**VPMD Exhibit 6**
**Staff Proposed Floor Amendments**

These amendments are proposed chiefly to remove any remaining references to the "VPMD Procedures Manual (Amended 8/1/1997)" or the Draft VPMD Procedures Manual (May, 2011). As stated in the Statement of Reasons, filed April 25, 2011:

> 'Referenced within the current Part 100 and incorporated as law, and made enforceable, (20.11.12 NMAC[sic]) is the Procedures Manual, which was last revised 1995. The Procedures Manual is significantly outdated . . . It is inconsistent with Part 100 . . . VPMD moved necessary regulatory language that was contained in the Procedures Manual to the proposed amended Part 100. It is VPMD's intent to have only a technical guidance document that is, basically, a handbook for air care stations and operators. All regulatory language that provides the basis of enforcement, as well as the enforcement processes itself, must be fully provided in Part 100 . . . all pertinent enforcement, penalty assessment and hearing procedures have been moved nearly verbatim from the Procedure Manual to Part 100. It is VPMD's desire, with concurrence of its counsel, to abandon the Procedures Manual as an incorporated and referenced additional regulation. A future handbook or a technical guidance manual that reinforces the air care station knowledge in executing valid emission testing can be created apart from the notice and comment rulemaking procedures of the Board, as long as the document lacks any binding legal effect. This position is supported by case law involving federal regulatory agencies. The change of the character of the Procedures Manual is explained in the proposed amended Part 100 at 20.11.100.15.A NMAC . . . it has become apparent that 20.11.100.15.A NMAC is unnecessary because VPMD can provide informative handouts to its air care stations as it deems appropriate, as long as the handout or guidance document is not a "rule" or "regulation" and is of a nature that it cannot be used for a basis of an enforcement action. VPMD plans to update this planned technical guidance document in a contemporary manner whenever, the technology, equipment, software or hardware is changed. To avoid any confusion on this matter, VPMD has determined that it would be best to strike the language at 20.11.100.15.A NMAC and a floor amendment to address this change will be submitted prior to the hearing.'

However, during development of the aforementioned floor amendment, it became apparent that for all of the aforementioned reasons, *all* of the references to the Procedures Manual needed to be stricken and not just those at 20.11.100.15.A NMAC. In addition, there are minor amendments to correct redundancies ("specifically specified"), misspellings ("air care station" not "air care state") and a transposition of phrase ("van mounted or movable" for "fleet").

**TITLE 20 ENVIRONMENTAL PROTECTION**
**CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
**PART 100 MOTOR VEHICLE INSPECTION -- DECENTRALIZED**

**20.11.100.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600. [10/19/82. . .12/1/95; 20.11.100.1 NMAC - Rn, 20 NMAC 11.100.I.1, 10/1/02; A, 9/1/04]

**20.11.100.2 SCOPE:**

**A. Applicability (vehicles to be inspected):**

**(1) Motor vehicles.** All motor vehicles, as defined in 20.11.100.7 NMAC, shall be inspected for compliance with the requirements of [~~this part~~] 20.11.100 NMAC unless otherwise exempted. A vehicle shall not be registered or re-registered until the vehicle has passed the applicable on-board diagnostics (OBDII) inspection, exhaust emissions inspection, tampering inspection, pressurized gas cap test and visible emissions inspection prescribed by [~~20.11.100.14~~] 20.11.100.17 NMAC or the program has issued a time extension for repairs of the vehicle, unavailability for testing, or reciprocity for a test from another state.

[~~**B.**~~] **(2) Commuter vehicles:** All motor vehicles [~~, which~~] that are more than four years old and are driven into, operated, or are otherwise present in Bernalillo county for 60 or more days per year but are registered in another county or state [~~must~~] shall comply with [~~this part~~] 20.11.100 NMAC.

[~~**C.**~~] **(3) Federal installations:** Vehicles[~~, which~~] that are operated on federal installations located in Bernalillo county, shall comply with [~~this part~~] 20.11.100 NMAC, whether or not the vehicles are registered in New Mexico or Bernalillo county. The inspection requirement applies to all employee owned or leased vehicles as well as agency operated vehicles. The inspection requirements for federal installations are mandated by 40 CFR Part 51.356(a)(4).

[~~**D.**~~] **(4) Fleet vehicles:** Fleet vehicles[~~, which~~] that are registered outside of Bernalillo county but are primarily operated in Bernalillo county shall comply with [~~this part~~] 20.11.100 NMAC. The inspection requirements for fleet vehicles are mandated by 40 CFR Part 51.356(a)(2).

[~~**E.**~~] **(5) Municipalities and counties:** If the program enters into a joint powers agreement with a municipality or county to extend the enforcement of [~~this part~~] 20.11.100 NMAC, all vehicles registered in that municipality or county [~~must~~] shall comply with [~~this part~~] 20.11.100 NMAC.

**B. Exempt vehicles:**

(1) all new motor vehicles for four years following initial registration from the date of the manufacturer's certificate of origin (MCO);

(2) vehicles that are fueled by a mixture of gasoline and oil for purposes of lubrication;

(3) motor vehicles that are used for legally sanctioned competition and not operated on public streets and highways;

(4) implements of husbandry, or road machinery not regularly operated on public streets and highways;

(5) other vehicles that are not regularly operated on public streets and highways after providing satisfactory proof to the program manager;

(6) vehicles leased by a leasing company whose place of business is Bernalillo county to a person who resides outside of Bernalillo county; however, an exemption shall not be granted if the person resides in an area, that has an EPA-required vehicle inspection program;

(7) vehicles that are 35 years old or older;

(8) vehicles sold between licensed dealers;

(9) vehicles with a GVW of 10,001 lbs or more; and

(10) Dedicated electric vehicles.

(11) Existing electric hybrid vehicles which were exempted from 20.11.100 NMAC as of the effective date of 20.11.100.2 NMAC, until such time that a change of ownership of the vehicle occurs.

[5/20/88. . .12/1/95; 20.11.100.2 NMAC - Rn, 20 NMAC 11.100.I.2, 10/1/02; A, 5/1/04; A, 9/1/04]

**20.11.100.3 STATUTORY AUTHORITY:** [~~This part~~] 20.11.100 NMAC is adopted pursuant to the, authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4; and the City of

Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances. It is adopted in order to comply with the Federal Clean Air Act Amendments of 1990 and 40 CFR Part 51, [~~which are the environmental protection agency inspection/maintenance requirements~~] Subpart S, *Inspection/Maintenance Program Requirements*.
[10/19/82. . .12/1/95; 20.11.100.3 NMAC - Rn, 20 NMAC 11.100.I.3, 10/1/02; A, 9/1/04]

**20.11.100.4 DURATION:** Permanent, unless the violation described in 20.11.101 NMAC occurs.
[12/1/95; 20.11.100.4 NMAC - Rn, 20 NMAC 11.100.I.4, 10/1/02; A, 5/1/04]

**20.11.100.5 EFFECTIVE DATE:**

A. [~~Effective~~] December 1, 1995, unless a later date is cited at the end of a section. If no EPA-confirmed violation (two exceedances) of the federal ambient carbon monoxide standards has occurred within Bernalillo county, the vehicle inspection frequency shall be biennial. [~~Until the later of June 13, 2006, or when the SIP revision, "*second half of the carbon monoxide maintenance plan for Bernalillo county*", is effective following EPA approval, if EPA confirms a violation of the federal ambient carbon monoxide standards, then, 120 days after the violation is confirmed by the EPA, the program shall require annual testing of vehicles and the program will be upgraded to meet the performance standards established in 40 CFR Part 51. Beginning on the later of June 13, 2006, or when the SIP revision, "*second half of the carbon monoxide maintenance plan for Bernalillo county*" is effective following EPA approval, if no EPA-confirmed violation of the federal ambient carbon monoxide standards has occurred, the vehicle inspection frequency shall be biennial.~~]

**B.** Beginning January 1 of the first year following the federally effective date for the 2011 revised ozone standard, all 1998 and newer diesel motor vehicles must pass an on-board diagnostic test pursuant to Paragraph (2) of Subsection E of 20.11.100.17 NMAC.
[8/25/92. . .12/1/95; 20.11.100.5 NMAC - Rn, 20 NMAC 11.100.I.5, & A, 10/1/02; A, 9/1/04]

**20.11.100.6 OBJECTIVE:** To provide for the control and regulation of carbon monoxide (CO), hydrocarbon (HC), ozone precursors and particulate emissions above certain levels from motor vehicles, and for anti-tampering inspections.
[10/19/82. . .12/1/95; 20.11.100.6 NMAC - Rn, 20 NMAC 11.100.I.6, 10/1/02; A, 5/1/04; A, 9/1/04]

**20.11.100.7 DEFINITIONS:** In addition to the definitions in 20.11.100.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in [~~this part~~] 20.11.100 NMAC shall govern.

**A. "*Air care* inspection station"** means a private business authorized by a certificate in accordance with [~~20.11.100.18~~] 20.11.100.21 NMAC to inspect motor vehicles and issue certificates of inspection. It also means stations established by the city of Albuquerque and Bernalillo county, or other governmental entities, for testing government owned or leased motor vehicles.

**B. "*Air care* inspector"** means an individual authorized by a certificate issued by the program to perform inspections of motor vehicles and who has met the requirements of [~~20.11.100.21~~] 20.11.100.26 NMAC.

**C. "*Air care* station"** means [~~both~~] an *air care* inspection station, [~~and~~] a fleet *air care* station or a vehicle-mounted or moveable *air care* station.

**D.** [~~Reserved~~] **Audit** means an assessment by VPMD, either as a physical on site visit or an off site review of data collected electronically, designed to determine whether *air care* inspectors and *air care* stations are correctly performing all tests and other functions required by the VPMD program. Physical on site audits shall be of two types: overt and covert. {after 40 CFR 51.363(a)}

**E. "Biennial"** means every other year.

**F. "Chassis"** means the complete motor vehicle, including standard factory equipment, [~~exclusive of~~] but excluding the body and cab.

**G. "City"** means the city of Albuquerque, a New Mexico municipal corporation.

**H.** "**Clean piping** " means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent "pass" for a vehicle's tailpipe emissions test by entering into the emissions analyzer unique information identifying the vehicle being tested, but then performing the tailpipe test on a different vehicle,which bypasses actual testing of the first vehicle.

**I. "Clean scanning**" means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent "pass" for a vehicle's emissions test by entering into the emissions analyzer unique information identifying the vehicle being tested, but then performing the emissions test on a different vehicle ,which bypasses actual testing of the first vehicle**.** {after Missouri Code of State Regulations 10-5.381(2)(B)}

**[~~H.~~] J.** **"County"** means the county of Bernalillo, a political subdivision of the state of New Mexico.

**K.** "**Covert audit**" means a quality assurance site visit by an anonymous agent delegated by VPMD to drive a vehicle into the selected station and asked to have the vehicle tested. The vehicle may be set up by VPMD in a tampered or failed condition. Covert audits are required by EPA to ensure that *air care* stations and *air care* inspectors are performing the emissions test correctly. {after 40 CFR 51.363 (a)(4)(v)}

**L.** "**Covert surveillance**" means a quality assurance audit by observation done from an off-site location near the *air care* station, often using binoculars to monitor the actions of an *air care* inspector performing emissions testing. {after 40 CFR 51.363 (a)(4)(v)}

**[~~I.~~] M.** **"Dealer"** means any person who sells or solicits or advertises the sale of new or used motor vehicles subject to registration in the state of New Mexico and as further defined in the Motor Vehicle Code Chapter 66, NMSA 1978.

**[~~J.~~] N.** **"Distributor"** means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer.

**[~~K.~~] O.** **"Division" or "VPMD"** means the vehicle pollution management division of the city environmental health department, which provides the staff for the Albuquerque-Bernalillo county vehicle pollution management program.

**[~~L.~~] P.** **"Driver"** means every person who drives or is in actual physical control of a motor vehicle upon a highway or upon property used for inspections.

**Q.** "**Emissions analyzer**" means a device for measuring the concentration of certain exhaust gases emitted by a motor vehicle.

**R.** **"Emissions inspection system" or "EIS"** means the equipment and software for conducting the official emissions inspection.

**[~~M.~~] S.** **"Essential parts"** means all integral and body parts of a vehicle of a type required to be registered under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model type or mode of operation.

**[~~N.~~] T.** **"Exhaust emissions**" means CO, HC and all other substances emitted through a motor vehicle's exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices, if any.

**[~~O.~~] U.** **"Exhaust [~~emission~~] emissions control device"** means equipment designed by the manufacturer of the vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification designed by the manufacturer of the motor vehicle [~~which~~] that causes a reduction of pollutants emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering with other exhaust **[~~emission~~] emissions** control devices.

**[~~P.~~] V.** **"Fast idle condition or unloaded 2500 rpm"** means an exhaust emissions inspection conducted with the engine of the vehicle running under an accelerated condition as required by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements.*

**[~~Q.~~] W.** **"Field audit gas"** means a gas mixture with known concentrations of $CO_2$, CO, and HC that is used by the program to check the accuracy of exhaust gas analyzers used by authorized inspection stations.

**X.** **"Fleet"** means a group of vehicles under the common ownership or control of a commercial or governmental entity.

