Colorada wildlife management area, part of the Ladd S. Gordon complex, is located approximately 7 miles southeast of Belen on the east side of the Rio Grande and is more fully described in deeds on file in Valencia county and with the department.

I. Charette lakes wildlife management area is located approximately 23 miles southwest of Springer and is more fully described in deeds on file in Mora county and with the department.

J. Clayton lake wildlife management area is located approximately 15 miles north of Clayton and is more fully described in deeds on file in Union county and with the department.

K. Colin Neblett wildlife management area is located immediately east of the village of Eagle Nest and Eagle Nest lake and is more fully described in deeds on file in Colfax county and with the department.

L. Double E wildlife management area is located approximately 6 miles northeast of Gila and is more fully described in deeds on file in Grant county and with the department.

M. Eagle Nest lake wildlife management area is located immediately south of the village of Eagle Nest and is more fully described in deeds on file in Colfax county and with the department.

N. Edward Sargent wildlife management area is located immediately north of Chama and is more fully described in deeds on file in Rio Arriba county and with the department.

O. Elliott Barker wildlife management area is located approximately 15 miles northwest of Cimarron and is more fully described in deeds on file in Colfax county and with the department.

P. Fenton lake wildlife management area is located approximately 9 miles north of Jemez Springs and is more fully described in deeds on file in Sandoval county and with the department.

Q. Glenwood Allred wildlife management area is located immediately south of Glenwood and is more fully described in deeds on file in Catron county and with the department.

R. Hammond Tract wildlife management area is located approximately 2 miles east of Blanco and is more fully described in deeds on file in San Juan county and with the department.

S. Heart Bar wildlife management area is located approximately 36 miles north of Silver City and is more fully described in deeds on file in Grant and Catron counties, and with the department.

T. Jackson lake wildlife management area is located approximately 8 miles northwest of Farmington along the La Plata river and includes management of state land office section 16 and bureau of land management section 21 and is more fully described in deeds on file in San Juan county and with the department.

U. La Joya wildlife management area, part of the Ladd S. Gordon complex, is located approximately 20 miles south of Belen and is more fully described in deeds on file in Socorro county and with the department.

V. Lake Roberts wildlife management area is located approximately 20 miles north of Silver City and is more fully described in deeds on file in Grant county and with the department.

W. Marquez wildlife management area is located approximately 25 miles north of Laguna and is more fully described in deeds on file in McKinley and Sandoval counties and with the department.

X. McAllister lake wildlife management area is located approximately 7 miles southeast of Las Vegas and is more fully described in deeds on file in San Miguel county and with the department.

Y. Marquez/LBar wildlife management area is located approximately 25 miles north of Laguna and is more fully described in deeds on file in Cibola, McKinley and Sandoval counties and with the department.

Z. Mimbres Tract wildlife management area is located approximately 1 mile southeast of Mimbres, and is more fully described in deeds on file in Grant county and with the department.

AA. Navajo wildlife management areas are located approximately 10 miles northeast of Navajo Lake and are more fully described in deeds on file in San Juan county, Rio Arriba county and with the department.

BB. Pine river wildlife management area is located approximately 1 mile south of the Colorado border off state road 511 and is more fully described in deeds on file in San Juan county and with the department.

CC. Prairie-chicken wildlife management areas are located throughout Chaves, DeBaca, Lea and Roosevelt counties and are more fully described in deeds on file in said counties and with the department.

DD. Red Rock wildlife management area is approximately 26 miles north of Lordsburg and is more fully described in deeds on file in Grant county and with the department.

EE. Retherford wildlife management area is located approximately 3 miles southeast of Bloomfield and is more fully described in deeds on file in San Juan county and with the department.

FF. Rio Chama wildlife management area is located approximately 14 miles south of Chama, bordering El Vado reservoir and the Chama river, and is more fully described in deeds on file in Rio Arriba county and with the department.

GG. Rio de los Pinos wildlife management area is located approximately 10 miles southwest of Antonito, Colorado and is more fully described in deeds on file in Rio Arriba county and with the department.

HH. River Ranch wildlife management area is located approximately 24 miles northwest of Deming and is more fully described in deeds on file in Grant county, Luna county, and with the department.

II. San Simon Cienega wildlife management area is located approximately 16 miles northwest of Animas and is more fully described in deeds on file in Hidalgo county and with the department.

JJ. Socorro-Escondida wildlife management area is located approximately 3 miles northeast of Socorro and is more fully described in deeds on file in Socorro county and with the department.

KK. Tres Piedras wildlife management area is located approximately 5 miles southeast of Tres Piedras and is more fully described in deeds on file in Taos county and with the department.

LL. Tucumcari lake wildlife management area is located immediately east of Tucumcari and is more fully described in deeds on file in Quay county and with the department.

MM. Urraca wildlife management area is located approximately 12 miles north of Questa and is more fully described in deeds on file in Taos county and with the department.

NN. Wagon Mound wildlife management area is located approximately 1 mile north of Wagon Mound and is more fully described in deeds on file in Mora county and with the department.

OO. Water canyon wildlife management area is located approximately 18 miles northeast of Grants by Mount Taylor and is more fully described in deeds on file in Cibola county and with the department.

PP. William A. Humphries wildlife management area is located approximately 10 miles west of Chama, south of US highway 64/84 and is more fully described in deeds on file in Rio Arriba county and with the department.

QQ. William S. Huey wildlife management area is located approximately 2 miles north of Artesia and is more fully described in deeds on file in Eddy county and with the department.

[19.34.5.8 NMAC - Rp, 19.34.5.8 NMAC, 4/1/2023]

PART 6: PUBLIC LAND USER STAMP (SIKES ACT)

19.34.6.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.34.6.1 NMAC - Rp 19.34.6.1 NMAC, 4/1/2021]

19.34.6.2 SCOPE:

The department of game and fish and all persons who hunt, fish or trap on land administered by the U.S. forest service or the U.S. bureau of land management in the state.

[19.34.6.2 NMAC - Rp 19.34.6.2 NMAC, 4/1/2021]

19.34.6.3 STATUTORY AUTHORITY:

17-1-14 and 17-1-26 NMSA 1978 provide the state game commission the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species. Public Law 93-452 (Sikes Act) permits the state, secretary of agriculture and secretary of interior to enter into agreements for the issuance of public land management stamps.

[19.34.6.3 NMAC - Rp 19.34.6.3 NMAC, 4/1/2021]

19.34.6.4 DURATION:

March 31, 2031.

[19.34.6.4 NMAC - Rp 19.34.6.4 NMAC, 4/1/2021]

19.34.6.5 EFFECTIVE DATE:

April 1, 2021.

[19.34.6.5 NMAC - Rp 19.34.6.5 NMAC, 4/1/2021]

19.34.6.6 OBJECTIVE:

To provide for a public land management stamp for hunting, fishing or trapping on certain public lands in New Mexico, requires purchase of stamp, creates a citizen advisory committee, and provides for expenditure of funds from stamp revenues.

[19.34.6.6 NMAC - Rp 19.34.6.6 NMAC, 4/1/2021]

19.34.6.7 DEFINITIONS:

A. "Public land" means those lands which surface areas are under the management authority of the United States forest service or the United States bureau of land management, except those lands under the management authority of the United States bureau of land management in game management unit 28.

B. "Public land management stamp" or "habitat stamp" means a stamp or validation that is affixed to or printed on a hunting, trapping, or fishing license to demonstrate compliance with this regulation.

[19.34.6.7 NMAC - Rp 19.34.6.7 NMAC, 4/1/2021]

19.34.6.8 PURCHASE:

A. Each person hunting on any public land, must purchase a public land management stamp.

B. Resident trappers twelve years of age and older trapping for protected furbearers, and non-resident trappers trapping on any public land, must purchase a public land management stamp.

C. Anglers twelve years of age and older, except resident anglers 70 years of age and older, fishing on any public land, must purchase a public land management stamp.

D. Only one public land management stamp is required for each individual to hunt, trap, or fish on public land during any license year.

E. Purchase price for each public land management stamp shall be ten dollars (\$10.00). Starting in 2022 the purchase price will be adjusted annually based on the consumer price index from the United States department of labor, bureau of labor statistics, and may be rounded. The state game commission may defer annual adjustments; deferral of annual adjustments may not exceed five consecutive years.

[19.34.6.8 NMAC - Rp 19.34.6.8 NMAC, 4/1/2021]

19.34.6.9 EXPENDITURE OF FUNDS COLLECTED:

A. The expenditure of funds collected under this regulation shall be consistent with the most current management plans developed by the United States forest service, the United States bureau of land management and the New Mexico department of game and fish.

B. A minimum of fifty percent of the funds over a five-year period will be spent on projects that benefit fish, excluding administrative fees.

[19.34.6.9 NMAC - Rp 19.34.6.11 NMAC, 4/1/2021]

19.34.6.10 CITIZEN ADVISORY COMMITTEE:

A citizen advisory committee shall be created. The committee will be comprised of nine members, seven of which shall follow the district and representation requirements as defined in 17-1-2 NMSA 1978. All members shall be selected and appointed by the state game commission from a list of applicants provided by the department. The committee will provide citizen advice to the agencies and will prioritize eligible projects.

[19.34.6.10 NMAC - Rp 19.34.6.12 NMAC, 4/1/2021]

PART 7: OPEN GATE: HUNTING AND FISHING ACCESS PROGRAM

19.34.7.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.34.7.1 NMAC - N, 10-31-2005]

19.34.7.2 SCOPE:

General public.

[19.34.7.2 NMAC - N, 10-31-2005]

19.34.7.3 STATUTORY AUTHORITY:

Sections 17-1-1, 17-1-2, 17-1-5.1, 17-1-14, 17-1-26, 17-2-6 and 17-4-1 NMSA 1978, provide the New Mexico state game commission with the authority to lease lands for game management and wildlife habitat as well as acquire properties for hunting grounds. Also, to provide for use of game and fish for use and development for public recreation, and to establish rules and regulations that it may deem necessary to carry out the purposes of Chapter 17, NMSA 1978.

[19.34.7.3 NMAC -N, 10-31-2005; A, 9-30-2010]

19.34.7.4 DURATION:

Permanent.

[19.34.7.4 NMAC - N, 10-31-2005]

19.34.7.5 EFFECTIVE DATE:

October 31, 2005, unless a later date is cited at the end of a section.

[19.34.7.5 NMAC - N, 10-31-2005]

19.34.7.6 OBJECTIVE:

To establish fees, and other rules for accessing private lands, state lands (including lands of counties and other instrumentalities of the state), tribal lands and federal lands for recreational uses like hunting, fishing, trapping and other endeavors.

[19.34.7.6 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010]

19.34.7.7 DEFINITIONS:

A. "Commission" shall mean the New Mexico state game commission.

B. "Director" shall mean the director of the New Mexico department of game and fish.

C. "Department" shall mean the New Mexico department of game and fish.

D. "Open gate" shall mean a program of the department to provide hunters, anglers, and trappers with wildlife associated activities as determined by the department with the purpose to increase access on private lands, state lands (including lands of counties and other instrumentalities of the state), federal lands or tribal lands.

E. "Landowner" shall mean a private landowner, lessee, tribal entity, or local, state, or federal entity authorized to manage property with whom the department enters into an open gate access agreement.

F. "Open gate property" shall mean lands enrolled in the open gate program recognized as a game and fish management area for the purposes designated.

[19.34.7.7 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

19.34.7.8 HABITAT MANAGEMENT AND ACCESS VALIDATION FEE:

On or after April 1, 2006 no resident or nonresident license or permit shall be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check-off or other official mark, that a \$4.00 fee for habitat management and access validation has been paid, provided that an individual purchaser shall be required to pay for only one habitat management and access validation fee each license year, regardless of the number of licenses or permits purchased by the licensee. Exceptions: no person under the age of 18, no resident angler age 70 and older and no person designated by the department as a 100% disabled resident veteran is required to purchase the habitat management and access validation.

[19.34.7.8 NMAC - N, 10-31-2005; A, 3-31-2006; A, 10-31-2006; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

19.34.7.9 PROHIBITION OF DISCRIMINATION:

If otherwise qualified as stated above, no one shall be denied use of leased private lands, state lands (including lands of counties and other instrumentalities of the state), tribal lands and federal lands on the basis of race, color, religion, gender, sexual orientation or national origin.

[19.34.7.9 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010]

19.34.7.10 ACCESS AGREEMENTS FOR THE OPEN GATE PROGRAM:

A. The director may enter into open gate access agreements for hunting, fishing, trapping or other recreational endeavors to take place on private land with suitable habitat to support the recreational uses, or to provide a right-of-way corridor through private land or tribal land to large, inaccessible blocks of public lands meeting the conditions of 19.34.7.11 NMAC.

(1) Such access agreements shall include the name of the landowner, map of the property, the permitted uses, property rules, responsibilities of the landowner and department, term, amount of compensation, the liability clauses for the department and landowner, with signatures of the director and landowner.

(2) Landowners shall agree participation is voluntary and enrollment is contingent on the annual availability of funds.

(3) All renewals of open gate access agreements shall be subject to annual review per the requirements found in 19.34.7.11 NMAC.

B. Subject to consideration for access rights granted by the landowner, the landowner shall be paid a fee pursuant to commission approved fee schedule or as otherwise approved by the director for unique circumstances.

C. To enhance wildlife habitat and provide a more quality hunting, fishing and trapping experience on participating properties, the department may provide additional financial and technical incentives for wildlife habitat improvements undertaken by the landowner. The terms and conditions of such improvements and incentives shall be negotiated between the landowner, the department and local, state, or federal partners as appropriate.

D. Amendments of an existing open gate access agreement may only be done by mutual consent of the department and landowner, in writing.

E. False representation of a property's rightful ownership is grounds for legal action and will result in immediate termination of the access agreement.

[19.34.7.10 NMAC - N, 10-31-2005; A, 9-28-2007; A, 9-30-2010; A, 7-31-2012]

19.34.7.11 PARTICIPATION REQUIREMENTS:

A. Minimum qualifications: Lands or waters eligible for enrollment in the open gate program must provide suitable fish or wildlife habitat or access to said habitat to support the recreational uses designated through an open gate agreement, and meet, at minimum, one of the following conditions:

(1) enrollment will result in increased hunting, fishing or trapping access on private land; or

(2) enrollment will provide a meaningful access corridor to large or exceptional, inaccessible blocks of state lands, federal lands or tribal lands for hunting, fishing or trapping; or

(3) enrollment may improve regional wildlife or fisheries management goals of the department which may include, but are not limited to, supplying quality or extraordinary hunting, fishing or trapping opportunities and enhancing fish or wildlife habitat conditions.

B. Enrollment process:

(1) Persons interested in enrolling in the open gate program must submit a completed application and provide proof of ownership, or if leasing the property, a copy

of the lease with a notarized and signed statement from the landowner authorizing program participation.

(2) All applications are subject to a department evaluation to determine if the lands or waters proposed for enrollment satisfy the requirements found in 19.34.7.11 NMAC.

(3) If the lands or waters do not meet the requirements, the applicant will be notified that the application does not qualify for participation in the open gate program.

(4) If the department determines the lands or waters meet the requirements, the department and landowner may negotiate an open gate access agreement.

[19.34.7.11 NMAC - N, 9-30-2010; A, 7-31-2012]

19.34.7.12 USE OF OPEN GATE AREAS:

A. Any person accessing land enrolled in the open gate program to hunt, fish or trap must:

(1) obtain and possess a valid hunting, fishing or trappers license when required unless otherwise provided in the access agreement; and

(2) comply with enrolled property rules as described on the access agreement and as posted at access points or parking areas to include manner and method of take or other special use restrictions as posted.

B. It shall be unlawful for any person to violate any provisions posted on an open gate property.

[19.34.7.12 NMAC - N, 9-30-2010; A, 7-31-2012]

CHAPTER 35: CAPTIVE WILDLIFE USES

PART 1: [RESERVED]

PART 2: CALL PEN AND RETRIEVER TRIALS

19.35.2.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[12/30/95; Recompiled 12/31/01]

19.35.2.2 SCOPE:

People interested in training bird dogs and holding field trials or field tests for dogs.

[12/30/95; Recompiled 12/31/01]

19.35.2.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, and 17-15-4 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[7/8/92, 12/30/95; Recompiled 12/31/01]

19.35.2.4 DURATION:

Permanent.

