

Exhibit G

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION COMMISSION
4
5

6 IN THE MATTER OF THE APPLICATION OF THE NEW
7 MEXICO OIL CONSERVATION DIVISION FOR REPEAL
8 OF EXISTING RULES 19.15.1 THROUGH 19.15.15 NMAC,
9 ADOPTION OF NEW RULES 19.15.2 THROUGH 19.15.16
10 NMAC, 19.15.18 THROUGH 19.15.26 NMAC, 19.15.29 AND
11 19.15.30 NMAC, 19.15.34 THROUGH 19.15.37 NMAC, AND
12 19.15.39 NMAC, AND AMENDING 19.15.17 AND 19.15.36
13 NMAC TO MAKE CONFORMING CHANGES; STATEWIDE
14

15 Case No.
16
17

18 **WRITTEN TESTIMONY OF CHERYL L. BADA**
19

20 My name is Cheryl L. Bada, and I am an Assistant General Counsel with the Energy,
21 Minerals and Natural Resources Department. I am presenting this testimony on behalf of
22 the Energy, Minerals and Natural Resources Department, Oil Conservation Division
23 (Division) in the proceeding of the Division's application to rearrange the Division's
24 rules into new parts. To accomplish this the Division proposes to repeal existing rules
25 19.15.1 through 19.15.15 NMAC; replace those rules with new parts 19.15.2 through
26 19.15.16 NMAC, 19.15.18 through 19.15.26 NMAC, 19.15.29 and 19.15.30 NMAC,
27 19.15.34 through 19.15.37 NMAC, and 19.15.39 NMAC, which would contain the rules
28 that were previously contained in repealed rules 19.15.1 through 19.15.15 NMAC; and
29 amend 19.15.17 and 19.15.36 NMAC to amend cross-references to reflect the
30 rearrangement of the rules.
31

32 **OVERVIEW**
33

- 34 1. The Division is requesting that the Oil Conservation Commission (Commission)
35 approve a rearrangement of the Division's rules 19.15.1 through 19.15.15 NMAC. The
36 Division proposes to move these rules into new parts 19.15.2 through 19.15.39 NMAC.
37 In addition, the Division is asking the Commission to approve amendments to 19.15.17
38 NMAC and 19.15.36 NMAC. These amendments are needed so that cross-references
39 contained in 19.15.17 NMAC and 19.15.36 NMAC reflect the rearrangement.
40
- 41 2. The goal is to make better use of the structure available under the New Mexico
42 Administrative Code (NMAC). The NMAC is divided into Titles, Chapters, Parts, and
43 Sections. Rules issued pursuant to the Oil and Gas Act appear under Title 19, Natural
44 Resources and Wildlife and Chapter 15, Oil and Gas. Each part issued under a chapter is
45 considered a rule and should reflect a single subject matter. See Subsection OO of
46 1.24.1.7 NMAC and Subsection A of 1.24.10.8 NMAC attached as Exhibits G-1 and G-2.

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1 An example of a part that contains the requirements for a single subject matter is
2 19.15.36 NMAC, the rule for surface waste management facilities. An example of a
3 section is 19.15.36.8 NMAC, Surface Waste Management Facility Permits and
4 Application Requirements.

5
6 3. The Division is proposing the rearrangement because many of the current parts
7 contain sections that address numerous unrelated subjects. This often makes it difficult to
8 locate all of the sections that regulate a particular area. For example, 19.15.1 NMAC,
9 General Provisions and Definitions, which is a part, is 28 pages in length and contains
10 sections addressing a wide variety of topics, from definitions, prevention and abatement
11 of water pollution, pools, and forms to meetings by teleconference and tax incentives.

12
13 4. Because the State Records Center and Archives rules provide that a part should be
14 devoted to specific subject matter, when the Division proposes new rules or amendments
15 the State Records Center and Archives has required those rules to be moved to a new part
16 rather than remain as a section in a part that covers numerous subject matters. Examples
17 of this are 19.15.1.17 NMAC, which governs pits, below-grade tanks, and closed-loop
18 systems, and 19.15.1.36, which covers surface waste management facilities. Both were
19 previously formatted as an individual section within another part. Because of the length
20 of both rules and the fact that they address specific subject matter, the State Records
21 Center and Archives required that they each be codified as their own part. Codification
22 as a part makes the rule easier to locate. It also makes it easier to read because the
23 requirements can be separated into individual sections.

24
25 5. By rearranging the rules at one time and moving them to new parts, rather than
26 moving them piecemeal as rules are amended or replaced, the Division can place parts
27 that contain similar subject matter near each other and place sections that have similar
28 subject matter into individual parts. It also allows the Division to update and correct
29 cross-references to NMAC cites and to forms. Many of the Division's rules contain
30 outdated cross-references because the cross-references have not been changed as the rules
31 that they reference have been amended, replaced, or repealed.

32
33 6. Prior to filing this application, the Division distributed a table showing the proposed
34 rearrangement to attorneys who often appear before the Division and Commission. See
35 Exhibit G-3, attached. The Division distributed the table to Thomas Kellahin, J. Scott
36 Hall, Ocean Munds-Dry, Pete Domenici, Jr., James Bruce, and William Carr on
37 December 13, 2006. The table was also distributed to all Division staff. See Exhibit G-4,
38 attached. The Division received suggestions from Thomas Kellahin including
39 suggestions concerning the proposed location of some of the parts. The Division moved
40 the part concerning hardship gas wells based on Mr. Kellahin's comments. On October
41 1, 2007, William Carr distributed the proposed rearranged rules to the New Mexico Oil
42 and Gas Association Regulatory Practices Committee. See Exhibit G-5, attached.

43
44 7. In July 2008, the Division made the following revisions to its proposal:

- placing Subsection D of 19.15.5.303 NMAC (rearranged as 19.15.23.9 NMAC), which address off-lease transportation of storage prior to measurement, in Part 23, Off Lease Transport of Crude Oil Contaminants, instead of Part 12, Pools;
- removing the statement in 19.15.15.1302 NMAC [rearranged as 19.15.7.10 NMAC] that “a list of all plugging bonds approved and in force shall be kept in each district office” because they are actually kept at the Santa Fe office.
- removing the references to the number of copies of forms that operators must submit since multiple copies are generally not needed or the operator submits the information on-line;
- modifying 19.15.13.1111, 19.15.13.1112 NMAC, and Subsection E of 19.15.5.314 NMAC (rearranged as 19.15.7.21, 19.15.7.22 NMAC, and 19.15.18.19 NMAC) to reflect that the actual practice is for operators to complete and maintain forms C-111 and C-112 instead of filing them with the Division;
- removing 19.15.1.34 NMAC because the new well tax incentive is no longer available and therefore a certification process is not needed;
- correcting references to the form number in Subsection J of 19.15.8.7 NMAC (rearranged as 19.15.21.7 NMAC), 19.15.9.708 NMAC (rearranged as 19.15.26.15 NMAC), and 19.15.3.104 NMAC (rearranged as Subsection C of 19.15.15.12 NMAC);
- modifying 19.15.1.16 NMAC (rearranged as 19.15.7.9 NMAC) to reflect that the Division’s forms are available on its website;
- modifying 19.15.13.1100 NMAC (rearranged as 19.15.7.8 NMAC) to list all the forms required in the Division’s rules;
- so that instructional information for forms will be located in one part, moving the information providing what an operator must submit on form C-139 and form C-140 from 19.15.1.31 NMAC and 19.15.1.32 NMAC (rearranged as 19.15.6.9 NMAC and 19.15.6.10 NMAC) to 19.15.13 NMAC (rearranged as 19.15.7.43 and 19.15.7.44 NMAC) and reflecting that those forms are on-line applications;
- moving the language for what the operator must submit on form C-124 from 19.15.5.302 NMAC (rearranged as 19.15.18.9 NMAC) to 19.15.13.1124 NMAC (rearranged as 19.15.7.32 NMAC) so that the information required on the form will be located in the part that addresses reports and forms;
- modifying Paragraph (2) of Subsection C of 19.15.7.502 (rearranged as Paragraph (2) of Subsection C of 19.15.20.9 NMAC) to reflect that the form C-115 application is an on-line application and that operator enters the cause of the excess production and the plan of adjustment in the comments area of the on-line application; and
- modifying Subsection A of 19.15.9.706 NMAC (rearranged as Subsection A of 19.15.26.13 NMAC) to reflect that operators use form C-115 for salt water disposal that is not at a surface waste management facility and form C-120-A for salt water disposal that is at a surface waste management facility.

