

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

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ENVIRONMENTAL HEALTH
16 MAY 23 AM 10:45

IN THE MATTER OF PETITION TO AMEND
20.11.100 NMAC-MOTOR VEHICLE
INSPECTION-DECENTRALIZED

AQCB Petition No. 2016-2

Environmental Health Department,
City of Albuquerque, Petitioner.

ENVIRONMENTAL HEALTH DEPARTMENT'S
PETITION TO AMEND 20.11.100 NMAC –
MOTOR VEHICLE INSPECTION – DECENTRALIZED

The City of Albuquerque's Environmental Health Department (EHD) petitions the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) to authorize a hearing on EHD's proposed regulatory change to remove the on-board diagnostic test requirement for diesel vehicles (diesel emissions test requirement) from 20.11.100 NMAC, *Motor Vehicle Inspection-Decentralized* (EHD's Proposed Rule). As explained below, the diesel emissions test requirement is not authorized under the state Air Quality Control Act, NMSA 1978, § 74-2-4(E); or under the Albuquerque (City) Motor Vehicle Emissions Control Ordinance, Revised Ordinances of Albuquerque (ROA), § 7-8-1 et seq.

1. EHD's Vehicle Pollution Management Division (VPMD) operates a decentralized vehicle emissions testing program, also known as the Inspection and Maintenance (I/M) Program, codified at 20.11.100 NMAC, and authorized by the state Air Quality Control Act, NMSA 1978, § 74-2-4(E); the City Motor Vehicle Emissions Control Ordinance, ROA § 7-8-1 et seq.; the federal Clean Air Act, 42 U.S.C. § 7401 et seq.; and the U.S. Environmental Protection Agency's (EPA) implementing regulations, 40 C.F.R. §§ 51.350 to 51.373, Subpart S - *Inspection/Maintenance Program Requirements*.

2. On May 11, 2011, the Air Board held a public hearing and adopted a diesel emission test requirement similar to one EHD had petitioned the Air Board to adopt.

3. On October 31, 2012, EPA approved the diesel emissions test requirement as part of the State Implementation Plan (SIP). 77 Fed. Reg. 65,821 (October 31, 2012).

4. The diesel emissions test requirement became effective on January 1, 2013 in accordance with the provisions of 20.11.100.5(B) NMAC.

5. A legal review has revealed that the diesel emissions test requirement exceeds state and local legal authority.

6. The state Air Quality Control Act authorizes the Air Board to adopt an I/M Program for "vehicles under twenty-six thousand pounds gross vehicle weight powered by a *spark-ignited* internal combustion engine." NMSA 1978 § 74-2-4(E) (emphasis added).

7. The City Motor Vehicle Emissions Control Ordinance defines the motor vehicles subject to inspection as, in part, a vehicle which "is propelled by a spark ignition, internal combustion engine[.]" ROA § 7-8-3.

8. Diesel engines are compression-ignited, not spark-ignited.

9. The current diesel emissions test requirement conflicts with the state Air Quality Control Act and the City Motor Vehicle Emissions Control ordinance. NMSA 1978 § 74-2-4(E); ROA § 7-8-3.

10. In this petition, EHD proposes to remove the diesel emissions test requirement from the I/M Program.

11. As required by 20.11.82.18(B) NMAC, EHD's Proposed Rule is attached to this petition and indicates the proposed regulatory changes on page 2, lines 12-14, 15-16; page 4, line 24; page 5, line 49; and page 10, lines 31-33, 35.

12. EPA has informed EHD that the proposed regulatory change will not require a formal SIP revision process under the federal Clean Air Act. 42 U.S.C. § 7410(l).

13. Rather, because the current regulation was submitted to EPA for approval into the SIP without adequate state legal authority, the Air Board's attorney may request via letter that EPA remove the diesel emissions test requirement using a simpler administrative error correction to remove the diesel testing requirement from the SIP. 42 U.S.C. § 7410(k)(6).

14. The Air Board is authorized to adopt this proposed regulatory change under NMSA 1978 § 74-2-5(B)(1); ROA §§ 7-8-5 and 9-5-1-4; and Bernalillo County Ordinances § 30-33(b)(1).

15. EHD estimates that the hearing will take no more than two hours.

16. EHD requests permission to provide a court reporter for the hearing.

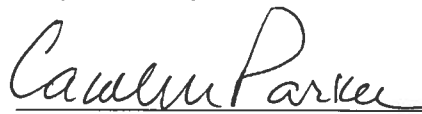
17. EHD requests that the Air Board designate a hearing officer for the hearing.

WHEREFORE, EHD requests that the Air Board,

- a. Authorize a hearing to consider whether to adopt EHD's Proposed Rule;
- b. Designate a hearing officer;
- c. Authorize EHD to provide a court reporter.

Respectfully submitted,

CITY OF ALBUQUERQUE
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CERTIFICATE OF SERVICE

I certify that an original and ten copies of this *Petition to Amend 20.11.100 NMAC* was hand-delivered on May 23, 2016, to:

Andrew Daffern, Hearing Clerk
Albuquerque-Bernalillo County Air
Quality Control Board
One Civic Plaza, NW, Room 3023
Albuquerque, New Mexico 87103



Carol M. Parker
Assistant City Attorney

243447

1 **TITLE 20 ENVIRONMENTAL PROTECTION**
2 **CHAPTER 11 ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**
3 **PART 100 MOTOR VEHICLE INSPECTION -- DECENTRALIZED**
4

5 **20.11.100.1 ISSUING AGENCY:** Albuquerque-Bernalillo County Air Quality Control Board, c/o
6 Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.
7 [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]
8

9 **20.11.100.2 SCOPE:**

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

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

17 (2) **Commuter vehicles:** All motor vehicles that are more than four years old and are driven into,
18 operated, or are otherwise present in Bernalillo county for 60 or more days per year but are registered in another
19 county or state shall comply with 20.11.100 NMAC.

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

24 (4) **Fleet vehicles:** Fleet vehicles that are registered outside of Bernalillo county but are primarily
25 operated in Bernalillo county shall comply with 20.11.100 NMAC. The inspection requirements for fleet vehicles
26 are mandated by 40 CFR Part 51.356(a)(2).

27 (5) **Municipalities and counties:** If the program enters into a joint powers agreement with a
28 municipality or county to extend the enforcement of 20.11.100 NMAC, all vehicles registered in that municipality or
29 county shall comply with 20.11.100 NMAC.

