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New Mexico Register

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Notices of Rulemaking and Proposed Rules

COUNCIL FOR PURCHASING FROM PERSONS WITH DISABILITIES

NOTICE OF PROPOSED RULEMAKING

Public Notice: The New Mexico Council for Purchasing from Persons with Disabilities will hold a public hearing on Wednesday, October 8, 2025, at approximately 2:00 p.m. during the regular council meeting. The hearing will be held as an agenda item during the regular monthly council meeting. The meeting will be held in person at the New Mexico Commission for the Blind, 2200 Yale Blvd SE, Albuquerque NM 87106 and additionally may be attended by the public by Zoom meeting as detailed by the published meeting announcement.

Purpose of Rule Hearing: The purpose of the public hearing is to receive public input on the proposed recission and replacement of NMAC Title 2, Chapter 40, Part 5.

Statutory Authority: Section 13-1C-1 through Section 13-1C-7, NMSA 1978.

Purpose of the Proposed Amendments: The purpose of these changes is to ensure clarity and consistency of definitions and references to the State Use Act.

Summary of Proposed Changes to 2.40.5 NMAC Repeal and replacement of this rule is required under 1.24.11.9 NMAC. Replacement of the amended rule is to allow for consistency in referencing Chapter 14, Article 4 NMSA 1978, the "State Rules Act", enable more concise language in descriptions, definition of brokering, and addition of applicable federal laws under requests received under the Inspection of Records Act (IPRA).

The only sections of replacement rule 2.40.5 NMAC to be amended and updated are:

Section 7, subsections B, paragraph (3) of E, F, H, I, & J;
Section 8, subsection C;
Section 10, subsection F, paragraph (10);
All of Section 11;
Section 15, subsections B through D;
and

New Section 16, which has the new IPRA language.

Copies of and how to Comment on the Proposed Rules: Access to amended rule to be rescinded and proposed replacement rule for review and public comment addressing the proposed rule changes can be found at https://horizonsofnewmexico. org/council-meetings/#nmacinformation. Comment forms are available at that page for completion and submission. All forms must include the commenter's name and contact information. Written mail and electronic mail must be received no later than 5:00 p.m. MST on September 30, 2025. Written comments will be given the same consideration as oral comments made at the public hearing. All written comments received will be posted as they are received on the website at http://horizonsofnewmexico.org/ council-meetings/#nmac-information along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter. All written comments will be posted on the website within (3) three days of

Special Needs: Individuals who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Kathleen Pinyan at pinyan.nmpurcouncil@proton.me as soon as possible to allow adequate time to provide the requested accommodation(s).

ETHICS COMMISSION

NOTICE OF RULE MAKING AND PUBLIC RULE HEARING

Notice of Rulemaking: The State Ethics Commission [the commission] will hold a public hearing on the proposed adoption and amendment of certain rules, as detailed below. These amendments are proposed pursuant to Paragraph 2 of Subsection A of Section 10-16G-5, NMSA 1978. No technical scientific information was consulted in drafting these proposed amendments.

Copies of all the proposed amendments may be found at the Commission's website, https://www.sec.nm.gov, or by appointment at the commission's main office in Albuquerque: the State Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

Notice of Public Rule Hearing: The commission will conduct a virtual public rule hearing on Friday, October 10, 2025, beginning at 9:00 a.m. For instructions on how to attend this meeting, visit the Commission's website at: https://www.sec.nm.gov/ meetings/. The public hearing will be conducted in a fair and equitable manner by the commission and shall be recorded. Any interested member of the public may attend the hearing and will be provided a reasonable opportunity to offer public comment, including presentation of data, views, or arguments, on the proposed rules during the hearing. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact ethics.commission@sec.nm.gov. The commission will make every effort to accommodate all reasonable requests, but cannot guarantee accommodation of a request that is not received at least five calendar days before the scheduled hearing.

Notice of Acceptance of Written Public Comment: Written public comments, including presentation of data, views, or arguments about the proposed amendments, from any interested member of the public will be accepted until 5:00 p.m. on Friday, September 26, 2025, by submitting them via email to ethics. commission@sec.nm.gov with the subject line "SEC Rulemaking R25-01," or via first class mail or by hand delivery by appointment to the commission's Albuquerque office: New Mexico Ethics Commission, University of New Mexico Science and Technology Park, 800 Bradbury Drive SE, Suite 215, Albuquerque, NM, 87106.

Description of Proposed

Amendments: In compliance with Section 14-4-5.2 NMSA 1978, this notice includes the following summary of the proposed amendments, a short explanation of the purposes of the amendments, and specific legal authority authorizing the amendments. The method and manner of public comment and notice of public hearing on the proposed rules are listed above.

The proposed amendments are as follows:

Amendments to 1.8.1 NMAC, Sections 9-12, new Section 21:

These amendments are proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5, State Ethics Commission Act, NMSA 1978. The purpose of the proposed amendments is to clarify the scope of laws under the Commission's jurisdiction and authority, incorporate the requirement that the commission seek voluntary compliance in certain matters into the investigation and resolution of civil actions to enforce the state's ethics laws, and to move the commission's general provisions concerning confidentiality of records from 1.8.3 NMAC, the rule governing Administrative Hearings, to 1.8.1 NMAC, which addresses General Provisions.

Amendments to 1.8.3 NMAC, Sections 9-11, 13-15, removing Section 16: These amendments are proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978. These amendments provide clarity for the process of submitting an administrative complaint, the general counsel's role in investigating a complaint and the hearing officer's role in determining probable cause, and deletes the rule on records and confidentiality so that it is more appropriately located in

Amendments to 1.8.5 NMAC,

1.8.1 NMAC.

Sections 8 and 10: This amendment is proposed pursuant to Paragraph (2) of Subsection A of Section 10-16G-5 of the State Ethics Commission Act, NMSA 1978. The purpose of the amendment is to include a jurisdictional review component for complaints alleging violations of the Revised Uniform Law on Notarial Acts ("RULONA") prior to conducting an investigation.

LIVESTOCK BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that

the New Mexico Livestock Board (NMLB) will hold an in-person rulemaking hearing on September 30, 2025, at 9:00 a.m. at the Townplace Suites by Marriott, 4200 Sierra Vista Dr, Farmington, NM 87402. The hearing will be held in-person and accessible virtually. Instructions on how to join the virtual Regular Board Meeting will be posted on the NMLB's website, www.nmlbonline. com/board.

The NMLB will consider proposed amend/repeal/replace Rules. The purpose of the amended rules adoption is to add rules for the New Mexico Meat and Poultry Inspection Division 21.33.2 NMAC Food Safety, Meat and Poultry Inspection. Rules proposed for amendment to 21.33.2

NMAC include new definitions, applications/licenses, inspections, tagging, operating requirements and procedures, regulatory authority, hearings and enforcement. The NMLB will consider proposed amend/ repeal/replace Rules. The purpose of the amended rules adoption is to make changes to current Livestock Board Fees and add fees for meat and poultry state inspection or custom exempt establishment registration and renewal fees in 21.32.10 NMAC Livestock Board Fees. See Rules 21.32.2.7 through 21.32.2.30 NMAC; 21.32.10.8; 21.32.10.9; 21.32.10.10; 21.32.10.11; 21.32.10.15 NMAC.

Full copies of text of the proposed new rules can be obtained from the agency's website at www.nmlbonline.com. To request a copy of the proposed rule by mail, contact the NMLB at (505)841-6161. Visit www.nmlbonline for instructions on how to attend the virtual public hearing.

Interested persons may submit written comments on the proposed Rules 21.32.2.7 through 21.32.2.30 NMAC; 21.32.10.8; 21.32.10.9; 21.32.10.10; 21.32.10.11; 21.32.10.15 NMAC at www.nmlbonline.com or individuals may mail written comments to: NMLB/Rule Comments, 2105 Osuna Rd NE Building South, Albuquerque, NM 87113. Comments are due by 4:30 p.m. on Friday, September 26, 2025. The final proposed rules will be voted on by the Board during the public hearing on Monday, September 30, 2025. Interested persons may also provide data, views or arguments, orally or in writing, at the in-person and virtual public rule hearing to be held on September 30, 2025 at 9:00 a.m. at the Townplace Suites by Marriott, 4200 Sierra Vista Dr, Farmington, NM 87402. All written comments will be posted on the agency's website within three (3) days of receipt.

Legal authority for this rulemaking can be found in the Livestock Code 77-2-7, et seq. NMSA 1978; Livestock Board's power to establish rules and regulations 77-2-7, et seq. NMSA 1978; State meat inspection program; rules; penalties; cooperation with federal government 22-5-22, et seq. NMSA.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the agency at (505) 841-6161 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the NMLB at (505) 841-6161 if a summary or other type of accessible format is needed.

NURSING, BOARD OF

NOTICE OF PROPOSED RULEMAKING

The New Mexico Board of Nursing (hereinafter the "Board") will hold a public rule hearing on Monday, September 29, 2025, at 9:00 a.m. The rule hearing will be held in person at the NM Board of Nursing, 6301 Indian School Road NE, Suite 71, Albuquerque, NM 87110. A Board staff member will be available at 6301 Indian School Rd, NE, Suite 710, Albuquerque, NM 87110, to accept comments in written form for submission and consideration through Friday, September 26, 2025, at close of business at 5pm.

To attend the hearing: Please attend the meeting at NM Board of Nursing, 6301 Indian School Road NE, Suite 710, Albuquerque, NM 87110.

The purpose of the rule hearing is to consider proposals to amend/repeal/replace 16.12.1 NMAC ("General Provisions"), 16.12.2 NMAC ("Nurse Licensure"), 16.12.3 NMAC ("Nursing Education Programs"), 16.12.4 NMAC ("Hemodialysis Technicians"), 16.12.9 NMAC ("Management of Chronic Pain with

Controlled Substances"), 16.12.10 NMAC ("Health Care records"), 16.12.12 NMAC ("Discipline and Application Denials") and 16.12.13 NMAC ("Alternative to Discipline"). The rules hearing will also consider new part name(s) and new rules 16.12.15 NMAC ("Licensed Practical Nurse (LPN) Licensure"), 16.12.16 ("Registered Nurse (RN) Licensure"), and 16.12.17 ("Advanced practice Registered Nurse (APRN) Licensure").

Persons desiring to view the proposed rules may download them from https://www.bon.nm.gov. If you do not have internet access, a copy of the proposed rules may be requested by contacting NMBON at (505) 841-9083.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to sheena.ferguson@bon.nm.gov. Alternatively, members of the public may submit written comments by sending an original, signed copy to:

New Mexico Board of Nursing ATTN: NMBON Public Comments 6301 Indian School Rd. NE, Suite 710 Albuquerque, NM 87110

The Board will accept written public comment received at or before 5:00 PM on Friday, September 26, 2025, at close of business at 5:00pm. All written comments will be posted to the Board's website within three business days following receipt to allow for public viewing.

The board will preside over the hearing. The board will hear public comments, review written public comments, and any exhibits admitted during the hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the NMBON at (505) 841-9083.

The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Statutory Authority: Subsection A of Section 61-3-10 NMSA 1978 of the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, specifically authorizes the Board to "promulgate rules in accordance with the State Rules Act (Chapter 14, Article 4 NMSA 1078) as necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice." In addition, Section 61-1-31.1 NMSA 1978 of the Uniform Licensing Act, requires the Board to "determine those states and territories of the United States and District of Columbia from which the board will not accept an applicant for expediated licensure and those foreign countries from which the board will accept an applicant for expedited licensure. The list of disapproved licensing jurisdictions shall be posted on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval."

Purpose of the proposed rules:

The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally satisfy the Board's statutory obligation to "promote, preserve and protect the public health, safety and welfare." Section 1 of section 61-3-2 NMSA 1978.

Summary of Proposed Changes:

The Board summarizes its proposed changes to its administrative rules as follows:

16.12.1 NMAC - General Provisions

The proposed changes to Part 1 of the Board's current rules consist of amending existing language to include new definitions applicable to all the Board's rules to include artificial intelligence, advanced practice, dependent and independent practice, direct supervision, encumbered, and health care workforce data collection.

16.12.2 NMAC - Nurse Licensure

The proposed changes to Part 2 include repealing part 2 and replacing it with Parts, 15 for Licensed practical Nurses, Part 16 for Registered Nurses, and Part 17 for Advanced Practice Registered Nurses.

16.12.3 NMAC - Nursing Education Programs

The proposed changes to Part 3 of the Board's current rules are to amend the existing language. The amended Part 3 proposed to add the definition of artificial intelligence, requirements for establishment of new nursing programs, new requirements for the clinical site data submission, new requirements for the use of artificial intelligence in nursing curriculum, minimum faculty requirements, and program complaints.