[12/30/95; Recompiled 12/31/01]

19.35.2.5 EFFECTIVE DATE:

December 30, 1995 [unless a later date is cited at the end of a section]

[12/30/95; Recompiled 12/31/01]

19.35.2.6 OBJECTIVE:

Establish the use of legally propagated game birds in training bird dogs, with or without the use of call pens, and establishing the use of game birds and raccoons in field trials and field tests.

[7/8/92, 12/30/95; Recompiled 12/31/01]

19.35.2.7 DEFINITIONS:

A. "Legally propagated game birds for use in training bird dogs" shall mean pen-raised pheasants, bobwhite quail, and chukar.

B. "Game birds for use in field trials and tests" shall mean legally propagated pen-raised pheasants, quail, chukars, and mallards.

C. "Field trial" shall mean the activity of releasing, killing and possessing game birds for the purpose of competence testing and competition in dog training.

D. "Field test" shall mean the activity of using legally propagated and possessed game birds or [raccoon held under a retention permit for dog] competence testing and competition. No wildlife shall be intentionally killed during a field test.

[7/8/92; Recompiled 12/31/01]

19.35.2.8 USE OF LEGALLY PROPAGATED GAME BIRDS IN TRAINING BIRD DOGS; CALL PENS:

A. In conjunction with bird dog training, a person may daily possess, liberate and kill up to ten (10) legally propagated game birds raised or obtained in accordance with New Mexico laws and regulations.

B. While engaged in this activity, a person must have in possession a proper propagator's receipt for the birds being used. If a person is using birds he has raised, he must have in possession a copy of his propagation permit.

C. This regulation does not address or affect activities associated with protected wildlife for purposes other than those herein described.

D. If a call pen is to be used in association with this activity, a call pen permit is required. Application must be submitted to the department, stating the name of the person and the location of the call pen. The call pen shall be permanently marked with the permittee's name, address, and permit number.

[7/8/92, 12/30/95; Recompiled 12/31/01]

19.35.2.9 USE OF GAME BIRDS AND RACCOONS IN FIELD TRIALS AND FIELD TESTS:

A. It shall be unlawful to conduct a field trial or field test without first submitting an application to the director of the department of game and fish.

B. The application and fee for a field trial or field test must be received by the department of game and fish at least 15 days prior to the start of the trial. The application shall include dates of the trial, location, source of game birds and copies of pertinent documents authorizing possession of protected wildlife to be used. A copy of the application must be maintained by the sponsor and in his/her possession during the trial/test. The application shall be considered approved unless notified in writing by the department.

C. A receipt or retention permit for all wildlife held during the trial or test shall be in the possession of the sponsor.

D. Raccoons may be released during a field test provided the application states the dates of the release and that an authorization for the release is granted by the director of the department of game and fish.

E. Posting: Notices of the field trial/field test will be posted at each corner and entrance to the field trial/test area.

F. Any person registered with the sponsor may take, hunt or pursue game birds during the trial.

G. Game birds taken at bona fide field trials may be sold or donated. The sponsor shall provide to all persons receiving such birds, an invoice stating the name of the club or organization, the date the bird or birds were taken, the species and number of birds covered by the invoice.

[7/8/92, 12/30/95; Recompiled 12/31/01]

PART 3: SHOOTING PRESERVES

19.35.3.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[12-/30/95; Recompiled 12/31/01]

19.35.3.2 SCOPE:

Landowners or managers who wish to establish, maintain, and operate a regulated shooting preserve on deeded land. License fee is designated in 19 NMAC 30.1[now 19.30.9 NMAC].

[12/30/95; Recompiled 12/31/01]

19.35.3.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, and 17-3-36 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[7/8/92, 12/30/95; Recompiled 12/31/01]

19.35.3.4 DURATION:

Permanent.

[12/30/95; Recompiled 12/31/01]

19.35.3.5 EFFECTIVE DATE:

December 30, 1995 [unless a later date is cited at the end of a section]

[12/30/95; Recompiled 12/31/01]

19.35.3.6 OBJECTIVE:

To govern the establishment, maintenance and operation of regulated shooting preserves.

[7/8/92, 12/30/95; Recompiled 12/31/01]

19.35.3.7 DEFINITIONS:

A. "Legally propagated game birds" shall mean all pheasants, quail, chukars and mallards within a regulated preserve.

B. **[RESERVED]**

[7/8/92, 12/30/95; Recompiled 12/31/01]

19.35.3.8 MAXIMUM AND MINIMUM SIZE OF REGULATED SHOOTING PRESERVES:

A regulated shooting preserve shall contain not less than 30 acres and not more than the number of contiguous deeded acres owned or controlled by the applicant. If the owner, operator, or manager of a preserve desires to increase the area of the preserve, he/she shall submit to the department of game and fish a new plat or map indicating the proposed addition. The addition shall not be made without written approval from the director.

[7/8/92; Recompiled 12/31/01]

19.35.3.9 FENCES AND SIGNS:

A. Posting: The shooting preserve shall be posted by placing signs at every primary entrance to the preserve and along each boundary where the preserve adjoins public land. Signs shall be posted after the state game commission has approved the application and before the permit can be issued. Signs are to be maintained to ensure conformity with this regulation.

B. Signs: The signs posted on a licenses shooting preserve shall state the following:

"Regulated Shooting Preserve"

(Name of shooting preserve, if any)

(Shooting preserve license number)

"Hunting by Permission Only"

(Owner's name and address)

C. Fences: Where possible and reasonable, regulated shooting preserves should be fenced. Fences, if present, may be of any type and need not be constructed to confine birds.

[7/8/92; Recompiled 12/31/01]

19.35.3.10 METHOD OF HUNTING ON REGULATED SHOOTING PRESERVE:

A. Legally propagated game birds may be taken only with the following methods: shotguns fired from the shoulder; any longbow and arrow; any legally held raptor used for falconry purposes.

B. Legally propagated game birds may be taken, hunted, or pursued by the use of dogs, artificial decoys, blinds and manually or mouth-operated bird calls.

C. Legally propagated game birds may not be killed, shot at, pursued or unnecessarily harried, driven, or rallied by use of or from a motor-driven vehicle, powerboat or sailboat.

[7/8/92; Recompiled 12/31/01]

19.35.3.11 OPEN SEASONS ON REGULATED SHOOTING PRESERVES:

A. The shooting preserve season shall be in the period September 1 through March 31 of the following year. Within this period, the preserve operator may specify dates for taking legally propagated game birds.

B. Hunting hours shall be from one-half hour before sunrise to sunset.

C. Except for legally propagated game birds, all protected game found on shooting preserves may be harvested only in accordance with the regulations of the state game commission concerning seasons and bag and possession limits.

[7/8/92; Recompiled 12/31/01]

19.35.3.12 RELEASE, POSSESSION AND USE OF LEGALLY PROPAGATED GAME BIRDS:

A. Legally propagated game birds may be released on a regulated shooting preserve in any quantity. Birds may be released but not hunted prior to the shooting preserve season.

B. Possession of game birds on the shooting preserve will be accompanied by an invoice in accordance with Section 17-3-33 NMSA 1978 or will be tagged in accordance with Section 13 [now 19.35.3.13 NMAC], when appropriate.

[7/8/92 ,12/30/95; Recompiled 12/31/01]

19.35.3.13 TAGS, RECORDS, REPORTS AND INSPECTION:

A. Shooting preserve bird tags, issued by the department of game and fish, shall be numbered and issued to shooting preserve owners, operators or managers for a fee of 10 cents per tag. Tags will be affixed to each bird taken on the preserve.

B. Records and Reports:

(1) The preserve operator will keep a record of all tags used on the preserve and of the total number of birds released.

(2) Within 15 days after the close of the shooting preserve season, the preserve operator shall submit to the department a year-end report stating the tag numbers used; the number of birds, by species, released; and copies of invoices for birds purchased or received from licensed propagators.

C. Inspection: The shooting preserve, all birds (live and dead) possessed in association with the preserve, and all records associated with the preserve shall be made available to officers of the department of game and fish for administrative inspection at any reasonable time.

[7/8/92; Recompiled 12/31/01]

PART 4: [RESERVED]

PART 5: WILDLIFE REHABILITATION PERMITS

19.35.5.1 ISSUING AUTHORITY:

New Mexico Department of Game and Fish.

[10/19/94; Recompiled 12/31/01]

19.35.5.2 SCOPE:

People involved with the rehabilitation of wildlife.

[10/19/94; Recompiled 12/31/01]

19.35.5.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the NM state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammal, birds and fish.

[10/19/94; Recompiled 12/31/01]

19.35.5.4 DURATION:

Permanent.

[10/19/94; Recompiled 12/31/01]

19.35.5.5 EFFECTIVE DATE:

September 15, 1994 [unless a later date is cited at the end of a section]

[10/19/94; Recompiled 12/31/01]

19.35.5.6 OBJECTIVE:

Establish and implement a system for the issuance and use of permits for the rehabilitation of sick, injured, orphaned or otherwise incapacitated wildlife for return to the wild or other authorized disposition in New Mexico.

[10/19/94; Recompiled 12/31/01]

19.35.5.7 DEFINITIONS:

A. "Agent": A person authorized to assist a permittee in performing rehabilitation functions, including transport or rehabilitation of wildlife, provided there is an employment or direct supervisory relationship between the permittee and the agent.

B. "Apprentice": A person in training who assists in all rehabilitation functions including, but not limited to, maintenance, transport and record keeping under the direct supervision of the permittee or co-permittee.

C. "Captive releases": Release of wildlife to an enclosed area from which the animal is not likely to be able to leave at will.

D. "Co-Permittee (sub-permittee)": A person holding all rights and responsibilities under a permit with another person.

E. "Department": The New Mexico department of game and fish.

F. "Director": The chief administrator for the department of game and fish.

G. "Endangered species": Any species listed or described by the department pursuant to the New Mexico department of game and fish statutes or regulations.

H. "Holding": Retaining in captivity.

I. "Human imprinting or human bonding": An abnormal dependency or fixation upon humans as parent substitutes or as companions resulting from too much association with humans at an early age.

J. "Migratory birds": A bird listed under or pursuant to the Migratory Bird Treaty Act (16 United States Code 703-712).

K. "Non-releasable animal": An injured animal, which after rehabilitation is determined to be unlikely to survive in the wild if released.

L. "Permit": The document issued under this regulation for a person(s) to conduct activities as authorized by the department of game and fish.

M. "Permitted rehabilitator": The person who holds a valid current permit from any state and a federal permit.

N. "Permittee responsibility": The responsibility that a permit holder or co-permit holder has to direct the actions of an individual under his or her control, and for which that supervisor accepted legal responsibility.

O. "Protected wildlife": A species, the possession or taking of which is controlled, regulated or prohibited by state or federal law or regulation. Specifically excluded from this definition are rock doves, European starlings, house sparrows, and domestic animals occurring in the wild.

P. "Rehabilitation": The temporary caring for injured, orphaned, sick or otherwise incapacitated wildlife until such animals can be released to the wild.

Q. "Release to the wild": Release of wildlife to an area where it is capable of leaving at will.

R. "Taking": The act of hooking, netting, snaring, trapping, pursuing, shooting, killing or capturing by any means or device and includes the attempt to take by the use of any method.

S. "Transportation": The transfer of captive protected wildlife by an individual(s) to a permit holder.

[10/19/94; Recompiled 12/31/01]

19.35.5.8 APPLICATIONS AND PERMITS:

A. Applications shall be filed on forms supplied by the department.

B. Applications shall contain a verified or sworn statement by the applicant attesting to the truth of the facts stated in the application.

C. Applications shall be made in the name of an adult person (18 years and older).

D. Permits shall be issued under the authority of the director or his/her designee.

E. Applications for permits, renewals and amendments shall provide the following information:

(1) Personal information which allows the identification of the applicant including full name, date of birth, home address and facility address;

(2) Each new application shall be supported by references from two verifiable, acknowledged, and permitted animal rehabilitation authorities who have known the applicant for at least 2 years and who attest to the applicant's ability to handle and care for protected wildlife in a humane and effective manner;

(3) A verified or sworn statement attesting to the truth of the facts stated in the application;

(4) Any other information determined by the department to be necessary to review the application.

F. Permits may not be issued until the applicant's facilities have satisfactorily passed an inspection conducted by a representative of the director.

G. Any person holding a permit which authorizes holding of live protected wildlife shall provide for appropriate humanitarian care.

H. Permits for the taking or holding of migratory bird species shall not be valid unless the permit holder also simultaneously applies for, obtains and maintains a valid federal permit.

I. Permits will only be issued to applicants that have demonstrated the ability and intent to correctly identify, properly record and humanely and knowledgeably care for and treat wildlife for the purpose of returning it to the wild or properly disposing of non-releasable animals. The applicant must demonstrate formal education, training and/or actual experience in wildlife rehabilitation for which permit authority is sought. A written or practical exam will be given to applicants in addition to requirements for references as one method of determining abilities.

J. All protected wildlife, their offspring and their parts taken or held under the authority of a permit remain the property of the state of New Mexico. The department retains the authority to seize or direct the disposition of such specimens.

K. Protected wildlife held under the authority of a rehabilitation permit may not be sold, bartered or exchanged. They may only be disposed of or released as prescribed by permit provision. Disposition or release shall be reported to the department in a manner prescribed by this regulation or by permit.

L. An initial permit shall be issued for one (1) year. Renewal of permit may be issued for any period of time not exceeding three (3) years from date of issuance.

M. Permits will be authorized to handle specific classes of wild animals for rehabilitation purposes. Handling any class of wildlife not authorized by the permit for longer than 48 hours while searching for appropriate placement is a violation.

[10/19/94; Recompiled 12/31/01]

19.35.5.9 PERMIT RENEWALS:

A. Permits shall be renewed in accordance with this regulation subject to its requirements unless issued as non-renewable permits.

B. Renewal applications shall be filed in writing on an application form provided by the department.

C. All terms of the permit, including the filing of complete annual reports, must be fully complied with before a renewal will be considered.

D. Applications for rehabilitating migratory birds shall contain a current corresponding federal permit number.

E. Denial and/or revocation of a permit may occur if the permit holder fails to meet any of the requirements for holding the permit.

F. Applications for renewal will not be considered while unresolved criminal charges are pending for alleged violation of state or federal wildlife laws or animal cruelty laws.

[10/19/94; Recompiled 12/31/01]

19.35.5.10 VIOLATIONS AND ENFORCEMENT:

A. Any violation of the New Mexico department of game and fish statutes, rules and regulations of the commission, or any provision in the permit, including amendments, may result in suspension, probation or revocation of a permit in addition to any applicable civil, criminal or administrative penalties.

B. Any misrepresentation of material fact in an application or annual report is a violation of this regulation.

[10/19/94; Recompiled 12/31/01]

19.35.5.11 HEARINGS:

A. An opportunity for hearing may be provided to any applicant or permit holder for any denial of a permit, probationary terms of a permit, denial of a permit renewal, or issuance of a permit where the terms of issuance are materially different from those requested by the applicant and adversely affect the applicant's interests.

B. Such procedures shall be consistent with state game commission Regulation 677.

[10/19/94; Recompiled 12/31/01]

19.35.5.12 PERMIT REQUIREMENTS:

A. A permit holder shall carry out all rehabilitation in a manner consistent with the goal of returning wildlife to its native range and habitat and in conformity with its seasonal occurrence in New Mexico.

B. A permit holder may designate an agent to transport wildlife associated with rehabilitation efforts.

C. A permit holder shall carry out all rehabilitation in a humane manner and plan activities to return the injured animals to a condition which will allow them to survive in the wild.

D. Apprentices shall handle wildlife only under supervision of the permittee or co-permittee.

E. A permit holder shall conduct rehabilitation in an environment which minimizes human contact and prevents human and domestic animal imprinting.

F. Animals in rehabilitation shall not be used for display or public programs. One way windows or video observation is permissible.

G. Non-releasable protected wildlife may only be retained for approved fostering or socialization purposes incident to wildlife rehabilitation or transferred to other permitted rehabilitators, zoo permit holders, licensed falconers and licensed raptor breeders or educational permit holders in accordance with requirements of this regulation and only after a written request for such retention or transfer has been made to and approved in writing by the department.

H. Permittee's facilities shall be subject to unannounced inspections by authorized representatives of the director at reasonable times.

I. Permittees shall maintain detailed and complete records on each animal received under the permit.

J. Releases of Rehabilitated Wildlife:

(1) A permit holder shall not release wildlife in such a manner or at such a location so that the released animals are likely to become a nuisance or threat to humans or their property.