30 **B. Exempt vehicles:**

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

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

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

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

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

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

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

44 (8) vehicles sold between licensed dealers;

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

46 (10) dedicated electric vehicles;

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

49 [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; A, 1/1/12]
50

51 **20.11.100.3 STATUTORY AUTHORITY:** 20.11.100 NMAC is adopted pursuant to the, authority provided
52 in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control
53 Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; the Joint Air Quality Control Board
54 Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4; and the City of Albuquerque
55 and Bernalillo County Motor Vehicle Emissions Control Ordinances. It is adopted in order to comply with the

1 Federal Clean Air Act Amendments of 1990 and 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program*
2 *Requirements*.
3 [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; A, 1/1/12]

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5 **20.11.100.4 DURATION:** Permanent, unless the violation described in 20.11.101 NMAC occurs.
6 [12/1/95; 20.11.100.4 NMAC - Rn, 20 NMAC 11.100.I.4, 10/1/02; A, 5/1/04]

7
8 **20.11.100.5 EFFECTIVE DATE:**

9 A. December 1, 1995, unless a later date is cited at the end of a section. If no EPA-confirmed
10 violation (two exceedances) of the federal ambient carbon monoxide standards has occurred within Bernalillo
11 county, the vehicle inspection frequency shall be biennial.

12 ~~B. ——— Beginning January 1 of the first year following the federally effective date for the 2011 revised~~
13 ~~ozone standard, or January 1, 2013, whichever is earlier, all 1998 and newer diesel motor vehicles must pass an on-~~
14 ~~board diagnostic test pursuant to Paragraph (2) of Subsection E of 20.11.100.17 NMAC.~~

15 [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; A, 1/1/12; A,
16 XX/YY/16]

17
18 **20.11.100.6 OBJECTIVE:** To provide for the control and regulation of carbon monoxide (CO), hydrocarbon
19 (HC), ozone precursors and particulate emissions above certain levels from motor vehicles, and for anti-tampering
20 inspections.

21 [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; A, 1/1/12]

22
23 **20.11.100.7 DEFINITIONS:** In addition to the definitions in 20.11.100.7 NMAC the definitions in 20.11.1
24 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.100 NMAC shall
25 govern.

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

30 B. “*Air care inspector*” means an individual authorized by a certificate issued by the program to
31 perform inspections of motor vehicles and who has met the requirements of 20.11.100.26 NMAC.

32 C. “*Air care station*” means an *air care* inspection station, or a fleet *air care* station.

33 D. “*Audit*” means an assessment by VPMD, either as a physical on-site visit or an off-site review of
34 data collected electronically, designed to determine whether *air care* inspectors and *air care* stations are correctly
35 performing all tests and other functions required by the VPMD program. Physical on-site audits shall be of two
36 types: overt and covert.

37 E. “*Biennial*” means every other year.

38 F. “*Chassis*” means the complete motor vehicle, including standard factory equipment, but
39 excluding the body and cab.

40 G. “*City*” means the city of Albuquerque, a New Mexico municipal corporation.

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

45 I. “*Clean scanning*” means the illegal act of an *air care* station or *air care* inspector that results in a
46 fraudulent “pass” for a vehicle’s emissions test by entering into the emissions analyzer unique information
47 identifying the vehicle being tested, but then performing the emissions test on a different vehicle, which bypasses
48 actual testing of the first vehicle.

49 J. “*County*” means the county of Bernalillo, a political subdivision of the state of New Mexico.

50 K. “*Covert audit*” means a quality assurance site visit by an anonymous agent delegated by VPMD
51 to drive a vehicle into the selected station and asked to have the vehicle tested. The vehicle may be set up by VPMD
52 in a tampered or failed condition. Covert audits are required by EPA to ensure that air care stations and air care
53 inspectors are performing the emissions test correctly.

54 L. “*Covert surveillance*” means a quality assurance audit by observation done from an off-site
55 location near the *air care* station, often using binoculars to monitor the actions of an *air care* inspector performing
56 emissions testing.

1 M. “Dealer” means any person who sells or solicits or advertises the sale of new or used motor
2 vehicles subject to registration in the state of New Mexico and as further defined in the Motor Vehicle Code Chapter
3 66, NMSA 1978.

4 N. “Distributor” means any person who distributes or sells new or used motor vehicles to dealers
5 and who is not a manufacturer.

6 O. “Division” or “VPMD” means the vehicle pollution management division of the city
7 environmental health department, which provides the staff for the Albuquerque-Bernalillo county vehicle pollution
8 management program.

9 P. “Driver” means every person who drives or is in actual physical control of a motor vehicle upon a
10 highway or upon property used for inspections.

11 Q. “Emissions analyzer” means a device for measuring the concentration of certain exhaust gases
12 emitted by a motor vehicle.

13 R. “Emissions inspection system” or “EIS” means the equipment and software for conducting the
14 official emissions inspection.

15 S. “Essential parts” means all integral and body parts of a vehicle of a type required to be registered
16 under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of
17 the vehicle or substantially alter its appearance, model type or mode of operation.

18 T. “Exhaust emissions” means CO, HC and all other substances emitted through a motor vehicle’s
19 exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices,
20 if any.

21 U. “Exhaust emissions control device” means equipment designed by the manufacturer of the
22 vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system
23 or engine modification designed by the manufacturer of the motor vehicle that causes a reduction of pollutants
24 emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering
25 with other exhaust emissions control devices.

26 V. “Fast idle condition or unloaded 2,500 rpm” means an exhaust emissions inspection conducted
27 with the engine of the vehicle running under an accelerated condition as required by 40 CFR Part 51, Subpart S,
28 *Inspection/Maintenance Program Requirements*.

29 W. “Field audit gas” means a gas mixture with known concentrations of CO₂, CO, and HC that is
30 used by the program to check the accuracy of exhaust gas analyzers used by authorized inspection stations.

31 X. “Fleet” means a group of vehicles under the common ownership or control of a commercial or
32 governmental entity.

33 Y. “Fleet air care station” means any person, business, government entity, firm, partnership or
34 corporation that provides for the construction, equipping, maintaining, staffing, managing and operation of
35 authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to
36 20.11.100 NMAC, and not offering inspection services to its employees or the general public.

37 Z. “Fuel” means any material that is burned by the engine of a vehicle in order to propel the vehicle.

38 AA. “Gas cap test” means the determination of the ability of the gas cap(s) to retain pressure.

39 BB. “Gross vehicle weight” means the weight of a vehicle without load, plus the weight of any load
40 thereon.

41 CC. “Government vehicle” means a motor vehicle exempt from the payment of a registration fee and
42 owned or leased by any federal, state, local, or other governmental entity.

43 DD. “Headquarters” means the main office of the vehicle pollution management program.

44 EE. “Highway” means every way or place generally open to the use of the public as a matter of right
45 for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of
46 construction, maintenance, repair or reconstruction.

47 FF. “Idle mode test” means an unloaded exhaust emissions test conducted only at the idle condition.

48 GG. “Inspection or re-inspection or test” means the mandatory vehicular anti-tampering and
49 emissions inspection conducted both visually and with equipment or chemical sensing devices as required by
50 20.11.100 NMAC.

51 HH. “Low emissions tune-up” means adjustments and repairs that can reduce motor vehicle
52 emissions, including but not limited to the following procedures:

53 (1) checking and setting to manufacturer’s specifications, the idle mixture, idle speed, ignition timing
54 and dwell;

55 (2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of
56 pollution control devices;

1 (3) checking and replacement of air breathing filters and positive crankcase ventilation valve as
2 necessary;
3 (4) replacement of spark plugs, points, and wires; and
4 (5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust emissions
5 control devices and systems, inspecting the operation of the emissions control system according to the motor vehicle
6 manufacturer's specified procedures, including hose routing and on-board diagnostics, new vehicle warranty and
7 repair or replacement as necessary.