16.12.4 NMAC - Hemodialysis Technicians

The proposed changes to Part 4 of the Board's rules consist of amending existing language. The amended part 4 rules make corrections to the new title of CHT-NC to encompass previous designations of CHT I and CHT II.

16.12.9 NMAC - Management of Chronic Pain with Controlled Substances

The proposed changes to Part 9 of the Board's rules consist of amending existing language for consistency with the Pain Relief Act, Sections 24-2D-1 through 24-2D-7 NMSA 1978. Clarification was added for Certified Clinical Nurse Specialists to align with APRN designations, and to update verbiage for medical records to reflect current terminology of health care records.

16.12.10 NMAC - Health Care Records

The proposed changes to Part 10 of the Board's rules consist of repeal and replacing existing language to update verbiage for medical records to reflect current terminology of healthcare record throughout the document, provided clarification for Release of Health Care Records, added clarification related to closing, selling or leaving a practice, as well as retention of health care records.

16.12.12 NMAC - Discipline and Application Denials

The proposed changes to Part 12 of the Board's rules consist of amending existing language to update verbiage for definitions, medical records to reflect current terminology of healthcare record throughout the document, amended to include verbiage for social media, provided clarification.

16.12.13 NMAC - Alternative to Discipline

The proposed changes to Part 13 of the Board's rules consist of repealing/replacing existing language to update the name throughout the document, verbiage for medical records to reflect current terminology of health care records throughout the document, amended verbiage for practice restrictions, monitoring, and discharge from the ATD program.

16.12.15 NMAC – Licensed Practical Nurse (LPN) Licensure

The proposed new Part 15 of the Board's rules for licensure and scope of practice for Licensed Practical Nurses (LPN) to include a new Reserve licensed practical Nurse category, a multistate licensure fee, clarification of Scope of practice, and artificial intelligence.

16.12.16 NMAC – Registered Nurse (RN) Licensure

The proposed new Part 16 of the Board's rules for licensure and scope of practice for Registered Nurses (RN) to include a new Reserve Registered Nurse category, a multistate licensure fee, clarification of Scope of practice, and artificial intelligence.

16.12.17 NMAC - Advanced Practice Registered Nurse (APRN) Licensure

The proposed new Part 17 of the Board's rules for licensure and scope of practice for Advanced Practice Registered Nurses (APRN) to include a new Reserve Registered Nurse category, a multistate licensure fee, clarification of Scope of practice, and artificial intelligence.

Technical Information: No technical information provided the basis for either of the proposed rules.

ENGINEER, OFFICE OF THE STATE

NOTICE OF PROPOSED RULEMAKING

The New Mexico Interstate Stream Commission ("NMISC" or "Commission") will hold a public hearing for the Commission to consider and take possible action on the Request of the NMISC Water Planning Program to adopt a new rule, Proposed Rule 19.25.16 NMAC, Regional Water Security Planning. The purpose of the Proposed Rule is to establish a framework for Regional Water Security Planning Councils to develop, maintain, and aid in implementation and tracking of Regional Water Security Plans. This framework will be grounded in regional values, scientific consensus, and New Mexico water law. The processes outlined in the Proposed Rule are intended to: ensure that the Plans will be based on the best available science, data, and models regarding available water supplies, use, and trends; provide transparency and opportunities for meaningful input and participation by local governing entities, the public and Nations, Pueblos, and Tribes within each Regional Water Security Planning Region; acknowledge the sovereignty, water rights, and water needs of Tribes, Nations, and Pueblos; consider public welfare and the needs of future generations of New Mexicans; align with state and federal laws; and identify and prioritize Projects, Programs, and Policies that

will help to ensure water security into the future.

Proposed Rule 19.25.16 NMAC identifies nine Regional Water Security Planning Regions that form the basis for Councils to be established and undertake a review of the science on the hydrology, use, and availability of water and produce Regional Water Security Plans. The Proposed Rule provides for the NMISC Staff to aid in the gathering of members and information for members to consider and evaluate, yet it is Councils that will develop a Regional Water Security Plan that includes prioritized Projects, Programs, and Policies. Proposed Rule 19.25.16 NMAC requires that Councils prioritize the Projects, Programs, and Policies based on readiness and identify a sponsor(s) for subsequent implementation.

The public hearing will begin on Wednesday October 15, 2025, at 9:00 a.m. and will resume at 1:00 p.m. on Thursday, October 16 and at 9:00 a.m. on Friday, October 17. The hearing will continue as long as required but not later than 5:00 p.m. on October 17 to hear all testimony, evidence, and public comment related to the Proposed Rule. The hearing will be conducted in a hybrid format to allow for both in-person and virtual participation. The in-person hearing will be held in the auditorium of the Willie Ortiz Building, 2600 Cerrillos Rd, Santa Fe, New Mexico 87505. Information on how to attend the hearing remotely, can be found on the NMISC/NMOSE website https://www.ose.nm.gov/RulesRegs/ rulemaking.php.

The NMISC is authorized to adopt rules pursuant to the Water Security Planning Act, NMSA 1978, Sections 72-14A-1 through 72-14A-5. The hearing will be conducted in accordance with 1.24.25 NMAC, Default Procedural Rule for Rulemaking Procedures; NMSA 1978, Section 14-4-1, the State Rules Act, and other applicable procedures, including any orders

from the Commission and appointed hearing officer. The Commission may deliberate and make a final decision on the Proposed Rule at the conclusion of the hearing or may convene a later meeting for that purpose.

The Motion to Initiate the Rulemaking Process, Statement of Reasons, and Proposed Rule 19.25.16 NMAC, as well as any orders from the Commission and appointed hearing officer governing the conduct of the hearing may be accessed by visiting https://www.ose.nm.gov/ RulesRegs/rulemaking.php and scrolling down to "Regional Water Security Planning" under "Docketed Matters." Paper copies of the Motion, Statement of Reasons, and Proposed Rule 19.25.16 NMAC are available at NM Office of the State Engineer district offices, the addresses for which can be found at https://www. ose.nm.gov/DO/index.php.

PUBLIC COMMENT: The

NMISC rulemaking hearing is open to the public, and individuals or representatives seeking to provide comments are encouraged to submit comments or data, views, or arguments in one of two ways:

- 1. During the public comment period in advance of the hearing comments may submitted online at: https://www.ose.nm.gov/RulesRegs/ rulemaking.php, or via postal mail to the NMISC Administrator, 5550 San Antonio Dr. NE, Albuquerque, NM 87109. The deadline for submitting written comments in advance of the hearing is September 27, 2025. Comments submitted during the public comment period will be posted to the website and available for viewing within three business days of receipt and will be submitted to the Commission in advance of the hearing.
- 2. During the hearing there will be multiple opportunities each day for public comment, which can be made in person or virtually at the following times:

Wednesday, October 15 at 12:00 p.m. (noon) and again at 4:00 p.m. Thursday, October 16 at 1:00 p.m. and 4:00 p.m. Friday, October 17 at 9:00 a.m.

No prior notification is required to make public comment at the hearing; however, for planning purposes if it is known that comment is to be provided at the hearing, please send an email to Jennifer.Salazar@ose.nm.gov and identify the name, affiliation, and the date, approximate time frame, and amount of time requested for making the comment. The appointed hearing officer shall determine the process and times for comments during the hearing. Any individual who provides comment during the hearing must state their name and affiliation for the record. All written comments will be considered exhibits for reference, but do not require formal admission into the hearing record. Any written material presented for review by the Commission at the rulemaking hearing must be provided to the Hearing Officer with 12 copies. If any person requires an interpreter to make public comment in a language other than English, please contact the NMISC Administrator as soon as possible, and at least 14 days prior to the hearing date at 5550 San Antonio Dr. NE, Albuquerque, NM 87109, telephone (505) 490-2171, or email Jennifer.Salazar@ose.nm.gov.

ACCESSIBILITY: In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, the New Mexico Interstate Stream Commission will not discriminate against individuals with disabilities on the basis of the agency's services, program, or activities. If any person requires an accommodation or an auxiliary aid or service or qualified sign language interpreter to participate in the rulemaking hearing, please contact the NMISC Administrator as soon as possible and at least 14 days prior to the hearing date at 5550 San Antonio Dr. NE, Albuquerque, NM 87109, telephone (505) 490-2171, or email Jennifer.Salazar@ose.nm.gov.

(TDD or TTY users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

PUBLIC LANDS, COMMISSIONER OF

NOTICE OF PUBLIC HEARING

The New Mexico State Land Office ("SLO") will hold a public hearing on September 30, 2025, at 10:00 a.m., and continuing thereafter as necessary, in Morgan Hall, Room 101, 310 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing will include a virtual/telephonic participation option, details of which will be provided on SLO's website (http://www.nmstatelands.org) at least 30 days prior to the public hearing. Any change to the location or time of the hearing will be posted with a final agenda on the SLO webpage (http://www.nmstatelands.org) at least 72 hours prior to the date and times specified above.

The purpose of the hearing is to consider repealing and replacing State Land Office Rule 19.2.7 NMAC (relating to geothermal resources leases) to address the Legislature's 2013 amendments to the Geothermal Resources Act (Section 19-13-1 et seq., NMSA 1978) and to modernize and improve the SLO's process for issuing leases for extraction, removal and/or use of geothermal resources from state trust lands. Legal authority for this rulemaking can be found in the Geothermal Resources Act, Section 19-13-25 NMSA 1978, and in Section 19-1-2 NMSA 1978.

The proposed rule is available on the SLO website (http://nmstatelands. org) and the Sunshine Portal (http://www.sunshineportalnm.com) and at the SLO building located at 310 Old Santa Fe Trail, Santa Fe, New Mexico. To request a hard copy, please contact Francesca Di Palma at (505) 827-5761 or make a request by email at SLO-INFO@nmslo.gov.

Written comments may be submitted

by mail to Francesca Di Palma, New Mexico State Land Office, Attention: Geothermal Rulemaking, or by email to SLO-INFO@nmslo.gov. Written comments (including comments submitted by email) will be accepted through 5:00 p.m. on September 26, 2025.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid (such as a sign language interpreter) to attend or participate in any aspect of the proposed rulemaking process or the public rule hearing are asked to contact Selena Romero at least 10 days prior to the hearing by phone at (505) 827-5790 or by email at sromero@nmslo.gov.

End of Notices of Rulemaking and Proposed Rules

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT FORESTRY DIVISION

This is an amendment to 19.1.3 NMAC, Sections 7, 12, 13 and 14, effective 8/26/2025.

19.1.3.7 DEFINITIONS:

- "Agricultural A. easement" means a less than fee simple interest in land that is granted in perpetuity, which creates a legally enforceable land protection or preservation agreement and restricts or prohibits the future development, including subdivision, or alteration of the land or the permanent severance of any appurtenant water rights for a purpose other than agricultural production or the natural values of the land. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.
- В. "Agricultural production" means the production for commercial purposes of crops, livestock or livestock products, including the processing or retail marketing of crops, livestock or livestock products that are primarily produced on site by an operator of a working farm, ranch or other agricultural land. The term includes use of land that is devoted to and meets requirements and qualifications for soil conservation programs under an agreement with an agency of the federal government and may include periodic fallowing and practices that promote conservation of land and water on and near the property.