8. On July 24, 2008 the Division sent the revised proposal to Mr. Carr for review and distribution to the New Mexico Oil and Gas Association Regulatory Practices Committee.

1 9. The State Records Center and Archives requires that agencies have permission for
2 copyrighted materials that are incorporated by reference. See Subsection HH of 1.24.1.7
3 NMAC, Exhibit G-1, and 1.24.10.22 and 1.24.10.23 NMAC, Exhibit G-2. Because many
4 of the Division's rules incorporate copyrighted materials the Division has obtained
5 permission from the copyright holders to reference these materials. The Division has
6 obtained permission from API, NACE International, and ASTM International.

7 8 **REARRANGEMENT**

9
10 1. The Division shares Chapter 15 (Oil and Gas) of Title 19 (Natural Resources and
11 Wildlife) with the Regulation and Licensing Department and the New Mexico
12 Department of Agriculture. The first part is supposed to contain definitions and other
13 requirements that are applicable to the entire chapter. The agencies do not have joint
14 rules, so there are no common definitions or provisions. Therefore, the State Records and
15 Archives Center has advised that in rearranging its rules, the Division needs to place its
16 definitions and general provision in 19.15.2 NMAC rather than in 19.15.1 NMAC, where
17 they are currently located.

18
19 2. The Regulation and Licensing Department's rules begin with 19.15.40 NMAC.
20 Therefore, the Division can use 19.15.2 through 19.15.39 NMAC for its rules. The
21 Division's application proposes that its rules be rearranged into the following parts:

- 22
23 19.15.2 NMAC, General Provisions for Oil and Gas Operations;
- 24 19.15.3 NMAC, Rulemaking;
- 25 19.15.4 NMAC, Adjudication; 19.15.5 NMAC, Enforcement and Compliance;
- 26 19.15.6 NMAC, Tax Incentives;
- 27 19.15.7 NMAC, Reports and Forms;
- 28 19.15.8 NMAC, Financial Assurance;
- 29 19.15.9 NMAC, Well Operator Provisions;
- 30 19.15.10 NMAC, Safety;
- 31 19.15.11 NMAC, Hydrogen Sulfide Gas;
- 32 19.15.12 NMAC, Pools; 19.15.13 NMAC, Compulsory Pooling;
- 33 19.15.14 NMAC, Drilling Permits;
- 34 19.15.15 NMAC, Well Spacing and Location;
- 35 19.15.16 NMAC, Drilling and Production;
- 36 19.15.17 NMAC, Pits, Below-Grade Tanks, Closed-Loop Systems, and Sumps;
- 37 19.15.18 NMAC, Production Operating Practices;
- 38 19.15.19 NMAC; Natural Gas Production Operating Practices;
- 39 19.15.20 NMAC, Oil Proration and Allocation;
- 40 19.15.21 NMAC, Gas Proration and Allocation;
- 41 19.15.22 NMAC, Hardship Gas Wells;
- 42 19.15.23 NMAC, Off-Lease Transport of Crude Oil Contaminants;
- 43 19.15.24 NMAC, Illegal Sale and Ratable Take;
- 44 19.15.25 NMAC, Plugging and Abandonment of Wells;
- 45 19.15.26 NMAC, Injection;
- 46 19.15.29 NMAC, Release Notification;

1 19.15.30 NMAC, Remediation;
2 19.15.34 NMAC, Produced Water;
3 19.15.35 NMAC, Waste Disposal;
4 19.15.36 NMAC, Surface Waste Management Facilities;
5 19.15.37 NMAC, Refineries; and
6 19.15.39 NMAC, Special Rules.
7

8 19.15.27 NMAC, 19.15.28 NMAC, 19.15.31 NMAC, 19.15.32 NMAC, 19.15.33
9 NMAC, and 19.15.38 NMAC are reserved in the event they are needed in the future.
10

11 3. See Exhibit E for a cross-walk that shows the location of the current rules and the
12 proposed location and Exhibit F for a cross-walk that shows the proposed locations of the
13 rearranged rules and the locations from which they were moved. Requirements for pools
14 were relocated to 19.15.12 NMAC from the existing 19.15.1 and 19.15.5 NMAC, so that
15 they would be contained in one part instead of two separate parts. Requirements for
16 compulsory pooling were placed in their own part, 19.15.13 NMAC, so that they would
17 be easier to locate. Currently, these requirements are located in 19.15.1 NMAC along
18 with such topics as general definitions, meetings by teleconference, and tax incentives.
19 Requirements for tax incentives, water prevention and abatement, safety, release
20 notification hydrogen sulfide gas, enforcement and compliance, well operator provisions,
21 well spacing and location, drilling permits, plugging and abandonment, hardship gas
22 wells, and financial assurance were also placed in their own separate parts. Rulemaking
23 and adjudication requirements were separated into two parts. General provisions such as
24 computation of time, emergency orders and rules, district offices, duties and authority of
25 field personnel, and numbering of division orders that were located in 19.15.14 NMAC
26 and 19.15.15 NMAC were relocated to 19.15.2 NMAC. The Division grouped parts
27 addressing administrative requirements such as reports and forms, well operator
28 provisions, and financial assurance together; parts addressing drilling and production
29 together; parts addressing releases and remediation together; and parts addressing waste
30 disposal together.
31

32 4. While rearranging the rules for the Commission's consideration, the Division made
33 the following non-substantive changes. If rules were written in passive voice they were
34 changed to active voice, so that that it is clear who the rule requires to comply with its
35 requirements. General definitions that are applicable to all Division rules, but which
36 were included in the body of individual sections were moved to 19.15.1.7 NMAC.
37 Definitions that are applicable to a particular part, but which were included in the body of
38 an individual section were moved to section 7 of that part. Under State Records Center
39 and Archives rules, section 7 of each part is to be used for definitions that apply solely to
40 that part. See Paragraph (7) of Subsection D of 1.24.10.8 NMAC.
41

42 5. In addition, the Division made the use of terms consistent throughout the parts. For
43 example, the current rules use both "division director" and "director". The term
44 "director" is defined. Therefore, all references to "division director" were changed to
45 "director". Other examples of the use of multiple terms that have the same meaning as
46 they are used in the rules are "OCD" and "division", "Oil Conservation Division" and

1 “division”, Bureau of Land Management” and “BLM”, “well operator” and “operator”,
2 “must” and “shall”, “standard cubic feet” and “cubic feet”, “bottom hole pressure” and
3 “subsurface pressure”, “input well” and “injection well”, “gas” and “natural gas”, “crude
4 oil” and “oil”, “public hearing” and “hearing”, “State Land Office” and “Commissioner
5 of Public Lands”, and “State of New Mexico” and “state”.
6

7 6. The definitions currently define “division” so all references to “OCD” and “Oil
8 Conservation Division” were changed to “division”. “BLM” is also defined so references
9 to the “Bureau of Land Management” were changed to “BLM”. “Operator” is defined
10 and includes well operators so references to “well operator” were changed to “operator”.
11 The Division changed “must” to “shall”, “public hearing” to “hearing”, “State of New
12 Mexico” to “state”, and “Commissioner of Public Lands” to “State Land Office”, “crude
13 oil” to “oil”, “input well” to “injection well”, and “natural gas” to “gas” throughout the
14 parts so that the same term would be used throughout the parts. The references to
15 “director” were changed to “commission chairman” in the rulemaking rule. The Division
16 also changed the references to “special pool rules” to “special pool orders” because they
17 are actually orders and not rules. Agencies must file rules with the State Records Center
18 and Archives.
19

20 7. The Division proposes to use and define the terms “tribal lands”, “tribal leases”, and
21 “tribal minerals”. Currently the Division’s rules contain the terms “Indian lands” and
22 “tribal lands” and “tribal minerals”. None of the terms is defined, however. Given that
23 the terms are used in rules requiring notice to the Bureau of Land Management, the terms
24 are intended to apply to those lands for which the federal government has a trust
25 responsibility to either a tribe or individual tribal member. The definitions clarify that
26 tribal lands, leases, or minerals are only those for which the federal government has a
27 trust responsibility and not to fee lands, minerals, or leases that a tribal member or tribe
28 owns that the federal government does not hold in trust.
29

