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New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

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The New Mexico Register

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New Mexico Register

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Notices of Rulemaking and Proposed Rules

GAME AND FISH DEPARTMENT STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a virtual meeting and rule hearing on Thursday, December 3, 2020 beginning at 9:00 a.m. The State Game Commission postponed the hearing, previously scheduled for October 16, 2020. For instructions on how to virtually attend this meeting, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Hunter Education rule.

Synopsis:

The proposal is to amend the Hunter Education rule, 19.36.3 NMAC, which will become effective January 1, 2021.

The proposed new rule will include changes to reduce the minimum age to participate in the Mentored-Youth Hunting Program from 10 to 8 years of age, add pronghorn antelope to allowable species Mentored-Youth may hunt, add mentor training requirement and make minor spelling corrections.

A full text of changes will be available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Hunter Education rule at lance.cherry@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 8:00 a.m. on December 2, 2020. The final proposed rule will be voted on by the Commission during a virtual public meeting on December 3, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual

public rule hearing to be held on December 3, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department’s website at www.wildlife.state.nm.us/commission/proposals-under-consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or the Department’s website at www.wildlife.state.nm.us for updated information.

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 Department at (505) 476-8000 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 Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission’s Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

GAME AND FISH DEPARTMENT STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a virtual meeting and rule

hearing on Thursday, December 3, 2020, beginning at 9:00 a.m. For instructions on how to virtually attend this meeting, visit the Department’s website at <http://www.wildlife.state.nm.us/commission/webcast/>. The purpose of this meeting is to hear and consider action as appropriate on the following: Presentation of proposed changes to the Hunting and Fishing Licenses and Application rule.

Synopsis:

The proposal is to adopt a new Hunting and Fishing Licenses and Application rule, 19.31.3 NMAC, which will become effective January 1, 2021.

The proposed rule adds the definition of “returning Iraq/Afghanistan veteran” to determine eligibility for special oryx hunts established elsewhere in rule and changes the eligibility requirements for Mobility Impaired applications. A more detailed summary, and the full text of changes, is available on the Department’s website at: www.wildlife.state.nm.us.

Interested persons may submit comments on the proposed changes to the Hunting and Fishing Licenses and Application rule at specialhunts@state.nm.us; or individuals may submit written comments to the physical address below. Comments are due by 5:00 p.m. on December 2, 2020. The final proposed rule will be voted on by the Commission during a public meeting on December 3, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on December 3, 2020.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department’s website at www.wildlife.state.nm.us/commission/proposals-under-

consideration/. This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or visit the Department’s website at www.wildlife.state.nm.us for updated information.

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 Department at (505) 476-8000 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 Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission’s Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

**GAMING,
BOARD OF**

**NOTICE OF PUBLIC HEARING
FOR RULEMAKING**

The New Mexico Gaming Control Board (NMGCB) has scheduled a public hearing to consider changes to rules promulgated pursuant the Bingo and Raffle Act for Friday, December 11, 2020 at 9:00 a.m., via Microsoft Teams. Log-in details for the Microsoft Teams access to the meeting will be available on the NMGCB website, <https://www.nmgcb.org>.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Madeline Aragon by telephone at (505) 274-4345 by

Tuesday, December 1, 2020 or the earliest date possible. The NMGCB requests at least ten (10) days advance notice to provide requested special accommodations. Public documents, including board agendas, minutes and proposed rules and amendments, can be provided in various accessible formats.

The NMGCB appointed hearing officer may consider the following rulemaking proposals at the meeting:

Amend, Repeal/Replace:

- 15.4.1 NMAC
- 15.4.2 NMAC
- 15.4.3 NMAC
- 15.4.4 NMAC
- 15.4.5 NMAC
- 15.4.6 NMAC
- 15.4.7 NMAC
- 15.4.8 NMAC
- 15.4.9 NMAC
- 15.4.10 NMAC
- 15.4.11 NMAC
- 15.4.12 NMAC
- 15.4.13 NMAC
- 15.4.14 NMAC

A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the NMGCB’s website, <https://www.nmgcb.org>, or by contacting Madeline Aragon at madeline.aragon3@state.nm.us or via regular mail at 4900 Alameda Boulevard NE, Albuquerque, NM 87113 or at (505) 274-4345.

At the hearing, the hearing officer will take oral and written comments related to the rulemaking actions listed above and during the meeting, consider public input in order to make a recommendation to the board for action with regard to proposed rules. Gaming Control Board members will consider and take action on the hearing officer’s recommendations at a subsequent board meeting.

Interested persons may submit comments on the proposed rules and amendments at the rule hearing or may submit written comments via email at GCB-Rules@state.nm.us.

All written comments will be posted on the NMGCB website within three (3) days of receipt. Written comments must be received no later than 5:00 p.m. on December 10, 2020. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Legal authority for this rulemaking can be found in the Bingo & Raffles Act, Sec. 60-2F-1 et seq., the Public Records Act, Section 14-3-1, et seq. and the State Rules Act, Section 14-4-1, et seq., NMSA 1978.

**HEALTH,
DEPARTMENT OF**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health (“Department”) will hold a public hearing on proposed amendments to 7.34.4 NMAC. The hearing will be held on December 4, 2020 at 9:00 a.m. via an Internet-based video conference (Cisco Webex), and via telephone, due to the ongoing public health emergency concerning the threatening contagious disease COVID-19; in accordance with Governor Michelle Lujan Grisham’s Executive Order 2020-004 and subsequent Executive Orders which declared a Public Health Emergency; and in accordance with the Public Health Orders issued by the Cabinet Secretary of the New Mexico Department of Health which limit mass gatherings. Members of the public who wish to submit public comment regarding the proposed rule changes will be able to do so via video conference and via telephone during the course of the hearing, and by submitting written comment before the conclusion of the hearing.

The proposed rule revisions include but are not limited to the following:

1. Amendments to 7.34.4.28 NMAC (“Reciprocity”). These include amendments adopted on October 8, 2020 via an emergency rule, including revisions to residency requirements for reciprocal participation in the Medical Cannabis Program; new requirements concerning what does and does not constitute “proof of authorization” for purposes of reciprocal participation in the Medical Cannabis Program; and revisions to registration, verification, and tracking requirements.

2. Amendments to other portions of 7.34.4.28 NMAC and associated provisions, including but not limited to revisions to the reciprocal limit on the quantity of medical cannabis that a reciprocal participant can possess, and new material limiting the period of time in which a reciprocal participant can participate in the Medical Cannabis Program.

The legal authority for the proposed rule amendments is at Subsection E of Section 9-7-6 NMSA 1978, and Subsections A, I, and J of Section 26-2B-7 NMSA 1978.

Free copies of the full text of the proposed rule amendments can be obtained online from the New Mexico Department of Health’s website at <http://nmhealth.org/about/asd/cmo/rules/> or from Andrea Sundberg using the contact information below.

The public hearing will be conducted to receive public comment on the proposed rule amendments described above. Any interested member of the public may attend the hearing and submit data, views, or arguments either orally or in writing on the proposed rule amendments during the hearing. To access the hearing by telephone: please call 1-844-992-4726, and enter the access code below. Your telephone comments will be recorded. To access the hearing via the Internet: please go to <http://www.webex.com>; click the “Join” button; click the “Join a Meeting” button; enter the following meeting

number and password where indicated on the screen: Meeting Number (Access Code): 146 712 3699 #, Meeting Password: 2yuJVuqKg; and then click the “OK” button.

Written public comment regarding the proposed rule amendments can be submitted by either mailing the comment to the following address:

Andrea Sundberg
NM Department of Health
Medical Cannabis Program
P.O. Box 26110
Santa Fe, NM 87502-6110

Or e-mailing the comment to the e-mail address MCP.comment@state.nm.us

Written comments must be received by the close of the public rule hearing on December 4, 2020. All written comments will be published on the agency website at <http://nmhealth.org/about/asd/cmo/rules/> within 3 days of receipt, and will be available at the New Mexico Department of Health Medical Cannabis Program for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Andrea Sundberg by telephone at (505) 827-2318. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

HEALTH, DEPARTMENT OF

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed Wholesale Prescription Drug Importation Program developed pursuant to the Wholesale Prescription Drug Importation Act NMSA 1978 Sections 26-4-1 to 26-4-10. The public hearing will be held on December 2, 2020 at 9:30 a.m. via Cisco WebEx online and telephone

conference, and comments will be received for 30 days via email after the conclusion of the hearing.

The hearing is being held via Cisco WebEx online and by telephone conference due to the concerns surrounding coronavirus and in accordance with Governor Michelle Lujan Grisham’s Executive Order 2020-004, Declaration of a Public Health Emergency, and any subsequent executive orders and various Public Health Emergency Orders limiting mass gatherings due to COVID-19.

Pursuant to the Wholesale Prescription Drug Importation Act, NMSA 1978 Section 24-4-4, the hearing will be conducted to receive public comments regarding the proposed Wholesale Prescription Drug Importation Program prior to submission of the program for federal approval. A Prescription Drug Importation Advisory Committee was created consisting of the Secretary of Health, the Executive Director of the Board of Pharmacy, the Secretaries of Human Services and General Services and the Superintendent of Insurance, to advise the Department of Health on developing and implementing a program for the importation of eligible prescription drugs from Canada. Through the advisory committee, the department developed a drug importation program that complies with the requirements of 21 U.S.C Section 384 that will be formally submitted to the Secretary of the United States Department of Health and Human Services for certification of the proposed program. The proposal will include the following:

- How the program will comply with the requirements of 21 U.S.C. Section 384.
- Description of the cost savings of these prescription to New Mexico consumers.
- How the program will ensure that selected eligible imported prescription drugs meet standards for safety and effectiveness set

forth by the US Food and Drug Administration.

- How the program will ensure compliance with the tracking and tracing verification and identification requirements of 21 U.S.C. Sections 360eee and 360eee-1.
- Prohibition of the distribution, dispensing, or sale of the imported prescription drugs outside of NM.
- Recommendation of an administrative charge to ensure funding of the program that does not impact consumer savings.
- Identification of an audit function.

Any interested member of the public may attend the hearing and offer public comments on the proposed rule during the hearing. To access the hearing by telephone: please call 1-408-418-9388. Your telephone comments will be recorded. To access the hearing via internet: please go to Webex.com; click the "Join" button; click the "Join a meeting" button; enter the following meeting number and password where indicated on screen-Meeting number (access code): 146 053 2913 #, Meeting password: QcZMPFPs225; click the "OK" button. You may also provide comment via Chat during the live streaming.