- **C.** "**Applicant**" means a qualified entity.
- **D.** "Committee" means the natural lands protection committee established pursuant to Subsection A of Section 75-5-4 NMSA 1978.
- "Conservation easement" means a less than fee simple interest in land granted in perpetuity, which creates a legally enforceable land protection or preservation agreement that restricts or prohibits further subdivision and may restrict or prohibit development, commercial and industrial uses or other activities, or alteration of the land or any appurtenant water rights necessary to maintain or preserve certain conservation values (e.g., natural resource, wildlife habitat, scenic, open space, cultural, historic or recreational and educational) on the subject property. The fee simple ownership remains with the landowner and the landowner continues uses of the land that are consistent with the provisions of the easement with no requirement for public access although the landowner may allow such access.
- F. "Conservation entity" means a private nonprofit charitable corporation or trust authorized to do business in New Mexico that has tax-exempt status as a public charity pursuant to the internal revenue code of 1986 and that has the power to acquire, hold or maintain land or interests in land.
- G. "Conservation project" means the acquisition of conservation or agricultural easements from a willing seller or a land restoration project that protects the state's natural heritage, customs and culture through action that preserves and conserves water quality and quantity to conserve and restore natural ecosystem function

- and processes; protects agricultural production on working farms, ranches and other agricultural lands; protects and restores New Mexico's forests and watersheds; conserves and restores wildlife habitat; maintains natural areas; provides outdoor recreation opportunities, including hunting and fishing and trails; or preserves cultural and historic sites with natural resources heritage value.
- H. "Department" means the energy, minerals and natural resources department.
- **I. "Fund"** means the natural heritage conservation fund.
- "In-kind" means property or services that benefit a grant-supported conservation project that are contributed without charge or at less than fair market value. Inkind contributions for purposes of land restoration projects may consist of the cost of operating equipment or equipment rental, goods or services, including labor, directly benefitting the land restoration project and specifically identifiable to the land restoration project. Labor costs included as in-kind shall be documented as reasonable and reference rates applicable to the local area and type of service. Inkind contributions for purposes of agricultural or conservation easements means the donation of interests in real property or the payment of transactional costs such as appraisals, environmental assessments, title insurance [or], surveys, mineral remoteness reports, baseline documentation reports, reasonable contributions to restricted stewardship funds held by the qualified entity or conservation entity, or labor costs required to produce these items.
- K. "Land restoration project" means actions intended to renew a degraded, damaged or destroyed natural land area and

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

- L. "Natural resource heritage value" means a vegetation community component, animal species assemblage or combination thereof; other naturally occurring representation of biological diversity; or esthetically appealing vistas of natural landscape that are significant or important.
- M. "Partner" means a conservation entity or other individual or entity cooperating or assisting a qualified entity with planning, applying for and executing a conservation project, which is specifically identified in an application, and will be a participant in a public-private conservation project.
- N. "Qualified entity" means a state agency, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, a political subdivision of the state; or, for conservation projects wholly within New Mexico, an Indian tribe or pueblo.

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

[19.1.3.7 NMAC - N, 7/30/2010; A, 8/26/2025]

19.1.3.12 APPLICATION REVIEW:

- The committee A. shall review applications that are timely, that are complete and that comply with the Natural Heritage Conservation Act and 19.1.3 NMAC and evaluate them against the criteria in Subsection B of 19.1.3.12 NMAC. The committee may reject untimely applications, incomplete applications or applications that do not comply with the Natural Heritage Conservation Act or 19.1.3 NMAC. The department secretary, upon request by the committee, may provide technical assistance through staff assignment or a group of public agency and private individuals selected to assist during a specified review cycle. After review, the committee shall make its recommendations on all evaluated conservation projects to the department.
- **B.** The committee shall evaluate applications for conservation projects based upon the following criteria:
- (1) the degree to which the conservation project serves the purposes of the Natural Heritage Conservation Act;
- (2) the extent of cash and in-kind matching financial support for the conservation project from sources other than the state, in context with the amount of funding requested and available overall;

<u>(3)</u> the degree to which transaction costs are reasonable and justified;

[(3)] (4) the applicant's and partner's technical qualifications and its ability to

complete and maintain the proposed conservation project;

[(4)] (5) the degree to which the conservation project fosters and integrates with existing conservation plans, strategies and initiatives;

[(5)] (6) the potential for benefits at the landscape and ecosystem scale;

[(6)] (7) the potential for improved public access for outdoor recreation opportunities, including hunting and fishing;

[(7)] (8) the potential for economic benefits, including direct commerce and ecosystem services, of the completed conservation project;

[(8)] <u>(9)</u> complementary or strategic values through proximity to other conservation actions, priorities or projects;

[(9)] (10) conservation project readiness for completion on a timely schedule;

[(10)] (11) degree and extent of partner involvement;

 $[\frac{(11)}{(12)}]$

the likelihood that the conservation project as proposed will have long-term success in achieving its purposes and will have long-term sustainability, including involvement of land dedicated to conservation purposes and an explicit monitoring plan;

to which water quality and quantity protect, restore, and manage watershed to maintain healthy waterflows

evaluate and categorize applications according to the following matrix of factors and relative values and base its assessment and recommendations on the matrix. The committee has discretion to determine how to use the information from the matrix to determine value assignments among features of each application, in consideration of any limitations identified in the application cycle announcement as provided for in Subsection A of 19.1.3.11 NMAC.

Factor	Level 4	Level 3	Level 2	Level 1
Serves purposes of the Natural Heritage Conservation Act	Clearly serves all purposes	Clearly serves multiple purposes	Clearly serves one purpose and may serve others	Questionable if any purposes are adequately served
Extent of matching cash and in-kind financial support	Applicant/Partner provide more than 75% of project costs	Applicant/Partner provide 50 to 75% of project costs	Applicant/Partner provide 25 to 49% of project costs	Applicant/Partner provide less than 25% of project costs
Transaction costs are reasonable and justified	Documentation of transaction costs is complete and within the allowable amount	Partial documentation of costs is provided and the amount requested is alllowable	Partial documentation of costs is provided and the amount requested is not allowable	No documentation of costs
Qualifications and ability of applicant and partners to complete and maintain proposed project	Substantial past experience and continuing capability to do proposed work and follow-up	Demonstrated completions of similar work and is fully structured to do similar work	Demonstrates some past ability and basic documented qualifications and infrastructure	Indicates uncertain capability or has no prior experience and necessary infrastructure
Degree of fostering existing conservation plans, strategies and initiatives (PSIs) specified in the cycle announcement	Project has substantial relation to most PSIs and directly fosters several	Project clearly fosters multiple PSIs and directly relates to several	Project has clear relation to one PSI and possible service to others	Project has uncertain relation to any PSIs or no clear degree of fostering
Potential for benefits at landscape or ecosystem scale	Substantial landscape and ecological scale benefits are evident in completed work	Substantial landscape or ecological scale benefits are evident in completed work	Desired scale benefits are evident, but are judged minimal	No clear benefits are evident at desired scale
Potential for improved public access to outdoor recreation opportunities on or off project site	Multiple enhanced recreation opportunities are evident, including hunting and fishing	Some enhanced outdoor recreation opportunities are evident and have prospect for growth	Some enhanced outdoor recreation opportunities are evident but are limited	Proposal has no discernible outdoor recreation elements
Potential economic benefits of completed project	Project has multiple economic benefits at multiple scales	Project has some economic benefits locally and broader	Project shows economic benefits, at least locally	Project has no discernible economic benefits
Complementary or strategic values through proximity to other ongoing or completed conservation actions, including any priority areas formally identified by the committee	Project is within a priority area or directly links to nearby completed or ongoing conservation actions and provides added heritage values	Project is within a priority area but has limited relationship to other conservation actions that will provide synergistic heritage values	Project is not within a priority area but has proximity to other actions that may provide synergy or economy of scale or cost effectiveness	Project has no proximity to other conservation endeavors and is not otherwise distinctive as a starting point

Factor	Level 4	Level 3	Level 2	Level 1
Degree of readiness to start and complete project on timely schedule	Readiness and time schedule are clear and background work is complete; timely execution is essentially assured	Readiness and time schedule are clear and reasonable to the project, but could experience some delay	Readiness and time schedule are clear, but have acknowledged or likely delays inconsistent with the nature of the project	Readiness and completion scheduling is unspecified, unclear or uncertain
Degree and extent of partner involvement	Multiple entity project where reasonable partnering is included with clear and substantive involvement and contribution	Multiple entity project where reasonable partnering is included beyond minimal but is not extensive	Single or multiple entity project where partnering is included, but is minimal	Single entity project with no partner involvement when such partnership is possible and advised
Likely long- term success and sustainability	Project is well-described and accomplishable with substantive provisions for sustained maintenance and routine outcome assurance	Project is well-described and accomplishable with basic provisions for sustained maintenance and periodic outcome assessment	Project is inherently achievable but contains limited provisions for maintenance over the long-term	Project appears basically achievable, but long-term outcome is questionable or uncertain
Degree of water quality and quantity benefit	Project is well-described with substantive provisions to protect, restore, and manage watershed to maintain healthy waterflows, including the protection of transferable water rights	Project is well-described with basic provisions to protect, restore, and manage watershed to maintain healthy waterflows	Project identifies some provisions, but insufficient	Does not address

- D. A summary of committee judgments, without attribution to individual committee members, among factors described in Subsection C of 19.1.3.12 NMAC will be made public regarding all applications that are recommended to the department for funding and those that are not recommended to be funded.
- E. Any changes to the scope, budget, or expected outcome of a project that has been recommended for funding shall be reported by the qualified entity to the department in writing and in detail for each individual change. Changes will be reviewed by the department and either

approved or referred to the committee for further review based on whether the department determines that the committee's original evaluation may receive a more negative assessment. [19.1.3.12 NMAC - N, 7/30/2010; A, 8/26/2025]

19.1.3.13 GRANT AWARDS:

A. A conservation project involving acquisition of a conservation or agricultural easement requires an appraisal that establishes the fair market value of the conservation or agricultural easement and meets United States treasury regulations and the uniform standards

of professional appraisal practice before the department will disburse the funds to the qualified entity.

In addition, for B. conservation projects involving acquisition of a conservation or agricultural easement, the qualified entity or partner conservation entity shall provide as specified by the department documents including a title commitment; phase I environmental site assessment and, if needed based on phase I environmental site assessment, a phase II environmental site assessment; a title opinion certifying that the landowner owns the minerals rights or a report, satisfactory to

the department, from a professional geologist that the probability of surface mining occurring on such property is so remote as to be negligible; a baseline documentation report; and if deemed necessary by the department, a property boundary survey. If the landowner owns the mineral rights, an easement shall prohibit subsequent sale or development of mineral rights by the landowner granting the conservation or agricultural easement. [A baselinedocumentation report of the propertyshall be recorded with the deed of conservation easement or agriculturaleasement in the office of the applicable county clerk.]

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

D. Grant awards
may be approved for use to pay
transactional costs for easement
projects such as appraisals, title
insurance, title opinions, surveys,
[or] environmental reviews, mineral
remoteness reports, baseline
documentation reports, reasonable
contributions to restricted stewardship
funds held by the qualified entity or
conservation entity, or documented
labor costs required to produce
these items, up to [three] thirty

percent of the total value of the conservation project funded [or tenpercent of the amount of the grant, whichever is less]. The committee and the department may consider and approve grant requests for paying only transaction costs for easement projects, subject to the grant being for up to [three] thirty percent of the total value of the conservation project [or—\$45,000, whichever is less].

- E. Overhead and administrative expenses used as inkind contributions may be no more than ten percent of the total cost of a project.
- A qualified entity or conservation entity may use contractors or subcontractors so long as their use is explained in the application, all applicable procurement requirements are met and the contractors or subcontractors are identified by name in the application, to the extent known. If contractors or subcontractors are identified in the application, the qualified entity or entities shall include documentation in the application that demonstrates all applicable procurement requirements were met. The qualified entity or entities associated with an approved project shall be wholly responsible for the project execution and performance, whether or not contractors or subcontractors are used. Use of contractors or subcontractors not identified in an application shall require the department's prior written approval.
- G. Prior to commencing any work, any contractors or subcontractors may be required to furnish state certification from insurers for coverage in the minimum amounts as designated by the state. Appropriate coverage shall be maintained in full force and effect during the term of the project and shall not serve to limit any liabilities or any other contractor obligations. The state and the department must be added as additional insured as required by statute, agreement or other obligation.

[19.1.3.13 NMAC - N, 7/30/2010; A, 8/26/2025]

19.1.3.14 PUBLIC-PRIVATE CONSERVATION PROJECTS:

- A. Conservation or agricultural easements. Conservation projects that are the joint acquisition of a conservation easement or agricultural easement by a qualified entity and a conservation entity and are funded in part with a grant to a qualified entity shall meet the following requirements.
- (1) The qualified entity and conservation entity shall hold title to the conservation easement or agricultural easement as cotenants having undivided interests in proportion to each entity's share of the acquisition.
- The **(2)** conservation entity shall acquire no less than ten percent of the easement as a percentage of the appraised easement value and may do so through cash or in-kind contributions to the total project value not paid by a qualified entity. [If an in-kindcontribution, no portion of that contribution shall be comprised of the portion of a donation by a landowner for which the landowner has been previously compensated through a state tax incentive or credit, but nothing in this provision shalldiminish the ability for any landowner to be eligible to apply for any state tax incentive or credit.]
- conservation entity, as part of the qualified entity's application, shall submit a plan for the conservation and stewardship of the lands for which the conservation entity and the qualified entity are responsible. The plan shall comply with the purposes of the Natural Heritage Conservation Act and shall specifically identify the entity responsible for ongoing monitoring and stewardship.
- **B.** Land restoration. When a conservation entity has partnered with a qualified entity on a land restoration project that is funded in part with a grant to a qualified entity, the following requirements apply.
- (1) The conservation entity shall provide at

8/26/2025]

least ten percent of the cost of the conservation project and may do so, all or in part, through cash or in-kind contributions to the total project cost not paid by a qualified entity.