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

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

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

23 **LL. "Motor vehicle"** means any vehicle that:
24 (1) is propelled by a spark ~~or compression~~ ignition, internal combustion engine;
25 (2) has four or more wheels in contact with the ground;
26 (3) is subject to registration with the MVD to an owner of record who is domiciled within Bernalillo
27 county, or is a government vehicle which is assigned to a governmental unit within Bernalillo county;
28 (4) has a GVW greater than 1,000 and less than 10,001 pounds;
29 (5) is for use upon public roads and highways;
30 (6) is a 1975 model year or newer; and
31 (7) is a vehicle not otherwise exempted by 20.11.100 NMAC.

32 **MM. "New motor vehicle"** is a vehicle that has undergone a transfer of ownership and is being
33 registered for the first time to any person, but does not include the sale to another licensed motor vehicle dealer for
34 the purpose of resale as a new vehicle.

35 **NN. "Operator"** means driver, as defined in 20.11.100 NMAC.

36 **OO. "Overt audit"** means an on-site quality assurance assessment of the performance of an *air care*
37 station or an *air care* inspector, conducted by VPMD personnel. An overt audit may also be an assessment of an *air*
38 *care* station's emissions analyzer to ensure that the equipment is maintained appropriately and operating correctly.

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

44 **QQ. "Pass fail criteria"** means the standards established by 20.11.100 NMAC that specify the
45 maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

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

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

51 **TT. "Program" or "VPMD program"** means the Albuquerque - Bernalillo county vehicle pollution
52 management program.

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

1 **VV. “Reconstructed vehicle”** means a vehicle that was assembled or constructed largely from of
2 essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or
3 that, if originally otherwise constructed, was materially altered by the removal of essential parts, new or used,
4 derived from other vehicles or makes of vehicles.

5 **WW. “Registration and re-registration”** means both original registration and renewal of motor vehicle
6 registration as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

7 **XX. “Standard gases”** means NIST certified emissions samples of gases maintained as primary
8 standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

9 **YY. “Truck”** means every motor vehicle designed, used or maintained primarily for the transportation
10 of property. In addition, all vehicles with a GVW greater than 6,000 pounds shall be considered a truck.

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

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

17 **BBB. “Visible emissions”** means any fume, smoke, particulate matter, vapor or gas, or combination
18 thereof, excluding water vapor or steam.

19 **CCC.** [Reserved]

20 **DDD.** [Reserved]

21 **EEE. “Working gases”** means program-approved span gases maintained by an authorized *air care*
22 inspection station to perform periodic calibration of approved exhaust gas analyzers.

23 **FFF. Abbreviations and symbols**

24 (1) **A/F** means air/fuel.

25 (2) **ASE** means the national institute for automotive service excellence.

26 (3) **CO** means carbon monoxide.

27 (4) **CO₂** means carbon dioxide.

28 (5) **DTC** means diagnostic trouble code.

29 (6) **EHD** means the environmental health department.

30 (7) **EIS** means the emissions inspection system.

31 (8) **EPA** means the environmental protection agency.

32 (9) **GVW** means gross vehicle weight.

33 (10) **HC** means hydrocarbon.

34 (11) **HP** means horsepower.

35 (12) **LNG** means liquefied natural gas.

36 (13) **LPG** means liquefied petroleum gas.

37 (14) **MPH** means miles per hour.

38 (15) **MCO** means manufacturer’s certificate of origin.

39 (16) **MVD** means the motor vehicle division of the New Mexico taxation and revenue department.

40 (17) **NDIR** means non-dispersive infrared.

41 (18) **NIST** means national institute of standards and technology.

42 (19) **OBDII** means a vehicle’s on-board diagnostics second generation.

43 (20) **%** means percent.

44 (21) **PCV** means positive crankcase ventilation.

45 (22) **ppm** means parts per million by volume.

46 (23) **VID** means the vehicle information database.

47 (24) **VIN** means vehicle identification number.

48 [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;
49 A, 5/1/04; A, 9/1/04; A, 1/1/12; A, XX/YY/16]

50
51 **20.11.100.8 VARIANCES:** [Reserved]

52 [12/1/95; 20.11.100.8 NMAC - Rn, 20 NMAC 11.100.I.8, 10/1/02]

53
54 **20.11.100.9 SAVINGS CLAUSE:** Any amendment of 20.11.100 NMAC that is filed with the state records
55 center shall not affect actions pending for violation of a city or county ordinance, or 20.11.100 NMAC. Prosecution

1 for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, or part in effect at the
2 time the violation was committed.

3 [9/23/94. . .12/1/95; 20.11.100.9 NMAC - Rn, 20 NMAC 11.100.I.9, 10/1/02; A, 1/1/12]

5 **20.11.100.10 SEVERABILITY:** If any section, paragraph, sentence, clause or word of 20.11.100 NMAC or
6 any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any
7 court, the decision shall not affect the validity of remaining provisions of 20.11.100 NMAC.

8 [9/23/94. . .12/1/95; 20.11.100.10 NMAC - Rn, 20 NMAC 11.100.I.10, 10/1/02; A, 1/1/12]

10 **20.11.100.11 DOCUMENTS:** Documents incorporated and cited in 20.11.100 NMAC may be viewed at the
11 vehicle pollution management program headquarters, 1500 Broadway NE, Albuquerque, NM 87102.

12 [12/1/95; 20.11.100.11 NMAC - Rn, 20 NMAC 11.100.I.11, 10/1/02; A, 1/1/12]

14 **20.11.100.12 VEHICLE POLLUTION MANAGEMENT DIVISION:**

15 **A.** The vehicle pollution management division or its successor agency is part of the city of
16 Albuquerque environmental health department.

17 **B.** The division manager shall establish and maintain a VPMD headquarters, which will include an
18 emissions inspection facility equipped with certified emissions testing equipment and employing at least two ASE
19 certified technicians.

20 **C.** The facility shall be operated by the city to provide services to the public and to facilitate program
21 responsibilities and administer the provisions of 20.11.100 NMAC.