30 8. The Division also proposes to clarify the meaning of “deliverability pressure” by
31 defining it in 19.15.21.7 NMAC. The term is currently used in Paragraph (21) of
32 Subsection B of 19.15.8.606 NMAC.
33

34 9. The Division proposes to remove references to the carbon black monthly report (see
35 Paragraph (19) of Subsection D of 19.15.3.1000, 19.15.3.1119 NMAC, and 19.15.6.404
36 NMAC in the current rules) from the rules because there are no carbon black plants in the
37 state. The Division has also removed most references in the rules to submitting
38 quadruplicate, triplicate, and duplicate copies of forms as these are generally no longer
39 applicable because usually multiple copies are not needed or the report is actually
40 submitted electronically.
41

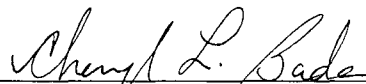
42 10. In addition, the Division proposes to remove transitional provisions that are
43 contained in the current 19.15.3.118 NMAC that are no longer needed. For example, see
44 Subparagraph (b) of Paragraph (4) of Subsection D of 19.15.3.118 NMAC. The Division
45 proposes to remove the reference to “one year after the effective date of this provision”
46 because the rule has been in effect for many years and all existing wells, facilities, or

1 operations should have a hydrogen sulfide contingency plan in place where required. See
2 also Subsection E of 19.15.3.118 NMAC.

3
4 **CONCLUSION**

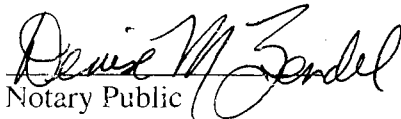
5
6 Rearrangement of the Division's rules allows the Division to address the State Records
7 and Archives Center's requirements that each part contain a specific subject matter and
8 not numerous different requirements in a comprehensive, planned manner rather than in a
9 piecemeal fashion. It also makes it easier to locate the requirements for each subject
10 matter since the current rules often contain provisions covering unrelated topics in the
11 same part, and requirements for a specific subject matter are sometimes located in more
12 than one part. It also provides the Division an opportunity to correct and update cross-
13 references. Therefore, the Division requests that the Commission adopt the
14 rearrangement of existing Division rules 19.15.1 through 19.15.15 NMAC and the
15 amendment of 19.15.17 NMAC and 19.15.36 NMAC as proposed in the Division's
16 application.

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18
19
20 I, Cheryl L. Bada, swear that the foregoing is true and correct.

21
22
23 

24 Cheryl L. Bada
25 Assistant General Counsel
26 New Mexico Energy, Minerals and Natural
27 Resources Department

28
29
30 Subscribed and sworn to before me this 12th day of August 2008, by Cheryl L. Bada.

31
32 
33 Notary Public

34
35
36 My commission expires:

37
38 01-09-2012
39

1.24.1 NMAC

TITLE 1 **GENERAL GOVERNMENT ADMINISTRATION**
CHAPTER 24 **RULES**
PART 1 **GENERAL PROVISIONS**

1.24.1.1 **ISSUING AGENCY:** New Mexico Commission of Public Records - State Records Center and Archives.
 [1.24.1.1 NMAC - N, 2/29/2000]

1.24.1.2 **SCOPE:** All state agencies.
 [1.24.1.2 NMAC - N, 2/29/2000]

1.24.1.3 **STATUTORY AUTHORITY:** The State Rules Act, Section 14-4-1 et seq. NMSA 1978.
 [1.24.1.3 NMAC - N, 2/29/2000]

1.24.1.4 **DURATION:** Permanent.
 [1.24.1.4 NMAC - N, 2/29/2000]

1.24.1.5 **EFFECTIVE DATE:** February 29, 2000 unless a later date is cited at the end of a section.
 [1.24.1.5 NMAC - N, 2/29/2000]

1.24.1.6 **OBJECTIVE:** The objective of this rule is to establish the general provisions for the rules filed in this chapter.
 [1.24.1.6 NMAC - N, 2/29/2000]

1.24.1.7 **DEFINITIONS:**

A. **"Agency"** means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches (Subsection A of Section 14-4-2 NMSA 1978).

B. **"Amendment"** means a change or modification to the existing text of a rule. An amendment can be no less than a section. A repeal of less than a part is an amendment.

C. **"Annotation"** means referenced material that is not part of the rule, located in brackets at the end of a section.

D. **"Chapter"** means the required NMAC designation for the normal division of a title. Chapter names and numbers are assigned by the records center, based upon the subject matter covered by agencies' rule filings. The chapter identifies distinct governmental functions, or subject-matter areas, usually, but not always, under the jurisdiction of a single agency.

E. **"Cited material"** means the source document from which the rule text was derived. The source document need not be consulted in order to determine what the rule is.

F. **"Compilation"** means the composition of filed rules into the New Mexico administrative code.

G. **"Duration"** means the length of time a rule is intended to be in effect, either permanent or for a set period of time. It is placed in the required NMAC section entitled DURATION.

H. **"Effective date"** means the date the rule goes into effect. It is placed in the required NMAC section entitled EFFECTIVE DATE. A rule's effective date cannot be earlier than the date of publication in the New Mexico register.

I. **"Emergency rule"** means a rule filing whose immediate implementation is necessary for the public peace, health, safety or general welfare.

J. **"Filing"** means the process by which one paper copy of a part or amendment, the corresponding electronic copy and the NMAC transmittal form are delivered to the records center and, if accepted by the records center, are date stamped and accessioned. See also "rule filing".

K. **"Filing date"** means the date a rule filing is date stamped by the records center.

L. **"History note"** means the required annotation of changes or repeals to a part or a section noted at the end of a modified section. At a minimum, this note contains the effective date of the original filing and the dates and identification numbers of any subsequent amendment(s), promulgation(s) and any repeal.

M. **"History of repealed material"** means the listing of repealed pre-NMAC or NMAC material that pertains to the subject matter of the part. The listing contains the pre-NMAC rule number or NMAC number and the name and the effective date of repeal for each repealed rule or part. It is placed in the history of the part.

N. **"History of the part"** means the material located after the last section of the part comprising pre-NMAC history and history of repealed material.

O. **"Incorporation by reference"** see "referenced material incorporated or adopted by rule".

P. **"Integrated part"** means a compiled part that incorporates amendments to sections of that part.

Q. **"Issuing agency"** means the agency that originally promulgated the rule, or its successor agency. It is listed in the required NMAC section entitled ISSUING AGENCY.

R. **"Issuing authority"** means the public official or employee of the issuing agency who is specifically authorized to approve the issuance of rules for that agency.

S. **"Name"** means the textual designation of a title, chapter, part or section.

T. **"New part"** means a part which did not previously exist in the New Mexico administrative code and where

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no pre-NMAC rules exist covering the same subject matter, or a complete replacement of an entire part and its amendments.

U. "NMAC" means the New Mexico administrative code, the organizing structure for rules filed by New Mexico state agencies. The NMAC is also the body of filed rules and the published versions thereof. The hierarchy of the NMAC is structured by title, chapter, part and section.

V. "NMAC table of contents" means the master list of approved NMAC titles maintained by the records center. It may also include chapter and part designations.

W. "Notice of rulemaking" means the advertisement published in the New Mexico register to provide public notice of an agency's intention to promulgate a rule(s) along with the date and time of hearings for the purpose of collecting public comment on the proposed rule(s).

X. "Number" means the numerical designations assigned to titles, chapters, parts and sections that combine to form a unique numerical designation for a rule. Numbers need not be sequentially assigned and intermediate ranges may be reserved.

Y. "Objective" means the purpose of the rule or the reason for its necessity. It is stated in the required NMAC section entitled OBJECTIVE.

Z. "Original filing" means the first filing of new rule material.

AA. "Part" means the required NMAC designation for the normal division of a chapter. A part consists of a unified body of rule material applying to a specific function or devoted to a specific subject matter. Structurally, a part is the equivalent of a rule.

BB. "Paragraph" means the normal division of a subsection and the sixth level of the NMAC hierarchy. Paragraphs are identified by a number within parentheses.

CC. "Pre-NMAC history" means the regulatory filing history (list) of filed rules, prior to converting to NMAC style and format, that provided the source material for the specific NMAC part. It contains the rule number, the rule name and the filing date for each listed rule.

DD. "Promulgation" means the public declaration of the adoption of an official and final rule.