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

[19.1.3.14 NMAC - N, 7/30/2010; A,

ENVIRONMENT DEPARTMENT

This is an emergency amendment to 20.10.2 NMAC, Sections 7, 11 & 15, effective 8/5/2025.

20.10.2.7 DEFINITIONS:

- A. "Act" means the Hemp Manufacturing Act, Section 76-24-1, et seq., NMSA 1978.
- **B.** "Adulterated" has the meaning stated in the New Mexico Food Act, Section 25-2-10 NMSA 1978.
- C. "Applicant" means a person who has submitted a hemp facility application to the regulatory authority.
- D. "Application" means documents provided by, and submitted to, the regulatory authority by an applicant as part of the process for obtaining a permit to extract, process, or engage in other manufacturing activities of hemp or hemp products.
- E. "Approved"
 means acceptable to the regulatory
 authority based on the regulatory
 authority's determination of
 conformity with principles, practices,
 and generally recognized standards
 that protect public health and
 compliance with the requirements of
 this part and the act.

- **F.** "Blend" means to combine into an integrated whole.
- **G.** "Board" means the environmental improvement board.
- H. "Cannabis sativa L." means the plant cannabis sativa L. and any part of the plant, whether growing or not.
- I. "CBD" means cannabidiol and is a cannabinoid and the primary non-psychoactive ingredient found in hemp.
- J. "Certificate of analysis" means an official certificate issued by a hemp laboratory signed by an authorized official of the hemp laboratory that guarantees the results of the laboratory's testing of a sample.
- **K.** "Conditional employee" means a potential hemp employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential hemp employees who may be suffering from a disease that may be transmitted through hemp, hemp extract, hemp-derived material, or hemp finished product and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.
- L. "Disposition" means storing, transferring to another person, or disposal.
- M. "Drinking water" means water that meets criteria as specified in 20.7.10 NMAC. Drinking water is traditionally known as "potable water" and includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking" water.
- N. "Employee" means the permit holder, person in charge, hemp employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a hemp facility.
- O. "Hemp" means the plant cannabis sativa L. and any part of that plant, including seeds and all derivatives, extracts, cannabinoids,

- isomers, acids, salts and salts of isomers, whether growing or not, with a THC concentration of not more than three-tenths percent on a dry weight basis.
- P. "Hemp-derived material" means any material containing THC in any concentration derived from cannabis sativa L. through any activity authorized pursuant to the act.
- Q. "Hemp employee" means an individual working with unpackaged hemp products or equipment utensils, or surfaces that contact unpackaged hemp products.
- R. "Hemp extract" means oil and extracts, including cannabidiol, cannabidiolic acid, and other identified and non-identified compounds derived from hemp.
- S. "Hemp extraction facility" means an operation that produces hemp extract.
- T. "Hemp facility" means a hemp extraction facility, hemp manufacturing facility, hemp processing facility or hemp warehouse.
- U. "Hemp finished product" means a hemp product that is intended for retail sale and containing hemp or hemp extracts for human consumption, absorption, or inhalation that has a THC concentration of not more than threetenths of one percent (0.30%).
- V. "Hemp harvest certificate" means a document issued by the New Mexico department of agriculture to a person licensed to harvest hemp for distribution or sale certifying that a quantity of hemp meets the THC concentration required pursuant to 21.20.3 NMAC.
- W. "Hemp laboratory" means an analytical laboratory approved by the regulatory authority to conduct laboratory analysis of hemp products.
- X. "Hemp manufacturing facility" means an operation, other than a hemp extraction facility, that produces hemp products, other than hemp extract, and provides hemp products for sale or distribution to other business entities.

- Y. "Hemp processing facility" means an operation, other than a hemp manufacturing facility, where hemp is processed or dried into a hemp finished product or into a hemp product that does not require further processing before being offered as a hemp finished product.
- **Z.** "Hemp products" means hemp, hemp-derived material, hemp extract, and hemp finished product.
- AA. "Hemp transportation manifest" means a form used for identifying the quantity, composition, origin, and destination of hemp products during transportation.
- BB. "Hemp transportation unit" means a motor vehicle department-licensed, driven or towed wheeled vehicle utilized to transport hemp products.
- CC. "Hemp warehouse" means a location, other than a hemp extraction facility or hemp manufacturing facility, where hemp extract is stored.
- DD. "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:
- (1) the number of potential injuries; and
- (2) the nature, severity, and duration of the anticipated injury.
- **EE.** "Law" means applicable local, state, and federal statutes, regulations, and ordinances.
- **FF.** "Licensee" means a person that possesses a valid license for hemp production issued by NMDA.
- **GG.** "Misbranded" has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA 1978.
- **HH.** "NMDA" means the New Mexico department of agriculture.
- II. "Operational plan" means a written plan

- outlining the product formulation, production steps, safety requirements, distribution, labeling, and recall procedures that will be implemented by a hemp facility when processing hemp products.
- **JJ.** "Permit" means the document issued by the regulatory authority that authorizes a person to operate a hemp facility.
- **KK.** "Permit holder" means the entity that:
- (1) is legally responsible for the operation of the hemp facility such as the owner, the owner's agent, or other person; and
- (2) possesses a valid permit to operate a hemp facility.
- **LL.** "Person" means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.
- MM. "Person in charge" means the individual present at a hemp facility who is responsible for the operation at the time of inspection.
- NN. "Personal care items" means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance, and includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.
- OO. "Poisonous or toxic materials" means substances that are not intended for ingestion and are included in four categories:
- (1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
- (2) pesticides, except sanitizers, which include substances such as insecticides and rodenticides:
- (3) substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

- that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.
 - **PP.** "Premises" means:
- (1) The physical facility, its contents, and the contiguous land or property under the control of the permit hold; or
- physical facility, its contents, and the land or property not described in Paragraph (1) of this definition if its facilities and contents are under the control of the permit holder and may impact hemp facility personnel, facilities, or operations, and a hemp facility is only one component of a larger operation.
- QQ. "Process authority" means an approved expert in the processes for controlling pathogenic microorganisms in food and/or hemp products, and as such, is qualified by education, training and experience to evaluate all of the aspects of pathogen control measures and determine if such control measures, when properly implemented, will control pathogens effectively.
- **RR.** "Public water system" has the meaning stated in 20.7.10 NMAC.
- SS. "Recall" means a return of hemp products that are either known or suspected to be adulterated, misbranded, or otherwise unsafe for human consumption, to the manufacturer or distributor, or that are disposed of by approved methods.
- TT. "Regulatory authority" means the New Mexico environment department.
- UU. "RLD / LP Gas Bureau" means the New Mexico regulation and licensing department, LP gas bureau.
- **VV.** "Secretary" means the secretary of New Mexico environment department or a designee.
- WW. "Semi-synthetic cannabinoid" means a substance that is created by a chemical reaction that converts one cannabinoid

extracted from a cannabis sativa L. directly into a different cannabinoid. Semi-synthetic cannabinoid does not include cannabinoids produced via decarboxylation of naturally occurring acidic forms of cannabinoids, such as Tetrahydrocannabinolic acid into the corresponding neutral cannabinoid, such as THC, through the use of heat or light, without the use of chemical reagents or catalysts, and that results in no other chemical change.

[WW:] XX. "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

YY. "Synthetic cannabinoid" means a cannabinoidlike compound that was produced by using chemical synthesis, chemical modification, or chemical conversion. Synthetic cannabinoid does not include:

compound produced through the decarboxylation of naturally occurring cannabinoids from their acidic forms; or,

<u>(2)</u> A semisynthetic cannabinoid.

[XX.] ZZ. "THC" means delta-9 tetrahydrocannabinol (CAS number 1972-08-3) as measured using a post-decarboxylation method and based on percentage dry weight.

[YY.] <u>AAA.</u> "THCA" means tetrahydrocannabinolic acid (CAS number 23978-85-0).

[ZZ.] <u>BBB.</u>

"Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this part if the regulatory authority determines that no hazard to human health or the environment will result from the modification or waiver.

[20.10.2.7 NMAC - N, 1/28/2020; A/E, 8/1/2025; A/E, 8/5/2025]

20.10.2.11 HEMP FACILITY REQUIREMENTS:

A. After the effective date of this part and unless otherwise

provided, it is illegal to operate a hemp facility which does not meet the requirements of this section.

B. Adoption of 21 CFR 117 Subparts A, B, and F. Except as otherwise provided, Subparts A, B, and F of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety.

C. Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

(1) 117.301: All records required by this part are subject to all requirements of this subpart;

(2) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location; and

(3) 117.320: All records required by this part must be made promptly available to the regulatory authority for official review and copying upon oral or written request.

D. Omissions. The following provisions are omitted from the incorporated subparts of 21 CFR 117:

(1) 117.1; (2) 117.5; (3) 117.7; (4) 117.8; (5) 117.310; (6) (7) 117.325; and

E. The current 21 CFR 111 and United States federal food, drug, and cosmetic act, title 21, chapter 9 are hereby adopted as a

(8)

117.335.

21, chapter 9 are hereby adopted as a technical reference and interpretation guide.

F. Hemp and Hemp Product Source and Hemp Product Transportation.

(1) Hemp facilities shall not receive hemp

without a hemp harvest certificate issued by NMDA or a person approved by the regulatory authority verifying the hemp being transported has a THC concentration of not more than three-tenths of one percent (0.30%) on a dry weight basis.

(2) Hemp facilities shall not receive hemp-derived material <u>or</u> hemp extract [or-hemp finished product] unless:

(a)

at, or before the time of receiving it, documentation is obtained by the hemp facility, from the company providing it, demonstrating it is hemp-derived;

[(a)] <u>(b)</u> it

is received from an NMED permitted hemp facility or a person approved by the regulatory authority;

[(b)] <u>(c)</u>

it is accompanied by a hemp transportation manifest; and

[(c)] <u>(d)</u>

hemp finished products intended for human consumption or hemp products that will be utilized as ingredients in hemp finished products intended for human consumption were transported under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of food, as well as against deterioration of the food and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

G. Records and Traceability.

(1) Hemp facilities shall implement the approved record keeping system at all times and shall maintain traceability records for a period of two years.

(2) Hemp facilities shall maintain all shipping records and records of receipt for all hemp products for a period of two years, including but not limited to:

(a)

hemp harvest certificate;

(b)

hemp transportation manifest;

(c)

date of receipt; and

(d)

certificate of analysis, if hemp finished product.

- H. Hemp facilities shall maintain the operational plans and recall plan, accepted by the regulatory authority, onsite during all hours of operation and shall make them available for review by the regulatory authority.
- I. The final disposition of all unused hemp product and residual solvents shall be conducted as approved by the regulatory authority in Subsection C of 20.10.2.8 NMAC.
- J. The permit holder shall be responsible to ensure the security of, and limit access to, hemp-derived material with a THC concentration of greater than threetenths of one percent (0.30%).
- K. Except as provided in Subsections L and M of this section, when conducting activities authorized under the Act or this part, a hemp facility shall not receive, possess, manufacture, offer, advertise, market, or sell semi-synthetic cannabinoids or synthetic cannabinoids or products containing semi-synthetic cannabinoids or synthetic cannabinoids.
- L. Except as provided in Subsection M of this section, A hemp facility may receive and use as an ingredient in hemp finished products semi-synthetic cannabinoids or synthetic cannabinoids identified in Paragraphs (1) through (9) of this subsection, provided that before use in manufacturing, laboratory analysis completed by an approved analytical laboratory of the semisynthetic cannabinoid or synthetic cannabinoid demonstrate the cannabinoid has a purity of greater than or equal to ninety-eight percent. Semi-synthetic cannabinoids or synthetic cannabinoids meeting the purity requirements of this subsection that may be received and used as an ingredient in hemp finished products are:

<u>(1)</u>
Delta-9 tetrahydrocannabivarin tetrahydrocannabivarin (THCV);

(2) Cannabichromene (CBC); (3) Cannabicitran (CBT); **(4)** Cannabicyclol (CBL); **(5)** Cannabielsoin (CBE); **(6)** Cannabigerol (CBG); **(7)** Cannabidivarin (CBDV); **(8)** Cannabidiol (CBD); and (9)Cannabinol (CBN).