(2) Wildlife releases which are made to fenced or enclosed areas without a reasonable expectation that the individuals will be able to leave at will may be considered as captive releases.

(3) Captive releases may subject the landowner or person in control of the premises to additional licensing requirements for holding protected wildlife in captivity or stocking protected wildlife.

(4) Protected wildlife shall be released only to place and habitat by seasonal occurrence appropriate for the species.

(5) Terrestrial animals shall only be released in the county where they were acquired or found, or in an adjacent county unless specific written permission for release elsewhere is granted by the department. Release locations should consider gene pools and population dynamics including availability of appropriate food base. Release locations shall be included in annual report.

(6) Protected wildlife may not be imported from another state or another country without meeting importation permit provision allowing such activity.

(7) Rehabilitated wildlife shall be released into species appropriate habitat at a suitable time (with considerations for the season, weather conditions and time of day) which shall enhance the animal's continued survival.

K. The department may make special conditions in individual permits which are consistent with this regulation and which are necessary to carry out the intent of this regulation or New Mexico statutes.

L. A copy of the approved permit or written authorization by the permittee shall accompany any shipment or transport of wildlife and shall be available for inspection at each of the premises authorized by the permit.

M. Wildlife shall not be possessed for longer than 180 days. Any request to hold wildlife in excess of this period shall be submitted to the department in writing.

[10/19/94; Recompiled 12/31/01]

19.35.5.13 RECORD KEEPING REQUIREMENTS:

A. Permit holders shall file annual reports by January 30 of each permit year unless permission is granted for a later filing.

B. Annual reports shall be completed and submitted on a form provided by or approved by the department. Rehabilitation records on each animal shall be maintained concurrent with its treatment and should include unique identification (case number), species name, sex (if known), place and date of origin, source (person or agency), probable reason for incapacitation, condition on receipt, treatment and disposition (date and location). All records shall be available for department review upon request.

[10/19/94; Recompiled 12/31/01]

19.35.5.14 GENERAL FACILITIES STANDARDS:

A. Rehabilitation permit holders shall comply with the applicable facilities standards of this regulation in addition to any specific requirements placed in their permits.

B. Permit holders shall provide confinement areas and cages for rehabilitation purposes appropriately sized, constructed and maintained so as to provide a humane and safe environment for animals held under the authority of a permit issued pursuant to this regulation and should conform to accepted national standards.

C. The department may specify individual caging requirements in each permit on a case-by-case basis depending upon the species, number, size, type and length of care required. In imposing individual standards, the department may be guided by similar requirements imposed by state and federal agencies regulating comparable activities.

E. Treatment records shall be maintained on currently held wildlife at the facility.

[10/19/94; Recompiled 12/31/01]

PART 6: AUTHORIZED USES OF WILDLIFE FOR EDUCATION, LAW ENFORCEMENT, RESEARCH AND SCIENTIFIC PURPOSES

19.35.6.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.35.6.1 NMAC - Rp, 19 NMAC 35.6.1 & 19 NMAC 36.2.1, 12/30/2013]

19.35.6.2 SCOPE:

The department of game and fish and persons seeking authorization for the taking of protected wildlife for educational, law enforcement, scientific or research purposes.

[19.35.6.2 NMAC - Rp, 19 NMAC 35.6.2 & 19 NMAC 36.2.2, 12/30/2013]

19.35.6.3 STATUTORY AUTHORITY:

Sections 17-1-14, 17-1-26, NMSA 1978 and 17-2-37 through 17-2-46, and 17-3-1, NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17, NMSA 1978 and all other acts pertaining to protected species.

[19.35.6.3 NMAC - Rp, 19 NMAC 35.6.3 & 19 NMAC 36.2.3, 12/30/2013]

19.35.6.4 DURATION:

Permanent.

[19.35.6.4 NMAC - Rp, 19 NMAC 35.6.4 & 19 NMAC 36.2.4, 12/30/2013]

19.35.6.5 EFFECTIVE DATE:

December 30, 2013, unless a later date is cited at the end of a section.

[19.35.6.5 NMAC - Rp, 19 NMAC 35.6.5 & 19 NMAC 36.2.5, 12/30/2013]

19.35.6.6 OBJECTIVE:

To provide consistent criteria for application and permit issuance for the take, possession and use of protected wildlife for educational, law enforcement, research or scientific purposes.

[19.35.6.6 NMAC - Rp, 19 NMAC 35.6.6 & 19 NMAC 36.2.6, 12/30/2013]

19.35.6.7 DEFINITIONS:

A. "Applicant": A person who has submitted an application for a permit pursuant to this rule.

B. "Apprentice": A person who is over the age of 14 and is in training under the direct supervision of a permittee or sub-permittee, who assists in the use of wildlife for scientific and educational purposes.

C. "Carnivore": Any animal within the order carnivora

D. "Department": The New Mexico department of game and fish.

E. "Director": Shall mean the director of the department of game and fish.

F. "Designated cooperator": Shall mean a person designated in writing by the director of the department of game and fish, as an official cooperator of the agency.

G. "Educational purposes": Shall mean the possession or take of protected wildlife as specimens for educational programs and instructional display as approved by the department.

H. "Permit": A document issued pursuant to this rule that authorizes a person to conduct specific activities involving protected wildlife.

I. "Protected wildlife": Shall mean those taxonomic groups listed in Chapter 17, NMSA 1978, including any species that are listed as either state or federally threatened or endangered.

J. "Scientific purposes": Shall mean the possession or take of protected wildlife for conducting research or monitoring for management purposes, as approved by the department.

K. "Sub-permittee": Shall mean a person authorized by a permit to conduct specified activities in the absence of a permit holder.

L. "Take": Shall mean the act of killing, capturing, pursuing, harassing, salvaging, retaining, or sacrificing protected wildlife by any means or device including attempting to take by the use of any method.

[19.35.6.7 NMAC - Rp, 19 NMAC 35.6.7 & 19 NMAC 36.2.7, 12/30/2013; A, 12/15/2014]

19.35.6.8 APPLICATION REQUIREMENTS:

A. The following requirements must be met for an application to be considered:

(1) A completed application form and the non-refundable application fee must be submitted to the department.

(2) Applicant must be 18 years of age or older and provide their full name, date of birth, home address and facility address; unless they are an apprentice who must be at least 14 years of age.

(3) Applicant must provide two references able to verify the applicant's ability to conduct activities relevant to the species and purpose requested.

(4) Application must include a containment or confinement plan describing where and how permitted species will be maintained, if applicable.

(5) Application must include copies of all applicable municipal, state or federal permits.

(6) Supplemental information must be supplied as requested by the department.

(7) Each application must include the applicant's signature as well as signatures of all sub-permittees being requested on the permit.

B. Additional requirements for educational use applications:

(1) Applicant must provide verifiable experience of at least 240 hours in handling, caring for and training live non-releasable wildlife of the same or similar species as those identified in the application. If this requirement cannot be met, an apprenticeship with a permitted individual or approved organization is required.

(2) Letters must be supplied from at least five separate and legitimate organizations or entities requesting wildlife related educational programs.

(3) Wildlife proposed for educational use must be obtained from a department approved source.

(4) Applicant must provide a detailed educational class or program curriculum or lesson plan which is subject to department approval prior to permit issuance.

C. Additional requirements for scientific use applications:

(1) Applicant must identify the specific wildlife being requested and provide details for disposition.

(2) Applicant must provide detailed justification for all activities, methods and locations.

(3) Applicant must provide requested take amounts, locations and specific take time frame.

(4) Applicant must provide detailed explanation of the scientific benefits to the species and the state of New Mexico. Scientific benefits will be subject to department review and approval.

(5) Applicant must provide evidence of education or experience supporting qualifications to conduct wildlife related research or monitoring activities.

[19.35.6.8 NMAC - Rp, 19 NMAC 35.6.8 & 19 NMAC 36.2.8, 12/30/2013]

19.35.6.9 PERMIT ISSUANCE:

A. Permits may be issued or denied under the authority of the director or his/her designee.

B. Authorizations and permits shall only be issued to individuals and not to parties or organizations.

C. Only those individuals that the applicant intends to utilize to take or possess protected wildlife when outside the immediate oversight and supervision of the permittee will be listed as sub-permittees.

D. A permit shall not be issued to applicants who cannot demonstrate sufficient wildlife handling qualifications and containment and confinement facilities to ensure the humane care of captive wildlife.

E. Applicant must obtain a permit prior to conducting requested activities.

F. Upon issuance of a permit, containment and confinement facilities shall be subject to random inspection by department employees.

G. Initial permits shall be issued for one year. Permit renewals may be approved for up to three years subject to director approval.

H. Each permit shall specify the number and species of protected wildlife the permittee shall be authorized to collect, possess, or handle for scientific or educational purposes.

I. Applications for permits or permit renewals shall not be considered if the applicant is subject to pending criminal charges or violations of any municipal, state or federal law relating to wildlife or other animal violations.

J. The state game commission must review any permit application for the possession or use of any carnivore that is held, possessed or released on private property for the purpose of recovery, reintroduction, conditioning, establishment or reestablishment in New Mexico. The director shall only issue a department permit in

accordance with commission direction following their review of an application submitted under this section of rule.

[19.35.6.9 NMAC - Rp, 19.35.6.8 NMAC, 12/30/2013; A, 12/15/2014]

19.35.6.10 PERMIT PROVISIONS:

A. General permit provisions:

(1) All protected wildlife, their offspring, and any parts held under the authority of a permit shall remain property of the state of New Mexico. The director shall have the authority to require that any permitted wildlife be returned to the department or to direct the disposition of such wildlife.

(2) A permit issued pursuant to this rule does not authorize propagation of wildlife unless specifically allowed in writing by the director.

(3) Protected wildlife held under the authority of a permit may not be sold, bartered, or exchanged unless specially allowed in writing by the director.

(4) Protected wildlife may not be disposed of, released as prescribed by permit provisions, or transferred to another permittee, unless specially allowed in writing by the director.

(5) Protected wildlife may not be imported from another state or another country without first obtaining an importation permit from the department.

(6) The director may apply specific provisions on individual permits to carry out the intent of this rule and applicable statutes.

(7) A copy of a valid permit must be in the possession of permittees and sub-permittees at all times when conducting permitted activities and must be available upon request by department officials.

(8) A permit holder shall carry out all educational activities in a humane manner.

B. Amendment and renewal requirements:

(1) Amendments to permits must be requested in writing, include justification, and be signed by permittee and any proposed additional sub-permittees;

(2) Payment of a fee approved by the director shall be required for each permit amendment.

(3) Annual reports must be filed and received by the department prior to renewal or reissuance of any permit.

(4) Permits must be amended prior to any changes in activities, including the addition of sub-permittees, type and numbers of wildlife to be collected, and collection locations and time frames.

C. Education permit requirements:

(1) Only a permit holder shall be permitted to possess wildlife specimens and no sharing of permitted wildlife shall be allowed between other permit holders.

(2) A permit holder must conduct a minimum of 12 educational programs per year or have the permitted animals available on static display to the public a minimum of 100 days per year.

(3) A permit holder shall carry out all educational activities in a manner which will benefit the species represented and wildlife in general.

(4) A permit holder shall not allow public contact with permitted wildlife. Applicants may request a waiver to this restriction. Waiver requests must be submitted to the department in writing and include justification for the request, and a signed waiver of liability and indemnification shall be required from the permit holder.

(5) All protected wildlife displayed must be controlled at all times and be presented in a professional manner.

(6) The loss or escape of any permitted wildlife shall be reported to the department within five business days.

(7) Health records shall be maintained at the housing facility approved for the permitted wildlife.

D. Scientific permit provisions:

(1) Specimens may not be donated, sold, exchanged, or otherwise processed except as allowed by permit provisions and in accordance with municipal, state or federal law.

(2) The disposition of progeny of wildlife taken or possessed shall be defined by permit provisions.

[19.35.6.10 NMAC - Rp, 19 NMAC 35.6.12 & 19 NMAC 36.2.8 & 10, 12/30/2013]

19.35.6.11 ANNUAL REPORTS:

A. A permit holder must submit an annual report by the deadline specified by the director.

B. Annual reports must be submitted, received, and approved by the department prior to renewal or reissuance of any permit.

C. The annual report shall include the disposition of all wildlife taken pursuant to the permit and any additional information required by the permit.

D. Annual reports shall be completed in a format as determined by the department. All data submitted shall become property of the department.

E. Educational permit annual reports shall include:

- (1)** dates of all presentations;
- (2)** names of organizations and schools at which presentations were given;
- (3)** number and age group of attendees;
- (4)** subject matter covered;
- (5)** specific wildlife or wildlife parts used in each program; and
- (6)** number of persons viewing wildlife on permanent display.

[19.35.6.11 NMAC - Rp, 19 NMAC 35.6.13 & 19 NMAC 36.2.11, 12/30/2013]

19.35.6.12 FACILITY STANDARDS:

A. Permit holders shall adhere to department guidelines for reasonable and humane care of captive wildlife. Requests for variations on facility guidelines must be submitted to the department in writing and include justification. All facility variation requests are subject to department review and approval prior to making any facility changes.

B. Permit holders must comply with all provisions, guidelines and specific requirements listed on their permit.

C. Permitted wildlife must be housed separately from human living areas and domestic pets.

D. Permit holders shall utilize travel containers that are appropriately sized, constructed, and maintained to ensure a humane and safe environment for wildlife in transit.

E. All permittee and sub-permittee facilities shall be subject to random inspections by department personnel.

[19.35.6.12 NMAC - Rp, 19.35.6.14 NMAC, 12/30/2013]

19.35.6.13 DIRECTOR'S AUTHORITY:

A. The director shall have the authority to:

- (1)** establish and approve any forms, applications and documents necessary to carry out the provisions of this rule;
- (2)** establish and approve all notice and posting provisions for public displays of wildlife;
- (3)** impose corrective measures to ensure the safety and welfare of humans and wildlife;
- (4)** require an applicant to purchase the appropriate hunting, fishing or trapping license when applicable;
- (5)** establish collection limits for protected wildlife;
- (6)** deny any application if it is determined that the applicant has provided false or incomplete information;
- (7)** deny any application that conflicts with current conservation measures, negatively affects local or regional species numbers, or is contrary to angling, hunting or trapping objectives;
- (8)** deny any application that does not represent a valid scientific or educational benefit; and
- (9)** declare any applicant or permittee who fails to comply with all of the application requirements, director's conditions, permit provisions, or rule requirements as non-compliant; upon a declaration of non-compliance, the director may deny any subsequent application and requests for amendments until all permit violations are corrected and the appropriate certificate of compliance is issued and fees are paid in full.

B. Certificate of compliance fee: The director shall determine the appropriate certificate of compliance fee per violation, not to exceed \$500.00 based on the following criteria:

- (1)** department expenses including staff time and travel costs associated with inspection and compliance monitoring;

- (2) department office expenses including mailing, shipping, and certificate issuance;
- (3) animal care, treatment, housing and feeding; and
- (4) other miscellaneous expenses.

[19.35.6.13 NMAC - N, 12/30/2013]

19.35.6.14 VIOLATIONS AND ENFORCEMENT:

A. Any violation of state statutes, rules, or permit provisions, including amendments, may result in cooperative compliance or denial or of a permit in addition to any applicable civil, criminal or administrative remedies and penalties.

B. The signature of an applicant, permittee, or sub-permittee on any application, annual report, permit, or any other department document, shall obligate the signatory to adhere to all applicable statutes, rules, and permit provisions. Violations of this rule shall include but not be limited to:

- (1) providing false or fraudulent information on any application or annual report;
- (2) late submission of an annual report;
- (3) exceeding authorized take limits of wildlife;
- (4) take of protected wildlife in an unauthorized locality or manner;
- (5) take of protected wildlife during an unauthorized time frame; or
- (6) take or possession of any wildlife not authorized by the permit.

C. The director may declare any permittee who fails to comply with all requirements or provisions as ineligible for future permits until all violations are corrected and the appropriate certificate of compliance fees are paid in full.

(1) The director may impose additional corrective measures in those instances where violations of this provision have been identified.

(2) The director may deny any subsequent applications or amendments submitted by a permittee or sub-permittee that has failed to implement corrective measures or has committed repeated violations.