EE. "Publication in the New Mexico register" means the process of publishing in the New Mexico register in accordance with 1.24.15 NMAC. The publication date is the date of the issue of the New Mexico register in which a rule appears.

FF. "Recompile" means the action of renumbering, reformatting and restructuring an existing rule without changing the text so that it complies with the current NMAC style and formatting requirements. Rules are recompiled for the convenience of using the NMAC website. The original filing remains the official version of the rule.

GG. "Records center" means the commission of public records, state records center and archives, the agency responsible for administering the State Rules Act, Section 14-4-1 et seq. NMSA 1978.

HH. "Referenced material incorporated or adopted by rule" means a source document that must be consulted in order to determine what the rule is, where such incorporated or adopted material is not stated in the rule.

II. "Reformat" means the application of adopted style and format requirements to current rules to conform to the NMAC structure promulgated by the records center.

JJ. "Renumbering" means the assignment of a new number to an existing chapter, part or section.

KK. "Repealer" means a rule filing which revokes or annuls an entire part.

LL. "Re-promulgation" means the filing of pre-existing rule material with the express intent that it continue in effect, or resume being in effect. This was done specifically pursuant to Subsection D of 14-4-7 NMSA 1978.

MM. "Reserved" means portions of the New Mexico administrative code (NMAC) with the word RESERVED in square brackets. Chapters, parts and sections may be reserved to hold space between lower numbered and higher numbered portions of the hierarchy, or may be reserved by agencies with the intent to write rule text in that area.

NN. "Restructuring" means the reformatting and reorganizing of the hierarchy of the NMAC by assigning new designations to existing rule material without altering the content of that material.

OO. "Rule" means any rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, issued or promulgated by an agency of state government and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, and as further defined in subsection C of Subsection 14-4-2 NMSA 1978 and Attorney General Opinion No. 93-1.

PP. "Rule filing" means the body of rule material organized for filing in accordance with Section 14-4-3 NMSA 1978 and 1.24.10 NMAC.

QQ. "Scope" means the extent of a rule's coverage. It identifies to whom the rule applies and whom it affects - for example, to the general public, for-profit corporations, public utilities, all state agencies, etc. It includes exclusions from coverage, and cross-reference to other parts of the NMAC which deal with the same or similar subject matter. It also indicates whether the rule is exhaustive of the subject area and whether other rules may apply. It is stated in the required NMAC section entitled SCOPE.

RR. "Section" means the required NMAC designation for the normal subdivision of a part. It has both a name and number, is the smallest filable unit of a rule filing and of the NMAC and is the fourth level of the NMAC hierarchy.

SS. "Statutory authority" means the statute or constitutional provision which authorizes the promulgation of rules concerning the topic of the part. In the absence of express legislative authority, statutory authority cites to the general legislative authority of the agency over the topic of the rule. It is stated in the required NMAC section entitled STATUTORY AUTHORITY.

TT. "Sub-paragraph" means the normal subdivision of a paragraph that is always the seventh level of the

NMAC hierarchy. Sub-paragraphs are identified by a lower case letter within parentheses.

UU. "Subsection" means the normal subdivision of a section and is always the fifth level of the NMAC hierarchy. A subsection is identified by a capital letter.

VV. "Synopsis" means a condensed version or outline of a rule.

WW. "Title" means the required NMAC designation for the major divisions of the NMAC. Each title brings together broadly related governmental functions and is the first level of the NMAC hierarchy. Titles shall be assigned by the records center.

XX. "Title case" means the style where the first letter of each significant word is capitalized.

YY. "URL" means the internet address of a web site.

ZZ. "U.S. law" means the United States code, the code of federal regulations, the federal register, New Mexico statutes, published portions of the NMAC and any material referenced therein.

[1.24.1.7 NMAC - Rp 1 NMAC 3.3.10.7 & 1 NMAC 3.3.15.7 & 1 NMAC 3.3.20.7, 2/29/2000; A, 6/30/2004]

[The most recent amendment includes definitions not previously promulgated.]

HISTORY OF 1.24.1 NMAC: [RESERVED]

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION
CHAPTER 24 RULES
PART 10 NEW MEXICO ADMINISTRATIVE CODE (NMAC)

1.24.10.1 ISSUING AGENCY: New Mexico Commission of Public Records - State Records Center and Archives.
 [1.24.10.1 NMAC - Rp 1 NMAC 3.3.10.1, 2/29/2000]

1.24.10.2 SCOPE: All state agencies. General provisions, including applicable definitions, are found in 1.24.1 NMAC. There are additional requirements on submitting a rule filing for publication in the New Mexico register (see 1.24.15 NMAC), for emergency rule filings (see 1.24.20 NMAC) and for transition to a new NMAC structure (see 1.24.11 NMAC).
 [1.24.10.2 NMAC - Rp 1 NMAC 3.3.10.2, 2/29/2000]

1.24.10.3 STATUTORY AUTHORITY: Section 14-4-7.2 NMSA 1978 directs the state records administrator to create and publish a New Mexico administrative code, and to adopt regulations setting forth procedures for compiling the code and prescribing the format and structure of the code. Section 14-4-3 NMSA 1978 directs that "...each agency of the executive branch of state government promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center."
 [1.24.10.3 NMAC - Rp 1 NMAC 3.3.10.3, 2/29/2000]
 [The attorney general's advisory letter dated November 16, 1999 provides guidance on public notice and publication requirements used in the development of 1.24.10 NMAC.]

1.24.10.4 DURATION: Permanent.
 [1.24.10.4 NMAC - Rp 1 NMAC 3.3.10.4, 2/29/2000]

1.24.10.5 EFFECTIVE DATE: February 29, 2000 unless a later date is cited in the history note at the end of a section.
 [1.24.10.5 NMAC - Rp 1 NMAC 3.3.10.5, 2/29/2000]

1.24.10.6 OBJECTIVE: The objective of this rule is to establish standards for uniform rule filings in an easily understood and common format. These standards are designed to ensure that rules are readily identifiable and available for public inspection; that each rule filing can be historically traced from its current status back to the original rule filing; and that rule filings are structured for expeditious compilation into the NMAC. The NMAC is designed to promote access and assist research by adopting a system for uniformly organizing state rules that facilitates fully searchable electronic access. Additionally, it is designed to facilitate electronic publication and availability via the internet.
 [1.24.10.6 NMAC - Rp 1 NMAC 3.3.10.6, 2/29/2000]

1.24.10.7 DEFINITIONS: [RESERVED]
 [1.24.10.7 NMAC - Rp 1 NMAC 3.3.10.7, 2/29/2000]
 [See 1.24.1.7 NMAC for applicable definitions]

1.24.10.8 NMAC STRUCTURE AND IDENTIFICATION:

A. The NMAC, a hierarchical structure, is divided into titles, chapters and parts, on the basis of subject matter. A title broadly organizes related governmental rule material in the first level of the hierarchy. The title is divided into chapters that identify distinct governmental functions. The chapter is divided into parts. The part relates to specific subject matter. It is at this level that rules are organized. The part is subdivided into sections. The section may be further subdivided into subsections, paragraphs and sub-paragraphs.

B. Each division of the NMAC through the section level shall have a name and number.

(1) The names and numbers of NMAC titles are listed in 1.24.10.26 NMAC, TABLE OF CONTENTS. Chapter names and numbers shall be assigned and maintained by the records center.

(2) The individual number of a title, chapter, part or section shall be expressed as a whole number. Titles shall be limited to two arabic digits; chapters shall be limited to three arabic digits; and parts and sections shall be limited to four arabic digits.

C. Subsections shall be indicated by at least one, but not more than three, upper-case alphabetic characters. Paragraphs are indicated by at least one, but not more than three, arabic digits within parentheses. Sub-paragraphs shall be indicated by at least one, but not more than three, lower-case alphabetic characters within parentheses.

D. The part name and number shall be assigned by the filing agency and subject to approval by the records center.

(1) The part names shall be descriptive and not exceed 120 characters. Agencies shall use names that provide adequate notice of the nature and content of the part.

(2) The individual part number shall not exceed four arabic digits and shall not include dashes or alphabetic characters.

(3) "Part 1" of each chapter shall be used or reserved for the general provisions that apply to all the parts in

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that chapter.

E. At the beginning of each part, an agency shall identify the part by title number and name, chapter number and name, and part number and name.