M. Subsections L and M of this section are effective beginning September 15, 2025. [20.10.2.11 NMAC - N, 1/28/2020; A/E, 8/1/2025]

20.10.2.15 HEMP
LABORATORIES: Analytical
[Testing] testing required in
[20.10.2.14 NMAC] this part shall
be conducted by an approved
analytical laboratory that has no direct
ownership or financial interest in the
hemp facility for which the testing is
being conducted.
[20.10.2.15 NMAC - N, 1/28/2020;
A/E, 8/1/2025]

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 6/26/2025 open meeting, to repeal rule 17.7.2 NMAC - Energy Efficiency (filed 9/14/2017) and replace it with 17.7.2 NMAC - Energy Efficiency, effective 8/26/2025.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC
UTILITIES AND UTILITY
SERVICES
CHAPTER 7 ENERGY
CONSERVATION
PART 2 ENERGY
EFFICIENCY

17.7.2.1 ISSUING
AGENCY: The New Mexico public regulation commission.

[17.7.2.1 NMAC - Rp, 17.7.2.1 NMAC, 8/26/2025]

17.7.2.2 SCOPE: This rule applies to all electric, gas, and distribution cooperative utilities subject to the Efficient Use of Energy Act and the commission's jurisdiction. [17.7.2.2 NMAC - Rp, 17.7.2.2 NMAC, 8/26/2025]

17.7.2.3 STATUTORY AUTHORITY: Sections 62-3-1, 62-8-6, and 62-17-1 to -11 NMSA 1978. [17.7.2.3 NMAC - Rp, 17.7.2.3 NMAC, 8/26/2025]

17.7.2.4 DURATION:

Permanent.

[17.7.2.4 NMAC - Rp, 17.7.2.4 NMAC, 8/26/2025]

17.7.2.5 EFFECTIVE

DATE: August 26, 2025, unless a later date is cited at the end of a section.

[17.7.2.5 NMAC - Rp, 17.7.2.5 NMAC, 8/26/2025]

17.7.2.6 OBJECTIVE:

The objective of this rule is to implement the Efficient Use of Energy Act's requirements for public utilities to acquire a portfolio of cost-effective energy efficiency and load management and to establish criteria to evaluate and implement a portfolio of cost-effective energy efficiency and load management that reduces energy demand and energy consumption. [17.7.2.6 NMAC - Rp, 17.7.2.6 NMAC, 8/26/2025]

17.7.2.7 **DEFINITIONS:**

In addition to the definitions provided in Section 62-17-4 NMSA 1978, the following definitions shall apply.

A. Definitions

beginning with "A": [RESERVED]

B. Definitions

beginning with "B": [RESERVED]

C. Definitions

beginning with "C": [RESERVED]

D. Definitions

beginning with "D": "decoupling"

means a rate adjustment mechanism to remove regulatory disincentives to ensure that the revenue per customer approved by the commission in a general rate case proceeding is recovered by a public utility without regard to the quantity of electricity or natural gas actually sold by the public utility subsequent to the date the rate took effect.

E. Definitions beginning with "E": "estimate" means a projection or forecast utilizing well known, commercially available, or standard engineering, economic, and financial calculations, ratings, and simulations, or other reasonable means.

F. Definitions
beginning with "F": [RESERVED]
G. Definitions

beginning with "G": [RESERVED]

H. Definitions

beginning with "H": [RESERVED]

I. Definitions

beginning with "I": [RESERVED]

J. Definitions

beginning with "J": [RESERVED]

K. Definitions

beginning with "K": [RESERVED]

L. Definitions beginning with "L":

(1) "life-cycle

basis" means utilizing the expected useful life of the energy efficiency and load management and applying a net present value methodology that does not adjust a discount rate for taxes in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated; and

(2) "low-

income customer" means a customer with an annual household income at or below two hundred percent of the federal poverty level, as published annually by the United States department of health and human services.

M. Definitions
beginning with "M":
"measurement and verification"
means an analysis performed by an
independent evaluator that estimates,
consistent with Subsection B of 17.7.2
NMAC, reductions of energy usage
or peak demand, and determines any

actual reduction of energy usage or peak demand that directly results from the utility's implementation of particular energy efficiency or load management measures or programs.

N. Definitions beginning with "N": "net benefits" means the difference between the present value of costs and the present value of benefits.

O. Definitions
beginning with "O": [RESERVED]
P. Definitions
beginning with "P":

(1) "plan

period" means the three years comprising the triennial plan;

(2) "plai

year" means a calendar year for which commission approval is requested or granted;

(3) "plan year overage" means the prior plan year's actual expenditures that exceeded actual collections at the approved funding level; and

year underage" means the prior plan year's actual collections at the approved funding level that exceeded actual expenditures.

Q. Definitions beginning with "Q.": [RESERVED]

R. Definitions
beginning with "R": "RFP" means
"request for proposals."

S. Definitions beginning with "S": [RESERVED]

T. Definitions
beginning with "T": "triennial
plan" means a utility's plan to
evaluate and implement, over a
plan period, a portfolio of costeffective energy efficiency and load
management that reduces energy
demand and consumption.

U. Definitions
beginning with "U": [RESERVED]
V. Definitions
beginning with "V": [RESERVED]
W. Definitions
beginning with "W":
[RESERVED]

X. Definitions
beginning with "X": [RESERVED]
Y. Definitions
beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED] [17.7.2.7 NMAC - Rp, 17.7.2.7 NMAC, 8/26/2025]

17.7.2.8 REQUIREMENTS FOR TRIENNIAL PLANS:

A. A public utility that is not a distribution cooperative utility shall file an application seeking approval of a triennial plan three years from the filing date of its previous application.

B. Compliance with pre-filing requirements: A public utility's triennial plan shall:

how the public utility has met the pre-filing requirements of Subsection E of Section 62-17-5 NMSA 1978, including descriptions of the process used to solicit non-binding recommendations, and any competitive bids required by the commission for good cause;

(2) identify by name, association, and contact information, each stakeholder that participated in the pre-filing process, including commission staff, the attorney general, and the energy, minerals and natural resources department; and

each stakeholder's non-binding recommendation on the design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

C. Plan year funding; costs; expenditures:

plan shall include the estimated plan year funding for energy efficiency and load management portfolio costs for each plan year during the plan period.

plan year funding for an electric public utility's triennial plan costs shall be expressed in dollars and shall be no less than three percent and no more than five percent of billing revenues from all of its customers' bills that the electric public utility estimates to be billed during the plan year to customer classes with the opportunity to participate, excluding:

(a)

gross receipts taxes, franchise fees, and right-of-way access fees;

(b)

revenues that the electric public utility estimates to bill during the plan year to any single customer that exceed \$75,000.00;

(c)

any customer's plan year selfdirected program credits approved by the electric public utility or by a commission approved self-directed program administrator; and

(d)

any customer's plan year self-directed program exemptions approved by the electric public utility or by a commission approved self-directed program administrator.

plan year funding for a gas public utility's triennial plan costs shall be expressed in dollars and shall not exceed five percent of customers' bills that the gas public utility estimates to be billed during the plan year, excluding:

(a)

gross receipts taxes, franchise fees, and right-of-way access fees;

(b)

revenues that the gas public utility estimates to bill during the plan year to any single customer that exceed \$75,000.00;

(c)

any customer's plan year self-directed program credits approved by the gas public utility or by a commissionapproved self-directed program administrator; and

(d)

any customer's plan year self-directed program exemptions approved by the gas public utility or by a commissionapproved self-directed program administrator.

(4) A triennial plan shall include a calculation of the difference between the prior plan year's actual plan expenditures and the prior plan year's applicable funding required by statute.

(5) In each plan year, a public utility shall make its best efforts to expend its approved

triennial plan funding while seeking to maximize cost-effective energy efficiency and load management.

(a)

A public utility may periodically adjust its plan year expenditures by an amount not greater than ten percent of the approved funding level if the adjustment will result in aligning plan year expenditures more closely with projected plan year collections.

(b)

A public utility may seek approval, by motion in its most recent triennial plan approval docket, to adjust its plan year expenditures by more than ten percent of the approved funding level.

utility shall utilize well known, commercially available, or standard engineering, economic and financial calculations, ratings, and simulations, or other reasonable methods, to determine monetary costs and avoided monetary costs at the portfolio and program levels.

D. A triennial plan shall include an executive summary.

E. For each proposed measure or program, including a previously approved measure or program submitted for reauthorization, a triennial plan shall contain:

(1) a detailed description of the measure or program;

(2) the expected useful life of the measure or program;

(3) any participation requirements and restrictions of the measure or program;

(4) the time period during which the measure or program will be offered;

(5) a

description of any competitive bid process for the measure or program;

(6) the estimated number of measure or program participants, supported by testimony and exhibits;

(7) the estimated economic benefit to participants attributable to the

measure or program, supported by testimony and exhibits;

(8) the estimated annual energy savings for, and the estimated energy savings over the useful life of, program, supported by written testimony and exhibits, expressed in:

(a)

kilowatt hours and dollars for electric utilities; and

(b)

therms and dollars for gas utilities;

9) the

estimated annual demand savings for, and the estimated demand savings over the useful life of, the measure or program, expressed in kilowatts and dollars, supported by testimony and exhibits;

(10) a

detailed budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a lifecycle basis and for each year of the expected useful life of the measure or program;

(11) the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a lifecycle basis, supported by testimony and exhibits that:

(a)

demonstrate and justify how the estimated monetary program costs will be equal to or greater than the actual monetary program costs; and

(b)

explain the public utility's rationale and methodology used to determine the estimated monetary program costs;

estimated avoided monetary cost associated with developing, acquiring, and operating associated supply side resources, supported by testimony and exhibits that:

(a)

demonstrate and justify how the estimated avoided monetary costs will be equal to or greater than the actual avoided monetary costs; and (h)

explain the public utility's rationale and methodology used to estimate the avoided monetary cost associated with acquiring, developing, and operating the associated supply side resource; and

- documentation, underlying data, calculations, estimates, and other items, presented in a manner that facilitates the preparation of a measurement and verification report by an independent program evaluator, along with compilation and preparation of the public utility's reporting requirements that facilitates a simple comparison of estimated results to actual results, including the public utility's cost of capital and discount rate.
- F. A triennial plan shall include an evaluation and determination that it will reduce energy usage, energy demand, or both.
- G. A triennial plan shall include an analysis showing that the portfolio is cost-effective by meeting the utility cost test and is designed to provide every affected customer class with the opportunity to participate and benefit economically.
- H. A public utility may request approval of an annual incentive award in its application requesting approval of a triennial plan. An annual incentive award shall:
- (1) be based on the utility's costs or net benefits;
- on satisfactory performance of the triennial plan in a given plan year, which may be shown by the utility meeting or exceeding the energy savings requirements of this rule;
- (3) be supported by testimony and exhibits; and
- (4) not exceed the product (expressed in dollars) of:

 (a) its

weighted cost of capital (expressed as a percent) plus two percent, and

(b) its

approved plan year funding.

I. For each approved large customer self-directed program,

the utility's triennial plan shall describe the process that enabled the utility to determine that a large customer self-directed program met the cost-effective definition set forth in Subsection B of Section 62-17-9 NMSA 1978 and merited the credit or exemption.

shall act expeditiously on a request for approval of a triennial plan. If a public utility requests approval of a tariff rider simultaneously with its triennial plan, then the review procedures of 17.7.2.13 NMAC shall control.

[17.7.2.8 NMAC - Rp, 17.7.2.8 NMAC, 8/26/2025]

17.7.2.9 RESIDENTIAL PROGRAMS:

- A. Energy efficiency and load management programs directed to residential customers shall enable residential customers or households to conserve energy, reduce demand, or reduce residential energy bills.
- (1) A public utility may stack its incentives with other state or federal programs as available to make energy efficiency and load management more attractive to residential customers.
- (2) A public utility shall not be penalized through the independent program evaluation process for stacking incentives or programs, such as receiving free-ridership penalties or less than full credit for energy efficiency.
- **B.** A public utility shall direct at least ten percent of its plan year funding, during each year of the plan period, to programs for lowincome customers.
- (1) The commission may approve a public utility to deviate from the ten percent low-income spending requirement if the public utility's portfolio is not cost-effective overall.
- (2) A public utility may coordinate with existing community resources, including affordable housing programs, and low-income weatherization programs managed by other utilities and federal,

state, county, or local governments. This section does not preclude the public utility from designing and proposing other low-income programs.

utility shall prefer utilizing providers with experience in the effective design, administration, and provision of low-income energy efficiency and load management measures and programs, along with experience in identifying and conducting outreach to low-income households. In the absence of qualified providers, a public utility that does not provide measures or programs directly may solicit qualified competitive bids for these services.

developing the utility cost test for energy efficiency and load management directed to low-income customers, unless otherwise quantified in a commission proceeding, the public utility shall assume that twenty percent of the calculated energy savings is the reasonable value of:

(a)

reductions in working capital;

(b)

reduced collection costs;

(c)

bad-debt expense;

(d)

improved customer service effectiveness; and

(e)

other appropriate factors qualifying as utility system economic benefits. [17.7.2.9 NMAC - Rp, 17.7.2.9 NMAC, 8/26/2025]

17.7.2.10 SELF-DIRECTED PROGRAM CREDITS FOR LARGE CUSTOMERS:

- A. A large customer may be eligible to receive a credit equal to the expenditures that the large customer makes at its facilities toward cost-effective energy efficiency and load management projects.
- (1) A large customer's expenditures shall meet the utility cost test as a condition to receiving approval for a credit.