[19.35.6.14 NMAC - Rp, 19 NMAC 35.6.10 & 19 NMAC 36.2.12, 12/30/2013]

19.35.6.15 APPEAL PROCESS:

A permit applicant may appeal a denial by the director in accordance with the following procedures:

A. Commission appeal:

(1) The applicant must submit, by certified mail, a written appeal to the chairman of the state game commission within 20 days of denial by the director.

(2) The written appeal must include the reason for the objection.

B. Commission decision: The commission may reverse the director's decision if:

(1) the commission determines that the decision of the director was arbitrary or capricious;

(2) the decision of the director was not based on law or regulation; or

(3) the appellant provides additional data or evidence that contradicts the data or evidence used by the department to deny the permit.

(4) The decision of the commission shall be final.

C. Schedule of appeal: Appeals filed with the commission will be heard at the next scheduled commission meeting subject to agenda item availability and related time constraints.

[19.35.6.15 NMAC - Rp, 19 NMAC 35.6.11, 12/30/2013]

19.35.6.16 EXEMPTIONS:

The following are exempt from applying for or holding permits for conducting activities under this rule:

A. employees of the New Mexico department of game and fish and other government agencies acting in the course of their official duties as determined by the director;

B. persons that salvage or aid in salvaging dead, injured or otherwise incapacitated wildlife at the direction of the department or others authorized for such possession; and

C. designated cooperators and department contractors provided the activities are consistent with their contractual or cooperative duties.

[19.35.6.16 NMAC - Rp, 19 NMAC 36.2.9, 12/30/2013]

19.35.6.17 COMPLIANCE AND ENFORCEMENT ALLOWANCE:

A law enforcement officer operating in a director approved covert operation may take protected wildlife pursuant to a license issued to a covert identity or pursuant to a permit or written authorization issued by the director or his designee.

[19.35.6.17 NMAC - N, 12/30/2013]

PART 7: IMPORTATION OF LIVE NON-DOMESTIC ANIMALS, BIRDS AND FISH

19.35.7.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.35.7.1 NMAC - Rp, 19.35.7.1 NMAC, 1-31-14]

19.35.7.2 SCOPE:

Persons who desire to bring wildlife species into the state of New Mexico. It may include the general public, pet importers, holders of Class "A" park licenses, department permittees and others.

[19.35.7.2 NMAC - Rp, 19.35.7.2 NMAC, 1/31/2014; A, 2/9/2021]

19.35.7.3 STATUTORY AUTHORITY:

17-1-14, 17-1-26 and 17-3-32.

[19.35.7.3 NMAC - Rp, 19.35.7.3 NMAC, 1-31-14]

19.35.7.4 DURATION:

Permanent.

[19.35.7.4 NMAC - Rp, 19.35.7.4 NMAC, 1-31-14]

19.35.7.5 EFFECTIVE DATE:

January 31, 2014, unless a later date is cited at the end of a section.

[19.35.7.5 NMAC - Rp, 19.35.7.5 NMAC, 1-31-14]

19.35.7.6 OBJECTIVE:

To provide consistent criteria for the importation of live non-domesticated animals into New Mexico and to protect native wildlife against the introduction of contagious or infectious diseases, undesirable species and address human health and safety issues.

[19.35.7.6 NMAC - Rp, 19.35.7.6 NMAC, 1-31-14]

19.35.7.7 DEFINITIONS:

A. "Accredited laboratory" A lab recognized for CWD testing by the New Mexico department of game and fish.

B. "Animal health emergency" A situation in which people or animals are at risk of exposure to infectious or contagious diseases as determined by the director.

C. "APHIS" Animal and plant health inspection service, United States department of agriculture.

D. "Applicant" Any person or entity that causes or submits a department application for importation.

E. "Certificate of compliance" An official department document declaring an applicant's ability to resume importation application eligibility.

F. "Certified Herd" A herd that has attained certified status as defined in the current USDA chronic wasting disease program standards.

G. "Closed herd sales" Sales of animals from a herd directly to the buyer in a manner that allows the buyer to transport the animals from the producer's premises directly to the buyer's premises without contact with animals from another herd, and without contact with other pens or transport facilities used by any other herd.

H. "Chronic Wasting Disease" or "CWD" is a transmissible spongiform encephalopathy of cervids.

I. "CWD-Exposed Animal" is an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 60 months.

J. "CWD-Exposed herd" is a herd in which a CWD-positive animal resided within 60 months prior to that animal's diagnosis as CWD-positive.

K. "CWD-Positive herd" is a herd in which a CWD-positive animal resided at the time it was diagnosed and which has not been released from quarantine.

L. "CWD-Suspect animal" is an animal for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

M. "CWD-Suspect herd" is a herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

N. "CWD-Trace-Back herd" is an exposed herd in which a CWD-positive animal has resided during the 60 months prior to the diagnosis.

O. "CWD-Trace-Forward herd" is a CWD-exposed herd that has received CWD-exposed animals from a CWD-positive herd during the 60 months prior to the diagnosis of CWD in the CWD-positive herd.

P. "Dangerous animal" An animal that due to its nature, biology or its behavior, including predatory or venomous animals, that may present a risk to the health, safety or well-being of the public or other animals including native wildlife, domestic pets or livestock.

Q. "Department" Shall mean New Mexico department of game and fish.

R. "Director" Shall mean the director of the department of game and fish.

S. "Importer" Any person or entity that causes an animal to be brought, transported or shipped into New Mexico with the exception of common mail carriers and delivery service providers during the course of their regular duties.

T. "Invasive animal" Any non-native animal, except protected wildlife, including any aquatic invasive species (AIS), whose introduction into New Mexico may cause or is likely to cause harm to the economy, environment, protected wildlife, human health or safety.

U. "Isolation" A period of time imported animals are separated and observed. The observation pen must have fences at least eight feet high. The isolation pen must prevent nose-to-nose contact with all wild ungulates during the observation period.

V. "Mixed herd" A herd comprised of animals from different sources and held to allow contact or commingling.

W. "Mixed herd sales" Sales from sale barns, auctions, private arrangements, or other facilities that allow joint penning or adjacent penning of animals from more than one closed herd, or otherwise facilitate or permit commingling, direct contact, or holding, boarding, or sharing the premises by more than one herd simultaneous or successively in time.

X. "Non-domesticated animal" For the purposes of this rule, any animal species that is wild by nature not listed as semi-domesticated or protected under chapter 17 NMSA, 1978.

Y. "NPIP" National poultry improvement program.

Z. "Official Animal Identification" A device or means of animal identification approved by USDA to uniquely identify individual animals nationally. The animal identification must include a nationally unique identification number that adheres to one of the following:

- (1) national uniform ear tagging system;
- (2) animal identification number (AIN);
- (3) premises-based number system using a premises identification number (PIN) in conjunction with a livestock production numbering system; or
- (4) any other numbering system approved by USDA for the identification of animals in commerce.

AA. "Protected wildlife" Shall mean those taxonomic groups of mammals, birds and fish listed in Chapter 17 NMSA, 1978, including any species that are listed as either state or federally threatened or endangered.

BB. "Release from captivity" For the purpose of this rule, the act of removing from confinement, letting go, liberating or setting free any imported, live non-domesticated animal into the wild.

CC. "Semi-domesticated animal" For the purpose of this rule, the director may designate an animal species as semi-domesticated in those instances where individual members of such species are commonly tamed, raised, bred or sold in captivity.

DD. "Species importation list" A list containing protected, non-game and semi-domesticated animal species established, maintained, updated or amended by the director of the New Mexico department of game and fish. The species importation list may contain importation requirements, restrictions and conditions for each animal species listed.

EE. "Qualified expert" Only a person officially designated by the director to import a specific non-domesticated animal.

FF. "Undesirable animal" An animal that may have adverse impacts to health, management or safety.

GG. "USDA" United States department of agriculture.

[19.35.7.7 NMAC - Rp, 19.35.7.7 NMAC, 1/31/2014; A, 12/15/2014; A, 2/9/2021]

19.35.7.8 IMPORTATION OF LIVE NON-DOMESTICATED ANIMALS:

It shall be unlawful to import any live non-domesticated animal into New Mexico without first obtaining appropriate permit(s) issued by the director except those animals identified within the species importation list group I. Permits will only be issued when all application requirements and provisions have been met. Failure to adhere to or violation of permit provisions may result in the applicant/importer becoming ineligible for importation(s). The pendency or determination of any administrative action or the pendency or determination of a criminal prosecution for the same is not a bar to the other.

[19.35.7.8 NMAC – Rp, 19.35.7.8 NMAC, 1/31/2014; A, 12/15/2014; A, 2/9/2021]

19.35.7.9 [RESERVED]

19.35.7.10 DIRECTOR'S AUTHORITY:

A. Species importation list: The director of the New Mexico department of game and fish shall develop a species importation list. The species importation list shall be established, maintained, updated or amended by the director as species information and concerns become available and are identified. The species importation list shall be grouped into the following minimum importation "groups" based on the following criteria.

(1) Species importation list group I are designated semi-domesticated animals and do not require an importation permit.

(2) Species importation list group II may be for live non-domesticated animals that are not known to be either invasive or dangerous and do not present a known risk to the health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(3) Species importation list group III may be for live non-domesticated animals that present minimal or manageable concerns that will require specific provisions that must be met prior to issuing an importation permit to address health, safety or well-being of the public, domestic livestock or to native wildlife and their habitats.

(4) Species importation list group IV may be for live non-domesticated animals that are considered dangerous, invasive, undesirable, state or federal listed threatened, endangered, a furbearer or any other species of concern as identified by the director. The importation of these species are prohibited for the general public but may be allowed for, scientific study, department approved restoration and recovery plans, zoological display, temporary events/entertainment, use as service animal or by a qualified expert.

(5) Any species of live non-domesticated animal not currently on the species importation list will be designated group IV until such time as another determination is made by the director.

B. Non-domesticated animal importation: The director may, in times of animal health emergency, suspend all importation activities or suspend importation of selected taxa for indefinite periods of time to protect wild and domestic animals from infectious disease epidemics and to protect the people of New Mexico from zoonoses.

C. Non-domesticated animal intrastate movement: the director may suspend intrastate movement in an animal health emergency.

D. Eligibility requirements for importation (cooperative compliance): The director may declare any applicant or importer who fails to comply with any importation conditions or provisions as ineligible for future importation permits or ability to supply animals into New Mexico until all permit violations are corrected and the appropriate certificate of compliance fees are paid in full.

(1) The director may require an applicant to obtain a certificate of compliance prior to becoming eligible to import any live non-domesticated animals and may impose additional corrective measures in those instances where violations of this provision have been identified.

(2) The director may impose a cease-and-desist order that makes an applicant ineligible to apply for an importation permit for up to a year in those instances where corrective measures have not been implemented or repeated violations have occurred.

E. Certificate of compliance fee: The director shall determine the appropriate certificate of compliance fee per violation not to exceed \$500.00 based on the following criteria:

(1) department expenses including manpower, travel, inspection and compliance monitoring;

(2) department office expenses including mailing, shipping, certificate issuance;

(3) animal care, treatment, housing and feeding;

(4) other miscellaneous expenses.

F. Qualified expert: the director shall determine the process and the requirements for a person to be designated a qualified expert for each applicable species.

(1) The director may require an applicant to provide specific qualifications including, but not limited to the following: professional references, experience, training, education and facility specifications.

(2) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

G. Application notices and documents.

(1) The director shall determine required forms, applications and documents to carry out the provisions of this rule.

(2) The director shall determine noticing and posting provisions to carry out the provisions of this rule.

(3) The director shall determine the permit and application conditions and requirements to carry out the provisions of this rule.

H. The director shall determine the process and requirements for re-entry into the state.

I. The director shall determine the process for expediting applications and permits including an additional application fee of \$25.00.

[19.35.7.10 NMAC - Rp, 19.35.7.10 NMAC, 1-31-14]

19.35.7.11 [RESERVED]

19.35.7.12 APPLICATION FOR IMPORTATION:

A. Any applicant requesting an importation permit for non-domesticated animals must submit the following information with the application:

(1) a containment or confinement plan indicating where and how the species will be maintained;

(2) a current and valid certificate from an accredited veterinarian certifying that each animal or rearing facility of origin has been inspected and is in good general health, disease free or that each animal or rearing facility of origin tests disease free for any specific disease(s) following the testing requirements and procedures as identified by the department during the application process, except;

(a) the department may approve an animal supplier that is currently enrolled in an accredited animal breeding program or facility health monitoring standards such as NPIP, AZA, or other government sanctioned program;

(b) the department may approve detailed and verifiable facility of origin health monitoring plans and records to be submitted by an organization(s) in lieu of a health or rearing facility inspection certificate from an accredited veterinarian;

(3) proof from the county and city into which the animal will be imported and held that possession of the animal is allowed;

(4) proof that all necessary federal permits have been obtained;

(5) proof that the requested species does not possess or have the immediate potential to carry infectious or contagious diseases; and

(6) confirmation by the applicant or person in authority representing the applicant agreeing to any conditions and provisions listed on the respective permit; and

(7) any importing person or entity must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals.

B. Additional conditions for the importation of a dangerous animal; applicant shall agree to the following provisions before an importation permit is approved:

(1) enter into a department approved written agreement releasing the department from liability;

(2) agree to meet all department approved posted warning requirements;

(3) agree to provide a department approved written warning to any person receiving such animal;

(4) government agencies or other entities as designated by the director may be exempted from the liability or warning requirements in this subsection.

C. All application fees are non-refundable.

[19.35.7.12 NMAC - Rp, 19.35.7.12 NMAC, 1-31-14]

19.35.7.13 TEMPORARY IMPORTATION:

Importation into the state for exhibition, advertising, movies etc. may be approved on an expedited basis provided that the animal will not be in the state for a period of more than 30 days. Specific requirements for the animals will be listed on the application and permit. Specific requirements for importation may be listed on the application. The department will have the final authority to list all conditions on the permit that will be required prior to final approval.

[19.35.7.13 NMAC - Rp, 19.35.7.13 NMAC, 1-31-14]

19.35.7.14 IMPORTATION OF CERTAIN FISH OR FISH EGGS INTO NEW MEXICO:

All fish species or eggs of the families salmonidae, esocidae, moronidae, ictaluridae, centrarchidae, percidae, and the genus oreochromis may be imported into the state provided that all conditions stated on the application and permit are met, including the following:

- A.** the name of department approved supplier pursuant to this regulation;
- B.** description of water into which fish will be released is provided; description must include: legal owner of water; legal description of location (township, range, section); county; name of water; size of water (surface acres-lake; miles-stream); source and discharge of water; major use of water; a map of sufficient size and detail to allow the water to be located by someone unfamiliar with the area shall be included;
- C.** species, size, pounds, and number of fish to be imported will be specified;
- D.** purpose of importation will be specified;
- E.** full description of person or persons requesting importation, to include: name, address, telephone number, name of contact person;
- F.** GPS coordinates (latitude and longitude in degree decimal minutes (DDM) using WGS 84 datum for each location where fish are stocked.
- G.** Oreochromis niloticus and oreochromis mossambicus may be imported into the state provided that:
 - (1)** All requirements set forth in the application and on the permit are met.
 - (2)** All other regulatory requirements, including those set forth herein, are met.

[19.35.7.14 NMAC - Rp, 19.35.7.14 NMAC, 1/31/2014; A, 10/15/2015; A, 2/9/2021]

19.35.7.15 APPROVED SUPPLIERS OF FISH OR FISH EGGS FOR IMPORTATION INTO NEW MEXICO:

- A.** The department will maintain a listing of approved fish suppliers.
- B.** All approved fish suppliers or their agent must carry a department-issued copy of the importation permit while transporting fish to the approved release site in New Mexico.

C. Approved supplier or their agent must notify the department of intended port of entry for importation of fish or fish eggs into New Mexico.

D. Approved supplier may be required to provide a presence/absence disease history (e.g., furunculosis bacterium, enteric redmouth bacterium, proliferative kidney disease, ceratomyxosis of salmonids, etc.) of the hatchery facility if requested by the New Mexico department of game and fish.

E. Approved suppliers shall meet the criteria and provide pathogen-free certification as specified herein.

F. Salmonids:

(1) For the infectious hematopoietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), viral hemorrhagic septicemia (VHS), and bacterial kidney disease (BKD).

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(b) Disease testing of fish must use American fisheries society (AFS) blue book or meet OIE (office international des epizooties) standards.