F. The first seven sections of each part shall state:

- (1) Section 1 - name of the issuing agency in a section entitled "ISSUING AGENCY";
- (2) Section 2 - the scope of the part in a section entitled "SCOPE";
- (3) Section 3 - the statutory authority under which a part is issued, in a section entitled "STATUTORY

AUTHORITY";

(4) Section 4 - the intended duration of the part in a section entitled "DURATION";

(5) Section 5 - the effective date of the part in a section entitled "EFFECTIVE DATE";

(6) Section 6 - the objective of the part in a section entitled "OBJECTIVE";

(7) Section 7 - the definitions that apply just to the part in a section entitled "DEFINITIONS." If there are no definitions for the part, Section 7 shall be reserved i.e. [RESERVED]. An annotation to general provisions may be included.

G. Section 8, and all subsequent sections, shall encompass the body of rule material specific to the part.

H. A section has both a name and number assigned by the promulgating agency. Each section shall be identified at the beginning by the full NMAC number (title number, followed by a period, chapter number, followed by a period, part number, followed by a period and the section number) followed by the name of the section. Example: Section 12 of this part is 1.24.10.12 STYLE

I. A section may be divided into subsections. Subsections may be used to further group similar paragraphs.

J. A paragraph is a unit of grammatical, tabular or other discrete, organized information that may be, although not advisably, divided into further units.

[1.24.10.8 NMAC - Rp 1 NMAC 3.3.10.15, 2/29/2000; A, 6/30/2004]

1.24.10.9 NMAC CITATION:

A. The format for full citation of material contained in the NMAC shall be the name of the part, followed by a comma, a space, the name of the issuing agency, followed by a comma, a space, the title number, followed a period, the chapter number, followed by a period, the part number, followed by a period, the section number, a space and the initials "NMAC." The citation shall be followed by the effective date in parentheses. Example: Disclosure of Taxpayer Information, New Mexico Taxation and Revenue Department, 3.1.3.8 NMAC (10/31/1996)

B. A modified full citation where the name of the issuing agency is omitted from the citation may be used. Example: Disclosure of Taxpayer Information, 3.1.3.8 NMAC (10/31/1996)

C. The short-form citation of the NMAC is the title, chapter, part and section number separated by periods and followed by "NMAC". Example: 3.1.3.8 NMAC

D. Where a provision has been amended, the effective date shall be the effective date of the version that is being cited.

E. Where reference is to the whole part, the reference date shall be the original effective date together with the date of last amendment, i.e., (7/1/94 as amended through 1/1/2000.)

F. Where citation below the level of a section is desired, designations below the section shall precede the citation. Example: Subsection A of 3.1.3.8 NMAC.

[1.24.10.9 NMAC - Rp 1 NMAC 3.3.10.8, 2/29/2000; A, 6/30/2004]

1.24.10.10 ISSUING AUTHORITY:

A. The issuing authority is responsible for ensuring compliance with the requirements set forth in this part.

B. Where delegation is authorized, the agency may, by rule or formal appointment, specify an issuing authority other than that named in statute. The agency shall forward, in writing, the title, name and signature of the designee to the state records administrator. The agency shall notify, in writing, the state records administrator of any change in the designation. Designation shall only be made by the issuing authority. Formally appointed designees are not allowed to appoint other designees.

C. The records center shall not accept a rule filing signed by other than the issuing authority, or a formally appointed designee.

[1.24.10.10 NMAC - Rp 1 NMAC 3.3.10.9, 2/29/2000; A, 6/30/2004]

1.24.10.11 WHAT CONSTITUTES A RULE:

A. Agency directives that affect persons outside the agency or have significant indirect affect upon such persons are rules.

B. Manuals of procedure may contain material that affects other state agencies, the public or agency clients. Such material shall be filed as a rule. If it cannot be separated from other material, the entire manual shall be filed. Agencies are encouraged to separate rule material even if it is later included in a manual of procedure.

C. Procedures for public hearings and open meetings shall be filed as a rule.

D. Contracts, requests for proposals (RFPs) or requests for information (RFIs), including form contracts, are not rules; however, agencies may issue rules that require contractual terms.

E. Materials specifically exempted by statute from the State Rules Act are not rules.

F. Computations of annual assessments based on rule or statute are not rules - i.e., tax tables.

G. Minutes of meetings are not rules.

[1.24.10.11 NMAC - N, 2/29/2000; A, 6/30/2004]

[See Section 14-4-4 NMSA 1978 and Attorney General's Opinion 93-1 for more on the definition of a rule.]

1.24.10.12 STYLE:

A. Style shall be guided by relevant portions of the current edition of the legislative drafting manual of the New Mexico legislature published by the New Mexico legislative council service. The following provisions are specifically adopted.

(1) Chapter 4, Bill Drafting, the portion dealing with brackets, line-through and underscoring shall apply to proposed amendments and amendments for publication in the New Mexico register. This style shall not be applied to the integrated part.

(2) Chapter 7, Legislative Style and Language Provisions, except for the portion dealing with numbers, formulas and charts.

(3) Figures and symbols may represent amounts of money. It is not necessary to spell out the number.

B. Special symbols shall be avoided and the common abbreviation or full spelling used instead. For example, deg. for degree and lbs. for pounds.

C. No rule filing shall be typed in all capital letters.

D. Indentions shall be standardized as follows.

(1) Section numbers shall be flush with the part's one-inch margin.

(2) One tab shall be used to indent the first line of a subsection. Tab once after the subsection designation before beginning the text.

(3) Paragraphs shall be indented 20 spaces. Do not use tabs.

(4) Subparagraphs shall be indented 30 spaces. Do not use tabs.

(5) After the numeric or alphabetic designation for a paragraph or subparagraph, indent five spaces before the beginning of the text.

(6) Automatic indents are not permitted.

E. Sections shall be clearly separated.

F. The name of the issuing agency in Section 1 and in full citation shall be typed in title case.

G. The first page of a new part or integrated part shall begin with the title, chapter and part numbers and names. The information shall be flush with the document's one-inch margin and typed in bold capital letters. Example:

TITLE 3 TAXATION

CHAPTER 1 TAX ADMINISTRATION

PART 3 DISCLOSURE OF TAXPAYER INFORMATION

H. Use of tables is permissible but shall be used sparingly because tables may cause difficulties in the rule filing process and may increase publication costs. The agency shall be guided by the following when using tables.

(1) Tables shall be in portrait orientation.

(2) Text in tables shall be Times New Roman, 10-point font.

I. No rule filing shall contain footnotes.

[1.24.10.12 NMAC - N, 2/29/2000; A, 6/30/2004]

1.24.10.13 ELECTRONIC STANDARDS:

A. Electronic storage media for rule filings shall be one of the following:

(1) diskette shall be 3.5 inches IBM format, high density;

(2) CD-ROM, IBM format; or,

(3) Zip disk, IBM format.

B. For rule filings, the electronic format shall be *MS Windows* version of *MS Word* software using Times New Roman, 10-point font, normal style.

C. Special coding, such as hanging indents, automatic tabbing, automatic numbering, body text style, non-breaking hyphens, automatic tracking, etc. shall not be used.

D. Use of images shall be limited. If necessary, they shall be included in the electronic version of the document as GIF or PDF files.

[1.24.10.13 NMAC - Rp 1 NMAC 3.3.10.13, 2/29/2000; A, 6/30/2004]

1.24.10.14 PAPER VERSION STANDARDS:

A. Paper:

(1) Output shall be produced from, and not vary from, the electronic version of the rule filing.

(2) Size shall be 8.5 x 11 inches.

(3) Weight shall be a minimum of 20-lb. bond or copier paper.

(4) Color shall be white.

B. Ink: Color shall be black and uniform throughout.

C. Binding: Rule filings shall be unbound and consist of individual sheets.

D. Page Layout:

(1) A rule filing shall be single-spaced with double spacing between sections.

- (2) The original paper version of a rule filing shall be single-sided.
- (3) Margins shall be a minimum of one inch on all four sides, excluding the footer.
- (4) Tabs shall be set at 0.5 inches.
- (5) The word processing document shall have a footer for page identification which shall appear at the

midpoint within the one-inch margin on the foot of every page. The footer shall contain the NMAC number down through the part number in the bottom left corner of the footer. The page number shall be located at the bottom right corner of the footer.