- (2) The credit may be used to offset up to seventy percent of an energy efficiency tariff rider
- (3) Eligible expenditures shall have a simple payback period of more than one year but less than seven years.
- (4) Projects that have received rebates, financial support, or other substantial program support from a utility are not eligible for a credit.
- (5) Any credit not fully utilized in the year it is received shall carry over to subsequent years.
- **B.** Large customers shall seek and receive approval for credits from the utility or a commission-approved self-direct administrator.
- C. Large customers applying for an investor-owned electric utility bill credit shall meet the electricity consumption size criteria set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.
- **D.** Large customers applying for gas utility bill credit shall meet the gas consumption criteria as set forth in Subsection G of Section 62-17-4 NMSA 1978 and the utility cost test.
- Large customers Ε. seeking a credit shall provide, to the public utility or the commissionapproved self-direct program administrator, access to all relevant engineering studies and documentation needed to verify energy savings of a project, and allow access to its site for reasonable inspections at reasonable times. All records relevant to a self-directed program shall be maintained by the large customer for the duration of the program, and evaluated in accordance with this rule, subject to appropriate protections for confidentiality.
- **F.** The utility shall designate a qualified representative to review, and approve or disapprove, requests for credits.
- **G.** The commission may appoint a program administrator to review, and approve or disapprove, requests for credits.

- **H.** Approvals or disapprovals by the utility representative or administrator shall be subject to commission review.
- (1) Within 30 business days, the utility representative or administrator shall file each self-directed program review, approval, or disapproval with the commission, and serve notice on all interested parties.
- (2) Notice of an appeal of a utility or administrator approval or disapproval of a large customer credit request shall be filed with the commission within 30 calendar days of the approval or disapproval action.
- I. Implementation of credits shall be designed to minimize utility administrative costs.
- J. Self-directed program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-directed program credits.
- **K.** The public utility or administrator shall act expeditiously on requests for self-direct program approval.
- L. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program shall be accounted for in calculating its compliance with minimum required energy savings.

M. Credit eligibility:

(1). Large customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit.

- (2) Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit.
- (3) Large customer expenditures incurred to produce electric and natural gas energy savings, electric and

natural gas demand savings, or any combination of energy savings and demand savings for both electric and natural gas, are eligible for an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures shall not be double counted.

[17.7.2.10 NMAC - Rp, 17.7.2.10 NMAC, 8/26/2025]

17.7.2.11 SELF-DIRECTED PROGRAM EXEMPTIONS FOR LARGE CUSTOMERS:

- A. To receive approval for an exemption to paying seventy percent of the tariff rider, a large customer shall demonstrate, to the reasonable satisfaction of the public utility or self-directed program administrator, that it has exhausted all cost-effective energy efficiency and load management projects at its facilities.
- (1) Projects that have received rebates, financial support, or other program support from a utility are not eligible for an exemption.
- (2) Eligible expenditures shall have a simple payback period of more than one year but less than seven years.
- **B.** Large customers shall seek and receive approval for exemptions from the utility or a commission-approved self-direct administrator.
- Applying for an investor-owned electric utility bill exemption shall meet the electricity consumption size criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.
- **D.** Large customers applying for a gas utility bill exemption shall meet the gas consumption criterion set forth in Subsection G of Section 62-17-4 NMSA 1978.
- **E.** The utility shall designate a qualified representative to review, and approve or disapprove, requests for exemptions.
- **F.** The commission may appoint a program administrator to review, and approve or disapprove, requests for exemptions.

- **G.** Approvals or disapprovals by the utility representative or administrator shall be subject to commission review.
- (1) Within 30 business days, the utility representative or administrator shall file each self-directed program approval or disapproval with the commission, and serve notice on all interested parties.
- (2) Notice of an appeal of a utility or administrator approval or disapproval of a large customer exemption request shall be filed with the commission within 30 calendar days of the approval or disapproval action.
- H. Self-directed program participants, or large customers seeking an exemption shall provide, to the public utility or the commission approved selfdirect program administrator, access to all relevant engineering studies and documentation needed to verify energy saving of a project, and allow access to its site for reasonable inspections, at reasonable times. All records relevant to a self-directed program shall be maintained by the large customer for the duration of the program, and evaluated in accordance with this rule, subject to appropriate protections for confidentiality.
- I. Self-directed program participants, or large customers seeking exemption, shall submit qualified in-house or contracted engineering studies, and such other information as may be reasonably required by the utility or program administrator, to demonstrate qualification for self-directed program exemptions.
- **J.** The utility or administrator shall act expeditiously on requests for self-direct program approval.
- K. For investor-owned electric utilities, the equivalent amount of energy savings associated with a large customer's self-directed program shall be accounted for in calculating its compliance with minimum required energy savings.
 - L. Credit eligibility:
 - (1) Large

- customer expenditures incurred to produce electric energy savings or electric demand savings are only eligible for an electric utility bill credit.
- (2) Large customer expenditures incurred to produce natural gas energy savings or natural gas demand savings are only eligible for a gas utility bill credit.
- customer expenditures incurred to produce electric and natural gas energy savings, electric and natural gas demand savings, or any combination of energy savings and demand savings for electric and natural gas, are eligible for an electricity bill credit and a gas utility bill credit, provided that the same energy efficiency expenditures or load management expenditures shall not be double counted.

[17.7.2.11 NMAC - Rp, 17.7.2.11 NMAC, 8/26/2025]

17.7.2.12 MODIFICATION OR TERMINATION:

- A. Within each plan year, the commission may, or any party may move the commission to, modify a program, terminate a program, or approve a new program.
- (1) A motion to modify, terminate, or approve a program shall be filed in the public utility's most recent triennial plan approval docket.
- (2) The commission's modification or termination of a program shall occur only after an adequate period of implementation has elapsed and the commission determines that the program is not sufficiently meeting its goals and purposes.
- (3) Program modification or termination shall not nullify any preexisting obligations of the utility, alternative energy efficiency provider, or contractor for performance or failure to perform.
- (4) Program termination shall be accomplished in a manner that allows the utility to fully recover its prudent and reasonable program costs.

B. Within each plan year, a public utility may modify, terminate, or add measures in its portfolio; modify customer incentive levels; or make other adjustments to an approved measure or program if necessary to maintain the overall success of the measure or program; so long as the portfolio remains costeffective under the utility cost test. [17.7.2.12 NMAC - Rp, 17.7.2.12 NMAC, 8/26/2025]

17.7.2.13 REQUIREMENTS FOR COST RECOVERY:

- A. An electric utility shall only recover energy efficiency and load management costs from customer classes with an opportunity to participate in approved programs.
- **B.** A public utility, at its option, may recover its prudent and reasonable program costs and approved incentives, either through an approved tariff rider, in base rates or a combination of both.
- c. If a public utility seeks recovery of costs through a tariff rider, the utility shall file an advice notice and present the proposed ratemaking treatment to the commission for approval in its application for approval of its triennial plan.
- public utility's tariff rider ratemaking treatment proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.
- (2) Unless otherwise ordered by the commission, the public utility shall:

(a)

apply the tariff rider on a monthly basis; and

(b)

include language on customer bills explaining program benefits.

D. If a public utility seeks base rate recovery of costs, the utility shall present the proposed ratemaking treatment to the commission for approval in a general rate case.

public utility's base rate ratemaking treatment proposal shall reconcile recovery of any costs currently being recovered through a tariff rider or in base rates, or by a combination of the two, as well as any new costs proposed to be recovered through a tariff rider or in base rates, or by a combination of the two.

(2) The commission shall not reduce a public utility's return on equity based on approval of profit incentives pursuant to the Efficient Use of Energy Act.

E. The commission may approve a public utility to defer program costs and incentives for future recovery through creation of a regulatory asset with carrying charges.

F. Commission review of tariff rider:

(1) A tariff rider proposed by a public utility to fund approved energy efficiency and load management costs shall go into effect 30 days after filing, unless suspended by the commission for a period not to exceed 180 days.

(2) If the tariff rider to fund approved programs is not approved or suspended within 30 days after filing, it shall be deemed approved.

(3) If the commission suspends the effective date of a tariff rider to fund approved programs, but the commission does not act to approve or disapprove the tariff rider by the end of the suspension period, the tariff rider shall be deemed approved.

(4) The commission shall act expeditiously on a public utility's request for approval of a tariff rider to fund new programs.

(5) Annual

reconciliation:

(a)

A public utility shall annually reconcile its approved tariff rider, accounting for any plan year overage or underage.

(b)

The public utility shall include its reconciliation in the public utility's annual report, supported by appropriate exhibits, workpapers, or other documentation necessary to understand the reconciliation.

(c)

Commission staff shall evaluate the public utility's tariff rider reconciliation upon filing and notify the commission if staff identifies any issues or proposes any corrective instructions.

(d)

If the commission does not act to approve or disapprove, with corrective instructions, a reconciliation within 30 days, it shall be deemed approved.

(e) If

a public utility's annual reconciliation would result in changes to the utility's tariff if approved, the annual reconciliation shall additionally be filed as an advice notice.

G. Funding for the services of an independent program evaluator shall be paid by the public utility and treated as a regulatory asset to be recovered through rates established in the public utility's next general rate proceeding.

[17.7.2.13 NMAC - Rp, 17.7.2.13 NMAC, 8/26/2025]

17.7.2.14 ANNUAL REPORT:

A. A public utility shall file a report annually detailing its actions taken to comply with and fulfill the Efficient Use of Energy Act, this Rule, and its triennial plan approved for the reported year.

(1) The public utility shall file its annual report on the calendar date anniversary of the filing of its triennial plan in each plan year of the plan period.

(2) The public utility shall file its annual report in the docket associated with the triennial plan covering the plan year subject of the report.

(3) The public utility shall make its annual report publicly accessible on its website.

B. A public utility shall include the following information for each program in its annual report:

(1)

documentation of expenditures in the reported plan year, and estimates of expenditures expected in the next plan year, including documentation of any adjustments to expenditures in the reported plan year and expected adjustments to the next plan year;

(2) estimated and actual customer participation levels for the reported plan year;

(3) estimated and actual energy savings for the reported plan year;

(4) estimated and actual demand savings for the reported plan year;

(5) estimated and actual monetary costs for the reported plan year;

(6) estimated and actual avoided monetary costs for the reported plan year;

(7) an evaluation of its cost-effectiveness;

(8) for a selfdirected program, an evaluation of its cost-effectiveness and pay-back period; and

9) a

comparison of estimated energy savings, demand savings, monetary costs and avoided monetary costs to actual energy savings, demand savings, actual monetary costs, and avoided monetary costs by year.

C. A public utility shall also include the following information in its annual report:

(1) the most recent measurement and verification report of the independent evaluator;

each program expenditure not covered by the independent measurement and verification report and related justification as to why the evaluation was not performed;

(3) a listing of the total number of triennial plan participants served by year;

(4) the total number of customers applying for and participating in self-directed programs;

(5) the total number of customers applying for and receiving self-directed program exemptions;

(6)

measurement and verification of selfdirected program targets, (7) self-

directed program payback periods and achievements;

(8)

self-directed program customer expenditures on qualifying projects;

(9) self-

directed program oversight expenses incurred by the utility representative or administrator;

(10) if unable to comply, an explanation of why the public utility cannot achieve the minimum requirements of 17.7.2.19 NMAC, and a proposal for alternative requirements for acquiring cost-effective and achievable energy efficiency and load management;

(11) a

reconciliation of the public utility's commission-approved tariff rider;

(12) a

calculation of any plan year overage or underage; and

(13) any other information that may be required by the commission.

[17.7.2.14 NMAC - Rp, 17.7.2.14 NMAC, 8/26/2025]

17.7.2.15 MEASUREMENT AND VERIFICATION:

A. Every energy efficiency and load management program shall be independently evaluated at least every three years.

B. A public utility shall submit to the commission with its annual report for that year, a comprehensive measurement, verification, and program evaluation report prepared by an independent program evaluator.

(1)

Commission staff shall select and direct an independent program evaluator to prepare and submit a comprehensive measurement, verification, and program evaluation report to the commission.

