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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

ENVIRONMENT DEPARTMENT

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 20.6.4.9 NMAC – STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS –DESIGNATION OF WATERS OF THE UPPER PECOS WATERSHED AS OUTSTANDING NATIONAL RESOURCE WATERS, WQCC 20-18 (R)

The New Mexico Water Quality Control Commission (“Commission”) will hold a public hearing on Tuesday, April 13, 2021, and continuing on subsequent days, as necessary, via the WebEx video conferencing platform. The purpose of the hearing is to consider amendments to the Standards for Interstate and Intrastate Surface Waters, 20.6.4.9 NMAC, Designation of the Waters of the Upper Pecos Watershed as Outstanding National Resource Waters. The Commission will begin its regular monthly meeting at 9:00 am, and the public hearing will begin at the conclusion of its regular business. Information for attending the virtual hearing via the WebEx conferencing platform will be available on the Commission website, <https://www.env.nm.gov/water-quality-control-commission/wqcc-meetings/>, at least 10 days prior to the hearing and as follows:

Meeting link:

<https://nmed-oit.webex.com/nmed-oit/j.php?MTID=m4b5e27f7fecb5ab1134aa579721dcf71>

Meeting Number: 177 379
7046

Meeting password:
3W3jmQWUwZ2

To join by phone: 1-415-655-
0001 US Toll

Mobile phone: 1-415-655-
0001 1773797046## US Toll

The proposed amendments to 20.6.4.9 NMAC, as petitioned by San Miguel County, the Village of Pecos, the New Mexico Acequia Association, Molino de la Isla Organics, LLC, and the Upper Pecos Watershed Association (collectively, “Petitioners”), and docketed as WQCC 20-18 (R), propose designation of the waters of the Upper Pecos Watershed in San Miguel County as Outstanding National Resource Waters (“ONRWs”).

The petition and proposed amendments are available on the Commission’s website, at <https://www.env.nm.gov/water-quality-control-commission/20-18-r/>.

The petition may also be obtained electronically by contacting Pamela Jones, Commission Administrator, 1190 S. St. Francis Drive, Santa Fe, New Mexico 87502, (505) 660-4305 or Pamela.Jones@state.nm.us.

The hearing will be conducted in accordance with the New Mexico Water Quality Act, NMSA 1978, § 74-6-6; the Rulemaking Procedures for the Water Quality Control Commission, 20.1.6 NMAC; and the *Procedural Order & Hearing Guidelines* issued on November 20, 2020. A copy of the *Procedural Order & Hearing Guidelines* is available on the Commission’s website or may be obtained from the Commission Administrator at the address and phone number above. All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce relevant exhibits and to examine witnesses testifying at the public hearing.

Persons desiring to present technical testimony at the hearing must file with the Commission a written notice of intent. The notice of intent to present technical testimony shall:

- * Identify the person or entity for whom the witness(es) will testify;
- * Identify each technical witness the person intends to present,

and state the qualifications of that witness, including a description of their educational and work background;

* Attach the full direct testimony of each technical witness, which shall include an express basis for all expert opinions offered, and shall clearly delineate which of the ONRW petition elements, 20.6.4.9.A(1)–(6) NMAC, or criteria, 20.6.4.9.B(1)–(3) NMAC, is addressed;

* Include the text of any recommended modifications to the proposed regulatory change; and

* Identify and attach all exhibits to be offered by the person at the hearing.

The deadline for filing notices of intent is 5:00 p.m. on Wednesday, March 10, 2021, to the Commission Administrator. Any member of the general public may present non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing.

In order to present technical testimony rebutting the testimony of another party at the hearing, a person must file a notice of intent to present rebuttal testimony no later than 5:00 p.m. on Wednesday, March 24, 2021. The notice shall comply with the requirements set out above. In addition, if a party takes a position on proposed changes of other parties, the notice shall include the basis for that support or opposition.

All documents filed in this matter, including notices of intent, must be filed electronically via email to the Commission Administrator, at Pamela.Jones@state.nm.us

Those wishing to do so may offer non-technical public comment at the hearing or submit a non-technical written statement in lieu of oral testimony at or before the hearing. Written comments regarding the proposed amendment may be addressed to Pamela Jones, WQCC

Administrator, at the above address, and should reference docket number **WQCC 20-18 (R)**. Pursuant to 20.1.6.203 NMAC, any person may file an entry of appearance as a party. The entry of appearance shall be filed with the WQCC Administrator, at the above address, no later than March 24, 2021, 20 days before the date of the hearing.”