[1.24.10.14 NMAC - Rp 1 NMAC 3.3.10.13, 2/29/2000; A, 6/30/2004]

1.24.10.15 NMAC TRANSMITTAL FORM:

- A. Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in both hard copy and electronic format.
- B. The records center shall provide agencies with blank NMAC transmittal forms in electronic format.
- C. The filing agency shall complete the NMAC transmittal form prior to filing.
- D. The NMAC transmittal form shall not be handwritten and shall be suitable for reproduction.
- E. The following shall appear on the NMAC transmittal form:
 - (1) issuing agency name;
 - (2) three digit DFA account code for the agency (if applicable);
 - (3) issuing agency mailing address;
 - (4) contact person's name, phone number, fax number and e-mail address;
 - (5) type of filing - i.e., new, amendment, renumber, repeal or emergency filing;
 - (6) total number of pages;
 - (7) date(s) of any public hearing(s) on the proposed rule or amendment;
 - (8) effective date of the rule filing (cannot precede publication in the New Mexico register unless it is an emergency rule);
 - (9) NMAC name and number;
 - (10) description of amendment;
 - (11) most recent filing date of the part (if applicable);
 - (12) declaration of incorporated material;
 - (13) if reference materials are attached and are protected by copyright:
 - (a) indication if copyright permission was obtained;
 - (b) the proof of permission; or
 - (c) material is within the definition of public domain;
 - (14) legal citation(s) that grants the issuing agency the authority to promulgate rules on the subject area; and
 - (15) legal citation(s) that specifies who can authorize the rule in the agency.
- F. Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked.

[1.24.10.15 NMAC - Rp 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004]

1.24.10.16 FILING A RULE:

- A. At the time of filing the filing agency shall present:
 - (1) one paper and one electronic version of the completed NMAC transmittal form;
 - (2) one paper and one electronic version of the text of the rule or amendment;
 - (3) one electronic version of the integrated part (if filing an amendment);
 - (4) one electronic version of the billing information sheet; and
 - (5) one copy of the purchase document.
- B. Other material to be published in the New Mexico register in conjunction with promulgation of the rule or amendment shall be delivered to the records center at the time of filing. Examples include synopses, short-form publication, conversion tables and summaries of public comment.
- C. At the time of filing, an agency may submit to the records center an additional paper copy, for annotation on the first page of the rule with the date and hour of filing, to be returned to the agency (Section 14-4-3 NMSA 1978).
- D. If a short-form publication or synopsis is made in accordance with the requirements of 1.24.15 NMAC, the full text of the rule shall be submitted as part of the rule filing. The full text shall be published in the NMAC at no additional cost to the agency.
- E. No rule shall be valid and enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. If properly submitted and not published as a result of error, the rule shall be deemed to have been published three weeks after filing with the records center (Sections 14-4-3 and 14-4-5 NMSA 1978).

[1.24.10.16 NMAC - Rp 1 NMAC 3.3.10.10, 2/29/2000; A, 6/30/2004]

1.24.10.17 REJECTED RULE FILINGS:

- A. The records center shall refuse to file written material if it is not a rule as defined in 1.24.1.7 NMAC or if the materials submitted for rule filing do not conform to the style and format requirements detailed in 1.24.10 NMAC.
 - (1) Materials that are not rules may be filed as a publications.

(2) Rule filings that do not conform to style and format requirements shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

B. The records center shall identify material previously filed as a rule but not conforming to the definition of a rule. The material shall be removed from the rules collection and rule history database with thirty days written notice to the affected agency.

C. If an affected agency finds it previously filed material as a rule that does not conform to the definition of a rule, that agency shall notify the records center in writing. If the record center agrees the material does not conform to the definition of a rule, the material shall be removed from the rules collection and the rule history database within thirty days of receiving the notice.

[1.24.10.17 NMAC - N, 2/29/2000; A, 6/30/2004]

1.24.10.18 AMENDMENTS TO AND REPEALS OF EXISTING RULES:

A. Amendments to the part shall be prepared by the agency in such a manner as to provide for full- section addition, substitution or deletion. Parts shall only be amended by replacement, deletion or addition of whole sections. Deleting, replacing or adding words and sentences to a section shall be accomplished by replacement of the whole section.

(1) If a section contains entirely new material, unrelated to the material formerly contained in the section with the same NMAC number, then the former section shall be repealed. The repeal shall be identified within the history note at the end of the section with the appropriate notation (see 1.24.10.20 NMAC).

(2) An addition of a new section is an amendment to the part.

(3) If an entire part is being amended rather than repealed, the history notes shall reflect changes only in those sections in which there have been changes, including sections that are only renumbered.

(4) The first sentence on the first page of the text of an amendment shall state, "This is an amendment to (insert appropriate title number, chapter number, part number) NMAC, Section (insert the section number of the amended sections), effective (insert appropriate effective date)."

(5) For clarity, agencies may precede the text of an amendment with an explanatory paragraph to be published in the New Mexico register but which shall not be part of the rule.

B. Repeals shall be done by the issuing agency at the part level by identifying an expiration in the duration section of the part or by issuing a repealer. If less than a full part is being repealed, the rule filing shall be treated as an amendment. If other parts are affected by the repeal, they shall be amended as appropriate.

(1) If a part has been entirely rewritten and restructured so that a detailed section by section comparison is not possible, the agency may repeal the existing part and issue a new part with either the same or new part number. Where a new part number is used, an agency may record a reference to the pre-existing part in the historical note of the new part.

(2) The history note shall reflect the original NMAC effective date and number. When a part has been entirely repealed its history shall be reflected in the history of the part, which shall remain in the NMAC.

(3) Once a part number has been used in the NMAC, the history of the part shall continue to contain all NMAC history for that part, regardless of repealers.

C. Superseding rule filings are not permitted. This activity shall be handled through amendment of the part or by repeal and replacement of the part.

[1.24.10.18 NMAC - Rp 1 NMAC 3.3.10.12, 2/29/2000; A, 6/30/2004]

1.24.10.19 ERRORS IN THE NEW MEXICO ADMINISTRATIVE CODE:

A. Agencies may report errors at any time. Differences detected between the official and compiled rules shall be reported to the records center, in writing, as soon as possible.

B. The records center shall effect correction of differences detected in the NMAC as soon as possible.

C. In instances where there is a difference between the filed rule and the NMAC, the filed rule prevails.

D. If the filed rule is in error it shall be corrected by agency amendment.

[1.24.10.19 NMAC - N, 2/29/2000]

1.24.10.20 HISTORY NOTE: History notes facilitate the use of the NMAC and track the historical development of a rule provision.

A. There shall be a history note appended at the end of each section.

B. The history note shall contain the original effective date of sections filed after the implementation of NMAC. It shall also detail all subsequent amendments and number changes by section. Standard notations identified in this section shall be used to minimally identify the types of modifications made to sections.

(1) History shall appear in chronological sequence in brackets at the end of each section. A semicolon shall separate each significant change noted in the sequence of a section's history. Significant changes are: an amendment; a section number or name change; and an insertion of new rule material at a section number where previously repealed material had been located. Minimum dates required for each change are:

(a) effective date of new material;

(b) effective date of amended sections;

(c) effective date of repealed material; and

(d) effective date of the change to section numbers and names.

(2) If the section has been amended, note the new effective date and the nature of changes if possible. If the

section has been renumbered, list the former number and the effective date of change.

(3) Agencies shall provide information, in addition to dates, in the history using the following system: Identify the short form of the affected part or section followed by a space, a dash, a space and then the letter or combination of letters identifying the type of change. The last date in a series indicates the date of the last change to the section. Use:

- (a) "A" for amendment, followed by a comma, a space and the effective date of amendment;
- (b) "Re-pr" for re-promulgated, followed by a comma, a space and the effective date of re-promulgation;
- (c) "Rp" for replaced, followed by a comma, followed by the short form citation of the rule replaced, followed by a comma, a space and the effective date of replacement;
- (d) "Rn" for renumbered, followed by a comma, the former number, a space and the effective date of renumbering; and
- (e) "N" for new, followed by a comma, a space and the effective date of the new material;
- (f) "Repealed" for a section that is deleted and not replaced, followed by a comma, a space and the effective date of the deletion; and
- (g) "E" for an emergency filing, in combination with the appropriate action code and a slash (/).

C. The history note is not part of the rule.

[1.24.10.20 NMAC - Rp 1 NMAC 3.3.10.15.11.1 through 1 NMAC 3.3.10.15.11.3, 2/29/2000; A, 6/30/2004]

1.24.10.21 HISTORY OF THE PART

A. **Pre-NMAC history** is the first division of the history of the part and shall contain the pre-NMAC development of the rule material included in the part. The records center may add this material in brackets where it has not previously been part of the NMAC.