22 [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 &
23 Repealed, 10/1/02; Rn, 20 NMAC 11.100.II.1, 10/1/02; A, 5/1/04; 20.11.100.12 NMAC - N, 1/1/12]

25 **20.11.100.13 RESPONSIBILITIES OF VEHICLE POLLUTION MANAGEMENT DIVISION:** VPMD
26 shall be responsible for administering a program that ensures that federal motor vehicle emissions standards are met.
27 In order to be successful in meeting federal goals and criteria for a motor vehicle emissions testing program, VPMD
28 is authorized to take any actions commonly known to be necessary for a motor vehicle emissions testing program,
29 now and in the future, including, at a minimum:

30 **A.** developing and approving specifications for gas analyzers in a manner consistent with
31 improvements in the industry;

32 **B.** maintaining databases including the VID, certified *air care* inspectors' information and history,
33 and extensions/exemptions from official inspections;

34 **C.** providing training and certification processes for *air care* station and *air care* inspectors;

35 **D.** performing quality assurance audits as required by 20.11.100.30 NMAC, assessing the level of
36 compliance of each *air care* station or *air care* inspector by using onsite audits and by monitoring the information
37 provided by the VID;

38 **E.** enforcing the certification and recertification requirements of *air care* inspectors;

39 **F.** taking enforcement actions as appropriate and providing for penalty assessment;

40 **G.** investigating and maintaining records regarding complaints against certified *air care* stations and
41 certified *air care* inspectors;

42 **H.** providing for non-binding mediation of disputes arising from inspection activities by certified *air*
43 *care* stations or certified *air care* inspectors, including if necessary, a verification test at no cost to the person
44 requesting the test; and

45 **I.** evaluating and issuing compliance time extensions for vehicles unable to pass the inspection test
46 criteria as provided by 20.11.100 NMAC.

47 [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; 20.11.100.13
48 NMAC - N, 1/1/12]

50 **20.11.100.14 SCHEDULING OF INSPECTIONS:**

51 **A. Inspection and registration:** Every motor vehicle, as defined in 20.11.100.7 NMAC, shall be
52 inspected biennially unless it is determined to emit quantities of CO or HC between 75% and 100% of its maximum
53 allowable standard listed in Table I of Subsection A of 20.11.100.17 NMAC, in which case it shall be issued a
54 provisional pass certificate good only for a one year registration and shall be required to be inspected again the
55 following year prior to registration. The MVD shall distribute notices or other appropriate information to owners of
56 vehicles applying for re-registration in accordance with the written agreement between the MVD and the program

1 manager. Vehicles shall also be inspected when sold and when titles are transferred. A person who believes he has
2 a vehicle for which he has been erroneously notified of inspection may petition the program manager to correct the
3 error.

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

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

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

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

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

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

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

21 **D. Private fleets issued permanent fleet plates:**

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

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

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

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

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

34 [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,
35 5/1/04; 20.11.100.14 NMAC - N, 1/1/12]

36
37 **20.11.100.15 VEHICLE INSPECTION PROCEDURES:**

38 **A.** [Reserved]

39 **B. Vehicle tests:**

40 (1) To determine if a motor vehicle is in compliance with 20.11.100 NMAC, all inspections shall be
41 performed in strict accordance with 20.11.100 NMAC. Each vehicle shall be inspected at an *air care* station by an
42 *air care* inspector. All items shall be tested to completion with reports of outcomes provided to the motor vehicle
43 owner.

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

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

50 (2) **Exhaust gas emissions measurements:** No emissions inspection required by 20.11.100 NMAC
51 shall be performed unless the instrument used for measuring exhaust gases from the motor vehicle is an approved
52 emissions analyzer.

53 (a) **Vehicle operating condition:**

54 (i) Prior to this portion of the inspection, the entire vehicle shall be in normal operating
55 condition as specified by the emissions tune-up label originally installed on the vehicle. Motor vehicles equipped

1 for simple selection of alternate fuel supplies (switching between gasoline and any compressed or liquefied gaseous
2 fuel) shall be inspected using the fuel in use when presented for inspection.

3 (ii) Non-OBDII compatible vehicles (usually 1995 model year or older) subject to
4 20.11.100 NMAC shall be required to take and pass a preconditioned two-speed idle test as specified in Appendix B
5 to Subpart S of 40 CFR Part 51. The test procedure shall include a first and second-chance test at both idle and at
6 the unloaded 2,500 RPM test. If the vehicle passes both emissions tests, it shall be deemed in compliance with
7 minimum emissions standards unless the vehicle fails the tampering inspection, pressurized gas cap test or visible
8 emissions inspection required by 20.11.100 NMAC.

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

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

16 (b) **Exhaust emissions inspection:** The exhaust emissions inspection shall proceed as
17 specified in 40 CFR Part 51 Appendix B to Subpart S.

18 (c) **Selection of appropriate pass/fail emissions inspection criteria:** The appropriate
19 pass/fail criteria will be selected automatically by the approved emissions analyzer.

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

23 (4) **Visible emissions requirements:** In addition to exhaust and tampering requirements of
24 20.11.100 NMAC, all vehicles are subject to and must pass inspection for visible emissions (smoke). Non-diesel
25 vehicles may not emit any visible emissions (except steam) during the test as specified in Subsection C of
26 20.11.100.17 NMAC.

27 [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;
28 20.11.100.15 NMAC - Rn & A, 20.11.100.12 NMAC, 1/1/12]

29
30 **20.11.100.16 ACTIONS PROHIBITED DURING VEHICLE INSPECTION:**

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

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

- 35 (1) engaging in conduct that constitutes fraud, deceit, or gross negligence;
- 36 (2) negligently providing incorrect or misleading information to the public regarding the
37 requirements of 20.11.100 NMAC;
- 38 (3) failing or refusing to give a motorist the customer copy of the emissions test;
- 39 (4) failing to follow the inspection procedures specified by the vehicle manufacturer or required by
40 20.11.100 NMAC;
- 41 (5) making false promises likely to influence, persuade or induce a motorist to authorize the repair,
42 service or maintenance of a motor vehicle;
- 43 (6) entering false data into an emissions analyzer;
- 44 (7) performing or allowing a repair that is represented to the motorist as being required to remedy the
45 cause of an inspection failure or obtain a certificate of inspection when the repair is not required;
- 46 (8) adjusting or modifying a vehicle in a manner that would cause the vehicle to fail an inspection;
- 47 (9) charging for and performing an inspection that is represented to the motorist as being required
48 when it is not required;
- 49 (10) failing to maintain the confidentiality of an inspector's access code for the emissions analyzer;
- 50 (11) failing to advise VPMD of any change in information provided in the inspector's or station's
51 application for certification or for renewal of certification;
- 52 (12) failing to report to VPMD any illegal certification or other violation of 20.11.100 NMAC; or
- 53 (13) performing any type of clean scanning, clean piping or pretesting.

54 **C.** Performing any act or actions prohibited by Subsection B of 20.11.100.18 NMAC is a violation of
55 20.11.100 NMAC and may result in an enforcement action by VPMD.

1 **D.** It is the responsibility of each *air care* station owner or operator to ensure that all *air care*
 2 inspectors in his employment does not engage in prohibited act or actions in preparation for or during a vehicle
 3 inspection. VPMD may take an enforcement action against the *air care* station owner or operator employing *air*
 4 *care* inspectors who engage in prohibited act or actions.
 5 [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; 20.11.100.16 NMAC -
 6 N, 1/1/12]

7
 8 **20.11.100.17 VEHICLE INSPECTION CRITERIA:** Failure to pass any one of the applicable criteria
 9 specified below in Subsections A, B, C, D and E of 20.11.100.17 NMAC, entitled *exhaust emissions, anti-*
 10 *tampering, visible emissions, gas cap, and on-board diagnostics* respectively, shall constitute noncompliance with
 11 20.11.100 NMAC and a fail VIR shall be issued.