**[~~R.~~] Y.** **"Fleet *air care* station"** means any person, business, government entity, firm, partnership or corporation [~~which~~] that provides for the construction, equipping, maintaining, staffing, managing and operation of authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to [~~this part~~] 20.11.100 NMAC, and not offering inspection services to its employees or the general public.

**[~~S.~~] Z.** **"Fuel"** means any material that is burned by the engine of a vehicle in order to propel the vehicle.

**AA.** "**Gas cap test**" means the determination of the ability of the gas cap(s) to retain pressure.

**[~~T.~~] BB.** **"Gross vehicle weight"** means the weight of a vehicle without load, plus the weight of any load thereon.

**[~~U.~~] CC.** **"Government vehicle"** means a motor vehicle exempt from the payment of a registration fee and owned or leased by any federal, state, local, or other governmental entity.

**[~~V.~~] DD.** **"Headquarters"** means the main office of the vehicle pollution management program.

**[~~W.~~] EE.** **"Highway"** means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

**[~~X.~~] FF.** **"Idle mode test"** means an unloaded exhaust emissions test conducted only at the idle condition[~~, as described in the [VPMP] *VPMD procedures manual*~~].

**[~~Y.~~] GG.** **"Inspection or re-inspection or test"** means the mandatory vehicular anti-tampering and emissions inspection conducted both visually and with equipment or chemical sensing devices as required by [~~this Part~~] 20.11.100 NMAC.

**[~~Z.~~] HH.** **"Low emissions tune-up"** means adjustments and repairs[~~, which~~] that can reduce motor vehicle emissions, including but not limited to the following procedures:

(1) checking and setting to manufacturer's specifications, the idle mixture, idle speed, ignition timing and dwell; [~~and~~]

(2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of pollution control devices; [~~and~~]

(3) checking and replacement of air breathing filters and positive crankcase ventilation valve as necessary; [~~and~~]

(4) replacement of spark plugs, points, and wires; and

(5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust **[~~emission~~] emissions** control devices and systems, inspecting the operation of the **[~~emission~~] emissions** control system according to the motor vehicle manufacturer's specified procedures, including hose routing and on-board diagnostics, new vehicle warranty and repair or replacement as necessary.

**[~~AA.~~] II.** **"Manufacturer"** means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the laws of the state of New Mexico.

**[~~BB.~~] JJ.** **"Manufacturer's certificate of origin" or "MCO"** means a certification, on a form supplied by or approved by the MVD, signed by the manufacturer, stating that the new vehicle described therein has been transferred to the New Mexico dealer or distributor named therein or to a dealer duly licensed or recognized as [~~such~~] a dealer or distributor in another state, territory or possession of the United States, and that [~~such~~] the transfer is the first transfer of [~~such~~] the vehicle in ordinary trade and commerce. Every [~~such certificate~~] MCO contains a space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as [~~such~~] a dealer or distributor in another state, territory or possession of the United States. The certificate also contains a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or other standard identification number provided by the manufacturer of the vehicle, [~~where~~] if [~~such~~] the information exists.

**[~~CC.~~] KK.** **"Model year"** means the year of manufacture of the vehicle based on the annual production period of the vehicle as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then the model year means the calendar year of manufacture.

**[~~DD.~~] LL.** **"Motor vehicle"** means any vehicle [~~which~~] that:

(1) is propelled by a spark or compression ignition, internal combustion engine; [~~and~~]

(2) has four or more wheels in contact with the ground; [~~and~~]

(3) is subject to registration with the MVD to an owner of record who is domiciled within Bernalillo county, or is a government vehicle which is assigned to a governmental unit within Bernalillo county; [~~and~~]

(4) has a GVW greater than 1,000 and less than 10,001 pounds; [~~and~~]

(5) is for use upon public roads and highways; [~~and~~]

(6) is a 1975 model year or newer; and

(7) is a vehicle not otherwise exempted by [~~this part~~] 20.11.100 NMAC.

**[~~EE.~~] MM.** **"New motor vehicle"** is a vehicle[~~, which~~] that has undergone a transfer of ownership and is being registered for the first time to any person, [~~except in~~ but does not include the sale to another licensed motor vehicle dealer for the purpose of resale as a new vehicle.

**[~~FF.~~] NN.** **"Operator"** means driver, as defined in [~~this part~~] 20.11.100 NMAC.

**OO.** **"Overt audit**" means an on-site quality assurance assessment of the performance of an *air care* station or an *air care* inspector, conducted by VPMD personnel. An overt audit may also be an assessment of an *air care* station's emissions analyzer to ensure that the equipment is maintained appropriately and operating correctly**.** {after 40 CFR 51.363 (a)(1)}

**[~~GG.~~] PP.** **"Owner"** means a person who holds the legal title of the motor vehicle or, [~~in the event a~~] if the vehicle is the subject of an agreement for conditional sale or lease [~~thereof~~] with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then [~~such~~] "owner" means the conditional vendee, [~~or~~] lessee or mortgagor.

**[~~HH.~~] QQ.** **"Pass fail criteria"** means [~~those~~] the standards [~~set~~] established by [~~this part~~] 20.11.100 NMAC [~~which~~] that specify the maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

**[~~II.~~] RR.** **"Person"** means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or legal representative, agent or assign.

**SS.** **"Pretesting"** means the determination by an *air care* station or inspector, of the "pass" or "fail" status of a vehicle and providing the information to the vehicle owner prior to performing the required complete emissions test

**[~~JJ.~~] TT.** **"Program" or [~~VPM~~] "VPMD program"** means the Albuquerque - Bernalillo county vehicle pollution management program.

**[~~KK.~~] UU.** **"Program manager"** means a classified city employee selected in accordance with provisions of the joint powers agreement between the city and the county to perform for the joint air quality control board [~~those~~] the duties required to enforce and administer the provisions of [~~this part~~] 20.11.100 NMAC, or the program manager's designee.

**[~~LL.~~] VV.** **"Reconstructed vehicle"** means [~~any~~] a vehicle [~~which shall have been~~] that was assembled or constructed largely [~~by means~~] from of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or [~~which,~~] that, if originally otherwise constructed, [~~shall have been~~] was materially altered by the removal of essential parts, new or used, derived from other vehicles or makes of vehicles.

**[~~MM.~~] WW.** **"Registration and re-registration"** means both original registration and renewal of motor [~~vehicles~~] vehicle registration as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

~~[**NN.** **"Shall be inspected"** means the vehicle shall be subjected to testing and inspection as applicable to model year and weight classification and shall satisfy the criteria of this part as evidenced by the issuance of a certificate of inspection.]~~

**[~~OO.~~] XX.** **"Standard gases"** means NIST certified emissions samples of gases maintained as primary standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

**[~~PP.~~] YY.** **"Truck"** means every motor vehicle designed, used or maintained primarily for the transportation of property. In addition, all vehicles with a GVW greater than 6000 pounds shall be considered a truck.

~~[**QQ.** **"VEGAS"** means a program-certified, garage-type, computer controlled NDIR vehicle exhaust gas analyzer system which is capable of performing a preconditioned two-speed idle test on board diagnostic test, and pressurized gas cap test on vehicles as required by 40 CFR Part 51 appendix B to Subpart S and meets or exceeds the specifications adopted by the program.]~~

**ZZ.** **"Vehicle information database" or "VID"** means a database consisting of data collected from each official inspection as specified in the EIS.

**[~~RR.~~] AAA.** **"VIR"** means vehicle inspection report, a program-certified document (VIR) signed by a certified *air care* inspector or other program authorized official stating that the vehicle described therein is either in compliance (pass), not in compliance (fail), or has an approved time extension in order to achieve compliance through additional repairs or adjustments (time-limit extension).

**[~~SS.~~] BBB.** **"Visible emissions"** means any fume, smoke, particulate matter, vapor or gas, or combination thereof, [~~except~~] excluding water vapor or steam.

**[~~TT.~~] CCC.** ~~[**"[VPMP] *VPMD procedures manual*" or "procedures manual"** means a [compilation of] technical guidance document that outlines procedures required to perform a complete and valid vehicle emissions test and that [is] has been developed by the program manager pursuant to [20.11.100.12 20.11.100.15 NMAC and modified as vehicle emissions tests or equipment is changed.]~~ [Reserved]

**[~~UU.~~] DDD.** ~~[**"Wholesale"** means either any person selling or offering for sale vehicles of a type subject to registration in New Mexico to a vehicle dealer licensed under the Motor Vehicle Code, Chapter 66, NMSA 1978, or any person who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer, but does not include the act of selling a vehicle at retail as a dealer subject to the dealer licensing provisions of the Motor Vehicle Code.]~~ RESERVED

**[~~VV.~~] EEE.** **"Working gases"** means program-approved span gases maintained by an authorized *air care* inspection station to perform periodic calibration of approved exhaust gas analyzers.

**[~~WW.~~] FFF.** **Abbreviations and symbols**

(1) **A/F** means air/fuel.
(2) **ASE** means the national institute for automotive service excellence.
(3) **CO** means carbon monoxide.
(4) **$CO_2$** means carbon dioxide.
(5) **DTC** means diagnostic trouble code.

(6) **EHD** means the environmental health department.
(7) **EIS** means the emissions inspection system.
[~~(7)~~](8) **EPA** means the environmental protection agency.
[~~(8)~~](9) **GVW** means gross vehicle weight.
[~~(9)~~](10) **HC** means hydrocarbon.
[~~(10)~~](11) **HP** means horsepower.
[~~(11)~~](12) **LNG** means liquefied natural gas.
[~~(12)~~](13) **LPG** means liquefied petroleum gas.
[~~(13)~~](14) **MPH** means miles per hour.
[~~(14)~~](15) **MCO** means manufacturer's certificate of origin.
[~~(15)~~](16) **MVD** means the motor vehicle division of the New Mexico taxation and revenue department.
[~~(16)~~](17) **NDIR** means non-dispersive infrared.
[~~(17)~~](18) **NIST** means national institute of standards and technology.
[~~(18)~~](19) **OBDII** means a vehicle's on-board diagnostics second generation.
[~~(19)~~](20) **%** means percent.
[~~(20)~~](21) **PCV** means positive crankcase ventilation.
[~~(21)~~](22) **ppm** means parts per million by volume.
(23) **VID** means the vehicle information database.
[~~(22)~~](24) **VIN** means vehicle identification number.
[~~(23) **40 CFR Part 51** means the EPA regulations for inspection/maintenance programs published in the federal register on November 5, 1992 and mandated by the Federal Clean Air Act Amendments of 1990.~~]
[10/12/82. . .5/20/88, 11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.7 NMAC - Rn, 20 NMAC 11.100.I.7, 10/1/02; A, 5/1/04; A, 9/1/04]

**20.11.100.8 VARIANCES:** [Reserved]
[12/1/95; 20.11.100.8 NMAC - Rn, 20 NMAC 11.100.I.8, 10/1/02]

**20.11.100.9 SAVINGS CLAUSE:** Any amendment of 20.11.100 NMAC[~~, which,~~] that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, [~~Air Quality Control Board Regulation 28,~~] [~~the VPMD procedures manual~~] or 20.11.100 NMAC. Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, or part [~~or procedures manual~~] in effect at the time the violation was committed.
[9/23/94. . .12/1/95; 20.11.100.9 NMAC - Rn, 20 NMAC 11.100.I.9, 10/1/02]

**20.11.100.10 SEVERABILITY:** If any section, paragraph, sentence, clause or word of [~~this part~~] 20.11.100 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, [~~such~~] the decision shall not affect the validity of remaining provisions of [~~this part~~] 20.11.100 NMAC [~~or the procedures manual~~].
[9/23/94. . .12/1/95; 20.11.100.10 NMAC - Rn, 20 NMAC 11.100.I.10, 10/1/02]

**20.11.100.11 DOCUMENTS:** Documents incorporated and cited in [~~this part~~] 20.11.100 NMAC may be viewed at the vehicle pollution management program headquarters, 1500 Broadway NE, Albuquerque, NM 87102.
[12/1/95; 20.11.100.11 NMAC - Rn, 20 NMAC 11.100.I.11, 10/1/02]

**20.11.100.12 VEHICLE POLLUTION MANAGEMENT DIVISION:**
**A.** The vehicle pollution management division or its successor agency is part of the city of Albuquerque environmental health department.
**B.** The division manager shall establish and maintain a VPMD headquarters, which will include an emissions inspection facility equipped with certified emissions testing equipment and employing at least two ASE certified technicians. {after 22.11.100.20.A.(3) NMAC}
**C.** The facility shall be operated by the city to provide services to the public and to facilitate program responsibilities and administer the provisions of 20.11.100 NMAC. {after 22.11.100.20.A.(3) NMAC}

**20.11.100.13 RESPONSIBILITIES OF VEHICLE POLLUTION MANAGEMENT DIVISION:**

A. VPMD shall be responsible for administering a program that ensures that federal motor vehicle emissions standards are met. In order to be successful in meeting federal goals and criteria for a motor vehicle emissions testing program, VPMD is authorized to take any actions commonly known to be necessary for a motor vehicle emissions testing program, now and in the future, including, at a minimum:

(1) developing and approving specifications for gas analyzers in a manner consistent with improvements in the industry;

(2) maintaining databases including the VID, certified *air care* inspectors' information and history, and extensions/exemptions from official inspections;

(3) providing training and certification processes for *air care* station and *air care* inspectors;

(4) performing quality assurance audits as required by 20.11.100.30 NMAC, assessing the level of compliance of each *air care* station or *air care* inspector by using onsite audits and by monitoring the information provided by the VID; {after 20.11.100.20.B.(4) NMAC}

(5) enforcing the certification and recertification requirements of *air care* inspectors;

(6) taking enforcement actions as appropriate and providing for penalty assessment;

(7) investigating and maintaining records regarding complaints against certified *air care* stations and certified *air care* inspectors; {after 20.11.100.20.B.(3) NMAC}

(8) providing for non-binding mediation of disputes arising from inspection activities by certified *air care* stations or certified *air care* inspectors, including if necessary, a verification test at no cost to the person requesting the test; and{after 20.11.100.20.B.(1) NMAC}

(9) evaluating and issuing compliance time extensions for vehicles unable to pass the inspection test criteria as provided by 20.11.100 NMAC. {after 20.11.100.20.B.(2) NMAC}

[20.11.100.13 NMAC - N 2010]

**20.11.100.14 SHEDULING OF INSPECTIONS:**

**A. Inspection and registration:** Every motor vehicle, as defined in 20.11.100.7 NMAC, shall be inspected biennially unless it is determined to emit quantities of CO or HC between 75% and 100% of its maximum allowable standard listed in Table I of Subsection A of 20.11.100.17 NMAC, in which case it shall be issued a provisional pass certificate good only for a one year registration and shall be required to be inspected again the following year prior to registration. The MVD shall distribute notices or other appropriate information to owners of vehicles applying for re-registration in accordance with the written agreement between the MVD and the program manager. Vehicles shall also be inspected when sold and when titles are transferred. A person who believes he has a vehicle for which he has been erroneously notified of inspection may petition the program manager to correct the error.