The foregoing are summaries of the proposed program. The proposed program includes various additional substantive revisions not identified here. Free copies of the full text of the proposed rule may be obtained online from the Department's website at <https://www.nmhealth.org/about/phd/>

Written public comments may also be submitted to the mailing address shown below. Please submit any written comments regarding the proposed program by December 1, 2020 at 5pm to the attention of:

Aryan Showers
Director, Office of Policy and Accountability
Runnels Building

1190 South S. Francis Drive
Santa Fe, NM 87505
Aryan.showers@state.nm.us
505-470-4141

All written comments will be published on the agency's website at <https://www.nmhealth.org/about/phd/> within 3 days of receipt and will be available at the New Mexico Department of Health Office of General Counsel for public inspection.

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Sheila Apodaca by telephone at (505) 827-2997. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

LIVESTOCK BOARD

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Livestock Board (NMLB) will hold a video/telephonic rulemaking hearing on December 10, 2020 at 12:30 p.m. The hearing will be held via a virtual format. Instructions on how to join the virtual rulemaking hearing will be posted on the NMLB's website, www.nmlbonline.com.

The NMLB will consider a proposed amendment to 21.32.2 NMAC, **BRANDING OF LIVESTOCK**. The purpose of the proposed rule amendment to Subsection J of 21.32.2.7 NMAC is to provide NMLB clarity on the term "Confined Feeding" as used in the field in regards to branding requirements. The purpose of the proposed rule amendment to Subsection B of 21.32.2.9 NMAC is to allow dairy producers to be able to move cattle from one confined feeding operation to another without branding, provided there is no change of ownership.

The NMLB will consider a proposed amendment to 21.32.10 NMAC,

LIVESTOCK BOARD FEES.

The purpose of the proposed rule amendment to Subsection L of 21.32.10.8 NMAC is to provide NMLB a standard rate of pay for "Transportation Fees" for estray livestock.

Full copies of text of the proposed new rule 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.com for instructions on how to attend the virtual public hearing.

Interested persons may submit written comments on the proposed changes to 21.32.2 NMAC at www.nmlbonline.com or individuals may mail written comments to: NMLB/Rule Comments, 300 San Mateo Blvd NE, Suite 1000, Albuquerque, NM 87108. Comments are due by 4:30 p.m. on Wednesday, September 9, 2020. The final proposed rule will be voted on by the board during the public hearing on Thursday, September 10, 2020. Interested persons may also provide data, views or arguments, orally or in writing, at the virtual public rule hearing to be held on September 10, 2020 at 12:30 pm.

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.

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.

**REGULATION AND
LICENSING DEPARTMENT
ALCOHOLIC BEVERAGE
CONTROL DIVISION**

**NOTICE OF PROPOSED
RULEMAKING**

Public Hearing. The New Mexico Regulation and Licensing Department (RLD) Alcoholic Beverage Control Division (ABC) gives notice that it will conduct a public hearing on Monday, November 30, 2020 from 2:00 p.m. to 5:00 p.m. in the Rio Grande Conference Room, located in the Toney Anaya Building, 2550 Cerrillos Rd., Santa Fe, New Mexico 87504. The location of the public hearing may be subject to change due to the concerns surrounding COVID-19 and in accordance with Governor Michelle Lujan-Grisham's Executive Order 2020-004, Declaration of a Public Health Emergency, and the Public Health Emergency Order to Limit Mass Gatherings due to COVID-19. Continuous updates on hearing changes and Zoom information will be provided on the ABC website. The purpose of the public hearing is to receive public input on the proposed new rules 15.8.2 NMAC, Definitions; 15.8.3 NMAC, Applications and Renewals; 15.8.4 NMAC, General Operations Requirements; 15.8.5 NMAC, Prohibited Acts; 15.8.6 NMAC, Fines and Penalties; 15.8.7 NMAC, Hearing Procedure; and 15.8.8 NMAC, Miscellaneous Fees. At the hearing, the ABC will provide a verbal summary statement on record. Attendees who wish to provide public comment on record will be given three (3) minutes to make a statement concerning the rule changes. Written comment will also be accepted at the hearing.

Explanation of Purpose and Summary of Text

The purpose of the proposed new rule **15.8.2 NMAC, Definitions**, is to provide definitions for frequently used terms and key terms to be used in the licensing and regulation of tobacco products not defined by the Tobacco Products Act. Such terms include,

but are not limited to: age-controlled locations, approved operator, director, division, employee, licensed location, manufacture, and school.

The purpose of the proposed new rule **15.8.3 NMAC, Applications and Renewals**, is to establish a procedure and requirements necessary for businesses to apply for, and renew, licenses allowing them to manufacture, distribute, and retail tobacco products. The process for renewal of licenses also creates a timeframe in which licensee will need to submit their renewal application, before a license is set to expire.

The purpose of the proposed new rule **15.8.4 NMAC, General Operations Requirements**, is to establish general requirements all establishments, issued a license pursuant to the Tobacco Products Act, must abide by, as to: who may operate the establishment, lighting conditions of the establishment, sanitation requirements, as well as what things must be displayed to be viewed by the public.

The purpose of the proposed new rule **15.8.5 NMAC, Prohibited Acts**, is to provide tobacco products manufacturers, distributors, and retailers notice of prohibited actions. Establishments cannot sell tobacco products without first obtaining a license. Once an establishment obtains a license, they are limited to the types of sales allowed by that license. No matter the type of license an establishment cannot provide free samples of tobacco products without approval from ABC, sale tobacco products knowingly attractive to minors, sale tobacco products no longer in their original sealed packages, sale tobacco products that are not in child-resistant packaging, sale tobacco products to minors, or fail to verify that the customer buying tobacco products is at least 21 years of age.

The purpose of the proposed new rule **15.8.6 NMAC, Fines and Penalties**, is to establish general schedule for fines and penalties issued by ABC for various violations of the Tobacco Products Act, as well as establish when fines and penalties may be

compromised or enhanced due to the nature, facts, and surrounding circumstances of the violation.

The purpose of the proposed new rule **15.8.7 NMAC, Hearing Procedure**, is to establish the process for disposition of violations of the Tobacco Products Act. The process includes all steps from a violation being reported to ABC, through informal negotiations to resolve a citation for a violation, to the administrative proceedings to formally resolve a citation for a violation, to the issuing of a final order on the violation.

The purpose of the proposed new rule **15.8.8 NMAC, Miscellaneous Fees**, is establish a basic schedule of fees to be charged by ABC in order to process various applications, documents, and information in order to carry out the duties of the Tobacco Products Act. These fees include, but are not limited to, initial application fees for licenses and renewal application fees for licenses.

Statutory Authorization(s):

Sections 61-37-13, 61-37-22 NMSA 1978.

No technical information served as a basis for this proposed rule change.

Public Comment. Interested parties may provide comment at the public hearing or may submit written comments by mail to Phillip A. Sanchez, Alcoholic Beverage Control Division, Regulation and Licensing Department, 2550 Cerrillos Road, Santa Fe, New Mexico 87504, by electronic mail to Phillip.Sanchez2@state.nm.us, or by fax to (505) 476-4595. All written comments must be received no later than 5 p.m. (MDT) on Monday, November 30, 2020. The ABC encourages the early submission of written comments. The public comment period is from October 30, 2020, to November 30, 2020, at 5:00 p.m. (MDT).

The ABC will review all feedback received during the public comment period and issue communication regarding a final decision at a later date.

Copies of the proposed rules may be accessed through the page titled "Tobacco Products" on the ABC's website at <http://www.rld.state.nm.us/abc/tobacco-products.aspx> or may be obtained from Phillip Sanchez at (505) 476-4547 during regular business hours.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Phillip Sanchez (505) 476-4547 as soon as possible before the date set for the public hearing. The ABC requires at least 10 calendar days advance notice to provide any special accommodations requested.

**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.

AGRICULTURE, DEPARTMENT OF

This is an amendment to 21.18.3. NMAC, Sections 7, 9, 10, 26 and adding 31, effective 1/01/2021.

Explanatory statement: Section 9, Subsections A through D and F through H were not shown as no changes were made. Section 10, Subsections A through D and F through H were not shown as no changes were made.

21.18.3.7 DEFINITIONS:

A. The names and definitions for commercial feeds shall be the official definition of feed ingredients adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.

B. The terms used in reference to commercial feeds shall be the official feed terms adopted by the association of American feed control officials, except as the department designates otherwise in specific cases.

C. The following commodities are hereby declared exempt from the definition of commercial feed, under the provisions of Section 76-19A-5A NMSA 1978: raw meat and loose salt when unground and when not mixed or intermixed with other materials: provided that these commodities are not adulterated within the meaning of Section 76-19A-8 NMSA 1978.

D. The definitions in Section 76-19A-2 NMSA 1978 shall apply in addition to the following:

(1) Principal display panel means the part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(2) Ingredient statement means a collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed.

(3) Immediate container means the unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers.

(4) All life stages means gestation/lactation, growth, and adult maintenance life stages.

(5) Family means a group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, which has been successfully test-fed according to an association of American feed control officials feeding protocol(s).

E. Prescription diet means a feed that is made available to the public only through a licensed veterinarian or through the retail or internet sales to individuals purchasing the product under the direction of a veterinarian.

F. Department means the New Mexico department of agriculture.

[21.18.3.7 NMAC - Rp, 21.18.3.7 NMAC, 9/30/2013; A, 1/01/2021]

21.18.3.9 LABEL

INFORMATION: Commercial feed, other than customer-formula feed, shall be labeled with the information prescribed in this regulation.

E. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of ~~[76-19A-9A(4), NMSA-~~

~~1978.] Subsection 4 of Section 76-19A-9A NMSA 1978.~~

(1) The name of each ingredient as defined in the official publication of the association of American feed control officials, common or usual name, or one approved by the department.

(2) Collective terms for the grouping of feed ingredients as defined in the official definitions of feed ingredients published in the official publication of the association of American feed control officials in lieu of the individual ingredients; provided that:

(a) when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label;

(b) the manufacturer shall provide the feed control official, upon request, with a list of individual ingredients, within a defined group, that are or have been used at manufacturing facilities distributing in or into the state.

(3) The registrant may affix the statement, "ingredients as registered with the state" in lieu of ingredient list on the label. The list of ingredients must be on file with the department. This list shall be made available to the feed purchaser upon request.