12 **A. Exhaust emissions:** Every motor vehicle that is determined to emit quantities (rates) of CO and
 13 HC greater than those listed in Table I appropriate to model year and weight classification listed shall be *failed*.
 14 Every motor vehicle with emissions rates equal to or lower than the applicable amounts shall be *passed* under
 15 subsection A of 20.11.100.17 NMAC.

16
 17 **TABLE I**

18 **Maximum Allowable Exhaust Emissions**

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2,500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1975 - 1978	0 to 6,000	C/T	500	5.0	500	5.0
1979 - 1980	0 to 6,000	C/T	400	4.0	400	4.0
1981 - 1985	0 to 6,000	C/T	220	1.2	220	1.2
1986 - 1990	0 to 6,000	C/T	200	1.2	200	1.2
1991 - 1995	0 to 6,000	C/T	180	1.2	180	1.2
1975 - 1978	6,001 to 8,000	LT	600	6.0	600	6.0
1979 - 1980	6,001 to 8,000	LT	600	4.5	600	4.5
1981 - 1982	6,001 to 8,500	LT	400	2.7	400	3.0
1983 - 1988	6,001 to 8,500	LT	300	1.2	300	3.0
1989 - 1995	6,001 to 8,500	LT	220	1.2	220	1.2
1975 - 1980	8,001 to 10,000	MT	650	6.5	650	6.5
1981 - 1990	8,501 to 10,000	MT	400	4.0	400	3.0

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2,500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1991 - 1995	8,501 to 10,000	MT	220	2.0	220	2.0

B. Anti-tampering:

(1) All motor vehicles subject to 20.11.100 NMAC shall be inspected for the presence of a catalytic converter(s) that is properly connected.

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

(3) Vehicles that have had the original engine removed and replaced with a newer or inherently cleaner technology engine (including the emissions control devices required in association with that engine) may be eligible for a waiver of compliance with portions of Subsection B of 20.11.100.17 NMAC. The program manager shall determine if a vehicle has been retrofitted with an engine that is not adaptable to the emissions control requirements for the vehicle chassis model year. When the program manager makes the determination, the program manager may waive the requirements for replacement of 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 motor vehicles subject to inspection must pass an inspection for visible emissions. The *air care* inspector 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*.

E. On-board diagnostics (OBDII):

(1) All 1996 and newer gasoline motor vehicles must pass an on-board diagnostics test specified by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*. Any vehicle with an illuminated malfunction indicator lamp (MIL) or a set diagnostic trouble code (DTC) shall be *failed*. Any 1996 and newer model year vehicles 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, or January 1, 2013, whichever is earlier.~~

[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; 20.11.100.17 NMAC - Rn & A, 20.11.100.14 NMAC, 1/1/12; A XX/YY/16]

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 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 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 regarding exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. Vehicles 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.

1 C. VIRs may not be defaced by stamping information on, or affixing stickers to, the front or back of
2 the VIR except in the delineated area designated by the VPMD program manager. Any *air care* inspector or *air*
3 *care* station found to be defacing VIRs may be subject to an enforcement action pursuant to 20.11.100.36 NMAC
4 and penalties pursuant to 20.11.100.33 NMAC.
5 [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,
6 5/1/04; 20.11.100.18 NMAC - Rn & A, 20.11.100.15 NMAC, 1/1/12]

7
8 **20.11.100.19 REPAIRS, ADJUSTMENTS, AND RE-INSPECTIONS:** Every motor vehicle that fails an
9 inspection required by 20.11.100 NMAC shall be repaired as necessary to pass re-inspection. If replacement of
10 parts is required, the parts shall only be new aftermarket parts approved by the program manager or new original
11 equipment, manufacturer's parts or assemblies.

12 A. Repairs required by Subsection A of 20.11.100.19 NMAC, shall include but are not limited to, the
13 following as applicable to the type of failure.

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

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

19 (3) **Visible emissions:** Repair engine or replace inoperative emissions control devices as required to
20 eliminate visible emissions.

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

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

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

27 C. Re-inspections may be obtained at any *air care* station. One free retest, within 90 calendar days of
28 a failed test, may be obtained at the program headquarters, if requested.
29 [11/13/91. . .9/23/94, 12/1/95; 20.11.100.19 NMAC - Rn, 20 NMAC 11.100.II.8, 10/1/02; 20.11.100.19 NMAC - Rn
30 & A, 20.11.100.16 NMAC, 1/1/12]

31
32 **20.11.100.20 COMPLIANCE TIME EXTENSION:**

33 A. **Time extension for repairs.** Vehicles that are unable to pass re-inspection may be eligible to
34 obtain a time extension if the following conditions are met:

35 (1) the owner shall provide evidence satisfactory to the program manager or his designee, that at least
36 \$300.00 has been spent on the vehicle at a licensed repair facility for emissions-related repairs; or

37 (2) the owner shall provide evidence satisfactory to the program manager or his designee that at least
38 \$300.00 of repair work is required to bring the vehicle up to an engine performance level capable of passing an
39 emissions inspection; and

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

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

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

47 (1) vehicle VIN number;

48 (2) model year and manufacturer;

49 (3) owner's name and street address;

50 (4) valid driver's license number and any other information or documentation that the program
51 manager deems necessary; and

52 (5) if applicable, identification of the business and address where the re-inspection, tune-up or
53 determination was made, including documentation acceptable to the program manager or his designee that critical
54 parts are unavailable.

55 C. **Time extension limitations:**

1 (1) A time extension shall be granted only one time in the life of a vehicle and shall be for a period of
2 up to 12 consecutive months.

3 (2) If a vehicle that has been granted a time extension is repaired within the first 90 days of the
4 extension, the extension may be cancelled and not counted as the one-per-life-of-the-vehicle time extension.

5 (3) Time extensions shall be limited to 90 days for motor vehicles that exceed any of their maximum
6 allowable exhaust standards as specified in Table I at Subsection A of 20.11.100.17 NMAC by more than twice the
7 level allowed.

8 **D. Free inspection for timely repair.** Any failing vehicle repaired within 90 days of its failed test is
9 eligible for a free retest of that vehicle at the vehicle pollution management division headquarters.

10 **E. Inspection due following extension:** Any person who owns a motor vehicle for which a time
11 extension has been issued pursuant to 20.11.100.20 NMAC shall have that vehicle inspected within the time frame
12 specified in the extension granted for that vehicle.

13 **F. Expiration upon sale:** If a motor vehicle is granted a time extension under 20.11.100.20 NMAC
14 and is sold within the time extension period, the sale shall terminate the extension. The holder of the original time
15 extension shall inform each potential buyer that the vehicle does not comply with the emissions requirements of
16 20.11.100 NMAC. The seller shall also inform each potential buyer that the time extension is void upon the sale and
17 the vehicle cannot be registered unless the vehicle passes an emissions inspection.