**B. Vehicles unavailable for inspection:** Motor vehicles that are unavailable for inspection may be granted an extension of inspection if authorized by the program manager. Persons seeking an extension may petition the program manager by submitting a signed affidavit justifying the special need and by providing other necessary documentation as required by the program manager.

**C. Federal, state and local government vehicles:**

(1) Each motor vehicle operated in Bernalillo county that is owned or leased by the United States government, the state of New Mexico or any local government entity shall be inspected biennially.

(2) Scheduling vehicles for inspection pursuant to an agreement with the program manager shall be the responsibility of the governmental authority that owns or leases the vehicles The schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of 20.11.100 NMAC.

(3) Persons who are responsible for government fleet vehicles or motor pools shall update the vehicle inventory annually each January and forward the resulting inspection plan with fleet inventory to the program manager in a format approved by the program manager.

(4) Failure to forward the inspection plan and fleet inventory to VPMD by March 31st of each year is a violation of 20.11.100 NMAC and of the Air Quality Control Act [74-2-1 NMSA 1978].

(5) The program manager may assess a civil penalty not to exceed fifteen thousand dollars ($15,000) for each day during any portion of which a violation occurs, pursuant to 74-2-12.1 NMSA 1978

**D. Private Fleets Issued Permanent Fleet Plates:**

(1) Each motor vehicle operated in Bernalillo county that is owned or leased by a private or non-governmental entity that has been issued a permanent fleet license plate shall be inspected biennially.

(2) Scheduling vehicles for inspection pursuant to an agreement with the program manager shall be the responsibility of the entity that owns or leases the vehicles. The schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of 20.11.100 NMAC.

(3) Persons who are responsible for fleet vehicles or motor pools shall update the vehicle inventory annually each January and forward the resulting inspection plan with fleet inventory to the program manager in a format approved by the program manager.

(4) Failure to forward the inspection plan and fleet inventory to VPMD by March 31st of each year is a violation of 20.11.100 NMAC and of the Air Quality Control Act [74-2-1 NMSA 1978].

(5) The program manager may assess a civil penalty not to exceed fifteen thousand dollars ($15,000) for each day during any portion of which a violation occurs, pursuant to 74-2-12.1 NMSA 1978. {after 20.11.100.13 NMAC}

[20.11.100.14 NMAC - N 2010]

**[~~20.11.100.12~~] 20.11.100.15 VEHICLE INSPECTION PROCEDURES:**

**A. ~~[VPMP] *VPMD Procedures manual:*~~**

~~(1) The program manager shall develop [an official] a document entitled [VPMP] *VPMD procedures manual*[,outlining] that outlines in sufficient detail the procedures necessary for a certified *air care* station and a certified *air care* inspector [and a certified *air care* technician] to comply with all applicable requirements of [this part] 20.11.100 NMAC. [Upon approval by the board, the program manager shall publish the official VPMP procedures manual and, within 10 days of publication, provide notice of its availability.]~~

~~(2) The procedures, details and specifications contained in the [VPMP] *VPMD procedures manual* [will be a part of and incorporated into this part and shall be binding upon each *air care* inspection station, *air care* station owner/operator, *air care* inspector and *air care* technician.] are technical in nature and instruct the *air care* station or *air care* inspector of the actions to take to do a complete and valid vehicle emissions test. The *VPMD procedures manual* also contains requirements regarding routine preventative maintenance of the test equipment and corrective actions regarding procedure or equipment use or malfunction that may arise during a vehicle inspection .~~

~~(3) The *VPMD procedures manual* shall be amended as needed as a result of changes to equipment or procedure. Notice of amendments to the procedures manual shall be provided by the program manager, with copies made available to the users. It is the responsibility of each *air care* station owner and operator to obtain and incorporate all amendments made available by the program manager. Each *air care* station shall maintain at least one current copy of the [VPMP] *VPMD procedures manual* at each *air care* inspection station.~~

~~(4) If a provision of the *VPMD procedures manual* conflicts with a provision of [this part] 20.11.100 NMAC, the provision of [this part] 20.11.100 NMAC [will] shall prevail.]~~ [Reserved]

**B. Vehicle tests:**

(1) To determine if a motor vehicle is in compliance with [~~this part~~] 20.11.100 NMAC, all inspections shall be performed in strict accordance with [~~this part~~] 20.11.100 NMAC ~~[and the [VPMP] *VPMD procedures manual*]~~. Each vehicle shall be inspected at an *air care* station by an *air care* inspector. All items shall be tested to completion with reports of outcomes provided to the motor vehicle owner.

(a) Vehicles with an engine other than the engine originally installed by the manufacturer or an identical replacement of [~~such an~~] the engine shall be subject to the inspection procedures and standards for the chassis type, GVW and model year of the vehicle.

(b) Assembled vehicles or kit cars shall meet the standards and [~~emission~~] emissions control equipment [~~as requirements~~] that are required for the year of the vehicle engine. If the vehicle is assembled with a pre-1975 engine, testing is not required, but the vehicle owner [~~must~~] shall petition the program manager for an exemption from [~~emission~~] emissions inspections.

(2) **Exhaust gas emissions measurements:** No emissions inspection required by [~~this part~~] 20.11.100 NMAC shall be performed unless the instrument used for measuring exhaust gases from the motor vehicle is an approved [~~VEGAS~~] emissions analyzer.

(a) **Vehicle operating condition:**

(i) Prior to this portion of the inspection, the entire vehicle shall be in normal operating condition as specified by the emissions tune-up label originally installed on the vehicle ~~[or as specified in the [VPMP] *VPMD procedures manual*]~~. Motor vehicles equipped for simple selection of alternate fuel supplies (switching between gasoline and any compressed or liquefied gaseous fuel) shall be inspected using the fuel in use when presented for inspection.

(ii) [~~All 1975 - 1995 model year motor vehicles~~] Non-OBDII compatible vehicles (usually 1995 model year or older) subject to [~~this part~~] 20.11.100 NMAC shall be required to take and pass a preconditioned two-speed idle test as [~~outlined~~] specified in Appendix B to Subpart S of 40 CFR Part 51 ~~[and the *VPMD procedures manual*]~~. The test procedure [~~will~~] shall include a first and second-chance test at both idle and at the unloaded 2500 RPM test. If the vehicle passes both [~~emission~~] emissions tests, it shall be deemed in compliance

with minimum emissions standards unless the vehicle fails the tampering inspection, pressurized gas cap test or visible emissions inspection required by [~~this part~~] 20.11.100 NMAC.

(iii) All 1996 and newer model year motor vehicles subject to [~~this part~~] 20.11.100 NMAC shall be required to take and pass an on-board diagnostic test, pressurized gas cap test and visible emissions inspection as [~~outlined~~] specified in 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*[~~, and the *VPMD procedures manual*~~]. Certain 1996 and newer model year motor vehicles [~~which~~] that are not OBDII compatible may be tested using the two-speed idle test as determined by the program manager.

(iv) No test shall commence if there are apparent leaks in the motor vehicle's exhaust system that will cause the exhaust analyzer to invalidate the test.

[~~(v) Pattern failure notices issued by EPA shall be maintained by the *air care* station and *air care* inspector in an up-to-date file for reference to unusual pretest conditioning.~~]

[~~(b) **Pretest:** Vehicles presented to an *air care* station for inspection shall not be pre-tested by having manual diagnostic emissions analysis or visual examination for tampering performed prior to the beginning of the inspection. This shall not prohibit diagnostic engine analysis service of vehicles when specifically presented for such, before emission testing.~~]

[~~(c)~~](b) **Exhaust emissions inspection:** The exhaust emissions inspection shall proceed as [~~specifically~~] [~~described~~] specified in 40 CFR Part 51 Appendix B to Subpart S [~~and the [VPMP] *VPMD procedures manual*~~].

[~~(d)~~](c) **Selection of appropriate pass/fail emissions inspection criteria:** The appropriate pass/fail criteria will be selected automatically by the approved [~~VEGAS~~] emissions analyzer.

(3) **Visual examination for tampering:** The certified *air care* inspector shall determine specifically what emissions control devices should be in place and operable for each [~~1975 - 1995 model year~~] vehicle inspected. Specific design and equipment elements necessary in anti-tampering determinations shall only include catalytic converter(s).

(4) **Visible emissions requirements:** In addition to exhaust and tampering requirements of [~~this part~~] 20.11.100 NMAC, all vehicles are subject to and must pass inspection for visible emissions (smoke). Non-diesel vehicles may not emit any visible emissions (except steam) during the test as [~~described~~] specified in [~~Paragraph (3), of Subsection A of 20.11.100.14 NMAC~~] Subsection C of 20.11.100.17 NMAC.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95, 8/1/97; 20.11.100.12 NMAC - Rn, 20 NMAC 11.100.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.100.II.1, 10/1/02; A, 5/1/04]

**[~~20.11.100.13 SCHEDULING OF INSPECTIONS:~~**

~~**A. Inspection and registration:** Every motor vehicle, as defined in Section 20.11.100.7 NMAC, shall be inspected biennially when the owner is so notified or otherwise informed by MVD, unless the vehicle is a 1975-1985 model year motor vehicle in which case the inspection requirement shall be annual. Any 1986 - 1995 model year motor vehicle which is determined to emit quantities (rates) of CO and/or HC between 75% and 100% of any of its maximum allowable standards listed in Table I of Subsection A of 20.11.100.14 NMAC shall be issued a pass certificate good only for a one year registration and shall be required to be inspected again the following year prior to re-registration. The MVD will distribute notices or other appropriate information to owners of vehicles applying for re-registration in accordance with the written agreement made with the program manager. Vehicles shall also be inspected upon sale or when titles are transferred. Any person who believes he/she has a vehicle for which he/she has been erroneously notified of inspection may petition the program manager to correct such error.~~

~~**B. Vehicles unavailable for inspection:** Motor vehicles, which are unavailable for inspection, may be granted an extension of inspection if authorized by the program manager. Persons seeking such extension may petition the program manager by submitting a signed affidavit justifying the special need and by providing other necessary documentation as required by the program manager.~~

~~**C. Federal, state and local government vehicles:**~~

~~(1) Each motor vehicle operated in Bernalillo county which is owned or leased by the United States government, the state of New Mexico or any local government entity shall be inspected biennially.~~

~~(2) Scheduling vehicles under this subsection shall be established by the responsible governmental authority pursuant to an agreement with the program manager. Such schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of this part.~~

~~(3) Persons who are responsible for such government fleet vehicles or motor pools shall periodically, but not less than annually, update the vehicle inventory and forward the resulting inspection plan with inventory to the program manager.~~] { moved to 20.11.100.14 NMAC}

[5/20/88. . .9/23/94, 12/1/95, 20.11.100.13 NMAC - Rn, 20 NMAC 11.100.II.2, 10/1/02; A, 5/1/04]

**20.11.100.16 ACTIONS PROHIBITED DURING VEHICLE INSPECTION:**

**A.** Each certified *air care* station or certified *air care* inspector shall inspect each vehicle in its as–presented condition, regardless of whether the *air care* inspector knows or believes that the vehicle will not pass.