B. **History of repealed material** is the second division of the history of the part and shall contain repeals of NMAC parts or sections in full.

(1) When a section is repealed and not replaced, using the short form, followed by a space, a dash, a space, and then the word "repealed", a comma, a space and the effective date of the repeal.

(2) When only a section is repealed, and replaced, that history remains in the history note.

(3) When a part is repealed, the history of the part shall identify the part using the short form and the name, followed by a space, a dash, a space, the word "repealed", a comma, a space, and the effective date of the repeal. The history of repealed material shall be retained in the NMAC.

[1.24.10.21 NMAC - Rp 1 NMAC 3.3.10.15.11.1 & 1 NMAC 3.3.10.15.11.4, 2/29/2000]

1.24.10.22 MATERIAL REFERENCED IN RULES:

A. The source of material, which is fully included in the text of the rule, may be given as a citation. Where there is no intent to include in the rule additional material by incorporation from the cited reference, the source material need not be attached.

B. Referenced material (including standards, codes and manuals) incorporated or adopted by rule must be filed as part of that rule which may be accomplished by attachment.

(1) Referenced material that has been formally published does not need to meet style and format requirements of 1.24.10 NMAC. A copy of this formally published material must be filed.

(2) Other attachments must meet all style, format and filing requirements, including provision of an electronic copy, unless an exception has been granted pursuant to 1.24.10.24 NMAC.

(3) References to U.S. law shall be deemed to be references to the current version of such law, including subsequent amendments, unless otherwise expressly stated in the rule. References to U.S. law do not require submittal or a copy. In lieu of submitting a paper copy of these references, the issuing authority shall on the NMAC transmittal form list the references and internet site. This information shall be verified by the records center at the appropriate internet site to ensure access is available to users of the NMAC. If an internet site is not available or cannot be located, one paper copy of the attachment shall be filed with the rule for historical reference.

(4) Referenced material, other than U.S. law (including material referenced in New Mexico statutes or the NMAC), shall be the version filed with or referenced by the rule and shall not include any subsequent amendments or changes to the referenced material, unless otherwise expressly stated in the rule.

C. Referenced material that is not incorporated in the rule may be referenced in either the text or in an annotation. Annotations are not part of the rule.

[1.24.10.22 NMAC - Rp 1 NMAC 3.3.10.17.1 & 1 NMAC 3.3.10.17.2, 2/29/2000; A, 6/30/2004]

1.24.10.23 **REFERENCES TO COPYRIGHTED MATERIAL:** If an agency chooses to incorporate copyrighted material into a rule, it shall receive permission from the copyright holder prior to such incorporation. Such permission shall include the right to incorporate such material into the NMAC and to have such material subject to the laws, rules and contractual obligations of the state with respect to the NMAC. Any costs for such permission shall be the responsibility of the incorporating agency. A copy of such copyright permission shall be submitted with the filing. Failure to provide copyright permission shall result in rejection of the rule filing.

[1.24.10.23 NMAC - Rp 1 NMAC 3.3.10.17.3, 2/29/2000]

1.24.10.24 EXCEPTIONS: Exceptions to any provision of 1.24.10 NMAC shall be requested in writing to the state records administrator and may be approved by the state records administrator on a filing-by-filing basis.

[1.24.10.24 NMAC - Rp 1 NMAC 3.3.10.18, 2/29/2000]

1.24.10.25 PROCEDURE FOR APPROVAL OF NEW CHAPTERS AND PARTS:

A. If a chapter on a specific subject does not exist in the NMAC hierarchy, an agency may send a written request to the state records administrator for the creation of a new chapter. If the state records administrator approves the request, a new chapter will be created in the NMAC.

B. In order to avoid any delay in filing a rule, agencies shall submit, in writing, proposed part names and numbers to the administrative law division of the records center. The administrative law division of the records center shall approve or reject proposed part names and numbers within two weeks or shall notify the agency of further delay in approval. When the administrative law division of the records center rejects part names and numbers, it shall propose alternative names and numbers for submitted parts and state the reason why the proposed names and numbers were unsatisfactory.

[1.24.10.25 NMAC - Rp 1 NMAC 3.3.10.20, 2/29/2000; A, 6/30/2004]

1.24.10.26 NMAC TABLE OF CONTENTS:

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- 9 Human Rights
- 10 Public Safety and Law Enforcement
- 11 Labor and Workers' Compensation
- 12 Trade, Commerce and Banking
- 13 Insurance
- 14 Housing and Construction
- 15 Gambling and Liquor Control
- 16 Occupational and Professional Licensing
- 17 Public Utilities and Utility Services
- 18 Transportation and Highways
- 19 Natural Resources and Wildlife
- 20 Environmental Protection
- 21 Agriculture and Ranching
- 22 Courts

[1.24.10.26 NMAC - Rp 1 NMAC 3.3.10.21, 2/29/2000]

HISTORY of 1.24.10 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

SRC Rule 67-13, Style and Format for State Rules, 12/15/67

SRC Rule 70-2, Style and Format for State Rules, 7/1/70

SRC Rule 71-1, Style and Format for State Rules, 5/3/71

SRC Rule 74-1, State Rules Format and Style, 4/8/74

SRC Rule 79-2, State Rules Format and Style, 2/7/79

SRC Rule 79-3, State Rules: Format, Style and Filing Requirements, 6/21/79

SRC Rule 81-3, State Rules: Format, Style and Filing Requirements, 6/1/81 as amended through 6/16/95.

History of the Repealed Material:

SRC 67-13 Style and Format for State Rules - Superseded, 7/1/70

SRC 70-2 Style and Format for State Rules - Superseded, 5/3/71

SRC Rule 71-1 Style and Format for State Rules - Superseded, 4/8/74

SRC Rule 74-1 Style and Format for State Rules - Superseded, 2/7/79

SRC Rule 79-2 Style and Format for State Rules - Superseded, 6/21/79

SRC Rule 79-3 State Rules: Format, Style and Filing Requirements - Superseded, 6/1/81

SRC Rule 81-3 State Rules: Format, Style and Filing Requirements - Repealed, 1/1/96

1 NMAC 3.1 New Mexico Administrative Code - Repealed, 7/1/96

1 NMAC 3.3.10 New Mexico Administrative Code - Repealed, 2/29/2000

Bada, Cheryl, EMNRD

From: Macquesten, Gail, EMNRD
Sent: Wednesday, December 13, 2006 1:29 PM
To: Jim Bruce (JamesBruc@aol.com); Ocean Munds-Dry (Omundsdry@hollandhart.com); Pete Domenici Jr. (pdomenici@domenicilaw.com); Scott Hall (shall@mstlaw.com); Thomas Kellahin; William F. Carr (wcarr@hollandhart.com); Jim Bruce (JamesBruc@aol.com)
Cc: Bada, Cheryl, EMNRD
Subject: Proposed rulemaking
Attachments: TABLE OF RULES Draft 11-7-06 (2).doc

Counsel-

Cheryl Bada and I are working on revising OCD's rules.

Our first proposal is to re-organize the existing rules to give them a clear structure. The goal is to make the rules easier to use. For example, the title of each "Part" should lead the reader to the information relevant to that title. In addition, we hope to make better use of the structure that is available to us under the NMAC system. We can use up to 39 "Parts" but right now all our rules are crowded into 15 "Parts."

Please take a look at the draft "Table of Rules," attached. We propose to file an application for rulemaking, asking the Commission to re-number the rules as indicated in the table, and to change all rule references and cross-references in the rules to match the new numbering. If these changes are adopted, the OCD would also change its forms and publications so the rule references match the new numbering system.

This is a major undertaking. Because it is so complicated, we propose to limit this particular rulemaking proceeding to the re-organization issues, and not include substantive changes. We realize that OCD's rules need substantive revision, but we propose to address the substantive issues after the structural issues are resolved.

We welcome your comments and suggestions. Please send any comments or suggestions to me or to Cheryl Bada.