[21.18.3.9 NMAC - Rp, 21.18.3.9 & 10 NMAC, 9/30/2013; A, 1/01/2021]

21.18.3.10 EXPRESSION OF GUARANTEES:

E. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows:

(1) For ruminants

(a) Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than 5% protein from natural sources shall be guaranteed as follows:

[crude protein, minimum, _____%]

(This includes not more than _____% equivalent crude protein from non-protein nitrogen).]

(i) _____% crude protein, minimum, _____%

(ii) This includes not more than _____% equivalent crude protein from non-protein nitrogen.

(b) Mixed feed concentrates and supplements containing less than 5% protein from natural sources may be guaranteed as follows: equivalent crude protein from non-protein nitrogen, minimum, _____%

(c) Ingredient sources of non-protein nitrogen such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or other basic non-protein nitrogen ingredients defined by the association of American feed control officials shall be guaranteed as follows:

[nitrogen, minimum, _____%]

equivalent crude protein from non-protein nitrogen, minimum, _____%

(i) _____% nitrogen, minimum, _____%

(ii) equivalent crude protein from non-protein nitrogen, minimum, _____%

(2) For non-ruminants

(a) Complete feeds, supplements, and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

[crude protein, minimum _____% (this-

includes not more than _____% equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).]

(i) _____% crude protein, minimum _____%

(ii) _____% this includes not more than _____% equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended).

(b) Premixes, concentrates, or supplements intended for non-ruminants containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

*** [21.18.3.10 NMAC - Rp, 21.18.3.11 NMAC, 09/30/2013; A, 1/01/2021]

21.18.3.26 PET FOOD AND SPECIALTY PET FOOD STATEMENTS OF CALORIE CONTENT:

A. Except as required in 21.18.3.27 NMAC, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following:

(1) The statement shall be separate and distinct from the "Guaranteed Analysis" and shall appear under the heading "Calorie Content";

(2) The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and must be expressed as "kilocalories per kilogram" ("kcal/kg") of product and may also be expressed as kilocalories per familiar household measure (e.g., cans, cups, pounds); and,

(3) The calorie content is determined by one of the following methods:

(a) by calculation using the following "modified atwater" formula: ME(kcal/

kg) = 10[(3.5 x CP) + (8.5 x CF) + (3.5 x NFE)]

where: ME = metabolizable energy

CP = % crude protein "as fed"

CF = % crude fat "as fed"

NFE = % nitrogen-free extract (carbohydrate) "as fed"

[and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least

four production batches of the product; and the NFE is calculated as the difference between

100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the

same manner as CP and CF); or,] and the percentages of CP and CF are the arithmetic averages from

proximate analyses of at least four production batches of the product; and the NFE is calculated as the difference

between 100 and the sum of CP, CF, and the percentages of crude fiber, moisture, and ash (determined in the same manner as CP and CF); or,

(b) in accordance with a testing procedure established by the association of American feed control officials.

(4) An affidavit shall be provided upon request to the department substantiating that the calorie content was determined by:

(a) Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC in which case the results of all the analyses used in the calculation shall accompany the affidavit; or

(b) Subparagraph (b) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC in which case the summary data used in the determination of calorie content shall accompany the affidavit.

(5) The calorie content statement shall appear as one of the following:

(a)

The claim on the label or other labeling shall be followed parenthetically by the word “calculated” when the calorie content is determined in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC; or

(b)

The value of calorie content stated on the label which is determined in accordance with Subparagraph (b) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC shall not exceed or understate the value determined in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 21.18.3.26 NMAC by more than 15%.

B. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared.

[21.18.3.26 NMAC - N, 09/30/2013; A, 1/01/2021]

21.18.3.31 SPAY AND NEUTER PROGRAM FEE:

A. Additional Fees:

In addition to the commercial feed registration fee, an additional annual fee shall be collected on each pet food registered with the department. This fee shall be implemented as follows:

(1) Beginning January 1, 2021 and ending December 31, 2021, fifty dollars (\$50.00)

(2) Beginning January 1, 2022 and ending December 31, 2022, seventy-five dollars (\$75.00)

(3) Beginning January 1, 2023, one hundred dollars (\$100.00)

B. Exemptions:

(1) A pet food manufacturer shall be exempt of the spay and neuter program fees upon submission of a notarized affidavit attesting that tax-year annual gross revenue from the distribution of pet food is no more than three million dollars. The spay and neuter program fee exemption affidavit shall be submitted to the department on a form furnished by the department.

(2) A pet food

manufacturer shall be exempt of the spay and neuter program fees for a specific product upon submission of a notarized affidavit attesting that the specific product meets the definition of prescription diet. The spay and neuter program fee exemption affidavit shall be submitted to the department on a form furnished by the department.

C. Distribution, ninety-six percent of this additional fee collected shall be deposited with the state treasurer to credit the statewide spay and neuter subaccount of the animal care and facility fund. Four percent of this additional fee collected shall be distributed to the department to administer the New Mexico Commercial Feed Act.

[21.18.3.31 NMAC - N, 1/01/2021]

ENVIRONMENT DEPARTMENT

This is an amendment to 20.7.5 NMAC, Sections 7 and 14 effective 10/27/2020.

20.7.5.7 DEFINITIONS:

as used in this part.

A. “Act” means the Wastewater Facility Construction Loan Act.

B. “Administrative fee” means a fee assessed and collected by the department from the qualified borrower on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

C. “Base rate” means the highest loan interest rate.

[E:] D. “Clean Water Act” means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions.

[D:] E. “Clean water state revolving loan administrative fund” means a separate fund created outside the wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs

of administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative fund and shall be used explicitly for the purpose above.

[E:] F. “Commission” means the water quality control commission.

[F:] G. “Department” means the New Mexico environment department.

[G:] H. “Eligible project” means any project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code, as of January 1, 2018, including a wastewater facility project, a nonpoint source water pollution control project, and a watershed project that meet the criteria of the Clean Water Act.

[H:] I. “Final loan agreement” means an agreement executed by the qualified borrower and the department upon completion of the project in order to document the permanent financing of the final loan amount.

[I:] J. “Final loan amount” means the aggregate amount of the principal disbursed by the department to the qualified borrower during the construction of the eligible project, together with accrued and unpaid interest on the aggregate principal thereof.

[J:] K. “Financial assistance” means loans, combination loan/grants, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees or any combination of these purposes.

[K:] L. “Force account construction” means construction performed by the employees of a local authority rather than through a contractor.

[L:] M. “Fund” means the wastewater facility construction loan fund established in Section 74-6A-4 NMSA 1978 of the act.

~~[M.]~~ **N. “Local authority”** means a municipality, intermunicipal agency, county, incorporated county, mutual domestic water consumers association as defined by the Sanitary Projects Act, sanitation district, water and sanitation district or any similar district, recognized Indian tribe, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

~~[N.]~~ **O. “Payment”** means a disbursement from the fund directly to the qualified borrower.

~~[O.]~~ **P. “Priority list”** means the list of eligible projects ranked according to the priority system pursuant to the act.

~~[P.]~~ **Q. “Priority system”** means the system approved by the commission for ranking eligible projects for which financial assistance applications have been received pursuant to the act.

~~[Q.]~~ **R. “Qualified borrower”** means a creditworthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act, as of January 1, 2018, including a state agency, an interstate agency, and a local authority.

~~[R.]~~ **S. “State agency”** means an agency or department of the executive branch of government.

~~[S.]~~ **T. “Wastewater facility”** means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping and ventilating stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers, and other real or personal property and appurtenances incidental to their use or operation.

[20.7.5.7 NMAC - Rp, 20.7.5.7 NMAC, 12/16/2015; A, 9/29/2018; A, 10/27/2020]

**20.7.5.14
ADMINISTRATION OF THE
LOAN PROGRAM AND FUND:**

A. The loan program and fund is administered by the department as agent for the commission. Pursuant to Paragraph 10 of Subsection A of Section 74-6A-9 NMSA 1978 of the act, the department shall develop new, and implement existing, policies, procedures and guidelines necessary and appropriate to implement the provisions of the act and the Clean Water Act.

B. The necessary administrative expenses required of the board, the commission, and the department to implement the provisions of the act will be appropriated from the fund.

C. The department may impose and collect a fee from each qualified borrower that receives financial assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund, and used solely for the costs of administering the fund as follows:

(1) an administrative fee may be assessed on all financial assistance provided after January 1, 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

(2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of 20.7.5.14 NMAC above, the total administrative fee assessed shall not exceed five percent of the total loan amount; the fee will be assessed on the outstanding principal balance of the loan payable; these fees are due on the same dates the payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from the requirement by the department; the department may determine, establish and revise from time to time, the precise amount of the administrative fee to be charged, based on the

projected costs of administering the program and other revenue available to pay such costs; the administrative fee payments must be deposited in the clean water state revolving loan administrative fund as they are received; interest on the clean water state revolving loan administrative fund shall be transferred to the administrative fund as it is received; and

(3) an administrative fee of two percent of the unpaid principal balance of the refinanced loan will be assessed against the qualified borrower and shall be paid into the clean water state revolving loan administrative fund at the time of closing of the refinancing.

D. Financial assistance agreements will be prepared by the department and executed by the qualified borrower for the project which can be financed with available balances in the fund.

E. Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than 30 years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

F. The interest rate for the loan portion of the financial assistance shall be the rate in effect when the ~~[final]~~ loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced in accordance with ~~[Subsection I.] Subsection J.~~ of 20.7.5.14 NMAC. ~~[The interest rate shall be the base rate provided in Subsection G of 20.7.5.14 NMAC unless the local authority qualifies for a hardship rate provided in Subsection H of 20.7.5.14 NMAC.]~~

G. At the beginning of each state fiscal year, the commission may determine a base rate for the state fiscal year which is less than or greater than the current base rate.