**B.** Each certified *air care* station or certified *air care* inspector shall inspect each vehicle according to 20.11.100 NMAC [~~and the procedures manual~~] and is prohibited from taking any of the following actions:

(1) engaging in conduct that constitutes fraud, deceit, or gross negligence;

(2) negligently providing incorrect or misleading information to the public regarding the requirements of 20.11.100 NMAC [~~or the program manual~~];

(3) failing or refusing to give a motorist the customer copy of the emissions test;

(4) failing to follow the inspection procedures specified by the vehicle manufacturer or required by 20.11.100 NMAC [~~or the program manual~~];

(5) making false promises likely to influence, persuade or induce a motorist to authorize the repair, service or maintenance of a motor vehicle;

(6) entering false data into an emissions analyzer;

(7) performing or allowing a repair that is represented to the motorist as being required to remedy the cause of an inspection failure or obtain a certificate of inspection when the repair is not required;

(8) adjusting or modifying a vehicle in a manner that would cause the vehicle to fail an inspection;

(9) charging for and performing an inspection that is represented to the motorist as being required when it is not required;

(10 ) failing to maintain the confidentiality of an inspector's access code for the emissions analyzer;

(11) failing to advise VPMD of any change in information provided in the inspector 'sor station's application for certification or for renewal of certification;

(12) failing to report to VPMD any illegal certification or other violation of 20.11.100 NMAC; or

(13) performing any type of clean scanning, clean piping or pretesting.

**C.** Performing any act or actions prohibited by Subsection B of 20.11.100.18 NMAC is a violation of 20.11.100 NMAC and may result in an enforcement action by VPMD.

**D.** It is the responsibility of each *air care* station owner or operator to ensure that all *air care* inspectors in his employment does not engage in prohibited act or actions in preparation for or during a vehicle inspection. VPMD may take an enforcement action against the *air care* station owner or operator employing *air care* inspectors who engage in prohibited act or actions.

[20.11.100.16 NMAC - N 2010]

**[~~20.11.100.14~~] 20.11.100.17** **VEHICLE INSPECTION CRITERIA:** Failure to pass any one of the applicable criteria specified below in Subsections A, B, C, D and E of [~~Section~~] [~~20.11.100.14 NMAC~~] 20.11.100.17 NMAC, entitled *exhaust emissions*, *anti-tampering*, *visible emissions*, *gas cap*, and *on-board diagnostics* respectively, shall constitute noncompliance with [~~this part~~] 20.11.100 NMAC and a fail VIR shall be issued.

**A. Exhaust emissions:**

[~~(1)~~][~~Any~~] Every motor vehicle [~~which~~] that is determined to emit quantities (rates) of CO and HC greater than those listed in Table I appropriate to model year and weight classification listed shall be *failed*. [~~and those~~] Every motor vehicle with [~~emission~~] emissions rates equal to or lower than the applicable amounts shall be *passed* under subsection A of [~~20.11.100.14 NMAC~~] 20.11.100.17 NMAC.

**TABLE I**

**Maximum Allowable Exhaust Emissions**

| Vehicle Model Year | Gross Vehicle Weight Rating (pounds) | Group Code | Unloaded | | | |
|---|---|---|---|---|---|---|
| | | | Idle Mode | | 2500 RPM Test | |
| | | | HC PPM | CO % | HC PPM | CO % |
| 1975 - 1978 | 0 to 6000 | C/T | 500 | 5.0 | 500 | 5.0 |

| Vehicle Model Year | Gross Vehicle Weight Rating (pounds) | Group Code | Unloaded | | | |
|---|---|---|---|---|---|---|
| | | | Idle Mode | | 2500 RPM Test | |
| | | | HC PPM | CO % | HC PPM | CO % |
| 1979 - 1980 | 0 to 6000 | C/T | 400 | 4.0 | 400 | 4.0 |
| 1981 - 1985 | 0 to 6000 | C/T | 220 | 1.2 | 220 | 1.2 |
| 1986 - 1990 | 0 to 6000 | C/T | 200 | 1.2 | 200 | 1.2 |
| 1991 - 1995 | 0 to 6000 | C/T | 180 | 1.2 | 180 | 1.2 |
| | | | | | | |
| 1975 - 1978 | 6001 to 8000 | LT | 600 | 6.0 | 600 | 6.0 |
| 1979 - 1980 | 6001 to 8000 | LT | 600 | 4.5 | 600 | 4.5 |
| 1981 - 1982 | 6001 to 8500 | LT | 400 | 2.7 | 400 | 3.0 |
| 1983 - 1988 | 6001 to 8500 | LT | 300 | 1.2 | 300 | 3.0 |
| 1989 - 1995 | 6001 to 8500 | LT | 220 | 1.2 | 220 | 1.2 |
| | | | | | | |
| 1975 - 1980 | 8001 to 10,000 | MT | 650 | 6.5 | 650 | 6.5 |
| 1981 - 1990 | 8501 to 10,000 | MT | 400 | 4.0 | 400 | 3.0 |
| 1991 - 1995 | 8501 to 10,000 | MT | 220 | 2.0 | 220 | 2.0 |

[~~Note: These criteria will be reviewed by the board annually pursuant to the urban implementation plan for Albuquerque-Bernalillo county. Adjustments will be promulgated as appropriate.~~]

**B. Anti-tampering:**

(1) All [~~1975 - 1995 model year~~] motor vehicles subject to [~~this part~~] 20.11.100 NMAC shall be inspected for the presence [~~and proper connections~~] of a catalytic converter(s) that is properly connected.

(2) Any vehicle with [~~such~~] required features or components removed or rendered inoperative shall be *failed* [~~under this subsection~~] If no tampering [~~is evident~~] with [~~these~~] required components or systems is evident, this portion of the inspection shall be *passed*.

(3) Vehicles [~~which~~] that have had the original engine removed and replaced with a newer [~~and/or~~] or inherently cleaner technology engine (including the [~~emission~~] emissions control devices required in association with that engine) may be eligible for a waiver of compliance with portions of [~~this subsection~~] Subsection B of 20.11.100.17 NMAC. The program manager [~~or designee~~] shall determine if a vehicle has been retrofitted with an engine that is not adaptable to the [~~emission~~] emissions control requirements for the vehicle chassis model year. [~~Upon such~~] When the program manager makes the determination, the program manager may waive the requirements for replacement of [~~emission~~] emissions control equipment. There shall be no waiver for the installation of a catalytic converter unless the program manager determines installation would create a safety hazard.

**C. Visible emissions (smoke):** All [~~non-diesel~~] motor vehicles subject to inspection must pass an inspection for visible emissions. [~~Prior to conducting the OBDII or two-speed idle test, the *air care* inspector will observe the tailpipe for visible smoke while the driver raises the engine speed to 2200 - 2800 rpm for a minimum of~~

~~10 seconds to be followed immediately by observation at idle for a minimum of 10 seconds.~~] The *air care* inspector [~~will~~] shall watch the tailpipe during the idle portion of the emissions test and during the high-speed portion of the emissions test (using a mirror if necessary). If the inspector observes ***any*** smoke (not steam) during any part of the inspection, the visible portion of the emissions test shall be a *fail*.

**D. Gas cap (pressurized):** All 1975-2005 model year vehicles subject to inspection must pass a pressurized gas cap test to check the integrity of the gas cap seal designed to minimize fuel vapor loss or hydrocarbon emissions. Any vehicle with a gas cap that does not hold pressure consistent with the design standard for the vehicle shall be *failed*. [~~Gas cap testing for 1996 and newer OBDII tested vehicles shall not commence until 2005 and shall be limited to vehicles that are at least four years old.~~]

**E. On-board diagnostics (OBDII):**

**(1)** All 1996 and newer gasoline motor vehicles must pass an on-board diagnostics test [~~consistent with~~] specified by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*. Any vehicle with an illuminated malfunction indicator lamp (MIL) [~~and/or~~] or a set diagnostic trouble code (DTC) shall be *failed*. [~~There will be a one year phase-in period (2004) during which any vehicle which fails the OBDII test will default to the two-speed idle test. Vehicles which fail the OBDII test during phase-in but pass the two-speed idle test with maximum allowable exhaust standards of 100ppm hydrocarbons and 1.0% carbon monoxide will be issued a *pass* certificate valid only for a one year registration.~~] [~~Certain~~] Any 1996 and newer model year vehicles [~~which~~] that have been determined by the program manager to be OBDII incompatible shall be tested using the two-speed idle test with maximum allowable exhaust standards of 100 ppm hydrocarbons and 1.0 % carbon monoxide.

(2) all 1998 and newer diesel motor vehicles must pass an on-board diagnostic test (beginning January 1 of the first year following the federally effective date for the 2011 revised ozone standard),

[10/19/82. . .5/20/88, 9/23/94, 12/1/95, 8/1/97, 20.11.100.14 NMAC - Rn, 20 NMAC 11.100.II.3, 10/1/02; A, 5/1/04]

**[~~20.11.100.15~~] 20.11.100.18 VEHICLE INSPECTION REPORT:**

**A.** Vehicle inspection reports (VIRs) shall only be purchased at program headquarters. Unused VIRs shall not be exchanged, sold or given by any person to any other person. All unused VIRs [~~which, a person, does not intend to use~~] shall be turned in to the headquarters for credit or a refund, as the program manager determines is appropriate.

**B.** A pass VIR shall be issued to each motorist whose vehicle has undergone inspection and passed all criteria [~~relative to~~] regarding on-board diagnostics, exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. A fail VIR shall be issued to each motorist whose vehicle has undergone inspection and failed on-board diagnostics or any of the criteria [~~relative to~~] regarding exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. Vehicles [~~which~~] that have failed any portion of an inspection and have been subsequently repaired and adjusted and passed a reinspection shall be issued a pass VIR. Pass VIRs shall be presented to the MVD upon re-registration of the vehicle.

**C.** VIRs may not be defaced by stamping information on, or affixing stickers to, the front or back of the VIR except in the delineated area designated by the VPMD program manager. Any *air care* inspector or *air care* station found to be defacing VIRs may be subject to an enforcement action pursuant to 20.11.100.36 NMAC and penalties pursuant to 20.11.100.33 NMAC.

[11/13/91. . .8/25/92, 9/23/94, 12/1/95; 20.11.100.15 NMAC - Rn, 20 NMAC 11.100.II.4, 10/1/02; A, 5/1/04]

**[~~20.11.100.16~~] 20.11.100.19 REPAIRS, ADJUSTMENTS, AND RE-INSPECTIONS:** [~~Each~~] Every motor vehicle that fails an inspection required by [~~this part~~] 20.11.100 NMAC shall be repaired as necessary to pass re-inspection. [~~Where~~] If replacement of parts is required, [~~such~~] the parts shall only be new aftermarket parts approved by the program manager or new original equipment, manufacturer's parts or assemblies.

**A.** Repairs required by [~~this subsection~~] Subsection A of 20.11.100.19 NMAC, shall include but are not limited to, the following as applicable to the type of failure.

(1) **Exhaust emissions:** adjust idle speed, fuel/air ratio and ignition timing to manufacturer's specifications including replacement of spark plugs, spark plug wires, air filters and PCV specified by the manufacturer.

(2) **Anti-tampering:** replace the missing or disabled components with replacement parts acceptable to the program manager.

(3) **Visible emissions:** Repair engine or replace inoperative [~~emission~~] emissions control devices as required to eliminate visible emissions.

(4) **Gas cap:** Replace gas cap with a new approved aftermarket or original equipment cap.

(5) **On-board diagnostics:** Repair malfunction(s) indicated by diagnostic trouble code(s), clear diagnostic trouble code(s) and drive vehicle through drive cycle required to reset readiness monitors in order to ensure repair effectiveness and elimination of diagnostic trouble codes.

**B.** Any person may repair, adjust or replace parts as necessary to prepare a vehicle to pass re-inspection, but not after an inspection has commenced.

**C.** Re-inspections may be obtained at any *air care* station. One free retest, within 90 calendar days of a failed test, may be obtained at the program headquarters, if requested.