(c) Disease testing will be conducted on an annual basis; annual inspection must have occurred within the previous 12 months of application date.

(d) Sixty fish per lot will be sampled.

(e) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

(2) For the whirling disease pathogen.

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(b) Sixty fish per lot will be sampled.

(c) Inspection will include at least one lot of susceptible salmonids (rainbow trout, cutthroat trout, rainbow-cutthroat hybrids) which has been on the hatchery's water source for at least 10 months. If no lot of susceptible salmonids has been on the hatchery's water source for at least 10 months, then inspection shall include at least one lot of susceptible salmonid at least six months of age or older.

(d) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(e) Positive findings of whirling disease by pepsin-trypsin digestion shall be considered presumptive; positive findings of whirling disease by histology shall be considered confirmatory.

(f) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

(g) Supplier may be required to provide a whirling disease history of the hatchery facility if requested by the New Mexico department of game and fish.

(h) Presumptive findings: Any presumptive findings of disease with no confirmatory testing shall be deemed a positive finding of the disease.

(i) Positive findings of disease: Any facility deemed to have tested positive, by confirmatory findings or presumptive findings without confirmatory testing, under this rule shall be barred from importation into the state of New Mexico until the facility is shown to be pathogen free for a minimum of two consecutive years and has met all other requirements.

(j) Renovated facilities: A facility that has been deemed positive under this rule and has undergone complete renovation may apply for importation privileges as a new facility once it has had at least one annual inspection and has met all other requirements. Complete renovation for the purposes of this rule shall be defined as a facility that has:

(i) closed, secured, and sanitized all water sources;

(ii) confined all water conveyance to closed sealed pipes; and

(iii) constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after renovation may be required prior to authorization to import.

G. Warm water fish:

(1) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(2) Disease testing of fish must use American Fisheries Society (AFS) blue book procedures or meet OIE standards.

(3) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(4) Sixty warm water fish per lot shall be tested for viruses and bacteria.

(5) Approved supplier will document whether fish on the facility have ever been diagnosed with channel catfish virus.

H. *Oreochromis niloticus* and *oreochromis mossambicus* shall be certified as to species and as either all male or otherwise sterile by a qualified independent laboratory or by other means approved by the director. *Oreochromis niloticus* and *oreochromis mossambicus* capable of reproduction and certified as to species by a qualified, independent laboratory or by other means approved by the director may be approved for import only to a qualified expert.

I. Triploid grass carp: A notarized certificate of triploidy issued by another state wildlife agency, United States fish and wildlife service, USDA certified source or other source approved by the New Mexico department of game and fish must be provided for all grass carp imported into New Mexico.

J. Approved suppliers shall provide signed written assurance to the department that the fish rearing facilities are free of aquatic nuisance species (ANS) and aquatic invasive species (AIS). Failure to provide this assurance shall be reason to deny importation privileges. Approved suppliers shall be liable for any introduction of ANS or AIS caused by their actions.

[19.35.7.15 NMAC - Rp, 19.35.7.15 NMAC, 1/31/2014; A, 10/15/2015; A, 2/9/2021]

19.35.7.16 [RESERVED]

19.35.7.17 IMPORTATION CONDITIONS FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE:

All live protected wildlife species of the families bovidae, antilocapridae, and cervidae imported in the state of New Mexico shall meet the following criteria.

A. Be permanently identified with any 2 of the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

(1) implanted electronic identification device.

(2) ear tag with park identification number.

(3) tamper-proof ear tag with imprinted national identification number.

(4) USDA metal ear tags.

B. Be examined by an accredited veterinarian prior to importation. Each animal shall be accompanied by a pre-approved health certificate, certifying a disease-free status.

C. Test negative for brucellosis. Serum testing shall be done not more than 30 days prior to importation. All serum samples shall be tested by a cooperative state federal brucellosis laboratory.

D. Test negative for bovine tuberculosis not more than 90 days prior to importation. Animals to be imported must originate from a herd that had a negative whole-herd tuberculosis test not more than 12 months prior to importation or have a current "tuberculosis free herd" certificate issued from the state of origin through a USDA accreditation program. Bovine tuberculosis testing must be performed with the current USDA approved method and be conducted by a federally accredited veterinarian. Exception: Wild sheep are exempt from this testing requirement.

E. Only cervids enrolled and in the state CWD herd certification program and from a herd that has achieved certified status, and that does not show clinical signs associated with CWD may be imported into New Mexico.

(1) No cervid shall be allowed to enter the state if it has had any contact with a CWD suspect, exposed, positive, trace-forward or trace-back animal within 60 months prior to time of importation.

(2) No cervid coming through mixed herd sales or auctions shall be allowed to enter the state. Only animals from closed sales may be imported.

(3) No cervid shall enter the state in a conveyance that has held CWD suspect, exposed, positive, trace-forward or trace-back animals.

F. All elk to be imported into the state of New Mexico shall be tested for genetic purity. Only Rocky Mountain elk (*Cervus elaphus nelsoni*) will be allowed to be imported into the state of New Mexico. Any elk showing red deer hybridization or hybridization of other elk subspecies will not be allowed into the state. All testing shall be done ONLY by a New Mexico department of game and fish approved laboratory.

G. All progeny from female elk impregnated prior to importation into New Mexico shall be tested for hybridization of red deer and other elk subspecies.

H. White-tailed deer subspecies to be imported into the state of New Mexico must have originated and must exist west of the 100th meridian and test negative for meningeal worm.

I. Be permitted in compliance with Subsection A of 19.31.1.10 NMAC.

(1) Cost of testing: All testing will be at owner's expense.

(2) After entering the state, all animals shall be held in a separate facility by the owner and/or importer. All imported animals, prior to release, may be inspected at any time by a department of game and fish official or designee.

(3) Owners/importers must notify the department of game and fish within 24 hours of any disease indications or symptoms that manifest themselves among the imported animals prior to final inspection.

(4) Animals shall be held in isolation in the event of an animal health emergency as declared by the director.

(5) Final inspection / permit validation: No animals may be released from the separate facility into the class A park or other enclosure until the owner has received a release approval signed by a department of game and fish official.

[19.35.7.17 NMAC - Rp, 19.35.7.17 NMAC, 1-31-14]

19.35.7.18 INTRASTATE TRANSPORTATION FOR THE FAMILIES BOVIDAE, ANTILOCAPRIDAE AND CERVIDAE:

A. Transporting requirements: All live cervids transported within the state of New Mexico shall be legally possessed and permanently identified with any 2 of the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

(1) implanted electronic identification device.

(2) ear tag with park identification number.

(3) tamper-proof ear tag with imprinted national identification number.

(4) USDA metal ear tags.

B. The director may suspend intrastate movement in an animal health emergency.

[19.35.7.18 NMAC- Rp, 19.35.7.18 NMAC, 1-31-14]

19.35.7.19 RELEASE FROM CAPTIVITY FOR IMPORTED ANIMALS:

No person shall release from captivity an imported animal into New Mexico except by obtaining a release permit from the director. The transfer of an imported animal from one person to another person does not constitute a release from captivity.

A. Prior to approval by the director an applicant must:

(1) submit a plat of the release area;

(2) submit verification that landowners, tribal officials, state officials, federal officials and county officials that may be directly affected by the release have been notified of the potential release in writing and have been given 20 days to respond to the release; responses must be submitted with the application; it is the responsibility of the applicant to notify the above and submit responses to the department; failure to notify as indicated herein or to submit responses will result in the application being rejected until this condition is met and any compliance fees are paid;

(3) demonstrate that the intended release is provided for in state or federal resource or species management plans or strategies (CWCS).

B. Any individual or group of isolated animals in which signs of infectious or contagious disease is evident will not be released, will remain in isolation, and, at the recommendation of the state veterinarian:

(1) the animals shall be treated and restored to health until they no longer pose a threat of infection to wild, free ranging wildlife or to other captive animals in the facility; or

(2) the isolated animals shall be destroyed and remains will be disposed in a manner conforming to state, federal or local rules and regulations.

C. The director shall not approve any release permit that conflicts with current conservation management.

[19.35.7.19 NMAC - Rp, 19.35.7.19 NMAC, 1/31/2014; A, 12/15/2014; A, 2/9/2021]

19.35.7.20 [RESERVED]

19.35.7.21 DENIAL OF PERMIT APPLICATION:

The appropriate department division chief shall notify the applicant of a denial to import non-domesticated animals in writing. A denied application will not be further considered unless the applicant is granted an allowance through the director's review or the commission appeal process.

[19.35.7.21 NMAC - Rp, 19.35.7.21 NMAC, 1-31-14]

19.35.7.22 IMPORTATION PERMIT APPEAL PROCESS:

The denial of an importation permit may only be set aside if each step in the application and appeal process is adhered to sequentially and the appeal is conducted in accordance with the following procedures.

A. Director's review: any applicant whose importation permit application has been denied may request a review by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written request to the director within 30 days of denial.

(2) A request for the director's review must contain the reason for the objection.

(3) The director will consider any additional evidence and information that was not previously considered in the initial denial.

(4) The director will consider any conflicts with native wildlife, threats to human health, domestic animals or livestock and qualified expert designation when making a determination.

(5) The designation within a specified group on the director's species importation list cannot be used as the basis for review or appeal.

(6) The director shall make a determination and send the applicant his decision within 45 days.

(7) The determination to approve or deny a qualified expert designation by the director is final and is not subject to appeal.

B. Commission appeal: any applicant may appeal the decision by the director in accordance with the following procedures.

(1) The applicant must submit by certified mail a written appeal to the chairman of the state game commission within 20 days of denial by the director.

(2) The appeal to the chairman must contain the reason for the objection.

C. Basis for decision: The commission may set aside the decision of the director only if;

(1) the commission determines that the decision of the director was arbitrary or capricious;

(2) the decision of the director was not based on law or regulation;

(3) the appellant provides additional data or proves significant evidence that contradicts the data of the department;

(4) the decision of the commission shall be final.

D. An appeal filed with the commission will be heard at the next scheduled commission meeting subject to agenda item availability and related time constraints.

[19.35.7.22 NMAC- Rp, 19.35.7.22 NMAC, 1-31-14]

19.35.7.23 EXCEPTIONS:

Employees of the New Mexico department of game and fish and other state agencies acting in the course of their official duties are not required to have an importation permit. However, all disease testing requirements specified in this rule must be met prior to importation.

[19.35.7.23 NMAC- Rp, 19.35.7.23 NMAC, 1-31-14]

PART 8: FALCONRY

19.35.8.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.35.8.1 NMAC - Rp, 19 NMAC 35.1.1, 01/01/2012]

19.35.8.2 SCOPE:

Members of the public interested in the participating in the sport of falconry. Seasons for protected species which may be taken through falconry are found in Chapter 31 Part 5 and Part 6, and the license fee is found in Chapter 30 Part 1.

[19.35.8.2 NMAC - Rp, 19 NMAC 35.1.2, 01/01/2012]

19.35.8.3 STATUTORY AUTHORITY:

Sections 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species.

[19.35.8.3 NMAC - Rp, 19 NMAC 35.1.3, 01/01/2012]

19.35.8.4 DURATION:

Permanent.

[19.35.8.4 NMAC - Rp, 19 NMAC 35.1.4, 01/01/2012]

19.35.8.5 EFFECTIVE DATE:

January 1, 2012, unless a later date is cited at the end of a section.

[19.35.8.5 NMAC - Rp, 19 NMAC 35.1.5, 01/01/2012]

19.35.8.6 OBJECTIVE:

Establish rules for the use of protected raptors used in falconry activities.

[19.35.8.6 NMAC - Rp, 19 NMAC 35.1.6, 01/01/2012]

19.35.8.7 DEFINITIONS:

A. "Band" shall mean a permanent, nonreusable, numbered federal raptor leg band supplied by the department or by the USFWS.

B. "Department" shall mean the New Mexico department of game and fish.

C. "Eyass" shall mean a young raptor not yet capable of flight.

D. "Falconry" shall mean the ownership, caring for, and training of raptors for the pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking, or possession of captive bred or wild raptors to use in the sport; and includes the transfer, and transporting of raptors.

E. "Hack" or "hacking" shall mean the temporary release of a raptor held for falconry to the wild so that it may survive on its own.

F. "Hybrid" means offspring of any one species in Section 10.13 of Subchapter B of Title 50 of the Code of Federal Regulations and any other species, or of any two species in Section 10.13 of Subchapter B of this chapter, and any progeny of those birds.

G. "Imping" to graft or repair (a wing, tail, or feather) with a feather to improve a falcon's flying capacity.

H. "Imprint" shall mean a raptor that is hand-raised in isolation from two weeks of age until it has fledged, and has identified itself with humans rather than its own species. An imprinted raptor is considered to be so for its entire lifetime.

I. "Microchip" shall mean an ISO (international organization for standardization) compliant (134.2 khz) microchip purchased and supplied by the falconer permit holder.

J. "Passage bird" shall mean a raptor in its first year.

K. "Raptors" shall mean a migratory bird of the Order Accipitriformes, the Order Falconiformes or the Order Strigiformes listed in Section 10.13 of Title 50 of the Code of

Federal Regulations, including the bald eagle (*Haliaeetus leucocephalus*), and the golden eagle (*Aquila chrysaetos*).

L. "Raptor-taking permits" shall mean permits to take raptors from the wild for falconry purposes.

M. "Temporary foreign visitor" shall mean a foreign national, not an alien residing permanently in the United States, who qualifies as a general or master class falconer.

N. "USFWS" shall mean the United States fish and wildlife service.

[19.35.8.7 NMAC - Rp, 19 NMAC 35.1.7, 01/01/2012]

19.35.8.8 FALCONER PERMITS:

A. Permit requirement to practice falconry in New Mexico: A New Mexico falconer permit, a New Mexico temporary foreign visitor falconer permit or, for nonresidents, a valid state permit or a nonresident temporary foreign visitor falconer permit from another state is required.

B. Duration of falconer permits: All falconer permits shall be issued for a period not to exceed five years and shall expire March 31. All falconer permits may be renewed if the permittee has not violated relevant state or federal laws or regulations.

[19.35.8.8 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.9 REQUIREMENTS FOR ISSUANCE OF FALCONER PERMITS:

The director of the department may issue a falconer permit to an applicant who meets the following requirements.

A. The applicant must qualify as a resident of New Mexico, as prescribed by Chapter 17-3-4 NMSA 1978 Compilation.

B. Falconer permits may not be transferred to other persons.

C. Age, experience, sponsorship:

(1) Apprentice permit:

(a) The applicant for an apprentice permit must be at least 12 years of age and must have the written consent of a parent or legal guardian to assume responsibility for the apprentice's activities if under 18 years of age.

(b) A sponsor who holds a New Mexico general permit with two years experience, or a master permit, is required until the apprentice advances to general falconer.

(c) The applicant for an apprentice permit shall name the sponsor in the application submitted and shall include a letter from the sponsor indicating his or her willingness to sponsor the apprentice.

(d) The applicant for an apprentice permit must successfully pass the state falconry examination before he or she will be granted an apprentice permit.

(2) General permit:

(a) The applicant for a general permit must be at least 16 years of age. If the applicant for a general permit is under 18 years of age, a parent or legal guardian must sign the general permit application to assume responsibility for the applicant's activities.

(b) The general permit applicant shall submit a letter from a general or master falconer (preferably the applicant's sponsor) that the applicant shall have had at least two years experience in the practice of falconry at the apprentice level or its equivalent, including maintaining, training, flying and hunting raptor(s) for at least four months in each year. That practice may include capture and release of falconry raptors.

(c) An applicant for a general falconer permit may not substitute any falconry school program or education to shorten the period of two years at the apprentice level.

(3) Master permit: The applicant for a master permit shall have had at least five years experience in the practice of falconry at the general class level or equivalent experience.

(4) Temporary foreign visitor permit:

(a) A temporary foreign visitor may not apply for a permit at the apprentice class level.

(b) The applicant shall present evidence by letters of recommendation and experience, written in the English language, by other falconers or officials who have personal knowledge of the applicant's falconry experience, including the species of raptors previously flown and the number of years practicing falconry.

(c) The applicant for a temporary foreign visitor permit must pass the state falconry examination.

(d) Based on the evidence provided, the department shall determine the class level for the applicant as general or master class.

(e) A temporary foreign visitor applicant must present proof of legal temporary status in the United States by the immigration and naturalization service.