H. ~~[Hardship rates shall be approved by the department when a local authority meets the associated conditions at the time the~~

financial assistance agreement is executed:

- ~~(1)~~ When the local authority's per capita income is less than the statewide per capita income based on the most current United States (U.S.) bureau of census statistics;
- ~~(2)~~ The local authority's per capita income is less than three-fourths of the statewide per capita income based upon the most current U.S. bureau of census statistics;
- ~~(3)~~ A combination of loan and grant funds in those years when grant funding is available for assistance to rural communities;
- ~~(4)~~ An interest rate of zero percent when:
 - ~~(a)~~ the local authority's average user cost is greater than one and eighty-two hundredths percent of the local authority's per capita income. The calculation of average user cost shall be consistent with a statewide methodology established by the department; and
 - ~~(b)~~ the local authority's per capita income is less than three-fourths of the statewide per capita income based upon the most current U.S. bureau of census statistics;

| Interest Rate | Local Authority Criteria |
|---------------|---|
| 2.375% | Per capita income equal to or above statewide average; base interest rate. (G.) |
| 1.2% | Per capita income less than that statewide average. (H.)(1) |
| 0.6% | Per capita income less than 3/4 of the statewide average. (H.)(2) |
| 0% | Per capita income less than three-fourths of the statewide per capita income and the average user cost is greater than one and eighty-two hundredths percent of the local authority's per capita income. (H.)(4)(a)(b)] |

Local authority interest rates and interest rate conditions shall be determined by the department and reported to the commission at the beginning of each state fiscal year.

I. The interest rate for a state agency shall be the lowest interest rate available above zero percent in Subsection H of Section 14 of 20.7.5 NMAC [~~and~~].

J. [~~the~~] The interest rate for all other eligible borrowers will be the base rate at the time the loan agreement is executed.

~~[J:]~~ **K.** A local authority may refinance the loan portion of the financial assistance if the local authority later qualifies for a reduced rate. The refinancing may only occur at or after the execution of a final loan agreement.

~~[K:]~~ **L.** Financial assistance recipients shall comply with all applicable federal, state and local laws and regulations, including but not limited to:

- (1) procurement;
- (2) record keeping;
- (3) accounting;
- (4) audit and inspection;
- (5) occupational health and safety;
- (6) environmental review; and
- (7) non-discrimination.

~~[L:]~~ **M.** In the event of default by the qualified borrower, the department as agent for the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law.

[20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, 5/30/2017; A, 9/29/2018; A, 10/27/2020]

**HEALTH,
DEPARTMENT OF**

This is an amendment to 7.8.2 NMAC, Section 16, effective 10/27/2020.

Numbers were changed throughout Section 16 to conform to correct legislative style.

7.8.2.16 STAFF QUALIFICATIONS: A facility shall employ staff with the following qualifications.

A. Administrator, director, operator: an assisted living facility shall be supervised by a full-time administrator. Multiple facilities that are located within a 40 mile radius may have one full-time administrator. The administrator shall:

- (1) be at least 21 years of age;
- (2) have a high school diploma or its equivalent;
- (3) comply with the requirements of the New

Mexico Caregivers Criminal History Screening Act, 7.1.9 NMAC;

- (4) complete a state approved certification program for assisted living administrators;
- (5) be able to communicate with the residents in the language spoken by the majority of the residents;
- (6) not work while under the influence of alcohol or illegal drugs;
- (7) have evidence of education and experience

to prove the ability to administer, direct and operate an assisted living facility; the evidence of education and experience shall be directly related to the services that are provided at the facility;

(8) provide three notarized letters of reference from persons unrelated to the applicant; and

(9) comply with the pre-employment requirements pursuant to the Employee Abuse Registry, 7.1.12 NMAC.

B. Direct care staff:

(1) shall be at least [eighteen (18)] 16 years of age;

(2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;

(3) shall comply with the pre-employment requirements pursuant to the Employee Abuse Registry, 7.1.12 NMAC; and

(4) shall comply with the current requirements of reporting and investigating incidents pursuant to Incident Reporting, Intake Processing and Training Requirements, 7.1.13 NMAC;

(5) if a facility provides transportation for residents, the employees of the facility who drive vehicles and transport residents shall have copies of the following documents on file at the facility:

(a) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(b) documentation of training in transportation safety for the elderly and disabled, including safe vehicle operation;

(c) proof of insurance; and

(d) documentation of a clean driving record;

(6) any person who provides direct care who is not employed by an agency

that is covered by the requirements of the Caregivers Criminal History Screening Requirements, 7.1.9 NMAC, shall provide current (within the last 6 months) proof of the caregivers criminal history screening to the facility; the facility shall maintain and have proof of such screening readily available; and

(7) employers shall comply with the requirements of the Caregivers Criminal History Screening Requirements, 7.1.9 NMAC.

[7.8.2.16 NMAC - Rp, 7.8.2.16 NMAC, 1/15/2010; A, 10/27/2020]

**HEALTH,
DEPARTMENT OF**

This is an emergency amendment to 7.34.4 NMAC, Section 28, effective 10/8/2020.

7.34.4.28 RECIPROCITY: Beginning July 1, 2020, an individual who holds proof of authorization to participate in the medical cannabis program of another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo may lawfully purchase and possess cannabis, provided that the quantity of cannabis does not exceed the reciprocal limit identified in this section.

A. Reciprocal participation:

(1) **General requirements:** A reciprocal participant:

(a) may participate in the medical cannabis program in accordance with department rules;

(b) shall not be required to comply with the registry identification card application and renewal requirements established pursuant to this section and department rules;

(c) shall at all times possess proof of authorization to participate in the medical cannabis program of another state, the District of Columbia, a

territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo and shall present proof of that authorization when purchasing cannabis from a licensee; and

(d) shall register with a licensed non-profit producer for the purpose of tracking sales to the reciprocal participant in an electronic system specified by the department.

(2) Minors:

In the event that a reciprocal participant is a minor, a licensed non-profit producer shall not sell or transfer cannabis to the minor, but may sell or transfer cannabis to a parent or legal guardian of the minor who holds proof of authorization to purchase cannabis on the minor's behalf that was issued by another state of the United States, the District of Columbia, a territory or commonwealth of the United States or a New Mexico Indian nation, tribe or pueblo.

(3) Residency requirements:

(a) **Non-residents:** A person who is not a resident of New Mexico may participate in the medical cannabis program as a reciprocal participant, provided that the reciprocal participant's place of residence is consistent with their place of enrollment. (For example: a Colorado resident shall not be registered or otherwise participate as a reciprocal participant on the basis that he or she is enrolled in the medical cannabis program of a state or other jurisdiction other than Colorado.)

(b) **New Mexico residents:** A New Mexico resident who is not a member of a New Mexico Indian nation, tribe, or pueblo shall not participate in the medical cannabis program as a reciprocal participant, but may pursue enrollment as a qualified patient in accordance with rule 7.34.3 NMAC. A member of a New Mexico Indian nation, tribe or pueblo medical cannabis program may participate as a reciprocal participant, provided that the individual has proof of

authorization to participate in the New Mexico Indian nation, tribe or pueblo’s medical cannabis program.

B. Reciprocal

limit: A reciprocal participant may collectively possess within any three-month period a quantity of usable cannabis no greater than 230 total units. For purposes of department rules, this quantity is deemed the reciprocal limit. (For ease of reference: 230 units is equivalent to 230 grams, or approximately eight ounces, of dried usable cannabis plant material.)

C. Registration;

verification; tracking: A licensed non-profit producer shall require the submittal of a reciprocal participant’s contact information for registration purposes, to include the individual’s full name, date of birth, mailing address, and the enrollment number specified in the individual’s medical cannabis program enrollment card (if applicable); and shall record that information in an electronic tracking system specified by the department.

(1) The

licensed non-profit producer shall confirm the accuracy of a reciprocal participant’s contact information prior to each transaction.

(2) A

licensed non-profit producer that registers a reciprocal participant or that sells or transfers cannabis or a cannabis product to a reciprocal participant shall first verify the reciprocal participant’s identity by [viewing] comparing the individual’s proof of authorization from the other state, territory or tribe, [~~and also viewing~~] to the reciprocal participant’s government-issued photo identification card, and verifying that the information, including but not limited to place of residence, is consistent.

(3) A licensed

non-profit producer that sells or otherwise transfers cannabis or a cannabis product to a reciprocal participant shall track the sale or transfer using an electronic system specified for that purpose by the department.

(4) A licensed non-profit producer shall not register an employees or board member of the producer as a reciprocal participant.

(5) At the time of registration, a licensed non-profit producer shall electronically upload a copy of the reciprocal participant’s proof of authorization, and a copy of the reciprocal participant government issued photo ID which indicates the person’s place of residence, into the electronic tracking system specified by the department.

(6) A licensed non-profit producer shall ensure the individual registering as a reciprocal participant is not already registered as a reciprocal participant or a qualified patient in the New Mexico medical cannabis program, before entering registration information for the individual. Repeated registration of a reciprocal participant who was previously registered may result in disciplinary action in accordance with this rule.

D. Proof of

authorization: Proof of authorization to participate in the medical cannabis program of another jurisdiction (an “originating jurisdiction”) shall consist of a card or other physical document issued by a governmental entity authorized by law to enroll the applicant in the medical cannabis program in the originating jurisdiction. For purposes of reciprocal participation in the New Mexico medical cannabis program, permission from a medical practitioner shall not in itself be deemed proof of authorization to participate in the medical cannabis program of another jurisdiction, but shall be accompanied by a card or other proof of enrollment issued by an authorized governmental entity of the originating jurisdiction. (For example, a written letter from a physician authorizing the individual to participate in the California medical cannabis program shall not be deemed proof of authorization for the purpose of participating in the New Mexico medical cannabis program.)

[D] E. Refusal of service:

A non-profit producer that reasonably

suspects that either a person’s proof of authorization or identification card is falsified may refuse to dispense cannabis to cannabis to that individual.

[E] F. Informational

materials: At the time of a sale or transfer of cannabis to a reciprocal participant, a non-profit producer shall provide informational materials to the reciprocal participant that include, at a minimum, a notice of the time and quantity limits for reciprocity under this section, and a notice concerning state and federal prohibitions against the transport of cannabis across state and international boundaries.

[7.34.4.28 NMAC - Rp. 7.34.4.28 NMAC, 6/23/2020; A/E, 10/8/2020]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 106 STATE FUNDED ASSISTANCE PROGRAMS PART 631 HEAT AND EAT PROGRAM

8.106.631.1 ISSUING AGENCY: New Mexico Human Services Department. [8.106.631.1 NMAC - N, 11/1/2020]

8.106.631.2 SCOPE: This rule applies to the general public. [8.106.631.2 NMAC - N, 11/1/2020]

8.106.631.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the aid to families with dependent children (AFDC), general assistance (GA), shelter care supplement, the burial assistance programs and such other public welfare functions as may be assumed by the state. [8.106.631.3 NMAC - N, 11/1/2020]

8.106.631.4 DURATION: Permanent. [8.106.631.4 NMAC - N, 11/1/2020]

8.106.631.5 EFFECTIVE DATE: November 1, 2020, unless a later date is cited at the end of a section.
[8.106.631.5 NMAC - N, 11/1/2020]

8.106.631.6 OBJECTIVE: The objective of the New Mexico heat and eat program is to provide households with a cash payment to assist with energy expenses to households that do not pay heating or cooling expenses and do not receive LIHEAP but have an identifiable shelter cost. Payments are credited to recipients through a state managed fund. In addition to the energy assistance payment households who received this payment will see an increase in their deduction amount used to determine their SNAP benefit allotment.
[8.106.631.6 NMAC - N, 11/1/2020]

8.106.631.7 DEFINITIONS: [RESERVED]
[8.106.631.7 NMAC - N, 11/1/2020]

8.106.631.8 PROGRAM ELIGIBILITY: Benefits shall be processed annually at the beginning of the federal fiscal year dependent on the availability of funding.