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Commission may convene a meeting after the hearing to consider action on the proposal.

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Pamela Jones, Commission Administrator, at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone (505) 660-4305 or email Pamela.jones@state.nm.us. (TDD or TTY) users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

NMED does not discriminate on the basis of race, color, national origin, disability, age or sex in the administration of its programs or activities, as required by applicable laws and regulations. NMED is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7, including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. If you have any questions about this notice or any of NMED’s non-discrimination programs, policies or procedures, you may contact: Non-Discrimination Coordinator, New Mexico Environment Department,

1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@state.nm.us. If you believe that you have been discriminated against with respect to a NMED program or activity, you may contact the Non-Discrimination Coordinator identified above.

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING CASE NO. 20-00175-UT

In the matter of potential amendments to NMPRC rule 17.9.570 NMAC, entitled governing cogeneration and small power production.

The New Mexico Public Regulation Commission (the “commission”) gives notice of its initiation of a proposed rulemaking to amend or repeal and replace **17.9.570 NMAC**. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rule: The proposed amendments to Sections 6, 9 and 11 of 17.9.570 NMAC, are proposed to be adopted for the purpose of to comply with FERC Order 872-A which effective December 30, 2020, revised the federal regulations implementing Public Utility Regulatory Policies Act of 1978 (“PURPA”) to add criteria for the establishment of a legally enforceable obligation and clarifying avoided costs.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Section 2; the New Mexico Public Utility Act, Sections 62-3-1 et seq., NMSA 1978; and the Public Regulation Commission Act, Section

8-8-1 through 8-8-21 NMSA 1978, Paragraph (10) of Subsection B of Section 8-8-4 NMSA 1978.

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission’s website at <http://www.nmprc.state.nm.us> under Case No. 20-00175-UT or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Currently, due to the COVID-19 pandemic and orders of the governor pertaining thereto, in-person filing of comments is not allowed. Comments can be filed in accordance with the commission’s emergency rule on electronic filing by emailing comments in PDF format to PRC.Records@state.nm.us or can be filed by mailing to the commission’s records bureau at P.O. Box 1269, Santa Fe, NM 87504-1269. For more information on how to file, please contact Melanie Sandoval, the commission’s records bureau chief at melanie.sandoval@state.nm.us or (505) 827-6968. Written initial comments shall be filed no later than **May 10, 2021**. Written response comments shall be filed no later than **May 24, 2021**. Comments shall refer to Case No. 20-00175-UT. All written comments will be posted on the commission’s website within three days of their receipt by the records bureau.

A public hearing will be held on **June 28, 2021** at 2:00 p.m. which shall be accomplished through zoom or another digital platform, see the NMPRC home webpage <http://www.nmprc.state.nm.us> for instructions to connect. The purpose of the hearing is to receive oral comments. Any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission’s discretion. The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group

of individuals that shares the same message or seeks the same goals, in order to maximize the efficiency of the public comment hearing. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

The record of this case will close on June 30, 2021.

Interested persons should contact the Commission to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. If you are an individual with a disability and you require assistance or an auxiliary aid (such as a sign language interpreter) to participate in any aspect of this process, please contact Jim Williamson at (505) 467-9116 at least 48 hours prior to the commencement of the hearing.

RACING COMMISSION

NOTICE OF PUBLIC MEETING AND RULE HEARING

The New Mexico Racing Commission (Commission) will hold a Public Meeting and Rule Hearing on March 18, 2021. The Rule hearing will be held during the Commission's regular business meeting with the public session beginning at 9:00 a.m. The Rule Hearing and Commission meeting will be held virtually via Zoom.

Join Zoom Meeting

<https://us02web.zoom.us/j/81906894928?pwd=SGZGdGtuT01SNDV3dkNI SHU1RGNVQT09>

Meeting ID: 819 0689 4928

Passcode: 9sEQ9i

Dial by your location

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington D.C)

+1 312 626 6799 US (Chicago)

Meeting ID: 819 0689 4928

Passcode: 826049

Find your local number: <https://us02web.zoom.us/j/81906894928>

The Commission is proposing the following amendments listed below to the Rules Governing Horse Racing in New Mexico to clarify the rule regarding summary suspension and to update the most current version of the ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule, modifying multiple-medication violation penalties, correcting typographical error, modifying penalties of Category C violations, removing Naproxen as a permissible medication and updating the rule regarding non-steroidal anti-inflammatory drugs (NSAIDs).