[10/19/82. . .12/1/95; 20.11.100.16 NMAC - Rn, 20 NMAC 11.100.II.5, 10/1/02; A, 5/1/04]

**[~~20.11.100.17~~] 20.11.100.20 COMPLIANCE TIME EXTENSION: [~~Normal Difficulty:~~]**

**A.** **Time extension for repairs.** Vehicles[~~,which~~] that are unable to pass re-inspection [~~are~~] may be eligible to obtain a time extension [~~providing~~] if the following conditions are met:

~~[ (1) **Exhaust emissions:** In order for a motor vehicle to be eligible for a time extension, the owner must:~~

~~(a) provide evidence, satisfactory to the program manager, that a low emissions tune-up has been performed to the extent possible considering engine condition; repair and replace nonfunctional emissions control devices,~~

~~(b) provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available,~~

~~(c) petition the program manager at the program headquarters, provide receipts for all parts and/or repair work performed, and list at least the following information in order to be eligible for consideration:~~

~~(i) vehicle VIN number,~~

~~(ii) model year and manufacturer,~~

~~(iii) owner's name and street address,~~

~~(iv) valid driver's license number and/or any other information or documentation that the program manager may deem necessary, and~~

~~(v) if applicable, identification of where the re-inspection, tune-up and/or determination was made, including documentation acceptable to the program manager that critical parts are unavailable.~~

~~(2) **Anti-tampering**: In order for a motor vehicle to be eligible for a time extension, the vehicle must pass all criteria relative to exhaust emissions for its model year and weight. If the vehicle cannot pass the exhaust emissions, in order for a motor vehicle to be eligible for a time extension, the owner must:~~

~~(a) provide evidence that a low emissions tune-up has been performed to the extent possible considering engine condition; repair and replace nonfunctional emissions control devices,~~

~~(b) provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available,~~

~~(c) petition the program manager at the headquarters, provide receipts for all parts and/or repair work performed, and list at least the following information in order to be eligible for consideration:~~

~~(i) vehicle VIN number;~~

~~(ii) model year and manufacturer;~~

~~(iii) owner's name and street address;~~

~~(iv) valid driver's license number and/or any other information or documentation that the program manager may deem necessary; and~~

~~(v) if applicable, identification of where the re-inspection, tune-up, and/or determination was made including documentation acceptable to the program manager that critical parts are unavailable.~~]

(1) the owner shall provide evidence satisfactory to the program manager or his designee, that at least $300 has been spent on the vehicle at a licensed repair facility for emissions-related repairs; or

(2) the owner shall provide evidence satisfactory to the program manager or his designee that at least $300 of repair work is required to bring the vehicle up to an engine performance level capable of passing an emissions inspection; and:

(a) in order to receive a time extension based on a estimate of repairs, the owner must prove to the program manager or his designee that the owner is financially incapable of paying for the repairs; and

(b) the repair work estimate shall be from a licensed repair facility.

**B** **Application for time extension.** An owner who meets the criteria may apply for a time extension by petitioning the program manager or his designee at the VPMD headquarters, providing receipts for all parts and repair work performed, or providing the required estimate, and listing the following information in order to be eligible for consideration:

(1) vehicle VIN number;
(2) model year and manufacturer;
(3) owner's name and street address;
(4) valid driver's license number and any other information or documentation that the program manager deems necessary; and
(5) if applicable, identification of the business and address where the re-inspection, tune-up or determination was made, including documentation acceptable to the program manager or his designee that critical parts are unavailable.

**[~~B.~~]C. Time extension [~~for repairs~~] limitations:**

(1) [~~Vehicles which require repair in addition to a low emission tune-up may be eligible for a time extension of up to 12 months for repairs over three hundred dollars ($300).~~] A time extension shall be granted only one time in the life of a vehicle and shall be for a period of up to 12 consecutive months.

(2) [~~The vehicle owner must petition the program manager for a time extension for repairs. Upon receipt of the petition the program manager may grant a time extension based upon the validity and applicability of the information provided. In addition to the time extensions described above, the program manager has the discretion to issue time extensions for extraordinary circumstances and shall report such extensions on the next program report to the board.~~] If a vehicle that has been granted a time extension is repaired within the first 90 days of the extension, the extension may be cancelled and not counted as the one-per-life-of-the-vehicle time extension.

(3) Time extensions shall be limited to 90 days for motor vehicles that exceed any of their maximum allowable exhaust standards as [~~prescribed in~~] specified in Table I [~~shown in~~] at [~~Paragraph (1) of~~] Subsection A of [~~20.11.100.14~~] 20.11.100.17 NMAC by more than twice the level allowed.

**D Free inspection for timely repair.** Any failing vehicle repaired within 90 days of its failed test is eligible for a free retest of that vehicle at the Vehicle Pollution Management Division Headquarters.

**[~~C.~~]E. Inspection due following extension:** Any person [~~owning~~] who owns a motor vehicle for which a time extension has been issued pursuant to [~~this section~~] 20.11.100.20 NMAC shall have that vehicle inspected within the time frame specified [~~by~~] in the extension granted for that vehicle.

**[~~D.~~]F. Expiration upon sale:** If a motor vehicle is granted a time extension under [~~this section~~] 20.11.100.20 NMAC and is sold within the time extension period, [~~such~~] the sale shall terminate the extension. The holder of the original time extension [~~must~~] shall inform each potential buyer that the vehicle does not comply with the [~~emission~~] emissions requirements of [~~this Part~~] 20.11.100 NMAC. The seller [~~must~~] shall also inform each potential buyer that the time extension is void upon the sale and the vehicle cannot be registered unless the vehicle passes an emissions inspection.

**[~~E.~~]G. Appeals:** Any person aggrieved by the decision of the program manager or designee regarding a compliance time extension may appeal by petitioning the [~~director of the environmental health department (EHD).~~] program manager in writing for reconsideration of the decision. [~~To perfect the appeal, the person aggrieved must deliver the completed form to the headquarters within 15 consecutive days after receipt of the program manager's decision. Following receipt of the request for hearing, the director of the EHD shall report his or her decision to the program within 48 hours of the determination. By the end of the next working day or sooner, if reasonably possible, the program shall report the decision of the director of the EHD to the petitioner. The director of the EHD will present written findings of fact and conclusions of law to the division within 45 days, and the program shall forward the findings and conclusions promptly to the petitioner.~~] The petition shall provide the basis for reconsideration of the decision made regarding the time extension. The program manager, at his discretion, may review the petition and record and affirm or deny the decision on the request for the time extension, or the program manager may arrange for a hearing on the record at the city of Albuquerque office of administrative hearings, to be held no later than 15 working days after receipt of the request for reconsideration. The petitioner shall submit a $50 fee to the office of administrative hearings, which shall set the time and place for the hearing. The hearing officer shall present written findings of fact and a recommendation of action to the program manager, who shall make the final decision and forward the findings and decision promptly to the petitioner. The final decision of the program manager may be appealed to the Albuquerque - Bernalillo county air quality control board in accordance with 20.11.81 NMAC.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.17 NMAC - Rn, 20 NMAC 11.100.II.6, 10/1/02; A, 5/1/04]

**[~~20.11.100.18~~] 20.11.100.21 CERTIFICATION REQUIREMENTS FOR *AIR CARE* STATIONS:**

**A.** No person shall solicit, advertise or imply that a facility is an *air care* station certified by the program manager to conduct inspections pursuant to [~~this part~~] 20.11.100 NMAC without having a current program-

issued certificate on display on the premises. Any *air care* inspection station that has its certification permanently or temporarily withdrawn or canceled by the board or the program manager shall immediately remove all inspection related signs and cease to represent the facility as a certified *air care* station.

**B.** No *air care* station owner or operator shall allow a person to conduct any part of an inspection pursuant to [~~this part~~] 20.11.100 NMAC [~~without that person being~~] unless the person is an *air care* inspector certified by the program manager and [~~having~~] has a current program-issued certificate on display on the premises.

**C.** Any person may [~~make application~~] apply for certification [~~for the operation of~~] to operate an *air care* station.

**D.** **[**~~Prior to construction, installation or renovation of any~~] Before constructing, installing or renovating a facility or building intended for use as an *air care* station, the owner or operator [~~must have submitted~~] shall submit an application and [~~received~~] receive pre-approval to operate the facility as an *air care* station. The applicant shall also provide information on traffic flow and how it will be managed to prevent unsafe conditions. The applicant shall also indicate how and where the customer may view the vehicle inspection from start to finish.

**E.** The program manager may issue a station certificate to a person who [~~makes application~~] applies and demonstrates to the program manager's satisfaction the following minimum conditions ~~will~~ shall be in effect and equipment ~~will~~ shall be present at the applicant's proposed *air care* station:

(1) at least one certified *air care* inspector whose certification is current and listed with the program manager ~~will~~ shall be [~~on hand~~] present and ~~will~~ shall conduct all the inspections of motor vehicles; no [~~such~~] inspection [~~will~~] shall be performed in whole or in part by any person [~~other than~~] who is not a certified *air care* inspector;

(2) at least one approved [~~VEGAS~~] emissions analyzer owned or leased by the station [~~will~~] shall be in place and operating within the equipment specification limits [~~set forth in 20.11.100.25 NMAC~~];

(3) in order to qualify for certification, the facility shall also be equipped and supplied as follows:

(a) sufficient hand tools and automotive diagnostic equipment for proper performance of the inspections;

(b) program approved span gas and compatible equipment for performing gas span checks;

(c) suitable non-reactive tail pipe extenders or probe adapters for inspecting vehicles with screened or baffled exhaust systems; [~~and~~]

(d) the approved [~~VEGAS~~] emissions analyzer manufacturer's maintenance and calibration manual; and

(e) gas cap checking adaptors.

(4) The *air care* station [~~must~~] shall provide the vehicle owner or driver with access to the test area so that observation of the entire official inspection process is possible. Access may be limited, but in no way shall prevent full observation [~~from beginning to end~~.] of the entire official inspection process from start to finish; and

(5) [~~The program manager may deny certification to a facility that:~~

~~(a) does not comply with all applicable federal, state and local laws and regulations, or~~

~~(b) does not provide for an entrance and a dedicated inspection area inside the facility that is large enough to accept all vehicles with a GVW of 8500 lbs or less presented for inspection, or~~

~~(c) does not provide for adequate traffic flow, or~~

~~(d) does not provide adequate viewing access by the vehicle owner or driver or for surveillance by program auditors.~~] {moved to its' own Section, 20.11.100.22 NMAC}

~~[(6)~~ ]Certified *air care* station owners or operators shall be responsible for the general management of their facility(ies) and for the supervision of their *air care* inspectors [~~and technicians~~] in accordance with [~~this part~~] 20.11.100 NMAC[~~, the [VPMP] *VPMD procedures manual* and other procedures and policies of the program~~].

**F.** **"Emissions-inspection-only" stations** may be authorized by the program manager. [~~Such~~] Emissions-inspection-only stations shall indicate on a sign authorized by the program and placed in a readily visible location that no emissions-related adjustments or repair services are available. Repair-related requirements of [~~Paragraph (2), of Subsection G of 20.11.100.18~~] Subsection B of 20.11.100.23 NMAC do not apply to "inspection-only" stations.

**[~~G. Performance of certified *air care* stations:~~**

~~(1) A certified *air care* station will obtain and pay for routine and unscheduled maintenance or replacement parts of the approved exhaust gas analyzer.~~

~~(2) The certified *air care* station will accept and perform emissions inspections on all vehicles presented for inspection and must have adequate reference manuals and basic emissions information in accordance with the VPMP procedures manual. Emissions inspections will not be performed on vehicles when the emissions inspection would pose a threat to any person's safety. Any motor vehicle accepted for repair shall be one for which~~

~~the station has adequate information regarding idle speed, idle mixture, timing, dwell, fast idle speed specifications, high altitude specifications and information describing emissions control systems, diagnostic and repair procedures if normally available in the trade.~~

~~(3) The times that a certified *air care* inspector will be available to make inspections shall be posted if such times do not include all hours the station is open for business.~~

~~(4) Each certified *air care* station shall post a sign in a conspicuous location, on the exterior of the station, indicating testing hours and the fee charged for inspections. The sign shall meet the uniform format and style requirements established by the program manager.~~

~~(5) A certified *air care* station may not refuse any vehicle for inspection based upon the race, color, religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the station refuse any vehicle for inspection because of the make, model, or year of the vehicle.~~

~~(6) Each certified *air care* station shall provide vehicle owners or drivers access to the inspection area so that the owner or driver can observe the official inspection. Access can be limited but in no way shall prevent full observation.~~

~~(7) A certified *air care* station shall perform initial emissions inspection on vehicles without repair or adjustment prior to the inspection. This does not apply to a vehicle when an owner or driver specifically asks for repairs or adjustments prior to an emissions inspection and a work order is completed and authorized by the vehicle owner or driver.~~

~~(8) Each certified *air care* station must employ a sufficient number of *air care* inspectors so that it can adequately staff regular testing hours, as set by the *air care* station and approved by the program manager.~~

~~(9) Each *air care* station must ensure that emissions inspections are performed on every vehicle, upon presentation, unless a vehicle test poses a threat to a person's safety. An *air care* station which is not designated as an "inspection only" station may elect to conduct testing "by appointment only," as approved by the program manager, but must indicate this on the station sign in lieu of testing hours.~~

~~**H.** Any person owning or operating a certified *air care* station which undergoes change of business name, ownership, official inspection personnel, or approved exhaust gas analyzers, or ceases to operate as an *air care* station, shall notify the program manager within 10 days of such change. Any certified *air care* station may have its certification revoked for failure to provide such notice. Relocation of an *air care* station, without review and written approval of the program manager being required shall automatically terminate and invalidate a current station certificate.~~] {moved to its own section, 20.11.100.23 NMAC}

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.18 NMAC - Rn, 20 NMAC 11.100.II.7, 10/1/02; A, 5/1/04]

**20.11.100.22 BASIS FOR DENIAL OF *AIR CARE* STATION CERTIFICATION:**

**A.** The program manager may deny certification to a facility that does not:

(1) comply with all applicable federal, state and local laws and regulations;

(2) provide for an entrance and a dedicated inspection area inside the facility that is large enough to accept all vehicles with a GVW of 8500 lbs or less presented for inspection;

(3) provide for adequate traffic flow; or

(4) provide adequate viewing access by the vehicle owner or driver or for surveillance by program auditors. {Moved from extant 20.11.100.18.E.(5) NMAC}

B. Paragraph (2) of Subsection A of 20.11.100.22 NMAC does not apply to van-mounted or movable *air care* stations.

[20.11.100.22 NMAC - N 2010]

**20.11.100.23 PERFORMANCE OF CERTIFIED *AIR CARE* STATIONS:**

**A.** A certified *air care* station shall obtain and pay for routine and unscheduled maintenance and replacement parts for the approved exhaust gas analyzer.