A. Limited to current SNAP recipients: no application is needed for an individual or groups of individuals who reside together that do not pay separate heating or cooling costs and do not receive the Heating and Cooling Standard Utility Allowance (HCSUA).

B. Household: Eligible household include those who:
(1) are receiving SNAP after being determined eligible as outlined in 8.139.110 NMAC;

(2) have gross income less than one hundred sixty-five percent of the poverty level; and

(3) do not pay for any heating or cooling expenses, including the payment of a fee to use an air conditioner; and

(4) are not receiving the maximum SNAP benefit; and

(5) have an identifiable shelter cost.

C. Eligible households: will receive the HCSUA in accordance with 8.139.510.11NMAC.
[8.106.631.8 NMAC - N, 11/1/2020]

8.106.631.9 BENEFIT DELIVERY:
A. Effective date: At the beginning of every federal fiscal year, October 1, a one-time energy assistance cash payment will be issued to eligible households as defined in Subsection A of 8.106.631.9 NMAC.

B. Benefit issuance: Heat and Eat benefits are issued through a direct deposit into a household's EBT account. EBT cards are issued and maintained as defined at 8.139.610 NMAC. A Heat and Eat participating household has a definite issuance date so that benefits are received on or about the same time annually.

C. Benefit Amount: Dependent on the availability of state general fund a cash payment of no less than \$20 will be issued.

D. Eligible Uses for Benefit: This Cash benefit is intended to help the household meet their heating or cooling needs. Please refer to 8.106.610.8 NMAC for uses of Cash benefit.
[8.106.631.9 NMAC - N, 11/1/2020]

8.106.631.10 RECOUPMENT: If the benefit is not used by the end of the federal fiscal year that the benefits was issued, September 30, the benefit will be recouped from the participants EBT card and placed back into the state general fund.
[8.106.631.10 NMAC - N, 11/1/2020]

HISTORY OF 8.106.631NMAC: [RESERVED]

OSTEOPATHIC MEDICINE, BOARD OF

This is an amendment to 16.17.3 NMAC, Section 9 effective 11/8/2020.

16.17.3.9 CME CREDITS REQUIRED:

A. The New Mexico board of osteopathic medicine will require proof of having attended and received 75 credits of continuing medical education over the triennial renewal cycle. ~~[Thirty]~~ At least 30 credits shall be AOA category 1-A or category 1-B or a combination thereof. 45 credits can be CCME, AMA, ACCME, AAFP, AACOM, or AAPS.

B. One credit of required CME must be earned by reviewing the New Mexico Osteopathic Medical Practice Act and these board rules. Physicians must certify that they have completed this review at the time they submit their triennial renewal application. Review the rules and statutes by attestation upon initial licensure and renewal.

C. Continuing medical education is not required for federal emergency, telemedicine, postgraduate training, temporary teaching or youth camp or school licenses.

D. Six CME credits in pain management must be earned and may apply toward the 75 credits required in Subsection A of this section and may be included as part of the required CME credits in pain management in either the triennial cycle in which these credits are completed.

E. Those osteopathic physicians who are licensed in New Mexico, but not practicing in the state, or osteopathic physicians who do not possess a New Mexico controlled substance license are exempt from the requirements found in Subsection D.
[16.17.3.9 NMAC - N, 6/11/2018, A, 11/8/2020]

PUBLIC REGULATION COMMISSION

This is an emergency amendment to 1.2.2 NMAC, Section 7 and 8, effective 10/15/2020.

1.2.2.7 DEFINITIONS:

In addition to the definitions contained in Sections 3-29-2, 8-8-2, 53-4-1, 53-6-3, 53-8-2, 53-11-2, 53-19-2, 53-20-2, 60-2C-2, 62-3-3, 62-14-2, 63-9-2, 63-9A-3, 63-9H-3, 65-2A-3, 65-6-2, and 70-3-12 NMSA 1978, as used in this rule:

A. advisory staff means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

B. applicant means any party on whose behalf an application is made for approval or authorization of the commission;

C. chief clerk means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978;

D. chief of staff means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

E. commenter means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

F. complainant means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

G. corporations means domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53,

NMSA 1978, unless exempted by law from commission regulation;

H. document means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding which is not a pleading or which is required to be filed by commission rule or order outside a formal proceeding;

I. electronic means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

J. file, filed, or filing means delivery or transmittal to the chief clerk or the chief clerk's designee and acceptance by the chief clerk or the chief clerk's designee of an order, notice, pleading, or document to be kept on file in their official capacity;

K. fire marshal-regulated entities means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978;

L. formal proceedings means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission's docket for decision by the commission;

M. hearing examiner means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;

N. informal proceedings means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;

O. intervenor means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC;

P. mediator means a person assigned by the commission

to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements;

Q. party means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene; unless the context indicates otherwise, the term "party" may also refer to counsel of record for a party; staff shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;

R. petitioner means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

S. pleading means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

T. presiding officer means a commissioner taking such actions as are permitted under 1.2.2.29 and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;

U. proceeding means a formal proceeding;

V. public hearing means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues;

W. regulated entity means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity, railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

X. respondent

means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;

Y. staff means all persons, other than hearing examiners and advisory staff, employed by the commission; and

Z. telecommunications provider shall have the meaning given in Paragraph (2) of Subsection A of 63-7-23 NMSA 1978.}]

A. Definitions

beginning with "A":

(1) advisory

staff means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

(2) applicant

means any party on whose behalf an application is made for approval or authorization of the commission;

B. Definitions

beginning with "B":

C. Definitions

beginning with "C":

(1) chief clerk

means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978;

(2) chief of

staff means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

(3)

commenter means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

(4)

complainant means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

(5)

corporations means domestic and foreign corporations, limited liability

companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation;

D. Definitions

beginning with "D": document means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding which is not a pleading or which is required to be filed by commission rule or order outside a formal proceeding;

E. Definitions

beginning with "E": electronic means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

F. Definitions

beginning with "F":

(1) file, filed,

or filing means filing by electronic mail, by regular postal service mail of hard copies, or by in-person delivery of hard copies [or transmittal] to the chief clerk or the chief clerk's designee and acceptance by the chief clerk or the chief clerk's designee of any completed order, notice, pleading, or document that is either required to be kept on file or to be filed in the commission's e-docket in their official capacity. The emailed .pdf documents shall be electronically signed, shall be combined into one complete document (allowing the approx. 20MB size limit), and shall include accompanying consecutively numbered attachments, if any, and shall include a certificate of service evidencing service upon which individuals or entities and by what manner of service. Any complete, correctly filed document, order, notice or pleading will be accepted by the chief clerk or designee and will be uploaded in the .pdf format submitted in the appropriate identified case numbers locations in e-docket on a regular basis for the purpose of inspection of records (<https://edocket.nmprc.state.nm.us>). The commission or hearing examiners may require,

in addition, that five (5) paper copies of any document electronically filed shall also be mailed, by regular postal service mail to the commission at P.O. box 1269, Santa Fe, New Mexico, 87504-1269, to the chief clerk or designee, who shall be maintain the one original plus the electronically filed document which shall be made available, upon reasonable demand, for inspection by the public, other parties or the commission. There are size limit restrictions to the .pdf attachments which may change as the commission's servers change. If a person receives an "undeliverable" email, please reduce the size limit of the .pdf attachments and email the .pdf document in smaller sized batches with identifying numbers of how the document should be combined (i.e. batch 1 of 3, Application-1, batch 2 of 3 Schedules 2, etcetera.) so that the records chief clerk or designee may properly assemble for filing in e-docket;

(2) file

electronic signatures means a full, printed name of the person responsible for the electronic version of the document by scanning or other electronic reproduction of the signature or by typing in the signature line the notation "/s/" followed by the name of the person signing the original document and including the email address of the person signing. Electronically filed documents that require sworn verification by notarization under commission rules may be supported by unsworn affirmation in compliance with rule of civil procedure 1-011(B) NMRA;

(3) fire

marshal-regulated entities means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978;

(4) formal

proceedings means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission's docket for decision by the commission;

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

H. Definitions
beginning with "H": hearing examiner means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;

I. Definitions
beginning with "I":

(1) informal proceedings means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;

(2) intervenor means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC;

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

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

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

M. Definitions
beginning with "M": mediator means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements

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

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

P. Definitions
beginning with "P":

(1) party means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene; unless the context indicates otherwise, the term "party" may also refer to counsel of record for a party; staff

shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;

(2) petitioner means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

(3) pleading means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

(4) presiding officer means a commissioner taking such actions as are permitted under 1.2.2.29 and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;

(5) proceeding means a formal proceeding;

(6) public hearing means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues;

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

R. Definitions
beginning with "R":

(1) regulated entity means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity, railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

(2) respondent means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;

S. Definitions
beginning with "S": staff means all

persons, other than hearing examiners and advisory staff, employed by the commission; and

T. Definitions
beginning with "T": telecommunications provider shall have the meaning given in Paragraph (2) of Subsection A of 63-7-23 NMSA 1978.

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]
[1.2.2.7 NMAC - Rp, 17 NMAC 1.2.7, 9-1-08; A/E 10/15/2020]

1.2.2.8 GENERAL PROVISIONS:

A. Public records:
The commission's policy is to allow full and complete access to public records in accordance with the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 *et seq.* Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public record as of the day and time of their filing. The commission shall permit any person to examine any such public record, unless subject to a protective order, or otherwise protectable under the Inspection of Public Records Act. Under no circumstances will any person be allowed to take original commission records from commission premises. Arrangements to examine records or to obtain copies of records must be made through the chief clerk or the chief clerk's designee.