Thanks. Gail MacQuesten, OCD Attorney. 505 476-3451

7/31/2007

*Application for
Repeal, Replacement
And Amendment
OCD Exhibit No. G-3*

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Bada, Cheryl, EMNRD

From: Macquesten, Gail, EMNRD
Sent: Tuesday, July 15, 2008 10:43 AM
To: Bada, Cheryl, EMNRD
Subject: email to OCD folks, with Will Jones' response

From: Jones, William V., EMNRD
Sent: Wednesday, December 13, 2006 1:23 PM
To: Macquesten, Gail, EMNRD
Subject: RE: Rule reorganization
Hello Gail:
Glad you are doing this.

The "notice" references in current Rule 104 is currently to Rule 1207 when it should be to Rule 1210.

Will

From: Macquesten, Gail, EMNRD
Sent: Wednesday, December 13, 2006 11:17 AM
To: EMNRD-OCD - ARTESIA; EMNRD-OCD - AZTEC; EMNRD-OCD - HOBBS; EMNRD-OCD - SANTA FE
Cc: Bada, Cheryl, EMNRD
Subject: Rule reorganization

Hello All -- Cheryl Bada and I are working on revising OCD's rules.

The first step is to re-organize the existing rules so we have a clear structure. The goal is to make the rules easier to use -- the title of each "Part" should lead the reader to the information relevant to that title. In addition, we hope to make better use of the structure that is available to us under the NMAC system. We can use up to 39 "Parts" but right now all our rules are crowded into 15 "Parts."

Please take a look at the proposed "Table of Rules," attached. We propose to renumber the rules as indicated in the table, and change all rule references and cross-references in the rules to match the new numbering. This re-organization will require a rulemaking hearing. If the changes are adopted, we will also need to work on our forms and publications so their references match the new numbering.

This is a major undertaking. Because it is such a major change, we intend to limit the rulemaking proceeding to the re-organization issues, and not include substantive changes at this time. We can work on substantive changes after we have the new structure in place.

Please send any comments to me or to Cheryl Bada, Commission Attorney. We would appreciate hearing from you by Thursday, Dec. 21 if at all possible.

Thanks - Gail

*Application for
Repeal, Replacement
And Amendment
OCD Exhibit No. G-4*

7/15/2008

Attachments: 19 15 2 dz 06-14-07.doc; 19 15 3 dz 06-14-07.doc; 19 15 4 dz 06-04-07.doc; 19 15 5 dz 06-14-07.doc; 19 15 6 dz 06-14-07.doc; 19 15 7 dz 06-18-07.doc; 19 15 8 dz 06-18-07.doc; 19 15 9 dz 06-18-07.doc; 19 15 10 dz 06-18-07.doc; 19 15 11 dz 06-22-07.doc; 19 15 12 dz 06-20-07.doc; 19 15 13 dz 06-20-07.doc; 19 15 14 dz 06-20-07.doc; 19 15 15 dz 06-20-07.doc; 19 15 16 dz 06-20-07.doc; 19 15 18 dz 07-02-07.doc; 19 15 19 dz 06-26-07.doc; 19 15 20 dz 07-10-07.doc; 19 15 21 dz 07-02-07.doc; 19 15 22 dz 06-26-07.doc; 19 15 23 dz 06-26-07.doc; 19 15 24 dz 07-02-07.doc; 19 15 25 dz 07-02-07.doc; 19 15 26 dz 07-02-07.doc; 19 15 27 dz 07-02-07.doc; 19 15 30 dz 07-02-07.doc; 19 15 29 dz 07-02-07.doc; 19 15 34 dz 07-02-07.doc; 19 15 35 dz 07-02-07.doc; 19 15 36 dz 07-10-07.doc; 19 15 37 dz 07-02-07.doc; 19 15 39 dz 07-02-07.doc

From: William Carr [mailto:WCarr@hollandhart.com]

Sent: Monday, October 01, 2007 3:01 PM

To: A Giles; aalexander@br-inc.com; bill.duncan@exxonmobil.com; Bob Gallagher; Brenda Waller; Bruce Gantner; Chris Wyatt; cmoran@ypcnm.com; Corley; dan_mccright@eogresources.com; Dale Malody; dgirand@mackenergycorp.com; Darrell Gillen; Dean Chumbley; Debbie Beaver; seligman@nmoga.org; Elizabeth Bush-Ivie; F Schilling; Frank Krugh; hawkinj2@bp.com; J Ball; J Clark; Jason Sandel; Jimmy C; Kitty Wood; Kristen Howell; Linda Guthrie; M Hazlip; Manther; Markm; Michael Feldewert; Misty McLurg; Ocean Munds-Dry; POwen@PureResources.com; Patrick Josey; Paul Hagemeyer; ppearce@br-inc.com; randyp@ypcnm.com; rjsa; S Small; Sally K; Sam Sitton; Sharon R. Zubrod; ssabol; Todd; Walter Dueeae; William Carr; Yolanda Perez

Cc: Leach, Carol, EMNRD; Bada, Cheryl, EMNRD

Subject: FW: OCD Rule Reorganization

The Oil Conservation Division is proposing to reorganize its rules. Anyone who has tried to work with these rules will understand that they are poorly organized and very hard to work with.

Attached are drafts of reorganized rules. The Division has requested that I provide copies to you as a member of the NMOGA Regulatory Practices Committee. They are interested in receiving our input - either collectively or individually - and ask that any comments be sent to Cheryl Bada at the Energy, Minerals and Natural Resources Department. The Division is not attempting to rewrite the rules - only reorganize them. The only new items are the definitions of tribal lands, leases and minerals and the new section at the end of Part 2 that addresses compliance with reorganization and renumbered rules.

Bill Carr

This inbound email has been scanned by the MessageLabs Email Security System.

Attachments: 19 15 2 dz 06-14-07.doc; 19 15 3 dz 06-14-07.doc; 19 15 4 dz 06-04-07.doc; 19 15 5 dz 06-14-07.doc; 19 15 6 dz 06-14-07.doc; 19 15 7 dz 06-18-07.doc; 19 15 8 dz 06-18-07.doc; 19 15 9 dz 06-18-07.doc; 19 15 10 dz 06-18-07.doc; 19 15 11 dz 06-22-07.doc; 19 15 12 dz 06-20-07.doc; 19 15 13 dz 06-20-07.doc; 19 15 14 dz 06-20-07.doc; 19 15 15 dz 06-20-07.doc; 19 15 16 dz 06-20-07.doc; 19 15 18 dz 07-02-07.doc; 19 15 19 dz 06-26-07.doc; 19 15 20 dz 07-10-07.doc; 19 15 21 dz 07-02-07.doc; 19 15 22 dz 06-26-07.doc; 19 15 23 dz 06-26-07.doc; 19 15 24 dz 07-02-07.doc; 19 15 25 dz 07-02-07.doc; 19 15 26 dz 07-02-07.doc; 19 15 27 dz 07-02-07.doc; 19 15 30 dz 07-02-07.doc; 19 15 29 dz 07-02-07.doc; 19 15 34 dz 07-02-07.doc; 19 15 35 dz 07-02-07.doc; 19 15 36 dz 07-10-07.doc; 19 15 37 dz 07-02-07.doc; 19 15 39 dz 07-02-07.doc

From: William Carr [mailto:WCarr@hollandhart.com]

Sent: Monday, October 01, 2007 3:01 PM

To: A Giles; aalexander@br-inc.com; bill.duncan@exxonmobil.com; Bob Gallagher; Brenda Waller; Bruce Gantner; Chris Wyatt; cmoran@ypcnm.com; Corley; dan_mccright@eogresources.com; Dale Malody; dgirand@mackenergycorp.com; Darrell Gillen; Dean Chumbley; Debbie Beaver; seligman@nmoga.org; Elizabeth Bush-Ivie; F Schilling; Frank Krugh; hawkinj2@bp.com; J Ball; J Clark; Jason Sandel; Jimmy C; Kitty Wood; Kristen Howell; Linda Guthrie; M Hazlip; Manther; Markm; Michael Feldewert; Misty McLurg; Ocean Munds-Dry; POwen@PureResources.com; Patrick Josey; Paul Hagemeyer; ppearce@br-inc.com; randyp@ypcnm.com; rjsa; S Small; Sally K; Sam Sitton; Sharon R. Zubrod; ssabol; Todd; Walter Dueease; William Carr; Yolanda Perez

Cc: Leach, Carol, EMNRD; Bada, Cheryl, EMNRD

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Bill Carr

This inbound email has been scanned by the MessageLabs Email Security System.

*Application for
Repeal, Replacement
And Amendment
OCD Exhibit No. G-5*