18 **G. Appeals:** Any person aggrieved by the decision of the program manager or designee regarding a
19 compliance time extension may appeal by petitioning the program manager in writing for reconsideration of the
20 decision. The petition shall provide the basis for reconsideration of the decision made regarding the time extension.
21 The program manager, at his discretion, may review the petition and record and affirm or deny the decision on the
22 request for the time extension, or the program manager may arrange for a hearing on the record at the city of
23 Albuquerque office of administrative hearings, to be held no later than 15 working days after receipt of the request
24 for reconsideration. The petitioner shall submit a \$50.00 fee to the office of administrative hearings, which shall set
25 the time and place for the hearing. The hearing officer shall present written findings of fact and a recommendation
26 of action to the program manager, who shall make the final decision and forward the findings and decision promptly
27 to the petitioner. The final decision of the program manager may be appealed to the Albuquerque - Bernalillo
28 county air quality control board in accordance with 20.11.81 NMAC.
29 [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,
30 5/1/04; 20.11.100.20 NMAC - Rn & A, 20.11.100.17 NMAC, 1/1/12]

31
32 **20.11.100.21 CERTIFICATION REQUIREMENTS FOR *AIR CARE* STATIONS:**

33 **A.** No person shall solicit, advertise or imply that a facility is an *air care* station certified by the
34 program manager to conduct inspections pursuant to 20.11.100 NMAC without having a current program-issued
35 certificate on display on the premises. Any *air care* inspection station that has its certification permanently or
36 temporarily withdrawn or canceled by the board or the program manager shall immediately remove all inspection
37 related signs and cease to represent the facility as a certified *air care* station.

38 **B.** No *air care* station owner or operator shall allow a person to conduct any part of an inspection
39 pursuant to 20.11.100 NMAC unless the person is an *air care* inspector certified by the program manager and has a
40 current program-issued certificate on display on the premises.

41 **C.** Any person may apply for certification to operate an *air care* station.

42 **D.** Before constructing, installing or renovating a facility or building intended for use as an *air care*
43 station, the owner or operator shall submit an application and receive pre-approval to operate the facility as an *air*
44 *care* station. The applicant shall also provide information on traffic flow and how it will be managed to prevent
45 unsafe conditions. The applicant shall also indicate how and where the customer may view the vehicle inspection
46 from start to finish.

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

50 (1) at least one certified *air care* inspector whose certification is current and listed with the program
51 manager shall be present and shall conduct all the inspections of motor vehicles; no inspection shall be performed in
52 whole or in part by any person who is not a certified *air care* inspector;

53 (2) at least one approved emissions analyzer owned or leased by the station shall be in place and
54 operating within the equipment specification limits;

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

- 1 (a) sufficient hand tools and automotive diagnostic equipment for proper performance of the
2 inspections;
3 (b) program approved span gas and compatible equipment for performing gas span checks;
4 (c) suitable non-reactive tail pipe extenders or probe adapters for inspecting vehicles with
5 screened or baffled exhaust systems;
6 (d) the approved emissions analyzer manufacturer's maintenance and calibration manual; and
7 (e) gas cap checking adaptors;
8 (4) the *air care* station shall provide the vehicle owner or driver with access to the test area so that
9 observation of the entire official inspection process is possible; access may be limited, but in no way shall prevent
10 full observation of the entire official inspection process from start to finish; and
11 (5) certified *air care* station owners or operators shall be responsible for the general management of
12 their facility(ies) and for the supervision of their *air care* inspectors in accordance with 20.11.100 NMAC.

13 **F. "Emissions-inspection-only" stations** may be authorized by the program manager. Emissions-
14 inspection-only stations shall indicate on a sign authorized by the program and placed in a readily visible location
15 that no emissions-related adjustments or repair services are available. Repair-related requirements of Subsection B
16 of 20.11.100.23 NMAC do not apply to "inspection-only" stations.
17 [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; 20.11.100.21
18 NMAC - Rn & A, 20.11.100.18 NMAC, 1/1/12]

19
20 **20.11.100.22 BASIS FOR DENIAL OF AIR CARE STATION CERTIFICATION:** The program manager
21 may deny certification to a facility that does not:

- 22 **A.** comply with all applicable federal, state and local laws and regulations;
23 **B.** provide for an entrance and a dedicated inspection area inside the facility that is large enough to
24 accept all vehicles with a GVW of 8500 lbs or less presented for inspection;
25 **C.** provide for adequate traffic flow; or
26 **D.** provide adequate viewing access by the vehicle owner or driver or for surveillance by program
27 auditors.
28 [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; 20.11.100.22
29 NMAC - N, 1/1/12]

30
31 **20.11.100.23 PERFORMANCE OF CERTIFIED AIR CARE STATIONS:**

- 32 **A.** A certified *air care* station shall obtain and pay for routine and unscheduled maintenance and
33 replacement parts for the approved exhaust gas analyzer.
34 **B.** A certified *air care* station shall accept and perform emissions inspections on all vehicles
35 presented for inspection and shall have adequate reference manuals and basic emissions information. Emissions
36 inspections shall not be performed on vehicles if the emissions inspection would pose a threat to any person's safety.
37 A motor vehicle shall not be accepted for repair unless the station has adequate information regarding idle speed,
38 idle mixture, timing, dwell, fast idle speed specifications, high altitude specifications and information describing
39 emissions control systems, diagnostic and repair procedures, if normally available in the trade.
40 **C.** The times that a certified *air care* inspector will be available to conduct inspections shall be posted
41 if inspection times do not include all hours the station is open for business.
42 **D.** Each certified *air care* station shall post a sign in a conspicuous location, on the exterior of the
43 station, indicating testing hours and the fee charged for each inspection. The sign shall meet the uniform format and
44 style requirements established by the program manager.
45 **E.** A certified *air care* station shall not refuse any vehicle for inspection based upon the race, color,
46 religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the station
47 refuse any vehicle for inspection because of the make, model or year of the vehicle.
48 **F.** Each certified *air care* station shall provide vehicle owners or drivers access to the inspection area
49 so that the owner or driver can observe the official inspection. Access may be limited but in no way shall prevent
50 full observation.
51 **G.** A certified *air care* station shall perform initial emissions inspection on vehicles without repair or
52 adjustment prior to the inspection. This requirement shall not apply to a vehicle if an owner or driver specifically
53 asks for repairs or adjustments prior to an emissions inspection, without prior suggestion or recommendation by the
54 inspector or station owner or operator, and a work order is completed and authorized by the vehicle owner or driver.