B. Protective orders:
(1) Any person moving for an order to protect pleadings, documents or classes of documents from disclosure bears the burden of establishing their right, if any, to such protection. A motion

for an order to protect documents or information from disclosure shall be supported by an affidavit. The affidavit shall:

- (a) satisfy the claimant's burden of making a *prima facie* showing that protection is appropriate, and, if protection is sought for pleadings or documents that are to be filed, that protection is consistent with the Inspection of Public Records Act, including protectable trade secrets;
- (b) be executed by the claimant or a person employed by the claimant who is sufficiently knowledgeable about the grounds on which protection is sought that they can defend such claim if it is challenged; and

(c) explain with particularity the injury which would result from disclosure of the information for which protection is sought.

(2) If the commission or presiding officer deems it necessary, or if any party files a motion to compel, the commission or presiding officer may require the party seeking the protective order to file the documents or information which are the subject of the motion in a properly identified sealed container. The container may be opened by the commission or presiding officer prior to ruling on the motion for a protective order only for purposes of making an *in camera* inspection.

(3) The commission or presiding officer may, in ruling on the motion, provide that the documents or information not be disclosed or that they be disclosed only in a designated manner or to designated persons. Any order granting a motion for a protective order in whole or in part shall include clear and specific instructions to the chief clerk or chief clerk's designee regarding the limitations placed on disclosure of the documents or information subject to the order and a reminder that sanctions may be imposed under applicable laws for its violation. The protective order shall set forth the conditions for protection

and disclosure of information subject to protection under the Inspection of Public Records Act to parties to the proceeding. The order shall be included in the appropriate publicly available file in lieu of the documents or information which are the subject of the protective order.

(4) The period of time during which disclosure is limited shall be two years from the date of the final order in the case, provided that the movant may request that the protective order specify a different period of protection. The movant may, prior to expiration of the protective order, move for an order extending the period of protection of the documents or information.

(5) Nothing in this rule shall be construed as waiving or altering any requirement placed upon the commission for timely disclosure and copying of public records under the Inspection of Public Records Act.

[C. Fees:

(1) All application fees or other charges required by law shall be paid to the commission at the time of filing or at the time the charge is incurred.

(2) No pleading or document will be accepted without payment of required fees and submission of the required number of copies by the filing party, unless the commission or presiding officer directs otherwise.

(3) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA-1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the state records center for similar types of copies.

(4) The fee for copies of papers, testimony, or records on electronic storage media shall be the same charge set by the state records center for paper copies of the same.

(5) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, is \$10 per cassette or CD-ROM.

(6) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge a document search and preparation fee based on the hourly rate charged by the state records center for document preparation in 1.13.2 NMAC.]

C. Filing Fees:

(1)

Electronically filed documents that are required by law to be submitted with a filing fee, shall be emailed with an attached scan (pdf) or photograph (jpeg) of the filing fee (check or money order) with confidential information blocked or redacted which shall be made payable to the commission to show proof of payment at time of filing. After receipt of the electronically filed document and the attached scan or photograph of the filing fee, the records chief clerk or designee will issue a case no. (if applicable) and will post the document into e-docket. The filing fee must then be promptly physically mailed to NMPRC, attn: records bureau, P.O. Box 1269, Santa Fe, NM 87504-1269 for receipt and deposit. Providing a copy of the document cover page along with the filing fee, will assist the chief clerk or designee with the adequate information to know exactly which document the filing fee belongs to. All application fees or other charges required by law to be submitted with the filing of a document shall be paid to the commission by check or money order at the time of filing a hard copy by regular mail or in-person at the commission offices.

(2) No

pleading or document will be accepted without payment of required fees and submission of the required number of copies by the filing party, unless the commission or presiding officer directs otherwise.

(3) Except as

otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set

by the commission's inspection of public records policy posted on the commission's website.

(4) The fee for copies of papers, testimony, or records on electronic storage media shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(5) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(6) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge in accordance with the commission's inspection of public records policy posted on the commission's website.

D. Waiver of rules:

Upon the commission's or presiding officer's own motion or by motion of the staff or any party showing good cause and such notice as the commission or presiding officer may deem proper, the commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

E. Construction and amendment: These rules, and any rules incorporated by reference, shall be so construed as to secure just and speedy determination of the issues.

F. Docket: The commission shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number. The docket is open to public inspection.

G. Calendar of public hearings: The commission shall maintain a public hearing calendar. The public hearing calendar is open to public inspection.

H. [Address of the commission:] Persons shall submit filings in proceedings related to utilities and telecommunications providers to the records office located at the utility division's address.

Persons shall submit filings in proceedings related to motor carriers, railroads, fire marshal-regulated entities, corporations, and owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems to the records office located at the transportation division's address:

(1) Utility division:

(a)
Street address: Marian Hall, 224 E. Palace Avenue, Santa Fe, New Mexico 87501-2013.

(b)
Mailing address: Public Regulation Commission, Utilities Division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Transportation division:

(a)
Street address: P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, New Mexico, 87504.

(b)
Mailing address: Public Regulation Commission, (indicate appropriate division or bureau), P.O. Box 1269, Santa Fe, NM 87504-1269.]

I.] Office days and hours: The offices of the commission are open from 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., Monday through Friday, legal holidays excepted.

[J] I. Identification of communications: Communications shall contain the name, address, e-mail address, if available, and telephone number of the communicator and an appropriate reference to any commission cases pertaining to the subject of the communication.

[K] J. Current information required: In all cases, persons shall keep the information required by Subsection J of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.

[E] K. Computation of time: The time within which an act is to be done as provided in any rule or order promulgated by the commission or order issued by the presiding officer, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

[M] L. Extensions of time: Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the commission or presiding officer for good cause, upon a motion made before the expiration of the period prescribed or previously extended. The filing of the motion does not toll the running of the time period prescribed.

[N] M. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors.
[1.2.2.8 NMAC - Rp, 17 NMAC 1.2.8, 9-1-08; A/E 10/15/2020]

STATE ETHICS COMMISSION

This is an amendment to 1.8.1 NMAC: amending Sections 1, 3, 7 and renumbered 13, adding new Sections 9, & 14, and renumbering subsequent existing sections after Section 9, effective 10/27/2020.

1.8.1.1 ISSUING

AGENCY: State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. [247] 215, Albuquerque, NM 87106.

[1.8.1.1 NMAC-N, 1/1/2020; A, 10/27/2020]

1.8.1.3 STATUTORY

AUTHORITY: Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978; Section 10-16-13.1, Governmental Conduct

Act, Section 10-16-1 NMSA 1978, Subsection (C) of Section 10-15-1, Open Meetings Act, Section 10-15-1 NMSA 1978. [1.8.1.3 NMAC-N, 1/1/2020; A, 10/27/2020]

1.8.1.7 DEFINITIONS:

A. “Advisory opinions” are opinions written by the commission responding to questions presented by persons authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978 about how laws within the commission’s jurisdiction apply to specific fact situations.

B. “Interagency agreement” means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

C. “Joint powers agreement” as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

D. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC or the State Ethics Commission Act, NMSA 1978, § 10-16G-1 to -16. [1.8.1.7 NMAC-N, 1/1/2020; A, 10/27/2020]

1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS:

A. Advisory opinions. The commission may issue advisory opinions on matters related to ethics upon request.

(1) A request for an advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist’s employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) Upon receiving a request for an advisory opinion, the commission must

provide the requester with a written confirmation of receipt.

(3) Within sixty days of receiving a request for an advisory opinion, the commission must either:

(a) issue an advisory opinion;

(b) inform the requester that the commission will not be issuing an advisory opinion and provide an explanation for the commission’s decision; or

(c) inform the requester that the commission requires more than 60 days to issue an advisory opinion, and notifies the requester about the status of the request every 30 days thereafter.

(4) Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

B. Informal advisory opinions. A person may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request.

(1) A request for an informal advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act or the Governmental Conduct Act, government contractor, lobbyist or lobbyist’s employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) An informal advisory opinion is specific to the person who requests the advice and the facts presented in the request.

(3) An informal advisory opinion is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. The director, based on any informal advisory opinion issued, may draft an advisory opinion

for the commission to consider for issuance as an advisory opinion.

(4) If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to the informal advisory opinion, the commission may consider that the person acted in good faith.

[1.8.1.9 NMAC-N, 10/27/2020]

~~[1.8.1.12]~~ 1.8.1.13 ADDRESS FOR FILING DOCUMENTS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. [2+7] 215, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. [2+7] 215, Albuquerque, NM 87106.

C. By email: ethics.commission@state.nm.us.

[1.8.1.13 NMAC-N, 1/1/2020; Rn & A, 10/27/2020]

1.8.1.14 COMMISSION MEETINGS:

The time, location, and format of commission meetings is determined in accordance with this section.

A. Time, place, and duration. The commission chair, in consultation with the director, shall determine the time, place, format, and duration of commission meetings necessary to conduct the commission’s business.

B. Executive Session. Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

C. Virtual meetings. With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, the meeting should occur on a platform that allows members of

the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating shall be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

D. Attendance by individual commissioners. An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference provided that each commissioner participating by conference telephone can be identified when speaking, and those attending may hear every person who speaks during the meeting.
[1.8.1.14 NMAC-N, 10/27/2020]

End of Adopted Rules

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Other Material Related to Administrative Law

**GOVERNOR,
OFFICE OF THE****EXECUTIVE ORDER 2020-072****THIRD AMENDED ORDER
DIRECTING INDIVIDUALS
TRAVELING TO NEW MEXICO
TO SELF-ISOLATE OR SELF-
QUARANTINE FOR A LIMITED
PERIOD AND DIRECTING THE
NEW MEXICO DEPARTMENT
OF HEALTH TO INITIATE
LAWFUL ISOLATION AND
QUARANTINE PROCEEDINGS
FOR INDIVIDUALS WHO DO
NOT SELF-ISOLATE OR SELF-
QUARANTINE**

WHEREAS, on March 11, 2020, Executive Order 2020-004 declared a statewide public health emergency pursuant to the Public Health Emergency Response Act and invoked gubernatorial powers under the All Hazard Emergency Management Act. See Order Declaring A State of Public Health Emergency and Invoking the Powers Provided by the All Hazard Emergency Management Act and the Emergency Licensing Act, Executive Order 2020-004. That Order is incorporated by reference herein.

WHEREAS, despite the best efforts of our State and local governments and the citizens of New Mexico, COVID-19 has continued to spread and ongoing efforts are still necessary to mitigate and contain the spread of COVID-19.