(2)

Commission staff shall:

(a)

undertake a competitive bid process and abide by State purchasing rules and commission policies in selecting an independent program evaluator; **(b)**

develop an RFP, including the scope, terms of work, and evaluation process to score the RFP responses;

(c)

receive, review, score, and rank the RFP responses;

(d)

rank and recommend competitive qualified bidders to the commission;

(e)

negotiate a contract with the competitive bidder who is awarded the bid; and

(f)

administer the contract, including:

(i) confirming that contract deliverables are met:

(ii)

reviewing invoices and related contract performance; and

(iii)

approving utility invoices after review.

(3)

Commission staff shall consult with the public utility and other interested stakeholders in the selection of the independent program evaluator.

C. An independent program evaluator shall:

(1) measure and verify energy and demand savings;

(2) determine program cost-effectiveness by utilizing the data contained in the utility's approved triennial plan;

(3) assess the public utility's performance in implementing its triennial plan;

(4) assess whether the utility has complied with its requirements under the Efficient Use of Energy Act and this rule, and whether it has operated in good faith;

(5) provide recommended improvements for program performance;

(6) confirm that programs were implemented, meet reasonable quality standards, and are operating fully and correctly;

applicable international performance measurement and verification protocols, describe any deviation from those protocols, and explain the reason for such deviation;

(8) evaluate self-directed programs, expenditures, credits, and exemptions using the same measurement and verification standards applied to utility measures and programs by the utility or commission-approved self-directed program administrator; and

(9) fulfill any other measurement and verification duties required by law.

D. The independent program evaluator shall provide all information and documentation at the portfolio and program levels, and all assumptions utilized in its evaluation.

E. The public utility shall cooperate with the independent program evaluator and commission staff in making information and personnel available to facilitate the independent program evaluator's report.

F. Upon written request by a large customer, the information provided by the large customer to the utility or program administrator, independent program evaluator, or others, shall remain confidential except as otherwise ordered by the commission.

G. The independent evaluation process, including net-to-gross and free-ridership calculations, should be independent of other state and federal incentives as to not penalize a public utility for stacking incentives or programs.

[17.7.2.15 NMAC - Rp, 17.7.2.15 NMAC, 8/26/2025]

17.7.2.16 DISTRIBUTION COOPERATIVES:

A. Every 24 months, a distribution cooperative utility shall examine the potential to assist its customers in reducing energy consumption or peak electricity demand in a cost-effective manner.

(1) Based on these studies, a distribution cooperative utility shall establish or update energy efficiency and load management savings targets, and it shall implement or update cost-effective energy efficiency and

load management programs that are economically feasible and practical for its members and customers.

- governing body of the distribution cooperative utility, rather than the commission, shall have the authority to approve or deny energy efficiency and load management savings targets and programs.
- or implementing energy efficiency, conservation or load management programs, a distribution cooperative utility shall attempt to minimize any cross-subsidies between customer classes.
- **B.** A distribution cooperative utility shall file a report by May 1st annually, describing all of its programs or measures that promote energy efficiency, conservation, or load management.
- (1) The report shall set forth the costs of each measure or program for the previous calendar year and the resulting effect on electricity consumption.
- (2) The report shall include a description of all planned programs or measures to promote energy efficiency, conservation, or load management, and the planned implementation dates.
- c. Costs resulting from programs or measures to promote energy efficiency, conservation, or load management may be recovered by the distribution cooperative utility through its general rates. In requesting approval to recover such costs in general rates, the distribution cooperative utility may elect to use the procedure set forth in Subsection G of Section 62-8-7 NMSA 1978. [17.7.2.16 NMAC Rp, 17.7.2.16 NMAC, 8/26/2025]

17.7.2.17 AUDIT:

A. The commission may audit a public utility to examine whether the public utility's triennial plan costs are prudent, reasonable, and properly assigned to programs in accordance with the Efficient Use of Energy Act, this rule, commission orders, and other applicable requirements and standards.

B. The cost of an audit may be considered a recoverable program cost unless it results in a commission finding of the public utility's malfeasance or misfeasance; in which case, audit costs may not be recoverable from the public utility's customers.

[17.7.2.17 NMAC - Rp, 17.7.2.18 NMAC, 8/26/2025]

17.7.2.18 ENERGY SAVINGS TARGETS FOR ELECTRIC UTILITIES:

- A. A public utility providing electricity service to New Mexico customers shall acquire or implement, over plan years 2026-2030, a portfolio of cost-effective and achievable energy efficiency and load management available in its service territory that shall produce a savings, by plan year 2030, of at least five percent of its 2025 total retail kilowatt-hour sales to New Mexico customer classes that had the opportunity to participate.
- В. If the commission determines, after public hearing on an electric utility's triennial plan, that the minimum requirements of this section exceed the achievable amount of energy savings available to the electric utility, or that the costs to achieve the minimum requirements of this section are neither prudent nor reasonable, the commission shall establish lower minimum energy savings requirements for the utility based on the maximum amount of energy savings that the commission determines may be achievable for the utility.
- C. The commission-provided incentives for an electric utility's compliance with this section shall be the same as that which the commission provides for a triennial plan pursuant to Subsection H of 17.7.2.8 NMAC.

[17.7.2.18 NMAC - N, 8/26/2025]

17.7.2.19 DECOUPLING:

A. A public utility may petition the commission for approval of a decoupling rate adjustment mechanism.

- (1) A public utility shall separately calculate regulatory disincentives removed through a rate adjustment mechanism for the rate class or classes to which the mechanism applies.
- public utility shall collect or refund regulatory disincentives removed through a rate adjustment mechanism through a separate tariff rider than that for which the commission approved the public utility to collect triennial plan costs and incentives.
- (3) A public utility's petition shall be included in a general rate case filing.

B. Burden of proof:

- (1) The public utility petitioner shall bear the burden to prove that the proposed decoupling rate adjustment mechanism will result in just and reasonable rates.
- (2) The public utility petitioner shall bear the burden to prove that rate regulation has created regulatory disincentives or barriers to the utility's expenditures on energy efficiency and load management that will be alleviated through the adoption of a decoupling rate adjustment mechanism.
- (3) The public utility petitioner shall bear the burden to prove that the proposed decoupling rate adjustment mechanism will remove regulatory disincentives or barriers for public utility expenditures on energy efficiency and load management.
- (4) The public utility petitioner may not prove its need for a decoupling rate adjustment mechanism by citing revenue losses resulting from business risks or other factors not specified in this rule.

C. Commission review:

(1) The commission shall review the public utility's petition to ensure that the decoupling rate adjustment mechanism balances the interests of the public, consumers, and investors, and results in just and reasonable rates.

(2) The commission shall approve a public

utility's petition for a decoupling rate adjustment mechanism unless the commission finds it to be unjust or unreasonable. If the commission finds the petition to be unjust or unreasonable, the commission may:

(a)

modify the proposed decoupling rate adjustment mechanism; or

(b)

deny the petition pursuant to Subsection D of Section 62-8-7 NMSA 1978.

- (2) The commission shall not reduce a public utility's return on equity based on approval of a decoupling rate adjustment mechanism.
- **D.** A public utility that receives commission approval for a decoupling rate adjustment mechanism:
- (1) shall be eligible to earn an increased annual incentive award capped at fifteen percent of its approved plan year funding pursuant to Subsection H of 17.7.2.8 NMAC; and
- (2) may seek a variance from the plan year funding requirements of Paragraphs (2) and (3) of Subsection C of 17.7.2.8 NMAC.

[17.7.2.19 NMAC - N, 8/26/2025]

HISTORY OF 17.7.2 NMAC:

Pre NMAC History: none.

History of Repealed Material:

17.7.2 NMAC, Energy Efficiency (filed 2/2/2007), repealed 5/3/2010. 17.7.2 NMAC, Energy Efficiency (filed 4/16/2010), repealed 1/1/2015. 17.7.2 NMAC, Energy Efficiency, filed (04/16/2010) - Repealed effective 9/26/2017. 17.7.2 NMAC, Energy Efficiency,

17.7.2 NMAC, Energy Efficiency, filed (9/14/2017) - Repealed effective 8/26/2025.

NMAC History:

17.7.2 NMAC, Energy Efficiency (filed 2/2/2007) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 5/3/2010.

17.7.2 NMAC, Energy Efficiency, (filed 04/16/2010) was replaced by 17.7.2 NMAC, Energy Efficiency,

effective 9/26/2017. 17.7.2 NMAC, Energy Efficiency, (filed 9/14/2017) was replaced by 17.7.2 NMAC, Energy Efficiency, effective 8/26/2025.

EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT

This is an amendment to 8.9.9 NMAC, Section 6 through 12 effective 8/26/2025.

8.9.9.6 OBJECTIVE:

- A. The objective of [8.16.3] 8.9.9 NMAC is to establish standards and procedures for administering loans under the Child Care Facility Loan Act. The Child Care Facility Loan Act directs the early childhood education and care department (the department) in conjunction with the New Mexico finance authority (the authority) to adopt rules to administer and implement the Child Care Facility Loan Act.
- The Child Care В. Facility Loan Act creates the child care facility revolving loan fund in the authority to provide long-term, low-interest funding for loans to providers to make health and safety improvements in their facilities, expand their facilities, create new facilities, [and] for operating capital [to maintain adequate and appropriate environments for their clients.], and to contract with the department for the provision of services to repay the loan. The purpose of act is to support the physical improvement, repair, safety and maintenance of licensed child care facilities throughout New Mexico to ensure the availability of healthy and safe teaching environments.
- establish eligibility guidelines, loan application requirements and evaluation procedures for loan applications. The authority will adopt a separate policy governing the structuring and parameters (including interest rates and terms), and financial monitoring of loans from the child

care facility revolving loan fund. [8.16.3.6 NMAC - Rp, 8.9.9.6 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.7 **DEFINITIONS:**

A. "Act" means the Child Care Facilities Loan Act (Sections 24-24-1 to 24-24-4 NMSA 1978).

- B. "Agreement" means the document or documents signed by the Authority and the eligible applicant that specifies the terms and conditions of a loan provided under the program.
- C. "Applicant" means a private provider [which], who is not governed, owned, or managed by a federal, state, or local government entity (including school districts and charter schools) and has filed an application for a loan with the department and the authority.
- D. "Application" means a written document filed with the department and the authority by an applicant for the purpose of obtaining a loan. An application may include a form prescribed by the department and the authority, written responses to requests for information by the department and the authority, or another format as determined by the department and the authority.
- **E.** "Authority" means the New Mexico finance authority.
- representative" means one or more individuals authorized by the governing body of an applicant to act on behalf of the applicant in connection with its application. An authorized representative may act on behalf of the applicant to the extent provided by law.
- G. "Board" means the New Mexico finance authority board of directors as created by the New Mexico Finance Authority Act, Sections 6-21-1 to 6-21-31 NMSA 1978.
- H. "Contract for services" means an agreement between the authority, the department, and an eligible child care provider in which the provider must meet the following criteria:
- in a child care desert;

- (2) provide
 care during non-traditional hours;
 (3) at least
 fifty percent of the children served are
 on child care assistance; and
 (4) the number
- of children served at the facility has increased by at least ten percent since loan closing.
- ECECD verifies that a borrower has met all the above requirements for Contracts for Services, NMFA will abate a predetermined amount of the original loan and modify the debt service schedule accordingly.
- [H:] I. "Department" means the New Mexico early childhood education and care department.
- J. "Entity" means privately owned child care facility, or one owned and managed by a non-profit organization as defined by the United States internal revenue service. This does not include any child care facility owned or managed by a state or local government (including school districts and charter schools). Child care facilities located on tribal lands and managed by tribal governments are considered entities for purposes of these regulations.
- [+] <u>K.</u> "Facility" means a child care facility operated by a provider, including both family homebased and center-based programs, licensed by the department to provide care to infants, toddlers, and children.
- [#:] L. "Fund" means the child care facility revolving loan fund held by the authority pursuant to the act.
- [K.] M. "Loan" means a loan from the fund.
- [L-] N. "Operating capital" means funds needed to meet short-term obligations, such as accounts payable, wages, debt servicing, lease and income tax payments in relation to the creation or expansion of a child care facility and provider services.
- [M:] O. "Project" means health and safety improvements to a child care facility, including physical improvement, repair, maintenance, expansion and operation of a child

- care facility providing a healthy and safe teaching environment, the creation of a new child care facility, or the receipt of operating capital as provided for in these regulations and the act.
- [N:] P. "Provider" means a person, entity or employer licensed by the department to provide child care to infants, toddlers and children pursuant to 8.9.4 NMAC, or in receipt of a provisional loan license as set forth in these regulations. Federal, state, and local government entities (including school districts and charter schools) are not considered "providers" for purposes of these regulations other than entities governed, owned, or managed by tribal entities located in New Mexico.
- O. "Provisional loan license" means a license provided for by the department, through its licensing division, to a proposed or renovated child care facility seeking a loan provided for in these regulations and the act. A provisional loan license is only applicable for purposes of the act and these regulations.
- [\textit{\textit{\textit{\textit{\textit{e}}}} \begin{align*} \textit{\textit{Rules}" means} \\ \text{these Child Care Facility Loan Act} \\ \text{fund program regulations.} \\ [8.16.3.7 \text{ NMAC} \text{Rp}, 8.9.9.7 \\ \text{NMAC}, 12/23/2024; A, 8/26/2025] \end{align*}