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

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

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

14 [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,
15 5/1/04; 20.11.100.23 NMAC - N, 1/1/12]

16
17 **20.11.100.24 FLEET AIR CARE STATIONS:**

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

20 B. Any person may apply for authorization for an *air care* station authorized by the program to
21 perform inspections under 20.11.100 NMAC for the purposes of fleet inspection of a company or corporate
22 business, or governmental fleet. Fleet *air care* stations shall not offer or provide the inspections to the company's
23 employees or the general public. Fleet *air care* stations shall be equipped and operated and shall be subject to the
24 same quality assurance requirements as a certified *air care* station. The signage requirements of Subsections C and
25 D of 20.11.100.23 NMAC do not apply to a fleet *air care* station. The fee for certifying a fleet *air care* station shall
26 be the same as for a certified *air care* station.

27 C. Notwithstanding Subsections A and B of 20.11.100.24 NMAC, any person with a fleet may
28 contract with any certified *air care* station to provide inspections required to satisfy 20.11.100 NMAC.

29 [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; 20.11.100.24
30 NMAC - Rn & A, 20.11.100.19 NMAC, 1/1/12]

31
32 **20.11.100.25 [Reserved]**

33 [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,
34 5/1/04; Repealed, 1/1/12]

35
36 **20.11.100.26 CERTIFICATION OF AIR CARE INSPECTORS:**

37 A. No person shall represent himself as a certified *air care* inspector without being in possession of a
38 duly authorized and currently valid certificate issued by the program manager.

39 B. Certificates issued under Subsection B of 20.11.100.26 NMAC shall be valid for 12 months unless
40 the program manager requires re-certification earlier as provided in 20.11.100.27 NMAC.

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

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

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

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

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

51 (iii) rules and regulations pertaining to inspection and the inspection procedures
52 established in the 20.11.100 NMAC;

53 (iv) general understanding of the benefits to vehicle owners provided in the *Defect*
54 *Warranty Provisions* of Section 207(a) and the *Performance Warranty Provisions* of Section 207(b) of the Federal
55 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 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, VIRs and supplemental documents;
- (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 the applicant has successfully completed the certification requirements of 20.11.100 NMAC.

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

(2) **Performance of certified *air care* inspectors:** Certified *air care* inspectors shall:

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

(b) accept all vehicles for 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 a vehicle for inspection if the inspection would pose a threat to any person's safety;

(c) refrain from deviation from 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 VIRs at the time of inspection.

[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; 20.11.100.26 NMAC - Rn & A, 20.11.100.21 NMAC, 1/1/12]

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 the certificates 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 than 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.

[5/20/88. . .12/1/95; 20.11.100.27 NMAC - Rn, 20 NMAC 11.100.II.16, 10/1/02; 20.11.100.27 NMAC - N, 1/1/12]

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

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

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

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

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

8 B. Whenever a certification has been suspended and the certification expires during the suspension
9 period, the *air care* inspector may not obtain a new certification until the term of the suspension has expired.
10 [5/20/88; 20.11.100.28 NMAC - Rn, 20 NMAC 11.100.II.17, 10/1/02; 20.11.100.28 NMAC - N, 1/1/12]

11
12 **20.11.100.29 ADMINISTRATIVE FEES FOR CERTIFICATIONS AND RECERTIFICATIONS:**

13 A. Any person seeking certification, or annual recertification thereof, in order to participate in the
14 program as an *air care* station or *air care* inspector shall pay to the city the required fee as established below, before
15 a certification shall be issued or renewed by the program.
16

Certifications	Amount
Certified <i>Air Care</i> Station	\$200.00
Certified <i>Air Care</i> Inspector	\$35.00

17 B. Every *air care* station or *air care* inspector who has had a certification suspended shall pay the
18 following fees before the *air care* station or *air care* inspector certification will be reinstated.
19
20

Reinstatement	Amount
<i>Air Care</i> Station Certification	\$200.00
<i>Air Care</i> Inspector Certification	\$35.00

21 C. Any *air care* inspector who requests to be certified on more than one motor vehicle emissions
22 analyzer shall pay a \$35.00 fee for each analyzer.
23 [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; 20.11.100.29 NMAC -
24 N, 1/1/12]
25
26

27 **20.11.100.30 VPMD QUALITY ASSURANCE AUDITS OF AIR CARE STATIONS AND AIR CARE**
28 **INSPECTORS:** VPMD's quality assurance audits and data analysis are designed to: discover, correct and prevent
29 fraud, waste and abuse; determine whether emissions testing procedures are being correctly performed; assess
30 whether emissions analyzers are measuring accurately; and find any existing problems that could impede program
31 performance.

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

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

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

39 (3) perform a complete quality assurance survey on the analyzer, the calibration gas system, and
40 automatic zero-span performance in relation to the specifications and requirements of 20.11.100 NMAC;

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

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

47 B. The program shall perform covert quality assurance audits without offering official credentials or
48 identification by submitting motor vehicles for inspection in order to examine the station operation under actual
49 conditions. Covert audit vehicles may be offered at random times in a condition resulting from intentional
50 maladjustment, or with emissions control components intentionally removed or rendered inoperative by VPMD.

1 The results of covert audits by the program will provide data for assessing the performance of certified *air care*
2 stations and certified *air care* inspectors and their adherence to the requirements of 20.11.100 NMAC.

3 C. VPMD shall perform covert quality assurance audits of the *air care* stations and *air care*
4 inspectors by observing their activities unannounced from a remote off-site area.

5 D. VPMD shall perform data analysis of information contained in the VID to audit the performance
6 of *air care* stations and *air care* inspectors. The criteria for the data analysis will be selected by VPMD in response
7 to VPMD investigations, complaints, certification renewals or other triggers, or may occur at random times on
8 randomly-selected stations and inspectors.

9 [20.11.100.30 NMAC - Rn & A, 20.11.100.24 NMAC, 1/1/12]

10
11 **20.11.100.31 ENFORCEMENT AGAINST AIR CARE STATIONS AND INSPECTORS:**

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

16 B. Violations for which the program manager or VPMD personnel may take action under
17 20.11.100.31 NMAC include:

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

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

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

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

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

29 E. A notice of violation or warning issued pursuant to 20.11.100 NMAC, shall be in writing on an
30 approved VPMD form and shall specify whether the notice of violation is issued to the inspector or the station. The
31 notice shall include notification of the penalty points assessed for the violation and the total penalty points the *air*
32 *care* station or inspector has accumulated during the preceding 12-month period.

33 [20.11.100.31 NMAC - N, 1/1/12]

34
35 **20.11.100.32 CATEGORIES OF VIOLATIONS:** The program manager, supervisor or VPMD auditor shall
36 review each notice of violation for consistency with 20.11.100 NMAC and determine the character and category of
37 the violation for the purpose of assessing penalty points, monetary penalties or taking other enforcement action.

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

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

43 C. **Minor violations** are common errors that can be prevented by diligence and care.

44 [20.11.100.32 NMAC - N, 1/1/12]

45
46 **20.11.100.33 PENALTY ASSESSMENT:**

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

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

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

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

55 E. **Intentional violations.**

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

1 (2) 16 points shall result in a suspension or revocation of certification, as appropriate, for the *air care*
2 inspector and the *air care* station at which the violations occurred.

