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**REGULATIONS PERTAINING TO THE
ENHANCED OIL RECOVERY ACT
Sections 7-29A-1 to 7-29A-5 NMSA 1978**

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7-29A-1. SHORT TITLE.--Chapter 7, Article 29A NMSA 1978 may be cited as the "Enhanced Oil Recovery Act".

7-29A-2. DEFINITIONS.--As used in the Enhanced Oil Recovery Act:

A. "crude oil" means oil and other liquid hydrocarbons removed from natural gas at or near the wellhead;

B. "division" means the oil conservation division of the energy, minerals and natural resources department;

C. "enhanced recovery project" means the use or the expanded use of any process for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 other than a primary recovery process, including but not limited to the use of a pressure maintenance process, a water flooding process, an immiscible, miscible, chemical, thermal or biological process or any other related process;

D. "expansion or expanded use" means a significant change or modification, as determined by the oil conservation division in:

(1) the technology or process used for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978; or

(2) the expansion, extension or increase in size of the geologic area or adjacent geologic area that could reasonably be determined to represent a new or unique area of activity;

E. "operator" means the person responsible for the actual physical operation of an enhanced recovery project;

F. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

G. "positive production response" means that the rate of oil production from the wells or pools affected by an enhanced recovery project is greater than the rate that would have occurred without the project;

H. "primary recovery" means the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the well bore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

I. "recovered oil tax rate" means that tax rate, as set forth in Paragraph (3) of Subsection A of Section 7-29-4 NMSA 1978, on crude oil produced from an enhanced recovery project;

J. "secondary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of primary recovery and is not a tertiary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other secondary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of

Subsection B of Section 70-2-12 NMSA 1978 that can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled;

K. "severance" means the taking from the soil of any product in any manner whatsoever;

L. "termination" means the discontinuance of an enhanced recovery project by the operator; and

M. "tertiary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of a secondary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other tertiary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of Subsection B of Section 70-2-12 NMSA 1978 that can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

7-29A-3. PROCEDURES FOR QUALIFYING FOR THE RECOVERED OIL TAX RATE.--

A. Crude oil severed and sold from an enhanced recovery project or the expansion of an existing project shall qualify for the recovered oil tax rate if, before the enhanced recovery project or expansion begins operation, the division approves the project or expansion and designates the area to be affected by the project or expansion, but no project or expansion approved by the division prior to the effective date of the Enhanced Oil Recovery Act shall qualify for the recovered oil tax rate.

B. The operator of a proposed enhanced recovery project or expansion shall apply to the division for approval of the proposed enhanced recovery project or expansion and shall provide the division with any relevant information the division requires for that approval.

C. If approval by the division of a unitization agreement as set forth in Chapter 70, Article 7 NMSA 1978 is required for purposes of carrying out the enhanced recovery project or expansion, the division shall not approve the enhanced recovery project or expansion unless it approves the unitization agreement.

D. An operator may apply for approval of a proposed enhanced recovery project or expansion concurrently with an application for approval of a unitization agreement as set forth in Chapter 70, Article 7 NMSA 1978 for the purposes of carrying out the proposed enhanced recovery project or expansion.

E. The division shall only approve a proposed enhanced recovery project or expansion if it determines that the application for approval has not been prematurely filed either for economic or technical reasons and that the area to be affected by the enhanced recovery project or expansion has been so depleted that it is prudent to apply enhanced recovery techniques to maximize the ultimate recovery of crude oil from the well or pool.

F. Upon the approval of the application for an enhanced recovery project or expansion, the division shall issue a certification of approval to the operator and designate the area to be affected by the enhanced recovery project or expansion.

G. The recovered oil tax rate shall apply only to the crude oil produced from the area the division certifies to be affected by the enhanced recovery project or expansion.

H. The operator shall file an application for certification of a positive production response with the division to be eligible to receive the recovered oil tax rate.

I. The recovered oil tax rate shall only apply to crude oil produced from an enhanced recovery project or the expansion of an existing project beginning the first day of the month following the date the division certifies that a positive production response has occurred and if the application for certification of

positive production response is filed:

(1) not later than five years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a secondary recovery project; or

(2) not later than seven years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a tertiary recovery project.

J. Qualification for the recovered oil tax rate ends on the first day of the first calendar month that begins on or after the ninety-first day following the termination of the enhanced recovery project or expansion.

K. If the active operation of an approved enhanced recovery project or expansion is terminated, the operator shall notify the division and the secretary of taxation and revenue in writing, not later than the thirtieth day after the termination of the enhanced recovery project or expansion.

L. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules and regulations concerning the approval of the applications, the designation of the affected areas and the operation, expansion and termination of the enhanced recovery projects as provided for in the Enhanced Oil Recovery Act.

7-29A-4. NOTIFICATION TO THE SECRETARY OF TAXATION AND REVENUE; DUTIES OF THE SECRETARY.--

A. The division shall immediately notify the secretary of taxation and revenue upon:

(1) certifying that a positive production response has occurred for an enhanced oil recovery project, in which case the notice shall contain the date certification was made and the date positive production response occurred;

(2) receiving notification of termination of an enhanced recovery project, in which case the notice shall contain the date of termination; and

(3) adopting and promulgating rules and regulations pursuant to the provisions of the Enhanced Oil Recovery Act.

B. The secretary of taxation and revenue shall adopt and promulgate rules and regulations to enforce the provisions of the Enhanced Oil Recovery Act.

7-29A-5. SECRETARY OF TAXATION AND REVENUE APPROVAL; REFUND.--

A. The person responsible for paying the oil and gas severance tax on production from the enhanced recovery project shall not qualify to receive the recovered oil tax rate unless that person:

(1) applies to the secretary of taxation and revenue in the form and manner prescribed by the secretary for approval to pay the oil and gas severance tax on crude oil severed and saved from the enhanced recovery project at the recovered oil tax rate;

(2) includes the certifications from the division of approval and designation of the affected areas of the enhanced recovery project and of a positive production response from the enhanced recovery project; and

(3) provides all relevant material that the secretary of taxation and revenue considers necessary to administer the applicable provisions of the Enhanced Oil Recovery Act.

B. An approval of the secretary of taxation and revenue in accordance with Subsection A of this section shall be applicable to crude oil severed and sold from the enhanced recovery project on and after the first day of the month following the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred. If the oil and gas severance tax is paid at a rate imposed in Paragraph (2) of Subsection A of Section 7-29-4 NMSA 1978 on crude oil severed and saved from the enhanced recovery project after the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred, a claim for refund may be filed in accordance with Section 7-1-26 NMSA 1978 for the excess in tax over the amount due using the recovered oil tax rate. Notwithstanding the provisions of Subsection E of Section 7-1-26 NMSA 1978 any such refund granted shall be made in the form of a credit against future oil and gas severance tax liabilities.