(f) A temporary foreign visitor applicant must be sponsored by a New Mexico resident general or master class falconer. The applicant shall present a letter with the application from the resident sponsor which shall confirm that the applicant may house and care for the applicant's raptors at the sponsor's falconry facilities. A New Mexico temporary foreign visitor permittee's sponsor may fly, house and care for the permittee's raptors, when provided a 3-186A form and letter of authorization, if the permittee intends to return to New Mexico regularly to practice falconry. Proof of the length of stay may be provided by a copy of the applicant's foreign passport or other immigration and naturalization service documentation.

(g) A permanent resident alien who resides permanently in New Mexico may not apply for a temporary foreign visitor permit, but may apply for a resident falconer permit.

D. Examination:

(1) The applicant for an apprentice or temporary foreign visitor permit shall answer correctly at least 80 percent of the questions on the examination relating to basic biology, care and handling of raptors, laws and regulations, disease, literature and other appropriate subject matter.

(2) The examination shall be conducted under supervised conditions by a department employee or a permitted master falconer representing the department.

(3) An applicant who fails to pass an examination must wait three months to retake it.

E. Fees:

(1) The applicant shall submit payment with the original application.

(2) Prior to examination, the applicant shall submit a nonrefundable examination fee of \$10.00. A person who fails to pass the examination shall not be required to pay additional examination fees when retaking the examination.

[19.35.8.9 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.10 CLASSES OF FALCONER PERMITS AND AUTHORIZED POSSESSION:

A. Apprentice permit:

(1) An apprentice falconer permittee may possess one American kestrel (*Falco sparverius*) or one red-tailed hawk (*Buteo jamaicensis*).

(2) An apprentice falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit.

(3) An apprentice falconer may present a conservation education program when accompanied by a master or general permit holder. A conservation education program shall provide information on raptor biology, ecological roles and conservation needs, and the permit holder may charge a fee to cover costs.

B. General permit:

(1) A general falconer permittee may possess not more than three raptors (including hybrids). The permittee may possess any wild-caught or captive-bred raptor except for eagle species and any other species restricted by the department.

(2) A general falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit.

(3) A general falconer may use a bird held under a falconer permit for conservation education programs presented in a public venue. A conservation education program shall provide information on raptor biology, ecological roles and conservation needs and the permit holder may charge a fee to cover costs.

(4) A general falconer with two or more years of experience at the general falconer level may sponsor up to two apprentice falconers.

C. Master permit:

(1) The master falconer permit shall authorize the permittee to possess not more than five wild-caught raptors and unlimited captive-bred raptors (including hybrids) if used for falconry, not to include any species listed as endangered in Title 50, Code of Federal Regulations, Part 17, except captive-bred endangered species per Title 50 Code of Federal Regulations, Part 17.

(2) The five wild-caught raptors authorized may include no more than a total of three golden eagles, white-tailed eagles, or Steller's sea eagle, and may include not more than three raptors listed as threatened in Title 50, Code of Federal Regulations, and then only in accordance with the provisions of Part 17.

(3) To possess a golden eagle, white-tailed eagle, or Stellar's sea eagle, a master falconer shall submit to the department a written request to possess individuals of the listed species. The written request must contain a description of the applicant's experience in handling large raptors, including information about the species handled and the type and duration of the activity in which the applicant has engaged. The written

request required by this subsection must be accompanied by at least two letters of reference from people with experience handling or flying large raptors such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), or great horned owls. Each letter of reference must contain a concise history of the applicant's experience with large raptors, and must attest to the applicant's ability to care for eagles and fly them in falconry. A master falconer may take up to two golden eagles within a calendar year where it is permitted under a depredation permit.

(4) A master falconer may conduct abatement activities with raptors possessed under his or her falconry permit, provided the raptors are captive-bred and the permittee has obtained a federal abatement permit for that purpose. No person other than the master falconer to whom an abatement permit has been issued and their subpermittee falconers may use a raptor possessed under a falconry permit to conduct abatement activities.

(5) A master falconer may receive payment, and may pay a general or apprentice falconer for providing abatement services under a federal permit for that purpose.

(6) A master falconer may use a raptor held under a falconer permit for conservation education programs presented in a public venue. A conservation education program shall provide information on raptors' biology, ecological roles and conservation needs, and the permit holder may charge a fee to cover costs.

(7) A master falconer may sponsor up to three apprentices.

D. Temporary foreign visitor permit:

(1) The temporary foreign visitor falconer permit shall authorize the permittee to possess no more than three captive-bred raptors or hybrids if the permittee is determined to be a general class falconer or five captive-bred raptors or hybrids if the permittee is determined to be a master class falconer.

(2) A temporary foreign visitor falconer may conduct abatement activities only as a subpermittee of a master falconer who holds an abatement permit.

(3) A temporary foreign visitor falconer may not act as a sponsor for an apprentice falconer.

E. Nonresident reciprocity:

(1) The department shall grant reciprocity and accept a permit issued to a nonresident falconer temporarily in New Mexico.

(2) The department shall accept a permit issued to a non-resident falconer permanently moving to New Mexico for the period required to establish residency and to meet all other requirements to qualify for a New Mexico resident falconer permit.

[19.35.8.10 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.11 DIRECTORS AUTHORITY AND TAKING OF RAPTORS:

The director of the department may develop a policy to permit raptor take.

A. A raptor may be taken by a resident falconer who holds a valid falconer permit.

(1) The holder of a valid falconer permit, may, at any time of the year, recapture by means of traps or nets any escaped raptor that was legally possessed.

(2) The holder of a New Mexico general or master falconer permit may, take an eyass or passage raptor as permitted herein.

(3) Any raptor taken shall be reported to the department within 10 days. The notification shall be filed through the USFWS 3186-A electronic reporting system unless otherwise required or approved by the department.

(4) No falconer shall possess a species raptor not authorized by his or her permit

(5) No falconer shall exceed the number of raptors authorized by his or her permit..

B. Withholding of raptor-taking permits: The taking of any species whose wild populations in New Mexico that are significantly or adversely affected by such take may be withheld through the director's raptor take policy.

C. Raptor-taking seasons:

(1) Eyasses may be taken from April 1 through January 15 of the subsequent year, and only by holders of general or master falconer permits. No more than two eyasses may be taken by a permittee during the raptor-taking season.

(2) Passage raptors may be taken from April 1 through January 15 of the subsequent year.

D. Age restrictions of raptors to be taken:

(1) No raptor older than one year of age may be taken other than the American kestrel (*Falco sparverius*) or the great horned owl (*Bubo virginianus*).

(2) A holder of a general or master falconer permit may acquire a raptor older than one year of age if it was taken from the wild for the purpose of controlling depredation or for its rehabilitation and if the permittee may legally possess it.

E. Limits on taking of raptors:

(1) A falconer may take no more than two raptors from the wild during any calendar year.

(2) A general or master falconer may take one raptor of a federally-listed threatened species of raptor during any calendar year, if he or she has an endangered species permit issued by the USFWS.

F. Valid area: Raptors shall be taken only in areas specified by the department in the director's raptor take policy.

G. Eligibility for and species authorized for nonresident raptor-taking permits; reports:

(1) A raptor-taking permit may be issued only to a person who holds a valid falconer permit from a state that allows a nonresident take of raptors.

(2) Nonresidents may take only those species as defined in the director's raptor take policy and each raptor take permit shall be issued only for those species authorized for resident falconers of equivalent class.

(3) A raptor taken by a nonresident must be reported on the USFWS 3186-A electronic reporting system within 10 days of capture.

H. Means of taking: Raptors shall not be taken with steel-jawed traps, chains, jump traps, or pole traps, but may be taken as authorized by the director.

[19.35.8.11 NMAC - Rp, 19 NMAC 35.1.8, 01/01/2012]

19.35.8.12 FACILITIES AND EQUIPMENT:

A. Inspection of facilities. An inspection is required for all new applicants and at the time of renewal if the permitted falconer is an apprentice falconer, or if the facilities have been moved. If a department officer or a master falconer representing the department has inspected the applicant's falconry facilities and equipment and found that they meet or exceed the standards below, the inspecting department officer or master falconer must submit a signed certification of the facility, the equipment and the inspection to the Santa Fe office of the department before the permit is issued or renewed.

B. Indoor facilities must be large enough to allow easy access for care of raptors. Each raptor must have an area large enough to allow it to fly if it is untethered or if

tethered, to fully extend its wings or bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.

(1) If more than one raptor is to be kept in a single facility, the raptors must be separated by partitions or tethered, or raptors may be housed untethered together if they are compatible with each other.

(2) If raptors housed in this indoor facility are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor to be housed in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.

(3) Each raptor must have a pan of clean water available unless weather conditions, perch type, or some other factor makes access to water unsafe for the raptor. There shall be at least one window for sunlight, and must provide a healthy environment for raptors inside, and a secure door that can be easily closed. The floor shall permit easy cleaning and shall be well drained. Acceptable indoor facilities include shelf perch enclosures where raptors are tethered side by side.

(4) Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and maintain healthy feathers. Falconry raptors may be kept inside a residence, raptors must be tethered and each raptor must have a suitable perch. The residence windows or other openings do not need to be modified.

C. Outdoor facilities: If the applicant also provides outdoor facilities, they shall meet the following standards:

(1) An outdoor facility must be totally enclosed, and may be made of heavy gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material.

(2) The facility must be covered and have at least a covered perch to protect a raptor held in it from predators and weather. The facility must be large enough to insure that the raptors cannot strike the enclosure when flying from the perch.

(3) New types of housing facilities or husbandry practices may be used if they satisfy the requirements above.

D. Equipment: The following items shall be in the applicant's possession before issuance of a falconer permit.

(1) Jesses. At least one pair of Aylmeri or Aylmeri type jesses, constructed of pliable, high-quality leather or suitable synthetic material, for use when the raptor is flown free.

(2) Leash and swivel. At least one flexible, weather-resistant leash and one strong swivel of acceptable falconry design.

(3) Bath. At least one water container, two to six inches deep, and wider than the length of the raptor, for each raptor.

(4) Outdoor perch. At least one weathering area perch for each raptor, of acceptable design for the species of raptor.

(5) Weighing device. A reliable scale or balance suitable for weighing the species of raptor(s).

(6) Feathers: A permittee may retain molted feathers and feathers from raptors that die in captivity but may use them only for imping, or may donate feathers, except golden eagles feathers, to any person or institution with a valid permit to have them.

E. Facilities for temporary holding or transportation of raptors: Any temporary facility for transporting or holding a raptor shall have an appropriate perch and be protected from extreme temperatures and excessive disturbance. No raptor shall be held in such a temporary facility for more than 120 days unless authorized by the department for extenuating circumstances.

F. Bands and transmitters:

(1) Species requiring a band: A nonreusable numbered band must be attached to every wild goshawk, gyrfalcon (*Falco rusticolus*), Harris's hawk, and peregrine falcon (*Falco peregrinus*) held for falconry. Bands for additional species may be required by the department.

(2) It shall be illegal to alter, counterfeit or deface a band. However, a falconer permittee may remove the rear tab from the nonreusable bands and may smooth any imperfect surface, if doing so does not affect the integrity of the band or its number.

(3) Return of band: The permittee shall remove and return the band to the department from any raptor that dies or is released with the exception of released captive bred raptors.

(4) Transmitters: When flown for falconry, a hybrid raptor must have two attached radio transmitters that will allow the permittee to locate it in the event of loss or failure of a single transmitter.

G. Maintenance; revocation and renewal of permits:

(1) Facilities and equipment: Each falconer permittee must, maintain his or her falconry facilities and equipment at or above the standards met to qualify for the

permit. An officer of the department may inspect the falconer's facilities and equipment at any reasonable hour only in the presence of the falconer permittee; except under exigent circumstances.

(2) Revocation and renewal: Falconer permits may be revoked or renewals denied for failure to maintain facilities or equipment or for violation of the provisions of this regulation or of Chapter 17-2-14 NMSA 1978 Compilation.

H. Reports:

(1) Department report: Upon request from the department, a permittee must report on operations conducted under the authority of his or her permit. A report from an apprentice falconer must be co-signed by the sponsor.

(2) Federal report: A permittee who takes, purchases, receives or otherwise acquires, sells, barter, transfers or otherwise disposes of a raptor shall be reported to the department within 10 days. The notification shall be filed through the USFWS 3186-A electronic reporting in accordance with appropriate state and federal regulations.

[19.35.8.12 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.13 IMPORTATION, TRANSPORT AND TEMPORARY HOLDING:

A. Importation: A copy of a valid falconer permit shall suffice as an importation permit for raptors brought into the state.

(1) A permitted falconer may import any raptor from another state, provided that the permittee does not exceed the number and species of raptors that can be held under his or her permit.

(2) The holder of a New Mexico temporary foreign visitor falconer permit may only import captive-bred raptor(s) from another state, provided the falconer does not exceed the number and species of raptors that he or she may possess.

B. Temporary importation: an importation permit is not required by nonresident falconers temporarily importing and possessing a raptor while in transit or for the purpose of falconry.

C. Relocation importation: a permitted falconer shall notify the department prior to relocating to New Mexico with a legally possessed raptor. Within 10 days of the arrival, notification shall be filed through USFWS 3-186A electronic reporting system unless otherwise required or approved by the department. The permittee shall document that the raptor was legally obtained, with such certificates, permits to take, federal form 3-186A submitted by the raptor propagator, etc.

D. Transportation of raptors:

(1) A New Mexico falconer may transport within New Mexico a raptor held under his or her permit and raptor(s) held for another falconer while in temporary care.

(2) A permittee may remove the raptor from New Mexico for meets, trials, and hunting in other states and return the raptor to New Mexico without obtaining New Mexico importation permit, provided the falconer permittee obtains any permit or license required for this activity by the state into which the raptor is taken.

(3) A nonresident falconer does not need an importation permit to bring a falconry raptor(s) into New Mexico for hunting or attending a falconry meet as provided in Chapter 17-3-32.1 NMSA 1978 Compilation.

E. Temporary holding of raptors: Raptors possessed under authority of a New Mexico falconry permit may be temporarily held or flown by another person (caretaker) at a location different than the falconer's.

(1) The permittee shall provide such caretaker with a signed statement authorizing the temporary transfer of the raptor to the caretaker and the temporary holding facility, as well as a copy of the federal 3186A form showing the permittee legally acquired the raptor.

(2) If the period of care will exceed 120 days, the permittee shall send written notification of such extended temporary care to the department no later than five days prior to the temporary care.

(3) The care of a permittee's raptor may be extended indefinitely by the department in extenuating circumstances such as illness, military service, or family emergency. Notification shall include the name and location of the caretaker, the reason for the extended temporary care, whether the raptor(s) may be exercised and flown, and approximately how many days the caretaker will be responsible for the raptor(s).

[19.35.8.13 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.14 RELEASE OF RAPTORS:

A permittee who wishes to release a raptor must notify the department 10 days before the intended release date.

A. The department will respond to the request within the 10 day period, and the raptor may be released back into the wild in accordance with approval and instruction from the department.

B. The department may require a period of hacking the raptor back to the wild at an appropriate time of year and an appropriate location.

C. The intentional permanent release of hybrid raptors is prohibited.

[19.35.8.14 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

19.35.8.15 RAPTOR PROPAGATION:

A federal permit is required for raptor propagation and activities associated with it are permitted in accordance with Title 50, Code of Federal Regulations, Section 21.30. No additional state permit is required.

A. A falconry raptor may be temporarily used for propagation without notice of transfer by individuals permitted to conduct raptor propagation.

B. A permittee may transfer a wild-caught falconry raptor to a raptor propagation permit after the raptor has been used in falconry for at least two years (one year for a sharp-shinned hawk (*Accipiter striatus*), a Cooper's hawk (*Accipiter cooperii*), a merlin (*Falco columbarius*), or an American kestrel).

C. When transferred to a propagation permit the acquisition of the raptor by the propagator shall be reported to the department within 10 days. The notification shall be filed through the USFWS 3186-A electronic reporting in accordance with appropriate state and federal regulations.

D. Raptors possessed for propagation, including all progeny produced pursuant to the permitted activity, must be identified with a band issued by the department. A falconer may purchase and implant an ISO microchip in addition to the band.

[19.35.8.15 NMAC - Rp, 19 NMAC 35.1.9, 01/01/2012]

PART 9: CLASS A PARK AND LAKES

19.35.9.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.35.9.1 NMAC - Rp, 19.35.9.1 NMAC, 3-14-14]

19.35.9.2 SCOPE:

Persons who desire to hold wildlife species in the state of New Mexico. This will include holders of class "A" park and lake licenses.