WHEREAS, many of the current confirmed positive cases of COVID-19 in New Mexico have resulted from interstate and international travel to New Mexico. Because some individuals infected with COVID-19 are asymptomatic or have very mild symptoms, travelers may be unaware they are carrying the virus. For this reason, persons arriving in New Mexico from out of state must self-isolate for a period of time sufficient to ensure that the public health and safety is not jeopardized.

WHEREAS, the All Hazards Emergency Management Act vests my office with the authority to take all actions necessary to protect the public health, safety and welfare and to direct State agencies to provide aid during an emergency response. NMSA 1978, § 12-10-4(B)(3); NMSA 1978, § 12-10-10(A).

WHEREAS, during a declared state of public health emergency, the Public Health Emergency Response Act authorizes the New Mexico Department of Health to isolate or quarantine individuals or groups as necessary to prevent or limit the spread of a threatening communicable disease, subject to certain statutory procedures. See NMSA 1978, §§ 12-10A-7 to -11.

THEREFORE, for the reasons set forth above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby order and direct as follows:

1. The terms “self-isolate” or “self-quarantine” refer to the voluntary physical separation of a person or group of people in a residence or other place of lodging. Any person who is self-isolating or self-quarantining may only leave a residence or place of lodging to receive medical care and should not allow others into the residence or place of lodging except for individuals designated by the New Mexico Department of Health, or individuals providing medical care or emergency response. Family or household members may visit an isolated or quarantined person, but those visitors are directed to then self-isolate or self-quarantine for a period of no less than 14 days. All persons self-isolating or self-quarantining shall be responsible for all costs associated with the isolation or quarantine.

2. I direct all persons who have arrived in New Mexico from a state with a positive test rate higher than 80 per 1,000,000 residents

or a test positivity rate greater than or equal to 5%, over a seven-day rolling average, or from outside the United States to self-isolate or self-quarantine for a period of at least 14 days from the date of their entry into the State of New Mexico or for the duration of their presence in the State, whichever is shorter.

3. All persons entering New Mexico from a state with a positive test rate lower than 80 per 1,000,000 residents, and a test positivity rate lower than 5%, over a seven-day rolling average, are advised to self-isolate or self-quarantine. New Mexico residents are further advised that they should be tested for COVID-19 within 5 to 7 days after their return to New Mexico from one of these states.

4. Any New Mexico state employee who vacations in another state and is required to self-quarantine upon reentering New Mexico will not be eligible for the paid leave provided by the Families First Coronavirus Response Act.

5. This Order’s direction to self-quarantine does not apply to persons employed by airlines, those performing public safety or public health functions, military personnel and their dependents, federal employees, those employed by a federal agency or national defense contractor, emergency first responders, health care workers, New Mexico residents who have left the State to obtain medical care, New Mexico residents who have left the State for less than twenty-four hours for matters attendant to parenting responsibilities, elementary, middle school, or high school students who attend school in neighboring states or who commute into New Mexico to attend school, those arriving in the State pursuant to a Court order, and persons who are employed or contracted by an “essential business,” as defined by the operative public health order addressing mass gathering restrictions and business closures, and who are traveling into New Mexico to conduct business activities.

6. Individuals who do not comply with the self-isolation and self-quarantine directives set forth above shall be subject to involuntary isolation or quarantine by the New Mexico Department of Health under the Public Health Emergency Response Act.

7. The New Mexico Department of Health may issue additional protocols for circumstances involving “essential businesses,” as defined by the Department of Health’s Public Health Orders.

8. The New Mexico Department of Health shall, with the cooperation and assistance of all other executive agencies, to take all necessary steps to ensure the screening and appropriate isolation and quarantine of individuals covered by this Order. This will include making temporary holds of individuals or groups, obtaining court orders requiring isolation or quarantine in compliance with the provisions of the Public Health Emergency Response Act, and imposing any civil or criminal penalties warranted under the Public Health Emergency Response Act and the Public Health Act when individuals do not self-isolate or self-quarantine as required by this Order.

9. I further direct the New Mexico Department of Health to post all information necessary to implement the directives in this order on its website.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Executive Order shall take effect on October 16, 2020 and shall remain in effect through the duration of the public health emergency declared in Executive Order 2020-004 and any extensions of that emergency declaration or until it is rescinded.

DONE AT THE EXECUTIVE OFFICE THIS 16TH DAY OF OCTOBER 2020

**ATTEST:
MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

**MICHELLE LUJAN GRISHAM
GOVERNOR**

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH**

**ACTING SECRETARY BILLY J.
JIMENEZ**

OCTOBER 16, 2020

Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders Limiting Businesses and Non-Profit Entities’ Operations and Providing Additional Restrictions on Mass Gatherings Due to COVID-19

PREFACE

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). Continued social distancing and self isolation measures are necessary to protect public health given the potentially devastating effects that could result from a rapid increase in COVID-19 cases in New Mexico. While this Order continues some loosened restrictions on mass gatherings and business operations, the core directive underlying all prior public health initiatives remains intact; all New Mexicans should be staying in their homes for all but the most essential activities and services. When New

Mexicans are not in their homes, they must strictly adhere to social distancing protocols and wear face coverings to minimize risks. These sacrifices are the best contribution that each of us can individually make to protect the health and wellbeing of our fellow citizens and the State as a whole. In accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans to stay in their homes for all but the most essential activities.

It is hereby **ORDERED** that:

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. March 13, 2020 Public Health Emergency Order to Temporarily Limit Nursing Home Visitation Due to COVID-19;

B. April 30, 2020 Public Health Emergency Order Modifying Temporary Restrictions on Non-Essential Health Care Services, Procedures, and Surgeries; and

C. March 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19.

3. The September 3, 2020 Public Health Emergency Order Amending prior Public Health Emergency Orders Closing All Businesses and Non-Profit Entities Except for those Deemed Essential and Providing Additional Restrictions on Mass Gatherings Due to COVID-19 is hereby amended as follows:

ORDER

WHEREAS, on March 11, 2020, because of the spread

of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

WHEREAS, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through November 13, 2020;

WHEREAS, COVID-19 continues to spread in New Mexico and nationally. Since, Executive Order 2020-004 was issued, confirmed COVID-19 infections in New Mexico have risen to over 34,000 and confirmed cases in the United States have risen to more than 7.8 million, with significant recent spikes in cases in some of our neighboring states;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

WHEREAS, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

WHEREAS, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1

to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Billy J. Jimenez, Acting Cabinet Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance as defined in the New Mexico Public Health Act, NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

The following definitions are adopted for the purposes of this Order:

Definitions: As used in this Public Health Order, the following terms shall have the meaning given to them, except where the context clearly requires otherwise:

(1) “Essential business” means any business or non-profit entity falling within one or more of the following categories:

a. Health care operations including hospitals, walk-in-care health facilities, pharmacies, medical wholesale and distribution, home health care workers or aides for the elderly, emergency dental facilities, nursing homes, residential health care facilities, research

facilities, congregate care facilities, intermediate care facilities for those with intellectual or developmental disabilities, supportive living homes, home health care providers, drug and alcohol recovery support services, and medical supplies and equipment manufacturers and providers;

b. Homeless shelters, food banks, and other services providing care to indigent or needy populations;

c. Childcare facilities;

d. Grocery stores, supermarkets, food banks, farmers’ markets and vendors who sell food, convenience stores, and other businesses that generate the majority of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, feed, and other animal supply stores, fresh meats, fish, and poultry, and any other household consumer products;

e. Farms, ranches, and other food cultivation, processing, or packaging operations;

f. Infrastructure operations including, but not limited to, public works construction, commercial and residential construction and maintenance, airport operations, public transportation, airlines, taxis, private transportation providers, transportation network companies, water, gas, electrical, oil drilling, oil refining, natural resources extraction or mining operations, nuclear material research and enrichment, those attendant to the repair and construction of roads and highways, gas stations, solid waste collection and removal, trash and recycling collection, processing and disposal, sewer, data and internet providers, data centers, technology support operations, and telecommunications systems;

g. Manufacturing operations involved in food processing, manufacturing agents, chemicals, fertilizer, pharmaceuticals, sanitary products, household paper products,

microelectronics/semi-conductor, primary metals manufacturers, electrical equipment, appliance, and component manufacturers, and transportation equipment manufacturers;

h. Services necessary to maintain the safety and sanitation of residences or essential businesses including security services, towing services, custodial services, plumbers, electricians, and other skilled trades;

i. Veterinary and livestock services, animal shelters and facilities providing pet adoption, grooming, daycare, or boarding services;

j. Media services;

k. Automobile repair facilities, bike repair facilities, and retailers who generate the majority of their revenue from the sale of automobile or bike repair products;

l. Utilities, including their contractors, suppliers, and supportive operations, engaged in power generation, fuel supply and transmission, water and wastewater supply;

m. Hardware stores;

n. Laundromats and dry cleaner services;

o. Funeral homes, crematoriums and cemeteries;

p. Banks, credit unions, insurance providers, payroll services, brokerage services, and investment management firms;

q. Businesses providing mailing and shipping services;

r. Laboratories and defense and national security-related operations supporting the United States government, a contractor to the United States government, or any federal entity;

s. Professional services, such as legal or accounting services, but only where necessary to assist in

compliance with legally mandated activities; and

t. Logistics, and also businesses that store, transport, or deliver groceries, food, materials, goods or services directly to residences, retailers, government institutions, or essential businesses.

(2) "Close-contact business" includes barbershops, hair salons, gyms, group fitness classes, tattoo parlors, nail salons, spas, massage parlors, esthetician clinics, tanning salons, guided raft tours, guided balloon tours, bowling alleys, ice skating rinks, and personal training services.

(3) "Food and drink establishments" include restaurants, breweries, wineries, distillers, cafes, coffee shops, or other similar establishments that offer food or drink. For purposes of this section, "breweries" are those businesses licensed pursuant to NMSA 1978, § 60-6A-26.1 (2019); "distillers" are those businesses licensed pursuant to NMSA 1978, § 60-6A-1 (2019); and "wineries" are those businesses licensed pursuant to NMSA 1978, § 60-A-11 (2019).

(4) "Houses of worship" means any church, synagogue, mosque, or other gathering space where persons congregate to exercise their religious beliefs.