**B.** A certified *air care* station shall accept and perform emissions inspections on all vehicles presented for inspection and shall have adequate reference manuals and basic emissions information [~~as required by the *VPMD procedures manual*~~]. Emissions inspections shall not be performed on vehicles if the emissions inspection would pose a threat to any person's safety. A motor vehicle shall not be accepted for repair unless the station has adequate information regarding idle speed, idle mixture, timing, dwell, fast idle speed specifications, high altitude specifications and information describing emissions control systems, diagnostic and repair procedures, if normally available in the trade.

**C.** The times that a certified *air care* inspector will be available to conduct inspections shall be posted if inspection times do not include all hours the station is open for business.

**D.** Each certified *air care* station shall post a sign in a conspicuous location, on the exterior of the station, indicating testing hours and the fee charged for each inspection. The sign shall meet the uniform format and style requirements established by the program manager.

**E.** A certified *air care* station shall not refuse any vehicle for inspection based upon the race, color, religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the station refuse any vehicle for inspection because of the make, model or year of the vehicle.

**F.** Each certified *air care* station shall provide vehicle owners or drivers access to the inspection area so that the owner or driver can observe the official inspection. Access may be limited but in no way shall prevent full observation.

**G.** A certified *air care* station shall perform initial emissions inspection on vehicles without repair or adjustment prior to the inspection. This requirement shall not apply to a vehicle if an owner or driver specifically asks for repairs or adjustments prior to an emissions inspection, without prior suggestion or recommendation by the inspector or station owner or operator, and a work order is completed and authorized by the vehicle owner or driver.

**H.** Each certified *air care* station shall employ a sufficient number of *air care* inspectors so the station can adequately staff regular testing hours, as set by the *air care* station and approved by the program manager.

**I.** Each *air care* station shall ensure that emissions inspections are performed on every vehicle, upon presentation, unless a vehicle test poses a threat to a person's safety. An *air care* station that is not designated as an "inspection only" station may elect to conduct testing "by appointment only," as approved by the program manager, but shall indicate this on the station sign in lieu of posting the testing hours.

**J.** A person who owns or operates a certified *air care* station that changes the business name, ownership, official inspection personnel, or approved exhaust gas analyzers, or ceases to operate as an *air care* station, shall notify the program manager in writing within 10 days of the change. A certified *air care* station may have its certification revoked for failure to provide required notice. Relocation of an *air care* station, without prior review and written approval of the program manager as required, shall automatically terminate and invalidate a current station certificate. {moved from extant 20.11.100.18.G & H NMAC}

[20.11.100.23 NMAC - N 2010]

**[~~20.11.100.19~~] 20.11.100.24 [~~VEHICLE POLLUTION MANAGEMENT PROGRAM~~] FLEET *AIR CARE* STATIONS:**

**A.** No individual or business shall represent itself as a certified fleet *air care* station without being in possession of a duly authorized and currently valid certificate issued by the program manager.

**B.** Any person may apply for authorization for an *air care* station authorized by the program to perform inspections under [~~this part~~] 20.11.100 NMAC for the purposes of fleet inspection of a company or corporate business, or governmental fleet. [~~These~~] Fleet *air care* stations shall not offer or provide the inspections to the company's employees or the general public. Fleet *air care* stations shall be equipped and operated and shall be subject to the same quality assurance requirements as a certified *air care* station. The signage requirements of [~~Paragraphs (3) and (4), of Subsection G of 20.11.100.18 NMAC~~] Subsections C and D of 20.11.100.23 NMAC [~~are waived~~ [~~in such a facility~~] do not apply to a fleet *air care* station. The fee for [~~authorization of such~~] certifying a [~~van-mounted or moveable~~] fleet air care station shall be the same as for a certified *air care* station.

**C.** Notwithstanding [~~the above~~] Subsections A and B of 20.11.100.24 NMAC, any person with a fleet may contract with any certified *air care* station to provide inspections [~~needed~~] required to satisfy [~~this part~~] 20.11.100 NMAC.

[11/13/91. . .9/23/94, 12/1/95; 20.11.100.19 NMAC - Rn, 20 NMAC 11.100.II.8, 10/1/02]

~~**[20.11.100.20 VEHICLE POLLUTION MANAGEMENT PROGRAM HEADQUARTERS:**~~

~~**A.** The program manager shall establish and maintain a VPMP headquarters, to be an emissions inspection facility equipped with at least one program certified VEGAS from each manufacturer participating in the program, and employing at least two ASE certified technicians. The facility shall be operated by the city to provide services to the public and as necessary to facilitate program responsibilities and administer the provisions of this part.~~

~~**B.** The headquarters shall have, but not be limited to, the following responsibilities:~~

~~(1) Provide for non-binding mediation of disputes arising from inspection activities by certified *air care* stations or certified *air care* inspectors, to include if necessary a verification test at no cost to the person requesting such test.~~

~~(2) Evaluate and issue a compliance time extension for vehicles unable to pass the inspection test criteria as provided under the terms of this part.~~

~~(3) Investigate and maintain records regarding complaints against certified *air care* stations, certified *air care* technicians and certified *air care* inspectors, and forward such findings to the board.~~

~~(4) Perform quality assurance audits as required by 20.11.100.24 NMAC.~~]

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.20 NMAC - Rn, 20 NMAC 11.100.II.9, 10/1/02; A, 5/1/04]

**20.11.11.25 VAN MOUNTED OR MOVABLE *AIR CARE* STATIONS:**

**A.** No individual or business shall represent itself as a certified van-mounted or movable *air care* station without being in possession of a duly authorized and currently valid *air care* station certificate issued by the program manager.

**B.** Before developing or retrofitting a van-mounted or moveable *air care* station, the owner or operator shall submit an application and receive approval to operate as an *air care* station.

**C.** Any person may apply to the program manager for authorization to operate a van mounted or movable *air care* station certified by the program to perform on-site inspections of non-privately-owned vehicles under 20.11.100.21 NMAC if the proposed van-mounted or moveable *air care* station meets the following conditions:

(1) the van-mounted or movable *air care* station is restricted to testing model year 1996 or newer vehicles;

(2) the van-mounted or movable *air care* station is further restricted to testing only OBDII compatible vehicles; and

(3) the van mounted or movable *air care* [~~state~~] station is equipped with pressurized equipment to perform gas cap testing as required.

**D.** Van-mounted or movable *air care* stations will not be authorized to provide *air care* inspections to the general public. Van mounted or movable testing is restricted to on-site commercial, government or public utility fleets and used vehicle inventories of dealerships licensed by the state of New Mexico. Van-mounted or moveable *air care* stations must provide a minimum of one-hour written notice (fax or email) provided to VPMD of the site name, address and requested number of vehicles.

**E.** The signage requirements of Subsections C and D of 20.11.100.23 NMAC do not apply to van-mounted or moveable *air care* stations. The fee for [~~authorization of such~~] certifying a [~~fleet~~] van-mounted or movable *air care* station shall be the same as for certifying an *air care* station.

[20.11.100.25 NMAC - N 2010]

**[~~20.11.100.21~~] 20.11.100.26 CERTIFICATION OF *AIR CARE* INSPECTORS:**

**A.** No person shall represent [~~him or herself~~] himself as a certified *air care* inspector without being in possession of a duly authorized and currently valid certificate issued by the program manager.

**B.** Certificates issued under [~~this subsection~~] Subsection B of 20.11.100.26 NMAC shall be valid for 12 months unless the program manager requires re-certification [~~at some shorter time~~] earlier as provided [~~below~~] in [~~Paragraph (3), of Subsection B of 20.11.100.21~~] 20.11.100.27 NMAC.

(1) **Certification requirements for *air care* inspectors:**

(a) A person [~~desiring to be certified~~] seeking certification shall file an application with the program manager on forms provided by the program. The issuance of certificates shall be administered by the program. Before an applicant may be granted a certificate, the applicant [~~must~~] shall demonstrate general knowledge, skill and competence requirements under the program and in accordance with training and testing requirements set forth by the program manager.

(b) The knowledge, skill and competence that an applicant must demonstrate shall include, but is not [~~be~~] limited to, the following:

(i) general operation and purpose of emissions control systems for all types of motor vehicles;

(ii) how HC and CO relate to timing and air/fuel ratio control;

(iii) rules and regulations pertaining to inspection and the inspection procedures established in [~~the *VPMD procedures manual* and~~] [~~this part~~] 20.11.100 NMAC;

(iv) general understanding of the benefits to vehicle owners provided in the *Defect Warranty Provisions* of Section 207(a) and the *Performance Warranty Provisions* of Section 207(b) of the Federal Clean Air Act as it applies to the inspection;

(v) ability to recognize by visual inspection the emissions control equipment for 1975 and newer vehicles, distinguishing between those [~~required~~] requiring and those not requiring inspection;

(vi) operation and proper use, care, maintenance and gas span checking of the approved exhaust gas analyzers;

(vii) proper use, filing and storage of inspection forms, [~~certificates of inspection~~] VIRs and supplemental documents; [~~and~~]

(viii) ability to perform an actual emissions inspection from start to finish; and

(ix) other information as the program manager requires.

(c) The program may issue a certificate to the applicant when the program manager determines that [~~there has been successful completion of~~] the applicant has successfully completed the certification requirements of [~~this part~~] 20.11.100 NMAC.

(d) Persons certified under [~~this subsection~~] Subsection B of 20.11.100.26 NMAC shall inform the program manager within [~~ten~~] 10 days of any change in legal name, employment status or current mailing address. Each certified inspector will be assigned a personal identification number [~~which~~] that will be checked for correlation in data audits of the program. Failure to keep the program manager informed may [~~be cause for~~] result in revocation of certification.

(2) **Performance of certified *air care* inspectors:** [~~Every~~] Certified *air care* [~~inspector~~] inspectors [~~shall comply with the [VPMP] *VPMD procedures manual* and all the board regulations and~~] shall:

(a) at no time allow another person to use [his ~~or her~~] certificate or personal code to enter into an approved exhaust gas analyzer, nor [~~will~~] shall [he ~~or she~~] delegate [his ~~or her~~] authority to another person to perform any official inspection or any part of an inspection under [his ~~or her~~] name or personal identity code;

(b) accept all vehicles for [~~emission~~] emissions inspection and perform the emissions inspections in an expedient manner in order to avoid unnecessary public inconvenience; however, an *air care* inspector shall not accept [~~any~~] a vehicle for inspection if the inspection would pose a threat to any person's safety;

(c) refrain from deviation from [~~this part~~] 20.11.100 NMAC and official procedures established for this program;

(d) at no time during the emissions inspections sequence attempt or allow adjustments to be performed on the vehicle being inspected until the final VIR is complete; and

(e) sign all [~~certificates of inspection~~] VIRs at the time of inspection.

~~[(3) **Re-certification requirements for certified *air care* inspectors:**~~

~~(a) The program manager will reissue certification to any *air care* inspector who demonstrates updated competency as evidenced under the then-current requirements administered by the program. Such re-certification shall be required upon expiration of a current annual certificate or sooner as provided below.~~

~~(i) If the board determines a need to update the general qualifications of *air care* inspectors prior to the annual re-certification period, holders of such certificates may be required to re-qualify.~~

~~(ii) As a result of auditing or investigating consumer complaints, a certified inspector may be required to re-certify if the program manager determines that competency and related problems must be corrected in order to protect the public.~~

~~(b) Certified *air care* inspectors must re-certify during the month of expiration of a current certification. The program shall mail written notification to the station address of record of any active certified inspector whose certificate is about to expire or is otherwise being revoked. The notice shall inform the person of the necessity for re-certification and the nature of such skills, systems, or any updated procedures or retraining deemed necessary to perform emissions inspections. The notice shall state the deadline for re-certification.~~] {moved to 20.11.100.27 A & B}

[5/20/88. . .11/13/91, 9/23/94, 12/1/95; 20.11.100.21 NMAC - Rn, 20 NMAC 11.100.II.10, 10/1/02]

~~**[20.11.100.22 CERTIFICATION OF *AIR CARE* TECHNICIANS:** [Reserved]]~~

[5/20/88. . .8/25/92, 9/23/94; 20.11.100.22 NMAC - Rn, 20 NMAC 11.100.II.11, 10/1/02; A, 5/1/04]

~~**[20.11.100.23 EXEMPTED SPECIAL VEHICLES CLASSIFICATIONS:**~~

~~**A.** All new motor vehicles shall be exempt from inspection only during the initial two registration periods first following the date of the manufacturer's certificate of origin (MCO).~~

~~**B.** Vehicles, which are fueled by a mixture of gasoline and oil for purposes of lubrication, are exempt from inspection.~~

~~**C.** Motor vehicles that are used for legally sanctioned competition and not operated on public streets and highways.~~

~~**D.** Implements of husbandry, or road machinery not regularly operated on public streets and highways.~~

~~**E.** Other vehicles which are not regularly operated on public streets and highways after making a proper showing to demonstrate such to the program manager.~~

~~**F.** Diesel and electric powered vehicles. New diesel vehicles are exempt until title transfer. Diesel vehicles must pass a visible emissions test at VPMD Program Headquarters prior to registration following a title transfer.~~

~~**G.** Vehicles leased by a leasing company whose place of business is Bernalillo county, to a person who resides outside of Bernalillo county. However an exemption shall not be granted if the person resides in an area, which has an EPA-required vehicle inspection program.~~

~~**H.** Vehicles manufactured during or before model year 1974.~~

~~**I.** Vehicles sold between licensed dealers.~~

~~**J.** Vehicles with a GVW of 10,001 lbs or more.~~

~~**K.** Dedicated alternative fueled vehicles classified as super ultra low emission vehicles.~~

~~**L.** Electric hybrid vehicles classified as super ultra low emission vehicles.~~] {moved to 20.11.100.2.B NMAC, except for "Subsection F, K and L".}

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.23 NMAC - Rn, 20 NMAC 11.100.II.12, 10/1/02; A, 5/1/04]

**20.11.100.27 RECERTIFICATION REQUIREMENTS FOR CERTIFIED *AIR CARE* INSPECTORS:**

**A.** The program manager will reissue certification to any *air care* inspector who demonstrates updated competency as evidenced under the then-current requirements administered by the program. Re-certification shall be required upon expiration of a current annual certificate or sooner if either of the following situations exist.