[19.35.9.2 NMAC - Rp, 19.35.9.2 NMAC, 3-14-14]

19.35.9.3 STATUTORY AUTHORITY:

17-1-14, 17-1-26, 17-2-3, 17-2-7, 17-2-10, 17-4-8, 17-4-9, 17-4-10, 17-4-11, 17-4-12, 17-4-13, 17-4-14, 17-4-15, 17-4-16, 17-4-17, 17-4-18, 17-4-19, 17-4-20, 17-4-21, 17-4-22, 17-4-23, 17-4-24, 17-4-25, 17-4-26, 17-4-27, and 17-4-28 NMSA 1978.

[19.35.9.3 NMAC - Rp, 19.35.9.3 NMAC, 3-14-14]

19.35.9.4 DURATION:

Permanent.

[19.35.9.4 NMAC - Rp, 19.35.9.4 NMAC, 3-14-14]

19.35.9.5 EFFECTIVE DATE:

March 14, 2014, unless a later date is cited at the end of a section.

[19.35.9.5 NMAC - Rp, 19.35.9.5 NMAC, 3-14-14]

19.35.9.6 OBJECTIVE:

To provide consistent criteria for the possession and sale of privately owned wildlife held in New Mexico. To provide disease testing and general requirements to protect native wildlife and address human health and safety issues.

[19.35.9.6 NMAC - Rp, 19.35.9.6 NMAC, 3-14-14]

19.35.9.7 DEFINITIONS:

A. "Animal health emergency" A situation in which people or animals are at risk of exposure to infectious or contagious diseases.

B. "Aquaculture/recirculating water systems" is a facility designed for the culture, rearing, and propagation of protected species of fish.

C. "Chronic wasting disease" or "CWD" is a transmissible spongiform encephalopathy of cervids.

D. "CWD-exposed animal" is an animal that is part of a CWD-positive herd, or that has been exposed to a CWD positive animal or contaminated premise within the previous 60 months.

E. "CWD-exposed herd" is a herd in which a CWD-positive animal resided within 60 months prior to that animal's diagnosis as CWD-positive.

F. "CWD-positive herd" is a herd in which a CWD-positive animal resided at the time it was diagnosed and which has not been released from quarantine.

G. "CWD profile" is a deer or elk at least 12 months of age that is emaciated and exhibits some combination of clinical signs associated with CWD including increased salivation, tremors, stumbling, incoordination, difficulty swallowing, excessive thirst, and excessive urination.

H. "CWD-response committee" is the group of persons who will develop a herd plan for any facility in which CWD is confirmed or in which is identified a trace-back or a trace-forward herd. This group will be comprised of at least the owner or designee of the facility, a representative from the department, from USDA veterinary services, and from the New Mexico livestock board. The committee must contain a qualified epidemiologist designated for the event.

I. "CWD-suspect animal" is an animal for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

J. "CWD-suspect herd" is a herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

K. "CWD-trace-back herd" is an exposed herd in which a CWD-positive animal has resided during the 60 months prior to the diagnosis.

L. "CWD-trace-forward herd" is a CWD-exposed herd that has received CWD-exposed animals from a CWD-positive herd during the 60 months prior to the diagnosis of CWD in the CWD-positive herd.

M. "Department" shall mean the New Mexico department of game and fish.

N. "Director" is the director of the New Mexico department of game and fish.

O. "Double fenced" means a park surrounded by two (2) fences, each continuous, with one fence surrounding the other and a separation of at least 30 feet between the fences.

P. "Facility" is the area of a class A park surrounded by a fence meeting specifications defined herein, and all buildings, isolation pens, loading chutes, gates, waters, and other structures and equipment used in the class A park operation.

Q. "Feed" is all forage grown outside the facility and transported in, all forages compounded and packaged for commercial distribution, and all dietary supplements.

R. "Herd plan" is a written facility management agreement that sets forth the steps to be taken to eradicate CWD from a CWD-positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd.

S. "Official animal identification" is a device or means of animal identification approved by USDA to uniquely identify individual animals nationally. The animal identification must include a nationally unique identification number that adheres to one of the following:

- (1) national uniform ear tagging system;
- (2) animal identification number (AIN);
- (3) premises-based number system using a premises identification number (PIN) in conjunction with a livestock production numbering system; or
- (4) any other numbering system approved by USDA for the identification of animals in commerce.

T. "Permit owner" is that person or persons to whom the class A park or lake permit is issued. This person(s) may be a lessee on the land designated for the class A park or lake.

U. "Quarantine" is an order issued to any class A park or lake prohibiting all animal ingress or egress. The director shall declare the end of the quarantine.

V. "Quarantine fence" is a fence, inside a facility, constructed to ensure isolation within the facility.

W. "Record" shall mean all vital documents and electronic data kept for each animal. These documents include, but are not limited to, breed registries, importation permits, bills of sale, health certificates, veterinary diagnoses, etc.

X. "Single fenced" is a park surrounded by one (1) continuous fence.

Y. "Shooter animals" are animals designated by a permit owner or his designee for hunting or harvesting in the facility.

Z. "Water" is the system for delivering water to animals in a facility including but not limited to wells, streams, ponds, troughs, and water catchments.

AA. "USDA" is the United States department of agriculture.

[19.35.9.7 NMAC - Rp, 19.35.9.7 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.8 POSSESSION AND RETENTION OF PROTECTED SPECIES LIVE ANIMALS, BIRDS AND FISH:

It shall be unlawful to possess protected species of live animals, birds or fish, as defined in 17-2-3 NMSA 1978, in New Mexico without first obtaining appropriate permits issued

by the director. Such permits will be issued only for those purposes named in Subsection A of 19.31.10.10 NMAC as described herein. New permits will not be issued until all conditions and appeal processes, if any, listed herein have been satisfied. A violation of the provisions herein shall subject the permittee or licensee to denial or revocation as described under authority of 17-1-14, 17-3-34 NMSA 1978 and 19.31.2 NMAC.

A. Only members of the following families of fish will be considered for retention in New Mexico class A lakes or class A - aquaculture/recirculating water systems:

- (1) salmonidae;
- (2) esocidae;
- (3) percichthyidae;
- (4) ictaluridae;
- (5) centrarchidae; and
- (6) percidae

B. Live oreochromis niloticus and oreochromis mossambicus capable of reproducing and/or propagation may be considered for retention in New Mexico only by a department approved qualified expert as defined in 19.35.7 NMAC.

C. Live oreochromis niloticus and oreochromis mossambicus incapable of reproducing (hybrid and sterile or triploid of the same sex) shall be considered for retention in New Mexico for the purposes of aquaculture.

D. Only members of the following families of mammals and birds will be considered for retention in New Mexico class A parks: Protected mammals and birds under 17-2-3 NMSA 1978.

E. Permission may be granted by the state game commission to retain prohibited species into New Mexico upon demonstration by the applicant that no possible conflict with native animals, human health or livestock will occur, upon showing of good cause, or upon requiring that certain additional conditions are met by the applicant, and does not conflict with any other law, rule or ordinance.

[19.35.9.8 NMAC - Rp, 19.35.9.8 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.9 POSSESSION CONDITIONS AND HEALTH CERTIFICATION:

All live protected species of the families' bovidae, antilocapridae, and cervidae retained in the state of New Mexico shall meet the following criteria:

A. All class A parks with cervids must develop and follow a herd plan if any animal is identified to come from a CWD-positive herd, CWD-suspect herd, CWD-exposed herd, CWD-trace-back or CWD-trace-forward herd. The herd plan will be developed by the CWD response committee:

(1) tissues from all CWD-exposed or CWD-suspect animals that die or are depopulated or otherwise killed must be collected and tested for CWD as specified in the herd plan. Carcasses and tissues of such animals should be disposed of as specified in the herd plan.

(2) CWD testing specified by the herd plan must be done at the expense of the class A park;

(3) CWD testing shall be done only at a laboratory approved by USDA and the department;

(4) laboratory results must be retained by the class A park and presented to the department with the annual inventory inspection; and

(5) the director may require CWD testing of cervids from class A parks not enrolled in the CWD herd certification program.

B. Any live cervid leaving a park must be accompanied by a health certificate by an accredited veterinarian.

C. Any protected wildlife leaving a park or lake must also be accompanied by a bill of sale or invoice.

D. All class A game parks must maintain herd records that include at least:

(1) bills of sale or donation receipts, that is, the source of all animals moved into the herd from an outside source;

(2) importation permit if the animal was imported into New Mexico from a source outside of the state;

(3) all health certificates associated with importation or other activities;

(4) age or date of birth, species, gender; and location of birth, that is, born at the facility or introduced from a location outside of the facility;

(5) registration documents if applicable;

(6) all health and medical records including details of veterinary care and consultation;

(7) all laboratory results and reports from disease testing and any necropsies performed;

(8) all documents associated with movement of live animals from the facility including movement to slaughter, and final destination of all movements; and

(9) all individual animal identification data.

E. Feed containing animal products or by-products shall not be administered to cervids.

F. Any positive test for CWD shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis by the class A park owner or owner's designee. This notification requirement will only be considered met if the owner or designee talks directly or by telephone to the department or sends a verifiable email to appropriate representatives of the department:

(1) the park shall be under immediate indefinite quarantine. All gates shall remain closed, and all existing fences shall remain standing and maintained at the owner's expense

(2) the director shall assemble the CWD response committee to determine immediate actions to:

(a) contain, control, and prevent further transmission

(b) develop and write a herd plan. If the CWD-positive herd is enrolled or certified in the CWD herd certification program, the herd plan will follow the guidelines contained in the publication, *USDA Chronic Wasting Disease Program Standards*; and

(c) determine all trace-back and all trace-forward facilities;

(3) class A park owners or designees shall notify all owners of trace-forward and trace-back herds of the positive CWD diagnosis within 96 hours of the diagnosis.

G. Domestic sheep shall not be kept within the boundaries of the park unless the domestic sheep herd is enrolled and participating in the USDA scrapie program.

H. All live protected species of fish retained in an aquaculture/recirculating water system operated by a qualified expert or live protected species for sale outside of the class A lake shall meet the following criteria:

(1) test annually meeting the same requirements as specified as 19.35.7 NMAC;

(2) any positive test for any of the pathogens listed in 19.35.7 NMAC shall constitute an animal health emergency. The department must be notified within 24 hours of the diagnosis. This notification requirement will only be considered met if the owner or designee talks directly to a department person either by phone or in-person:

(a) the lake or aquaculture/recirculating water system shall be under immediate indefinite quarantine; and

(b) owners shall submit factual copies of all records to the department within 72 hours of the diagnosis, and notify all owners of trace-forward and trace-back lots of fish of the positive diagnosis within 72 hours of the diagnosis.

[19.35.9.9 NMAC - Rp, 19.35.9.9 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.10 ANIMAL HEALTH EMERGENCIES:

Upon identification of an animal health emergency, the department shall determine immediate actions to contain, control, and prevent spread of the animal health emergency giving due consideration for public safety. The department will plan for quarantine, isolation, treatment, disinfection, including destruction and disposal. The director will notify and update appropriate public and private entities as needed.

A. Escaped animals: if, in the opinion of the director, any escaped animal poses an animal health emergency or a risk to animal or public health, the director may employ any and all available means to capture and return or to destroy the escaped animals.

B. Reportable diseases and conditions: the following diseases are considered to be of significant economic and biological risk to humans, wildlife, and domestic animals that, if detected and confirmed in wildlife species, are to be immediately reported to the department:

- (1)** anthrax
- (2)** arboviruses
- (3)** brucellosis
- (4)** chronic wasting disease
- (5)** epizootic hemorrhagic disease/bluetongue virus
- (6)** foot and mouth disease
- (7)** malignant catarrhal fever
- (8)** mange

(9) plague

(10) rabies

(11) tuberculosis

(12) tularemia

(13) vesicular stomatitis

(14) any other disease outbreak of significant threat to wildlife populations, livestock health, or human public health.

[19.35.9.10 NMAC - Rp, 19.35.9.10 NMAC, 3-14-14]

19.35.9.11 INTRASTATE TRANSPORTATION:

A. All live captive ungulates transported within the state of New Mexico shall:

(1) be legally possessed;

(2) can be transferred only to other class A park facilities or to processor for slaughter, or sold for immediate consumption;

(3) be shipped following all applicable laws;

(4) all live ungulates including cervids must be permanently identified with any two of the following devices, one of which must be an official animal identification. All identification data shall be registered with the department:

(a) implanted electronic identification device;

(b) ear tag with park identification number;

(c) tamper-proof ear tag with imprinted national identification number; or

(d) USDA metal ear tags.

B. Any individual(s) transporting live fish from a class A lake or aquaculture/recirculating water system shall:

(1) be required to obtain importation and release permits through the process outlined in 19.35.7 NMAC;

(2) legally possess the fish;

(3) only transfer or ship to another individual with a valid permit or by means or to destinations previously approved in the permit issued by the department; and

(4) ship following all applicable laws.

[19.35.9.11 NMAC - Rp, 19.35.9.11 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.12 CLASS A PARK AND LAKE AND CLASS A -
AQUACULTURE/RECIRCULATING WATER SYSTEM APPLICATION AND
PERMITTING OF NEW PARKS:**

New class A park and lake applications will be accepted anytime during the license year. All park and lake licenses will expire March 31 and must be renewed. Applicants or designee shall provide completely factual information on all application and supplemental material requested, included but not limited to:

A. Name of owner, address, telephone number, name of contact person;

B. Complete legal description of park or lake, including location (township, range, section); county; size of park or lake (surface acres-lake or water; major use of water; a map of sufficient size and detail to allow the park or water to be located by someone unfamiliar with the area shall be included;

C. Species, size, pounds, and number of wildlife to be retained will be specified;

D. Purpose of park or lake will be specified;

E. Each park or lake facility shall meet all the specifications listed on the application prior to final approval and no permit will be approved until all conditions and inspections have been completed by a department designee; and

F. Inclusion of annual fee for processing of application as per 19.30.9 NMAC.

[19.35.9.12 NMAC - Rp, 19.35.9.12 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.13 RENEWAL OF CLASS A PARKS AND LAKES AND CLASS A -
AQUACULTURE/RECIRCULATING WATER SYSTEMS:**

All applicants renewing their class A license shall apply to the department by May 1 of each year and must be received by the close of the business day. Any renewal application received after May 1 will be assessed an administrative fee of \$250.00 in addition to the normal application fee. Any class A park or lake or class A - aquaculture/recirculating water system failing to send in or renew their application by June 1 will be deemed delinquent and revocation action may commence following 19.31.2 NMAC.

[19.35.9.13 NMAC - Rp, 19.35.9.13 NMAC, 3-14-14; A, 10-15-2015]

**19.35.9.14 CLASS A PARK AND LAKE AND CLASS A -
AQUACULTURE/RECIRCULATING WATER SYSTEM FACILITY DESIGN,
INSPECTION AND RECORDS:**

A. Park enclosure: each class A park facility shall, at a minimum, conform to all rules listed below and on the application:

- (1)** no park shall exceed 3200 acres. Any additional acres will result in another class A park and will be considered as a separate park. All conditions of application and renewal shall be adhered to;
- (2)** fence height shall be at least eight feet (8') from ground level to the top wire or fence top for all new class A parks and for all parks participating in the state herd certification program. Fence shall be continuous from bottom to top, even if multiple layers must be used. Current class A parks with seven and one half foot (7.5') fences will not have to meet this requirement unless they apply for certification;
- (3)** fence wire must be a woven wire mesh, consisting of a top and bottom wire at least 12 gauge or its equivalent. Mesh measures shall not exceed six inch by seven inch (6"X7") openings;
- (4)** fence wire shall be taught enough to not allow bottom or top wire mesh to be pushed or maneuvered up or out of the way by force. If this occurs wire must either be re-stretched or bolstered in some other permanent fashion;
- (5)** fence wire must be maintained securely four inches (4") or less to the ground. Any fencing that is found to be greater than four inches (4") above the ground shall not constitute a proper fence and shall be aproned with permanent material;
- (6)** all fences must be securely fastened to the posts;
- (7)** barbed wire may be used on the bottom or top horizontal wires at the owner's discretion;
- (8)** posts shall be metal "T" posts, pipe or wooden (at least three and one half inches (3.5") in diameter; and must be pressure treated with a preservative);
- (9)** posts shall be set firmly in the ground and not subject to dislodging;
- (10)** posts shall be spaced at intervals not to exceed 18 feet (18') with T-posts or wood; or not to exceed 20 feet (20') on metal pipe;
- (11)** perimeter gates shall be constructed to at least the same specification as fence; mesh and height with no more than four inches (4") from ground to gate bottom;

(12) all water gaps and arroyos shall be constructed to withstand normal flooding and maintain enclosure;

(13) all fence right-of-ways shall be cleared for a distance of eight feet (8') on each side of the fence and all dead timber with a height greater than the distance to the fence shall be felled;

(14) class A park fences shall be constantly maintained as described above, if found out of compliance, the owner or his designee shall immediately repair any substandard material or specifications. It is the intent of this section that all fences shall be maintained in a game-proof condition at all times and prevent the passing of the game held therein;

(15) all working pens, corrals and holding pens used for processing or temporarily holding animals shall be located inside the park; and

(16) if the park fence is to border any other property (private or public) then a signed affidavit must be executed by the park owner to ensure correct placement of fence and verify ownership of property.