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

6 (4) When the intentional violation results in a false fail, the *air care* station or inspector may be
7 assessed a monetary penalty of up to \$1,000.

8 **F. Serious violations.**

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

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

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

18 **G. Minor violations:** Each minor violation shall be assessed two points. Minor violations shall
19 result in formal written notices of violation.

20 [20.11.100.33 NMAC - N, 1/1/12]

21
22 **20.11.100.34 HISTORY OF VIOLATIONS:**

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

27 **B.** When violations continue to occur at an *air care* station or by an *air care* inspector following
28 previous enforcement actions, the program manager may issue a more severe enforcement action, including but not
29 limited to: issuing a notice of violation instead of a written warning for a minor violation, or issuing an intent to
30 revoke or suspend a certification for a non-minor violation that is the latest violation in a history of violations.

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

34 **D.** Significant accumulation of penalty points shall result in an enforcement action described in
35 20.11.100.35 NMAC.

36 [20.11.100.34 NMAC - N, 1/1/12]

37
38 **20.11.100.35 ENFORCEMENT ACTION, DENIAL, SUSPENSION OR REVOCATION OF**
39 **CERTIFICATIONS:**

40 **A.** The program manager is authorized, after reasonable investigation and showing of a violation of
41 any provision of 20.11.100 NMAC, to take enforcement actions including monetary penalties and denial, suspension
42 or revocation of certification to operate under the program as a certified *air care* station or certified *air care*
43 inspector. In deciding on an appropriate action, the program manager may consider: past violations on file against
44 the charged party, previous actions that may have been taken by the program against the charged party, settlement or
45 consent agreements that document past violations, and judicial decisions if related to the requirements of 20.11.100
46 NMAC.

47 **B.** Notwithstanding the provisions of Subsection C of 20.11.100.35 NMAC, the program manager
48 may immediately suspend or revoke the certification of a certified *air care* station or certified *air care* inspector if
49 the program manager determines that continued operation as an *air care* station or *air care* inspector would
50 jeopardize the public health, safety and welfare; violate 20.11.100 NMAC or compromise the program.

51 **C.** Before taking any action to suspend or revoke a certification, the program manager shall inform
52 the inspector or station owner of the charges. Any party so informed may request a hearing on the merits before the
53 program manager. The request shall be made in writing to the program manager within 15 consecutive days after
54 receiving the notice of intent to suspend or revoke the certification.

55 **D.** Upon receipt of a written request for a hearing on the merits, the program manager shall set a date,
56 time and place for the hearing no more than 60 consecutive days from the date of receipt of the request. No fewer

1 than 15 consecutive days before the hearing, the program manager shall inform the charged party of the date, time
2 and place of the hearing. The program manager may appoint a hearing officer. At the hearing, the charged party
3 may demonstrate why a monetary penalty should not be imposed and the certification should not be suspended or
4 revoked. The hearing officer shall provide findings of fact, conclusions of law and a written recommendation to the
5 program manager based on the evidence presented at the hearing.

6 E. After the hearing on the merits, based on the findings of the initial investigation and the
7 recommendation of the hearing officer, the program manager shall take appropriate action including but not limited
8 to any one or a combination of the following: monetary penalty, suspension or revocation of the certification or
9 dismissal of the charges. The program manager may impose monetary penalties as authorized by the City of
10 Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances, the City of Albuquerque and
11 Bernalillo County Motor Vehicle Emissions Control Ordinances and the New Mexico Air Quality Control Act. The
12 program manager may consider past violations on file against the charged party, previous actions that may have
13 been taken by the program against the charged party, settlement or consent agreements that document past violations
14 and judicial decisions if related to the requirements of 20.11.100 NMAC.

15 F. After a hearing specified by 20.11.100.35 NMAC, any party whose application for certification is
16 denied or certificate is suspended or revoked may appeal the decision of the program manager to the board. To
17 perfect the appeal to the board, the appellant shall deliver a written request to the headquarters within 15 consecutive
18 days after receipt of the program manager's decision. At the next regular meeting of the board, the program
19 manager shall inform the board that an appeal has been filed. The board may make its determination based on the
20 record or may require a hearing de novo. If the board decides on a hearing de novo, the petitioner shall pay a fee of
21 \$125.00 pursuant to Subsection C of 20.11.2.22 NMAC by the deadline established by the board. A hearing de
22 novo shall be held in accordance with 20.11.81 NMAC. The board may uphold, overturn or amend the program
23 manager's decision. If the board decides to conduct a hearing de novo, the board may appoint a hearing officer, and
24 the board shall set a date, time and place for the hearing and shall hold the hearing within 90 consecutive days of the
25 headquarters' receipt of the written request. No fewer than 15 consecutive days before the hearing, the board shall
26 inform the appellant of the date, time and place of the hearing. The decision of the board shall be final.
27 [20.11.100.35 NMAC - Rn & A, 20.11.100.26 NMAC, 1/1/12]

28 29 **20.11.100.36 ADDITIONAL ENFORCEMENT AUTHORITY:**

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

33 B. **Procedural provisions:** Any person who violates the requirements of 20.11.100 NMAC shall be
34 guilty of a misdemeanor pursuant to either the City of Albuquerque Joint Air Quality Control Board Ordinance 9-
35 15-1-99(B)(1) R.O.1994 or the Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5. Any person
36 who violates a requirement of 20.11.100 NMAC shall also be subject to all other enforcement actions authorized by
37 the Air Quality Control Act, 74-2-1 et. seq., NMSA 1978 and other remedies available at law or equity.

38 C. **Referral for further investigation or legal remedy.** In addition to suspension or revocation of
39 certification and monetary penalties, cases that involve an intentional violation may be referred to the attorney
40 general, district attorney or city attorney, as appropriate, for further investigation of fraudulent acts or other acts
41 contrary to law.

42 [20.11.100.36 NMAC - Rn & A, 20.11.100.27 NMAC, 1/1/12]

43 44 **HISTORY OF 20.11.100 NMAC:**

45 **Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of
46 public records - state records center and archives.

47 Regulation No. 28, Motor Vehicle Inspection, filed 5/20/88;
48 Regulation No. 28, Motor Vehicle Inspection, filed 8/30/89;
49 Regulation No. 28, Motor Vehicle Inspection, filed 11/13/91;
50 Regulation No. 28, Motor Vehicle Inspection, filed 8/25/92;
51 Regulation No. 28, Motor Vehicle Inspection, filed 9/23/94.

52
53 **History of Repealed Material:** 20 NMAC 11.100.II.18, effective 8/1/97.

54
55 **Other History:** Regulation No. 28, Motor Vehicle Inspection, filed 9/23/94 was renumbered and reformatted to 20
56 NMAC 11.100, Motor Vehicle Inspection-Decentralized, effective 12/1/95.

1 20 NMAC 11.100, Motor Vehicle Inspection-Decentralized, filed 10/27/95 was renumbered, amended and
2 reformatted to 20.11.100 NMAC effective 10/1/02.