(1) If the program manager determines a need to update the general qualifications of *air care* inspectors prior to the annual re-certification period, holders of thecertificates may be required to re-qualify.

(2) As a result of auditing or investigating consumer complaints, a certified inspector may be required to re-certify if the program manager determines that competency or other problems must be corrected in order to protect the public.

**B.** Certified air care inspectors shall re-certify during the month the current certification is scheduled to expire.

**C.** Each *air care* inspector is responsible for applying for recertification in a timely manner. The date of certification expiration is provided on the inspector certification certificate, which shall be displayed in the *air care* station, and the gas analyzer provides notice of certification expiration starting at least 30 days prior to the certificate expiration date. VPMD will not give special consideration regarding the time and availability of a recertification class to an *air care* inspector whose certification has lapsed unless good cause exists, as determined by the program manager.

**D.** VPMD will review the VID records of each *air care* inspector at the time of the recertification request to determine if there is a pattern of violations or fraud during inspections performed during the previous three years.

**E.** If a former air care inspector requests recertification, but has allowed a lapse in recertification that is greater that 90 days in length, the program manager may require the former inspector to take the week-long certification training class rather than the recertification training class. {after 20.11.100.21.B.(3).(a).(i)}

[20.11.100.27 NMAC - N 2010]

**20.11.100.28 DENIAL OR SUSPENSION OF RECERTIFICATION FOR *AIR CARE* INSPECTOR:**

**A.** The VPMD program manager may suspend an existing certification or deny recertification for the following reasons:

(1) the VPMD program manager has determined, as a result of a review of the VID or VPMD inspection files, that an *air care* inspector has committed violations resulting in an accumulation of 16 points or more;

(2) the *air care* inspector has failed to attend the recertification training; or

(3) the *air care* inspector has failed the recertification test.

**B.** Whenever a certification has been suspended and the certification expires during the suspension period, the *air care* inspector may not obtain a new certification until the term of the suspension has expired.

[20.11.100.28 NMAC - N 2010]

**20.11.100.29 ADMINISTRATIVE FEES FOR CERTIFICATIONS AND RECERTIFICATIONS:**

**A.** Any person seeking certification, or annual recertification thereof, in order to participate in the program as an *air care* station or *air care* inspector shall pay to the city the required fee as established below, before a certification shall be issued or renewed by the program.

| **Certifications** | **Amount** |
|---|---|
| Certified *Air Care* Station | $200.00 |
| Certified *Air Care* Inspector | $35.00 |

{after 20.11.100.28 NMAC}

**B.** Every *air care* station or *air care* inspector who has had a certification suspended shall pay the following fees before the *air care* station or *air care* inspector certification will be reinstated.

| **Reinstatement** | **Amount** |
|---|---|
| *Air Care* Station Certification | $200.00 |
| *Air Care* Inspector Certification | $35.00 |

**C.** Any *air care* inspector who requests to be certified on more than one motor vehicle emissions analyzer shall pay a $35 fee for each analyzer.

[20.11.100.25 NMAC - N 2010]

**[~~20.11.100.24 QUALITY CONTROL OF *AIR CARE* STATIONS:~~] 20.11.100.30 VPMD QUALITY ASSURANCE AUDITS OF *AIR CARE* STATIONS AND *AIR CARE* INSPECTORS:** VPMD's quality assurance audits and data analysis are designed to: discover, correct and prevent fraud, waste and abuse; determine whether emissions testing procedures are being correctly performed; assess whether emissions analyzers are measuring accurately; and find any existing problems that could impede program performance.

**A.** The program shall conduct announced and unannounced overt quality assurance audits of each certified *air care* station as ordered by the program manager. The duties of the VPMD auditor shall include but not be limited to the following:

(1) Verify that the equipment, reference materials and staffing agree with the information on file with the program manager and are sufficiently maintained to meet the intent of the VPMD program;

(2) check the accuracy of data entry and production of the final inspection reports furnished to motorists;

(3) perform a complete quality assurance survey on the analyzer, the calibration gas system, and automatic zero-span performance in relation to the specifications and requirements of [~~this part~~] 20.11.100 NMAC.

(4) the field audit gases for standardizing approved analyzers used for inspections shall conform to the provisions [~~outlined~~] specified in 40 CFR, Part 86, Subpart B, §86.114-94, *Analytical Gases*, for automotive exhaust emissions testing; those gases shall be of "precision" quality, certified to be within ± (plus-or-minus) 1% of the labeled concentration, and certified by the NIST; and

(5) examine the service contract for the analyzer to assure proper lockout controls, data record capture and response in case of trouble.

**B.** The program shall perform covert quality assurance audits without offering official credentials or identification by submitting [~~any~~] motor [~~vehicle~~] vehicles for inspection [~~so as~~] in order to examine the station operation under actual conditions. [~~Such inspection~~] covert audit vehicles may be offered at random times in a condition [~~involving~~] resulting from intentional maladjustment, or [~~intentionally removed or rendered inoperative~~] with emissions control components intentionally removed or rendered inoperative by VPMD. The results of [~~Such~~] covert audits by the program will provide data for assessing the performance of [~~the~~] certified *air care* [~~station~~] stations and certified *air care* inspectors and [~~its~~] their adherence to the requirements of [~~this part~~] 20.11.100 NMAC [~~and the [VPMP] *VPMD procedures manual*~~].

**C.** VPMD shall perform covert quality assurance audits of the *air care* stations and *air care* inspectors by observing their activities unannounced from a remote off site area. {40 CFR 51.363}

**D.** VPMD shall perform data analysis of information contained in the VID to audit the performance of *air care* stations and *air care* inspectors. The criteria for the data analysis will be selected by VPMD in response to VPMD investigations, complaints, certification renewals or other triggers, or may occur at random times on randomly-selected stations and inspectors. {40 CFR 51.363}
[5/20/88. . .8/25/92, 9/23/94, 12/1/95, 20.11.100.24 NMAC - Rn, 20 NMAC 11.100.II.13, 10/1/02]

~~**[20.11.100.25 SPECIFICATIONS FOR APPROVED VEGAS:**~~

~~**A. Performance and design specifications for the VEGAS**: The program manager shall establish the specifications for the VEGAS, which shall be used exclusively by all stations, which have been certified by the program to perform emission inspections. The specifications shall be consistent with those required in 40 CFR Part 51 Appendix B subpart S and shall include, but are not limited to, operation by internal computer controlled logic, automatic data collection, service and maintenance requirements for replacement or loan analyzers and warranty for the period of an agreement with the station. The VEGAS shall be able to perform an on-board diagnostic test, a pressurized gas cap test, an idle mode test and an unloaded 2500 RPM test. The VEGAS shall provide second chance capabilities for the idle mode and 2500 RPM tests. The specifications shall be described in a separate document and shall be made available by the program upon request. A list of vendors for the approved VEGAS will be available at VPMD Headquarters.~~

~~**B.** The program manager will establish specifications for the exhaust gas analytical and sampling system portion of the approved VEGAS. The program manager will determine the manufacturers' compliance with the revisions and additions to the specifications necessary for use of the instrument within the program area.~~

~~**C. Applications for approval of vehicle exhaust systems:**~~

~~(1) Those manufacturers seeking to become a vendor of approved VEGAS shall make application to the program manager on forms provided by the program. Only manufacturers, which can offer an analyzer, which meets the requirements as specified by the program manager, shall be allowed to participate as a vendor.~~

~~(2) A manufacturer requesting the approval of an analyzer for the measurement of exhaust gases for use in the program shall make application with the program manager on forms provided by the Program. All manufacturers making application shall meet the applicable technical specifications and administrative requirements specified by the program manager prior to approval.~~

~~**D. Working span gases:**~~

~~(1) **General:** The VEGAS manufacturer and its designated marketing vendors shall, on request, supply span gases approved by the program to any ultimate purchaser of its unit. The VEGAS manufacturer shall also provide the analyzer purchaser with a comprehensive, up-to-date list with addresses and phone numbers of NIST-approved gas blenders. Each new or used VEGAS sold or leased by the instrument manufacturer or marketing vendor shall have a full span gas container installed and operational at time of delivery if the VEGAS is designed to incorporate an integral span gas supply.~~

~~(2) **Span gas blends:** The span gas concentrations supplied with VEGAS used by certified *air care* stations shall conform to the specifications developed pursuant to this subsection.~~

~~**E. VEGAS performance characteristics:**~~

~~(1) Optical correction factor sometimes referred to as "C" factor or "propane to hexane conversion factor": Each approved VEGAS shall be permanently labeled with its correction factor, carried to at least two decimal places. Factor confirmation shall be made on each assembled VEGAS by measuring both N-hexane and propane on assembly line quality checks.~~

~~(2) **Changes and equipment updates:** No changes in design or performance characteristics of component specifications which may affect VEGAS performance will be allowed without the program manager's approval. It will be the VEGAS manufacturer's responsibility to confirm that such changes have no detrimental effect on VEGAS performance. All approved VEGAS shall be updated as needed and specified in the specifications document.~~

~~**F. Documentation, logistics and warranty requirements:** An instruction manual shall accompany each VEGAS and shall contain at least the following:~~

~~(1) complete technical description,~~

~~(2) functional schematics (mechanical and electrical),~~

~~(3) accessories and options,~~

~~(4) model number, identification markings and location,~~

~~(5) operating maintenance to include recommended periodic cycles and procedure for maintaining sample system integrity (leaks, hang-up, calibration, filters, etc.),~~

~~(6) required service schedule, identifying the items needing maintenance and the procedures to be followed by the purchaser or lessor. The services to be performed only by the manufacturer shall be clearly identified,~~

~~(7) warranty provisions to include listing of warranty repair stations by name, address, and phone number, and~~

~~(8) the name, address, and phone number of the permanent southwestern regional representative(s) for training, service, and warranties.~~

~~**G. Calibration of approved VEGAS:** Certified *air care* stations and all others participating in this program shall abide by this subsection in the calibration and spanning of VEGAS. Span gases and containers shall meet the following parameters, blends and specifications:~~

~~(1) **span and calibration gases:** The operator of a certified *air care* station shall be responsible to assure that span gases used in approved VEGAS conform to the following:~~

~~(a) All span gases supplied to stations shall be named using EPA recommended naming practices.~~

~~(b) The carrier gas shall be nitrogen; the hydrocarbon gas shall be propane. Three component (HC, CO, $CO_2$ and carrier) gases will be provided.~~

~~(c) The concentration(s) of the span gas blend shall be within limits established by the program to provide for uniform VEGAS spanning.~~

~~(d) The accuracy of the certified *air care* station span gas blend shall be certified by the blender to be ± (plus or minus) 2% of labeled concentration and traceable to the NIST. Only gas blends supplied by the program's approved blenders shall be used with the approved VEGAS.~~

~~(e) Certified *air care* stations shall gas calibrate the approved VEGAS once each 72 hours as determined by the instrument or as needed in order to maintain accuracy.~~

~~(f) All approved VEGAS shall be calibrated only with span gases bearing a program approved label.~~

~~(2) **Accuracy:** A gas supplier shall initially demonstrate to the program its qualifications as a vendor of span gases. The program may require additional evidence of qualifications at periodic intervals. All gas suppliers will be required to abide by the "approved span gas verification program" established by the VPMP.~~

~~(3) **Containers:** Span gases shall be supplied in containers which meet all the applicable provisions of the occupational safety and health administration (OSHA).~~

~~(4) **Additional requirements:** Additional specifications related to calibration requirements are described in the VEGAS specifications document.~~]

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.25 NMAC - Rn, 20 NMAC 11.100.II.14, 10/1/02; A, 5/1/04]

**20.11.100.31 ENFORCEMENT AGAINST *AIR CARE* STATIONS AND INSPECTORS:**

**A.** If a VPMD program manager or a compliance auditor finds a condition or practice that violates any requirement of 20.11.100 NMAC, VPMD may take any enforcement action or combination of actions it finds necessary, including, but not limited to: a written warning, a notice of violation, a letter denying recertification, a notice of intent to suspend or revoke an active certification, or immediate lockout of the gas analyzer.