8.9.9.8 ELIGIBILITY GUIDELINES FOR APPLICANTS AND PROJECTS:

- **A.** An applicant is considered eligible if they meet the following eligibility requirements:
- (1) is a provider as defined by the act and these rules; and is
- (2) is verified as in good standing regarding its licensure by the department; and
- (3) complies with all applicable federal, state and local laws and regulations.
- **B.** A project is considered eligible if it meets the following eligibility requirements:
- (1) is owned by an eligible applicant; and
- (2) the project involves the physical improvement, repair, maintenance, expansion or

- operation of a facility, the creation of a new child care facility that has received a provisional loan license from the department, or has applied for operating capital, as defined by the act and these rules; and
- (3) involves a facility licensed by the department under 8.9.4.11 NMAC; or in receipt of a provisional loan license as set forth in these rules; and,
- (4) is verified as supporting healthy and safe teaching environments by the department.
- may give priority to eligible applicants that have facilities serving a proportionately high number of state-subsidized clients and low-income families [(by statute, this-factor has priority over all others)] that are located in communities with high poverty rates and that provide nontraditional-hour child care or based on other programmatic factors determined at discretion of the department.
- [8.16.3.8 NMAC Rp, 8.9.9.8 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.9 LOAN APPLICATION PROCEDURES:

- A. Contingent upon a sufficient balance in the fund, the department and the authority will accept applications and award loans
- B. The department and the authority will provide applications. Complete applications must be signed by an authorized representative of the provider. Only applications that are complete will be considered for a loan. The application shall include the following:
- (1) evidence of the eligibility of the applicant and the project;
- (2) proof of applicable licenses, including a provisional loan license, and certifications for the provider and the facility; and
- (3) a detailed description of the circumstances that demonstrate the impact of the project, including a description of the need for child care services in the community

in which the project is located, including data on licensed capacity and capacity to serve eligible children in the community.

(4)

description of how the project will benefit the health and safety of provider's clients; [and provider's elients, the quality of the provider's program, or the operation of the facility; and number of state subsidized and low-income families and total number of clients served:

(5)

information on the current and proposed services of the applicant to state-subsidized clients and lowincome families.

a detailed description of the project to be financed, including:

a description of the scope of work of the project;

(b)

the estimated cost of the project;

the target date for the initiation of the project and the estimated time to completion; and

(d)

the estimated useful life of the project and selected components;

a copy of the applicant's formation and governance documents (e.g., articles of incorporation and bylaws) [identification of the source fundsto complete the project if the loanrequested is not sufficient to cover the full cost of the project];

identification of the source funds to complete the project if the loan requested is not sufficient to cover the full cost of the project;

[(8)](9)

identification of the source of funds for repayment of the loan and the source of funds to operate and maintain the project over its useful life;

 $[\frac{(9)}{(10)}]$

the applicant's financial reports for the most recent three years and federal and state tax returns;

[(10)] (11)

the applicant's projected cash flows

for at least [3] three years;

[(11)] <u>(12)</u>

the applicant's business plan;

 $[\frac{(12)}{(13)}]$

the written assurance that the project is allowed by the owner of the facility, if the owner is not the applicant;

[(13)] (14)

any existing licenses or certifications that pertain to the business;

 $[\frac{(14)}{(15)}]$

any insurance documents pertaining to the business; [and]

[(15)] <u>(16)</u>

request for a provisional loan license from the department for proposed facilities or new construction;

(17) The department and the authority may contract for services with an eligible provider to provide child care as reasonably adequate legal consideration for money from the fund if the provider, during the course of the loan, meets the following criteria:

be located in a designated child care desert;

provides care during non-traditional hours;

demonstrates that at least fifty percent of the children that the provider or employer serves are recipients of a child care assistance program expanded or created by the provider;

(d)

demonstrate that the number of children served by the provider increased by at least ten percent; and

satisfies other qualifications as determined by the department and the authority as set forth in the agreement; and

(18) any

additional information as requested by the department or authority. [8.16.3.9 NMAC - Rp, 8.9.9.9 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.10 **EVALUATION OF** APPLICANT AND PROJECT:

Evaluations and A. determinations by department.

(1) Once an application is complete, the

department will evaluate the applicant and the proposed project for eligibility and make a determination as to eligibility.

(2) If the department determines that an applicant is eligible, including whether to issue a provisional loan license, the department will determine the programmatic priority for each application.

(3) Upon completion of its evaluation of eligibility and determination of programmatic priority, the department will refer the applications to the authority.

Financing approval by the authority.

Staff at the **(1)** authority will perform an independent analysis of the financial feasibility of each application as determined by the authority in its policy. [for a loan. Inevaluating an application, staff of the authority will consider:

the ability of the eligible applicant to secure financing from other sources;

the terms of any other sources of funding;

the applicant's ability to repay the loan; and

the applicant's ability and agreement to satisfy any other requirements for approval of the loan as the authority requires by its policy or otherwise.]

(2)

Restrictions on loans:

(a)

No more than twenty percent of the fund may be loaned to a single provider in a single project.

Loans from the fund are to be made at an interest rate greater than zero.

Loans from the fund are to be made for a term that does not exceed the useful life of the project being financed.

Approval by the authority. Staff of the authority may recommend applications for approval to the board. The board may approve all or part of any application recommended or may disapprove the application and deny funding at its sole discretion.

[8.16.3.10 NMAC - Rp, 8.9.9.10 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.11 RECONSIDERATION OF DECISIONS BY DEPARTMENT AND THE AUTHORITY:

- A. Decision by department as to eligibility. An applicant may request reconsideration of a contrary decision by the department as to whether it is an eligible applicant under these regulations. Notice must be given to the department in writing within ten working days of receipt of the department's decision as to eligibility. A request for reconsideration not timely or properly made will be barred. The department's secretary or designee will promptly review each timely request for reconsideration. The decision of the department secretary or designee as to eligibility is final.
- В. Decision by the authority as to financing. An applicant may request reconsideration of a decision by the authority denying a loan to an applicant by notifying the chief executive officer of the authority in writing within fifteen days of the date on which notice of an adverse decision is given by the authority to an applicant. The authority's chief executive officer will promptly review each timely request for reconsideration. The authority's chief executive officer will either consider the request for reconsideration or reject the appeal. The authority's chief executive officer will provide the applicant written notice of the rejection of a request for reconsideration within five business days following such decision. An applicant may appeal the authority's chief executive officer's decision by submitting a notice of appeal to the authority's board within [10] ten business days following receipt of the notice of that decision, which notice of appeal must include any reasons and documentation supporting the

applicant's position. An applicant's appeal to the authority's board will be considered by the authority's board at its next regular meeting. The decision of the authority's board is final. [8.16.3.11 NMAC - Rp, 8.9.9.11 NMAC, 12/23/2024; A, 8/26/2025]

8.9.9.12 LOAN AGREEMENTS:

- A. The authority and the eligible applicant will enter into an agreement and any other applicable documentation to establish the terms and conditions of the loan from the authority. The agreement will include the terms of repayment and sanctions available to the authority in the event of a default.
- **B.** The agreement will contain provisions that require loan recipients to comply with all applicable federal, state and local laws and regulations.
- C. The agreement will contain a provision that the eligible applicant agrees that any contract or subcontract executed for the completion of any project shall contain a provision that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin. The authority shall not be responsible for monitoring the contracts or subcontracts for inclusion of that provision or compliance with it.
- D. The authority will monitor the financial and reporting covenants of the agreement and will enforce all terms and conditions thereof, including prompt notice and collection. The authority will take actions as necessary to ensure loan repayment and the integrity of the fund.
- E. The department will monitor the performance of an eligible applicant under department licensure requirements and for programmatic requirements and will make the necessary site visits. The authority will not monitor the performance of an eligible applicant under department licensure requirements nor for programmatic

- requirements and will not make site visits. The authority will not be responsible for any act or omission of the applicant upon which any claim, by or on behalf of any person, firm, corporation or other legal entity, may be made, arising from the loan or any establishment or modification of the project or otherwise. The department will monitor any approved applicants who are on a contract for services to determine if the approved applicant is complying with all requirements of the contract for services. The department will promptly notify the authority if a loan recipient falls out of compliance with any licensure or programmatic requirements.
- F. In the event the loan recipient defaults, the authority may enforce its rights by suit or mandamus and may utilize all other available remedies under state and federal law.
- G. If an eligible applicant that has received a loan ceases to maintain its provider status or ceases to provide child care to infants, toddlers and children, the state shall have the following remedies available to it:
- (1) the acceleration of the loan requiring the immediate repayment of all amounts due, including all accrued and unpaid interest;
- (2) any other remedies available at law or in equity. [8.16.3.12 NMAC Rp, 8.9.9.12 NMAC, 12/23/2024; A, 8/26/2025]

End of Adopted Rules

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Other Material Related to Administrative Law

ENVIRONMENT DEPARTMENT ENVIRONMENTAL HEALTH DIVISION

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Environment Department gives Notice of a Minor, Nonsubstantive Correction to 20.10.2 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, nonsubstantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

The amendment explanatory sentence and the history notes have an incorrect date of '9/1/2025'. All relevant dates have been changed to '8/1/2025'.

Section 7: There are two Subsections (WW and YY) for the definition for "Semi-synthetic cannabinoid". The duplicate definition is removed and, thus, the succeeding Subsections are renumbered from 'XX' thru 'ZZ' to 'YY' thru 'AAA'.

A copy of this Notification will be filed with the official version of the above new rule.

REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

The Regulation and Licensing Department gives Notice of a Minor, Nonsubstantive Correction to certain Title 14, Chapter 15 – Elevator Safety Code rules: filed on July 30, 2025, published on August 12, 2025, to be effective on September 12, 2025.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, nonsubstantive corrections to spelling, grammar and format have been made to all filed copies of the rules listed below, as follows:

14.15.2 NMAC, New Rule, Permitting and Certificates of Operation

Section 10: Because there was a Subsection A without a Subsection B, paragraphs (1) through (8) have been re-numbered to Subsections B through I, respectively. Subsequent subparagraphs within Subsections B, C and H were likewise renumbered as paragraphs, respectively.

14.15.3 NMAC, New Rule, Inspections

Section 11: In Subsection D, the rule citations were corrected to include "NMAC" after part numbers.

14.15.7 NMAC, New Rule, Inspectors

Section 8: In Subsection D, paragraph (3), the rule citation was corrected from "...Paragraph E of Subsection of 14.15.5 NMAC." to "... Subsection E of 14.15.5.8 NMAC."

A copy of this Notification will be filed with the official version of the above rule.

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

The Board of Pharmacy gives Notice of a Minor, Nonsubstantive Correction to 16.19.4 NMAC, Amendment, Pharmacist and to 16.19.30 NMAC, Amendment, Compounding of Non-Sterile Pharmaceuticals.

Pursuant to the authority granted under State Rules Act, Subsection D

of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all filed copies of the rules listed below, as follows:

16.19.4 NMAC, Amendment, Pharmacist

Section 10: Subsection F, paragraph (1) corrected "that" to "than".

16.19.30 NMAC, Amendment, Compounding of Non-Sterile Pharmaceuticals

Section 7: In Subsection D, paragraph (4), subparagraph (d), the rule citation was corrected from "Paragraph 5 of Subsection D of Section 9 of 16.19.30 NMAC..." to "Paragraph (5) of Subsection D of 16.19.30.9 NMAC...".

A copy of this Notification will be filed with the official version of the above amendment.

End of Other Material Related to Administrative Law

2025 New Mexico Register Submittal Deadlines and Publication Dates Volume XXXVI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 3	January 14
Issue 2	January 16	January 28
Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 11
Issue 6	March 13	March 25
Issue 7	March 27	April 8
Issue 8	April 10	April 22
Issue 9	April 24	May 6
Issue 10	May 8	May 20
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Issue 19	September 25	October 7
Issue 20	October 9	October 21
Issue 21	October 23	November 4
Issue 22	November 6	November 18
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Issue 24 The New Maries Register is the effective of the seffer is the sef	December 11	December 23

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. The New Mexico Register is available free online at: http://www.srca.nm.gov/new-mexico-register/. For further information, call 505-476-7941