B. Park design:

(1) all feeding or baiting sources shall be at least 100 feet from any exterior fence, except holding pens or working facilities;

(2) no placement of feed or bait shall be allowed until the park license has been completely issued and the gates to park closed; and

(3) gates shall remain open until the final inspection and approval by a department designee.

C. Lake enclosure: each class A lake facility shall conform to all rules listed below and on the application:

(1) all bodies of water and channels connecting a series or group of lakes under one license shall be identified upon each application;

(2) list and describe all screens or other appliances that prevent ingress and egress of fish into and out the bodies of water; and

(3) a map of the lake facility and surrounding watershed shall be provided by the applicant upon application.

D. Aquaculture/recirculating water systems rearing fish capable of reproduction operated by a qualified expert:

(1) shall provide the department with a comprehensive biosecurity plan detailing preventative actions for disease, safety, escape and expected final disposition of fish. Permit issuance will not be considered until the biosecurity plan is complete and approved by the department;

(2) shall submit an annual report with detailed records regarding the operations, preventative measures utilized to maintain healthy fish and any biosecurity plan modifications or updates;

(3) shall be designed and operated to have no effluent discharge or potential to discharge effluent into any waters in New Mexico;

(4) shall be covered to prevent loss of fish through predation, theft, or other means;

(5) no fish shall be removed from the facility alive unless it is being exported outside of New Mexico according to lawful procedures or is moving within the state according to lawful procedures and cannot reproduce.

(6) shall annually certify compliance with all other applicable state, municipal, federal, or other required permits.

E. All other aquaculture/recirculating systems:

(1) shall be designed and operated to have no effluent discharge or potential to discharge effluent into any waters in New Mexico;

(2) shall be covered to prevent loss of fish through predation, theft, or other means;

(3) shall maintain detailed records and submit annual reports regarding the operations;

(4) shall annually certify compliance with all other applicable state, municipal, federal, or other required permits; and

(5) live fish shall not be removed from the aquaculture/recirculating system unless they are being transferred to another department permitted individual within the permit provisions.

F. Facility inspections of parks and lakes: once application is made to the department, the proposed site shall be subject to inspections by a department representative at any reasonable time. Inspections shall also occur at least once per year, upon receipt of renewal of application to inspect the facility and fence integrity. All inspections will be limited to the facility and the animals held therein.

G. Natural disasters: every owner or his designee shall immediately notify the department of any natural disasters that threaten or compromise the integrity of the facility. The owner or designee must make every effort to maintain animal(s) inside the facility. It shall be unlawful for any owner or designee to intentionally release animals endangered by a natural disaster.

H. Animal escapes: every owner or his designee shall immediately notify the department of any escapes from a park or lake. Species and all identification data shall be reported with time, location, number or quantity, and sex of escaped animals. Owner or designee shall immediately attempt to recapture escaped animals and make every reasonable effort to return the animals to their facility.

I. Park and lake closure or termination: any park or lake failing to renew by May 1 of each license year will be considered as failing to properly renew and subject its license to revocation according to 19.31.2 NMAC if this should be necessary. Any park, enclosure or lake maintained after May 1 without a license shall be considered in violation of 17-4-9 NMSA 1978. No animal shall be released into the wild, but held until certified with disease free status by that testing required by the director. Nothing in this section shall prevent the owner from legally disposing of his property provided that the number of game animals or fish shall not be lessened by disposition from his or her initial application survey or information filed with the department. However disposition must occur immediately as required by all applicable laws.

J. Records:

(1) any animal disposed or sold from a park or lake must be accompanied by an invoice signed by the owner or his designee and state the following:

(a) park or lake name and license number;

(b) date of disposition or sale, and;

(c) species, quantity, sex and identification data of game animals included in disposition or sale; or, if fish, the approximate weight and number;

(2) each owner shall submit a year-end report to the director by May 1 and state the following: species, quantity, sex, and identification data of game animals disposed, sold, or removed in any way; or, if fish, the approximate weight and number for the previous license year;

(3) owner or designee shall maintain all inventory and health records obtained or created for each animal as designated in 19.35.9.9 NMAC herein;

(4) final disposition, if known, shall be documented of every class A park or lake animal; and

(5) all such records listed in this section shall be made available for immediate inspection upon request by the director. Any owner or designee that knowingly provides inaccurate or false records will be deemed in violation of this section and subject to revocation proceedings pursuant to 19.31.2 NMAC.

K. Existing parks: parks and lakes permitted prior to January 1, 2014 of this regulation will have five (5) years to bring their facility into compliance with this regulation. However, all possession conditions and health certification requirements are mandatory and must begin immediately, even for existing class A parks and lakes.

[19.35.9.14 NMAC - Rp, 19.35.9.14 NMAC, 3-14-14; A, 10-15-2015]

19.35.9.15 DENIAL AND REVOCATION:

Each class A park and lake shall be subject to permit denial or revocation if found to be in violation of this rule or Chapter 17 NMSA 1978. No park or lake application will be approved if fencing or other barrier materials were purchased or installed by the department until all costs associated with the fencing have been reimbursed back to the department through the appropriate fund.

[19.35.9.15 NMAC - Rp, 19.35.9.15 NMAC, 3-14-14]

PART 10: PROTECTION OF AMPHIBIANS AND REPTILES

19.35.10.1 ISSUING AGENCY:

New Mexico Department of Game and Fish.

[19.35.10.1 NMAC - N, 10-31-01]

19.35.10.2 SCOPE:

To prohibit, permit and regulate commercial collecting of free-ranging, native amphibians and reptiles.

[19.35.10.2 NMAC - N, 10-31-01]

19.35.10.3 STATUTORY AUTHORITY:

17-1-14, 17-2-4.1, and 17-3-1 NMSA 1978 provide that the New Mexico State Game Commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978.

[19.35.10.3 NMAC - N, 10-31-01]

19.35.10.4 DURATION:

Permanent.

[19.35.10.4 NMAC - N, 10-31-01]

19.35.10.5 EFFECTIVE DATE:

October 31, 2001.

[19.35.10.5 NMAC - N, 10-31-01]

19.35.10.6 OBJECTIVE:

Establish procedures and requirements for the take of free-ranging, native amphibians and reptiles for commercial purposes.

[19.35.10.6 NMAC - N, 10-31-01]

19.35.10.7 DEFINITIONS:

A. "Free Ranging, Native Amphibians and Reptiles" are those species and subspecies of amphibians and reptiles naturally occurring in New Mexico.

B. "Commercial purpose" shall mean for the purpose of sale, barter, or profit. For this regulation, any person in possession of the annual bag limit or more than the annual bag limit of wild-caught amphibians and reptiles shall be deemed to possess these individuals for commercial purposes. In addition, any person in possession of more than 50 individuals with unlimited take, shall be deemed to possess these individuals for commercial purposes.

C. "Take" shall mean the act of seizing, capturing, trapping, killing of free-ranging, native amphibians and reptiles.

D. "Annual bag limit" shall mean the allowed number of individual, wild-caught amphibians and reptiles taken in a license year by a licensed collector.

E. "Fish Bait" shall mean the aquatic larval stage of the tiger salamander, *Ambystoma tigrinum*, used for baiting fish.

F. "Lizard races" shall mean the organized, competitive racing of any lizard not listed as threatened or endangered.

G. "Rattlesnake Roundup" shall mean an organized public event where the purpose is to display, buy, sell, and trade rattlesnakes of the genus *Crotalus*.

H. "Captive-bred" shall mean amphibians and reptiles that are hatched or born in captivity as a result of captive breeding.

[19.35.10.7 NMAC - N, 10-31-01]

19.35.10.8 TAKE:

A. It is unlawful for any person to take free-ranging, native amphibians and reptiles in New Mexico for commercial purposes without purchasing and having in possession a valid commercial collecting permit. In addition, nonresidents must purchase and also have in their possession a nonresident hunting license listed in Section 17-3-13 NMSA 1978 required by law for the year in which the taking is done.

B. It is unlawful to take all free-ranging, native amphibians and reptiles species that are Federal or State listed as threatened or endangered.

C. Exceptions:

(1) When there is an emergency situation involving an immediate threat to human life or private property, rattlesnakes may be captured, removed, or destroyed without a permit.

(2) No permit is necessary for take of free-ranging, native amphibians and reptiles for the purpose of rattlesnake roundups, fish bait, or lizard races. A commercial collecting permit is required when these species are taken for a commercial purpose.

(3) All other species of snake (other than rattlesnakes) collected and displayed for rattlesnake roundups shall not be bought, sold, or traded unless the person collecting such snakes is in possession of a commercial take permit.

(4) Amphibians and reptiles held in captivity prior to July 1, 2001 and their progeny are not subject to these regulations.

[19.35.10.8 NMAC - N, 10-31-01]

19.35.10.9 METHODS OF LEGAL TAKE:

Only the following methods shall be used for the legal, commercial take of free-ranging, native amphibians and reptiles.

A. Field collection, including the use of hand-held flashlights or spotlights, provided the collector is not in possession of a firearm or other implement whereby any big game animal or domestic animal could be killed.

B. Collection from road surfaces.

C. Lizard nooses, snake grabbers, and snake hooks.

D. Seines, cast nets, and dip nets.

[19.35.10.9 NMAC - N, 10-31-01]

19.35.10.10 ANNUAL BAG LIMITS:

A. A list of native, free-ranging amphibians and reptiles known to occur in the state of New Mexico wherein take is allowed, with the annual bag limit for each, shall be established and maintained by the Director of New Mexico Department of Game and Fish (Director's Amphibian and Reptile List).

B. It shall be unlawful to exceed the annual bag limit of any species of amphibian or reptile listed on the Director's Amphibian and Reptile List for the current license year.

[19.35.10.10 NMAC - N, 10-31-01]

19.35.10.11 PERMIT:

A. Commercial Collecting Permit: This permit is herein established and required to be purchased and in the possession of any person prior to their attempt to take any amphibian or reptile for commercial purposes.

B. Availability and expiration: Commercial Collecting Permits will be available for purchase through the New Mexico Department of Game and Fish. Commercial Collecting Permits are valid only during the current license year for which it was purchased. License years runs from April 1 through March 31 of the following calendar year. All commercial Collecting Permits expire on March 31 of each year.

C. Nonresidents are required to purchase and have in their possession a nonresident hunting license listed in Section 17-3-13 NMSA 1978 required by law for the year in which the taking is done, in addition to the Commercial Collecting Permit.

D. FEE: Each person must pay \$50.00 to receive a Commercial Collecting Permit.

[19.35.10.11 NMAC - N, 10-31-01]

19.35.10.12 YEAR-END REPORTS:

Each person who purchases a Commercial Collecting Permit is required to file a year-end report on a standardized form approved by the New Mexico Department of Game and Fish.

[19.35.10.12 NMAC - N, 10-31-01]

CHAPTER 36: WILDLIFE EDUCATION AND TRAINING

PART 1: [RESERVED]

PART 2: [RESERVED]

PART 3: HUNTER EDUCATION

19.36.3.1 ISSUING AGENCY:

New Mexico department of game and fish.

[19.36.3.1 NMAC – Rp, 19.36.3.1 NMAC, 4/1/2024]

19.36.3.2 SCOPE:

Hunters under the age of eighteen years.

[19.36.3.2 NMAC – Rp, 19.36.3.2 NMAC, 4/1/2024]

19.36.3.3 STATUTORY AUTHORITY:

Sections 17-2-33 through 17-2-35 NMSA 1978 create the Hunter Training Act and give the department of game and fish the authority to promulgate rules to implement the provisions of the act.

[19.36.3.3 NMAC – Rp, 19.36.3.3 NMAC, 4/1/2024]

19.36.3.4 DURATION:

April 1, 2024 through December 31, 2028.

[19.36.3.4 NMAC – Rp, 19.36.3.4 NMAC, 4/1/2024]

19.36.3.5 EFFECTIVE DATE:

April 1, 2024, unless a later date is cited at the end of a section.

[19.36.3.5 NMAC – Rp, 19.36.3.5 NMAC, 4/1/2024]

19.36.3.6 OBJECTIVE:

Regulation designed to carry the provisions of the Hunter Training Act.

[19.36.3.6 NMAC – Rp, 19.36.3.6 NMAC, 4/1/2024]

19.36.3.7 DEFINITIONS:

[RESERVED]

[19.36.3.7 NMAC – Rp, 19.36.3.7 NMAC, 4/1/2024]

19.36.3.8 HUNTER TRAINING COURSE REQUIRED:

It shall be unlawful for any person under the age of eighteen years to purchase or apply for any type of firearm hunting license unless that person has first successfully completed the New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish. Effective April 1, 2025, an approved hunter training course of another state may only be utilized by persons age nine (9) years and older.

[19.36.3.8 NMAC – Rp, 19.36.3.8 NMAC, 4/1/2024]

19.36.3.9 TYPES OF COURSES:

A. A person under the age of eighteen years who satisfies the requirements of either of the following training courses shall be issued a certificate following successful completion of a hunter training course:

(1) Completion of an approved hunter training course comprised of class work and firearms proficiency training and testing; or

(2) completion of an approved hunter training course comprised of a written lesson and testing and current registration in the department's mentored-youth program.

B. Registration in the department's mentored-youth program is limited to first-time youth hunters, 8 to 17 years of age, for a period of two consecutive license years and a person shall register in the program only once.

C. Mentored-youth program hunters may hunt with a firearm only after successful completion of the written lesson and testing portion of the course and while supervised by a licensed and mentor certified or hunter education certified parent, guardian or another licensed adult with consent of the parent or guardian who is within unaided voice and sight distance.

(1) Mentors shall possess a mentor certification number obtained after completion of a hunter training course comprised of a written lesson and testing and current registration in the department's mentored-youth program; or

(2) shall possess a hunter education certification number obtained through a New Mexico hunter training course or a hunter training course of another state which is approved by the New Mexico department of game and fish.

D. Mentored-youth program hunters shall be limited by age to hunt as follows:

(1) Mentored-youth under the age of ten years shall be limited to hunting small-game; or

(2) mentored-youth ten to seventeen years of age shall be limited to hunting small-game, turkey, deer, pronghorn antelope and javelina.

[19.36.3.9 NMAC – Rp, 19.36.3.9 NMAC, 4/1/2024]

19.36.3.10 PENALTY:

Any person violating the provisions of 19.36.3.8 NMAC is guilty of a petty misdemeanor and will be subject to penalties provided in Section 31-19-1 New Mexico Statutes Annotated, 1978 Compilation.

[19.36.3.10 NMAC – Rp, 19.36.3.10 NMAC, 4/1/2024]

19.36.3.11 REVOCATION OF HUNTER TRAINING CARD:

A. Hunter training certification will be revoked in accordance with 19.31.2 NMAC.

B. Hunter training certification may also be revoked for negligent use of a firearm.

[19.36.3.11 NMAC – Rp, 19.36.3.11 NMAC, 4/1/2024]

19.36.3.12 LIVE-FIRING COURSES:

A. Live-firing courses may be taught in conjunction with hunter education classes, in accordance with policies and procedures developed by the agency and distributed to certified instructors.

B. Live-firing courses may be taught only by hunter education instructors certified in live-firing instruction.

[19.36.3.12 NMAC – Rp, 19.36.3.12 NMAC, 4/1/2024]