(5) "Close-contact recreational facilities" include indoor movie theaters, indoor museums with interactive displays or exhibits and other similar venues, miniature golf, arcades, amusement parks, aquariums, casinos, concert venues, professional sports venues, event venues, bars, dance clubs, performance venues, go-kart courses, automobile racetracks, adult entertainment venues, and other places of recreation or entertainment. For purposes of this section, a "bar" is defined as any business that generated more than half of its revenue from the sale of alcohol during the preceding fiscal year.

(6) "Outdoor recreational facilities" include

outdoor golf courses, public swimming pools, outdoor tennis courts, youth programs, youth livestock shows, u-pick produce operations and corn mazes, horseracing tracks, botanical gardens, outdoor zoos, and New Mexico state parks.

(7) "Places of lodging" means all hotels, motels, RV parks, and short-term vacation rentals.

(8) "Retail space" means any business that sells goods or services directly to consumers or end-users and includes the following "essential businesses" identified in the categories above: l(d), (l)k, (l)m, and (l)n.

(9) "Mass gathering" means any public gathering, private gathering, organized event, ceremony, parade, organized amateur contact sport, or other grouping that brings together more than five (5) individuals in a single room or connected space, confined outdoor space or an open outdoor space. "Mass gathering" does not include the presence more than five (5) individuals where those individuals regularly reside. "Mass gathering" does not include individuals who are public officials or public employees in the course and scope of their employment.

(10) "COVID-Safe Practices" ("CSPs") are those directives, guidelines, and recommendations for businesses and other public operations that are set out and memorialized in the document titled "All Together New Mexico: COVID-Safe Practices for Individuals and Employers". That document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

I HEREBY DIRECT AS FOLLOWS:

(1) Except as provided elsewhere in this Order, all "mass gatherings" are hereby prohibited under the powers and authority set forth in the Public Health Act. An indoor or outdoor parade of any sort is a mass gathering; parades are therefore prohibited under this Order.

(2) “Essential businesses” may open but must comply with the pertinent “COVID- Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and any identified occupancy restrictions. “Essential businesses” identified as a “retail space” may not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Further, an “essential business” identified as a “retail space” may not allow a person who is without a mask or multilayer cloth face covering to enter the premises except where that person is in possession of a written exemption from a healthcare provider.

(3) “Close contact businesses” may operate at up to 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department. Bowling alleys may open for league play only and must adhere to occupancy restrictions and all applicable CSP’s including wearing masks. Ice skating rinks may operate for athletic training and practice by reservation only.

(4) “Close-contact recreational facilities” must remain closed.

(5) “Food and drink establishments” may provide dine-in service, but they may not exceed more than 25% occupancy of the maximum occupancy in any enclosed space on the premises, as determined by the relevant fire marshal or fire department. “Food and drink establishments” choosing to provide indoor dining must ensure that there is at least six feet of distance between tables. No more than six patrons may be seated at any single table. No bar or counter seating is permitted. Dine-in services shall be provided only to patrons who are seated at table, and patrons may not consume food or beverage while standing. “Food and drink establishments”

may also provide dine-in service in outdoor seating areas up to 75% occupancy, where applicable. Tables in outdoor seating areas must be spaced at least six feet apart. No more than six patrons may be seated at any single table. Patrons must be seated in order to be served food or drink unless ordering food for carryout. No bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law. Any food and drink establishment that is permitted to serve alcohol must close by 10:00 p.m.

(6) “Houses of worship” may hold services and other functions, indoors or outdoors, or provide services through audiovisual means. “Houses of worship” may not exceed 40% of the maximum occupancy of any enclosed building, as determined by the relevant fire marshal or fire department.

(7) “Outdoor recreational facilities” may operate provided they comply with the pertinent “All Together New Mexico: COVID-Safe Practices for Individuals and Businesses.” Further, state parks shall only be open to New Mexico residents. Visitor centers and any other large enclosed indoor spaces at state parks shall remain closed. As a condition of entering a state park, all visitors must demonstrate proof of residency through one of the following means: a New Mexico license plate on their vehicle; a New Mexico driver’s license or ID card; a valid New Mexico vehicle registration; a federal document attesting to residency; or a military identification. The State Parks Division is directed to extend the use of annual camping passes that were purchased after March 2019 for a period determined by the State Parks Division related to the original expiration date due to the closure of State Parks to camping. In addition, public swimming pools are limited to the concurrent use of not more than ten (10) persons. Play

and splash areas shall be closed. Horseracing tracks may not allow spectators.

(8) “Places of lodging” which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 60% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Healthcare providers who are engaged in the provision of care to New Mexico residents or individuals utilizing “places of lodging” for extended stays, as temporary housing, or for purposes of quarantining shall not be counted for purposes of determining maximum occupancy.

(9) Any business that is not identified as an “essential business”, “close contact business”, “food and drink establishment”, “house of worship”, “close-contact recreational facility”, “outdoor recreational facility”, or “place of lodging” may open provided that the total number of persons situated within the business does not exceed 25% of the maximum occupancy of any enclosed space on the business’s premises, as determined by the relevant fire marshal or fire department.

(10) Any entity, including businesses and houses of worship, operating pursuant to this public health order must comply with the pertinent “COVID-Safe Practices (CSPs)” section(s) of the “All Together New Mexico: COVID-Safe Practices for Individuals and Employers” and also any identified occupancy restrictions.

(11) Private educational institutions serving children and young adults from pre Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction described in the document “Reentry Guidance” published by New Mexico’s Public Education Department on June 20,

2020 and as updated from time to time thereafter, and shall operate with a maximum occupancy of 25% of any individual enclosed indoor space, such as any classroom, as determined by the relevant fire marshal or fire department, with the occupancy restriction herein to govern in the event of any discrepancy with the "Reentry Guidance."

(12) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when eating or drinking. Masks with vents shall not satisfy this requirement.

(13) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the Department of the Environment, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(14) In order to minimize the shortage of health care supplies and other necessary goods, grocery stores and other retailers are hereby directed to limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual. NMSA 1978, § 12-10A-6 (2012).

I FURTHER DIRECT as follows:

(1) This Public Health Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Public Health Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the New Mexico Public Health Act.

(3) Nothing in this Public Health Order is intended to restrain or preempt local authorities from enacting more stringent

restrictions than those required by the Order.

(4) This Public Health Order shall take effect on October 16, 2020 and remain in effect through November 13, 2020.

I FURTHER ADVISE the public to take the following preventive precautions:

-- **New Mexico citizens should stay at home and undertake only those outings absolutely necessary for their health, safety, or welfare.**

-- Retailers should take appropriate action consistent with this order to reduce hoarding and ensure that all New Mexicans can purchase necessary goods.

-- Avoid crowds.

-- Avoid all non-essential travel including plane trips and cruise ships.

DONE AT THE EXECUTIVE OFFICE THIS 16TH DAY OF OCTOBER 2020

ATTEST:

**/S/ MAGGIE TOULOUSE OLIVER
SECRETARY OF STATE**

WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO

**/S/ BILLY J. JIMENEZ, ACTING
CABINET SECRETARY OF
THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH**

**HEALTH,
DEPARTMENT OF**

**NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Department of Health gives Notice of a Minor, Non-substantive Correction to 7.1.30 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, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule:

In Section 5, the correct effective date for the rule: September 15, 2020 replaced the incorrect (and previous date for the emergency rule) date of March 20, 2020.

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

PUBLIC REGULATION COMMISSION

NOTICE OF ISSUANCE OF EMERGENCY RULES CASE NO. 20-00190-PRC

In the matter of the adoption of an immediate emergency rule amending rules of procedure 1.2.2 NMAC to provide for electronic filing.

SPECIFIC AUTHORITY:

Pursuant to Subsection C of Section 8-8-15 NMSA 1978, Section 14-4-5.6 NMSA 1978 and Section 62-6-4 NMSA 1978. These amendments shall be temporary in nature and the amended rules will revert to their previous versions by effect of law 180 days after the emergency rule amendments are filed.

CONCISE EXPLANATORY STATEMENT:

The emergency rule amends Subsections J, K and L of 1.2.2.7.J., K., and L. NMAC as follows:

- 1)** amend the definition of the term **file, filed, or filing** to address filing by electronic mail, regular postal service mail of hard copies, and by in-person delivery; and
- 2)** amend the definition of **date and time of filing** to address filing by electronic mail, regular postal service

mail of hard copies, and by in-person delivery; and

3) amend the definition of **electronic signature** address filing by electronic mail and to address unsworn affirmations in lieu of notarized verifications for filings through electronic mail.

The emergency rule amends Section 1.2.2.8.C NMAC, as follows:

1) amend the rules for submission of filing fees to address filing by electronic mail, regular postal service mail of hard copies, and by in-person delivery.

**DESCRIPTION OF EMERGENCY
RULE AMENDMENTS:**

The emergency amendments to establish procedures for electronic filing due to the closure of the NMPRC's offices at the PERA building due to the Governor's Executive Orders and due to the eviction from its office space by the General Services Department, Facilities Management Division, effective October 1, 2020.

**End of Other Material
Related to Administrative
Law**

2020 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXI, Issues 1-24

| Issue | Submittal Deadline | Publication Date |
|-----------------|---------------------------|-------------------------|
| Issue 1 | January 6 | 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 10 |
| Issue 6 | March 12 | March 24 |
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| Issue 8 | April 9 | April 21 |
| Issue 9 | April 23 | May 5 |
| Issue 10 | May 7 | May 19 |
| Issue 11 | May 28 | June 9 |
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| Issue 13 | July 6 | July 14 |
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| Issue 15 | July 30 | August 11 |
| Issue 16 | August 13 | August 25 |
| Issue 17 | August 27 | September 15 |
| Issue 18 | September 17 | September 29 |
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| Issue 21 | October 29 | November 10 |
| Issue 22 | November 13 | November 24 |
| Issue 23 | December 3 | December 15 |
| Issue 24 | December 17 | December 29 |

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The New Mexico Register is available free online at: <http://www.srca.nm.gov/new-mexico-register/>. For further information, call 505-476-7941.

2021 New Mexico Register

Submittal Deadlines and Publication Dates

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| Issue 3 | January 28 | February 9 |
| Issue 4 | February 11 | February 23 |
| Issue 5 | February 25 | March 9 |
| Issue 6 | March 11 | March 23 |
| Issue 7 | March 25 | April 6 |
| Issue 8 | April 8 | April 20 |
| Issue 9 | April 22 | May 4 |
| Issue 10 | May 6 | May 25 |
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| Issue 12 | June 10 | June 22 |
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| Issue 21 | October 28 | November 9 |
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