**B.** Violations for which the program manager or VPMD personnel may take action under 20.11.100.31 NMAC include:

(1) any act or omission by an *air care* station or an *air care* inspector that causes the station or inspector to be in violation of any applicable requirement of 20.11.100 NMAC;

(2) an *air care* station or inspector taking or performing any action prohibited under 20.11.100.16 NMAC as determined by any type of investigation by VPMD, such as an overt or covert audit, or VID analysis; and

(3) any other act or omission by a station or inspector that results in a situation that does not comply with 20.11.100 NMAC.

**C.** An enforcement action may be issued to an *air care* station or *air care* inspector by first class mail, hand delivery by VPMD personnel or electronically through the EIS.

**D.** The program manager may issue a notice of violation to the *air care* station for acts or omissions by an *air care* inspector at the *air care* station regardless of whether VPMD has issued a notice of violation to the air care inspector who committed the violation.

**E.** A notice of violation or warning issued pursuant to 20.11.100 NMAC, shall be in writing on an approved VPMD form and shall specify whether the notice of violation is issued to the inspector or the station. The

notice shall include notification of the penalty points assessed for the violation and the total penalty points the *air care* station or inspector has accumulated during the preceding 12-month period. {from procedure manual}
[20.11.100.31 NMAC - N 2010]

**20.11.100.32 CATEGORIES OF VIOLATIONS:**

A. The program manager, supervisor or VPMD auditor shall review each notice of violation for consistency with 20.11.100 NMAC and determine the character and category of the violation for the purpose of assessing penalty points, monetary penalties or taking other enforcement action.

(1) **Intentional violations**. An intentional violation is a violation that is the result of actions that are reckless, deliberate or purposeful or that occur when the person who committed the act or omission knew or should have known the conduct was a violation of 20.11.100 NMAC.

(2) **Serious violations**. Serious violations are actions that occur as a result of inspector error, which includes an omission, and are likely to result in inaccurate test results.

(3) **Minor violations** are common errors that can be prevented by diligence and care. {from procedures manual}
[20.11.100.32 NMAC - N 2010]

**20.11.100. 33 PENALTY ASSESSMENT:**

**A.** Penalty points may be assessed against the *air care* inspector, *air care* station or both. Penalty points are tracked for each *air care* station and each *air care* inspector throughout a rolling 12 month period.

**B.** Violations committed during an inspection shall be assessed against the air care inspector.

**C.** Program violations, such as allowing or requiring an inspector to perform an improper test or allowing a non-certified individual to perform part or all of a test; improper filing and storage of program documents, or improperly posted signs, shall be assessed against the station.

**D.** Air care stations may be held responsible for their inspectors' actions if evidence establishes that the inspector violations occurred due to lack of diligence or supervision by the *air care* station owner or operator.

**E. Intentional violations**

(1) Each intentional violation may result in the issuance of up to 16 points for each occurrence.

(2) 16 points shall result in a suspension or revocation of certification, as appropriate, for the *air care* inspector and the *air care* station at which the violations occurred.

(3) When an intentional violation results in a false pass, the *air care* station or inspector may be assessed a monetary penalty equal to 2.5 times the estimated cost of repair of the vehicle, according to the industry flat rate book.

(4) When the intentional violation results in a false fail, the *air care* station or inspector may be assessed a monetary penalty of up to $1000.

**F. Serious Violations**

(1) Each serious violation shall be assessed four points for each occurrence.

(2) A Serious violation shall require the station to refund the test fee and provide a free retest to the vehicle owner or designee.

(3) A Serious violation may also result in a mandatory conference at the VPMD Headquarters to discuss the violation and how to assure that there will be no future repetition of the problem. The results of the conference shall be documented and may include a commitment by the station or inspector or both to complete additional training. The program manager or designee may agree to vacate points if commitments are completed successfully and in a timely manner. Mandatory conferences shall be scheduled and held at the VPMD headquarters.

**G. Minor Violations:** Each minor violation shall be assessed two points. Minor violations shall result in formal written notices of violation.
[20.11.100.33 NMAC - N 2010]

**20.11.100.34 HISTORY OF VIOLATIONS:**

**A.** If the program manager determines that an *air care* station or *air care* inspector has a history of violations, the level of enforcement or penalty assessment may be increased for any future violations. The program manager shall not be limited to considering the immediately-preceding 12-month period to determine whether a history of violations exists.

**B.** When violations continue to occur at an *air care* station or by an *air care* inspector following previous enforcement actions, the program manager may issue a more severe enforcement action, including but not

limited to: issuing a notice of violation instead of a written warning for a minor violation, or issuing an intent to revoke or suspend a certification for a non-minor violation that is the latest violation in a history of violations.

**C.** When violations continue to occur at an *air care* station or by an *air care* inspector following previous enforcement actions, the program manager may assess more severe penalties or a greater number of penalty points as a result of an *air care* station or *air care* inspector committing additional errors or violations.

**D.** Significant accumulation of penalty points shall result in an enforcement action described in 20.11.100.35 NMAC

[20.11.100.35 NMAC - N 2010]

**[~~20.11.100.26~~] 20.11.100.35 [~~DISCIPLINARY~~] ENFORCEMENT ACTION, DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATIONS:**

**A.** The program manager is authorized, after reasonable investigation and showing of a violation of any [~~provisions~~] provision of [~~this regulation~~] 20.11.100 NMAC, to take [~~disciplinary~~] enforcement actions including monetary penalties [~~and/or~~] and denial, suspension or revocation of certification to operate under the program as a certified *air care* station[~~, certified fleet *air care* station,~~] or certified *air care* inspector [~~or certified *air care* technician~~]. In deciding on an appropriate action, the program manager may consider: past violations on file against the charged party, previous actions [~~which~~] that may have been taken by the program against the charged party, settlement or consent agreements [~~which~~] that document past violations, and judicial decisions if related to the requirements of [~~this part~~] 20.11.100 NMAC [~~to the procedures manual, or other program guidelines or requirements~~].

**B.** Notwithstanding the provisions of Subsection C of [~~20.11.100.26~~] 20.11.100.35 NMAC, the program manager may immediately suspend or revoke the certification of a certified *air care* station[~~, certified fleet *air care* station,~~] or certified *air care* inspector [~~or certified *air care* technician~~] if the program manager determines that continued operation as an *air care* station[~~, fleet *air care* station,~~] or *air care* inspector [~~or *air care* technician~~] would jeopardize the public health, safety and welfare; violate [~~the [VPMP] *VPMD procedures manual* or~~] [~~this part~~] 20.11.100 NMAC or compromise the program.

**C.** **[~~Prior to~~]** Before taking any action to suspend or revoke a certification, the program manager shall inform the inspector [~~technician~~] or station owner of the charges. Any party so informed may request a hearing on the merits before the program manager. [~~Such~~] The request [~~must~~] shall be made in writing to the program manager within 15 consecutive days [~~of receipt of~~] after receiving the notice of intent to suspend or revoke the certification.

**D.** Upon receipt of a written request for a hearing on the merits, the program manager shall set a date, time and place for the hearing no more than 60 consecutive days from the date of receipt of the request. No fewer than 15 consecutive days before the hearing, the program manager shall inform the charged party of the date, time and place of the hearing. The program manager may appoint a hearing officer. At the hearing, the charged party may demonstrate why a monetary penalty should not be imposed [~~and/or~~] and the certification should not be suspended or revoked. The hearing officer shall provide findings of fact, conclusions of law and a written recommendation to the program manager based on the evidence presented at the hearing.

**E.** **[~~At~~]** After the hearing on the merits, based on the findings of the initial investigation and the [~~evidence presented at the hearing~~] recommendation of the hearing officer, the program manager[~~, with the approval of the environmental health department director,~~] [~~may~~] shall take appropriate action including but not limited to any one or a combination of the following: monetary penalty; suspension or revocation of the certification or dismissal of the charges. The program manager may [~~issue~~] impose monetary penalties as authorized by the City of Albuquerque and [~~the~~] Bernalillo County Joint Air Quality Control Board Ordinances, the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances, and the New Mexico Air Quality Control Act. The program manager may consider: past violations on file against the charged party; previous actions [~~which~~] that may have been taken by the program against the charged party; settlement or consent agreements [~~which~~] that document past violations and judicial decisions if related to the requirements of [~~this part~~] 20.11.100 NMAC, [~~to~~] [~~the procedures manual, or other program guidelines or requirements~~].

**F.** After a hearing specified by 20.11.100.35 NMAC, any party whose application for certification is denied or certificate is suspended or revoked may appeal the decision of the program manager to the board. To perfect the appeal to the board, the appellant [~~must~~] shall deliver a written request to the headquarters within 15 consecutive days after receipt of the program manager's decision. At the next regular meeting of the board, the program manager shall inform the board [~~at the next regular meeting of the board~~] that an appeal has been filed. The board may make its determination based on the record or may require a hearing de novo. If the board decides on a hearing de novo, the petitioner shall pay a fee of $125 pursuant to Subsection C of 20.11.2.22 NMAC by the deadline established by the board. A hearing de novo shall be held in accordance with 20.11.81 NMAC. The board

may uphold, overturn or amend the program manager's decision. If the board decides to conduct a hearing de novo, the board may appoint a hearing officer, and the board shall set a date, time and place for the hearing and shall hold the hearing within 90 consecutive days of the headquarters' receipt of the written request. No fewer than 15 consecutive days before the hearing, the board shall inform the appellant of the date, time and place of the hearing. The decision of the board shall be final.
[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95, 20.11.100.26 NMAC - Rn, 20 NMAC 11.100.II.15, 10/1/02; A, 5/1/04; A, 9/1/04]

**[~~20.11.100.27 ENFORCEMENT:~~] 20.11.100.36 ADDITIONAL ENFORCEMENT AUTHORITY:**

**A. Mandatory inspections:** Any person who owns a motor vehicle subject to [~~this part~~] 20.11.100 NMAC and fails to demonstrate compliance with [~~this part~~] 20.11.100 NMAC shall be issued a failing VIR and shall be refused re-registration by the MVD pursuant to the Motor Vehicle Code, 66-3-7.1 NMSA (1978).

**B. Procedural provisions:** Any person who violates the requirements of [~~this part~~] 20.11.100 NMAC shall be guilty of a misdemeanor pursuant to either the City of Albuquerque Joint Air Quality Control Board Ordinance 9-15-1-99(B)(1) R.O.1994 or the Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5. Any person who violates a requirement of [~~this regulation also~~] 20.11.100 NMAC shall also be subject [~~both~~] to all other enforcement actions authorized by the Air Quality Control Act, 74-2-1 et. seq., NMSA 1978 and[~~all~~] other remedies available at law or equity.

**C. Referral for further investigation or legal remedy.** In addition to suspension or revocation of certification and monetary penalties, cases that involve an intentional violation may be referred to the attorney general, district attorney or city attorney, as appropriate, for further investigation of fraudulent acts or other acts contrary to law.
[5/20/88. . .12/1/95; 20.11.100.27 NMAC - Rn, 20 NMAC 11.100.II.16, 10/1/02]

**[~~20.11.100.28 ADMINISTRATIVE FEES FOR CERTIFICATIONS:~~** ~~Any person seeking certification, or annual renewal thereof, to participate in the program as an *air care* station, inspector or technician shall remit to the city the appropriate fee as indicated below before a certification shall be issued or renewed by the program.~~

| ~~**Certifications**~~ | ~~**Amount**~~ |
|---|---|
| ~~Certified *Air Care* Station~~ | ~~$200.00~~ |
| ~~Certified *Air Care* Inspector~~ | ~~$35.00~~ |
| ~~Certified *Air Care* Technician~~ | ~~$35.00~~] {moved to 20.11.100.29 NMAC} |

[5/20/88; 20.11.100.28 NMAC - Rn, 20 NMAC 11.100.II.17, 10/1/02]

**20.11.100.29** Repealed.
[9/23/94. . .12/1/95, R 8/1/97; 20.11.100.29 NMAC - Rn, 20 NMAC 11.100.II.18, 10/1/02]

**HISTORY OF 20.11.100 NMAC:**
**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
Regulation No. 28, Motor Vehicle Inspection, filed 5/20/88;
Regulation No. 28, Motor Vehicle Inspection, filed 8/30/89;
Regulation No. 28, Motor Vehicle Inspection, filed 11/13/91;
Regulation No. 28, Motor Vehicle Inspection, filed 8/25/92;
Regulation No. 28, Motor Vehicle Inspection, filed 9/23/94.

**History of Repealed Material:** 20 NMAC 11.100.II.18, effective 8/1/97.

**Other History:** Regulation No. 28, Motor Vehicle Inspection, filed 9/23/94 was renumbered and reformatted to 20 NMAC 11.100, Motor Vehicle Inspection-Decentralized, effective 12/1/95.
20 NMAC 11.100, Motor Vehicle Inspection-Decentralized, filed 10/27/95 was renumbered, amended and reformatted to 20.11.100 NMAC effective 10/1/02.