15.2.2 NMAC - Associations

15.2.4 NMAC - Claiming Races

15.2.5 NMAC - Horse Race – Rules of the Race

15.2.6 NMAC - Medications and Prohibited Substances

16.47.1 NMAC - Authorized Agents

A copy of the proposed rules may be found on the Commission's website at <http://nmrc.state.nm.us/rules-regulations.aspx>. You may also contact Denise Chavez at (505) 249-2184 to request to receive a copy of the proposed rules by regular mail.

Interested persons may submit their written comments on the proposed rules to the Commission at the address below and/or may appear at the scheduled meeting and provide brief, verbal comments. All written comments must be received by the Commission by 12:00 PM on March 17, 2021. Written comments should be submitted to: Denise Chavez, Paralegal, via email at DeniseM.Chavez@state.nm.us.

The **final** agenda for the Commission meeting will be available one hundred twenty (120) hours prior to the meeting. A copy of the **final** agenda may be obtained from Denise Chavez or from the Commission's website.

No technical information served as the basis for the proposed rule.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

Statutory Authority: Legal authority for this rulemaking can be found in the New Mexico Horse Racing Act, Sections 60-1A-1 through 60-1A-30 NMSA 1978 (2007, as amended through 2017), which, among other provisions, specifically authorizes the Commission to promulgate rules and regulations and carry out the duties of the Act to regulate horse racing in the State.

The Commission proposes the following rule amendments:

15.2.6.9 NMAC: To include Association of Racing Commissioners International's Model Rules of Racing December, 2020 version 14.4 and the Association of Racing Commissioners International's Controlled Therapeutic Medication Schedule for Horses, December, 2020, version 4.2.

Subsection B of 15.2.6.9 NMAC:

The purpose of the proposed amendment is to clarify and make the penalties for "Major" medication violations consistent with the Association of Racing Commissioners International's Model Rules guidelines.

Subsection O of 15.2.6.9 NMAC:

The purpose of the proposed amendment is to make point assigned for medication violations of Class A controlled therapeutic substances consistent with points assigned to non-controlled substances mandated by the Multiple Medication Violation Rule. Fixing a typographical error in subparagraph 8.

Subsection B of 15.2.2.8 NMAC:

The purpose of the proposed addition is to insure that the funds for the payments of the 10% Track Breeder's Award on New Mexico Bred winners, will be sent via wire transfer to the

designated bank account within 5 business days after the request.

Subsections A & B of 16.47.1.11

NMAC: The purpose of the proposed amendments is to clarify requirements for appointing authorized agents. Fixing typographical errors in subparagraph B.

Subsection A of 15.2.4.8 NMAC:

The purpose of the proposed amendments is to clarify a claim, should the newly claimed horse have a medication violation or the claimed horse is euthanized at the test barn or on the racetrack.

Subsection A of 15.2.5.11 NMAC:

The purpose of the proposed amendments is to clarify the requirements of the workout rule.

Subsection D of 15.2.5.14 NMAC:

The purpose of the proposed amendments is to discourage frivolous claims being filed by increasing the fee to \$1,000.00.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of Insurance (“Superintendent”), pursuant to the New Mexico Insurance Code, Sections 59A-1-1 et seq. NMSA 1978 (“Insurance Code”) and 13.1.4 NMAC, proposes to adopt a new rule, 13.10.35 NMAC, MINIMUM STANDARDS FOR LIMITED SCOPE DENTAL AND VISION PLANS.

PURPOSE OF THE PROPOSED NEW RULE IS:

Establish minimum regulatory standards and sales practices relating to dental and vision plans; standardize and simplify the terms and coverages; facilitate public understanding and comparison of coverage; eliminate provisions that may be misleading or confusing in connection with the purchase and

renewal of the coverages or with the settlement of claims; and require disclosures in the marketing and sale of the subject plans.

STATUTORY AUTHORITY:

Sections 59A-2-9 and 59A-23G-1 et seq. NMSA 1978.

Copies of the Notice of Proposed Rulemaking and proposed rule are available by electronic download from the OSI website (<https://www.osi.state.nm.us/index.php/idms/>) or the New Mexico Sunshine Portal.

OSI will hold a public video/ telephonic hearing on the proposed rule on March 11, 2021 at 9:00 a.m.

Join via Video: <https://us02web.zoom.us/j/2916274744>

Join via telephone: 1-346-248-7799
Meeting ID: 291 627 4744

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the video/telephonic hearing from members of the public and any interested parties.

Written comments and proposals will be accepted through 4:00 pm on March 11, 2021. Responses to written comments or oral comments will be accepted through 4:00 pm on March 22, 2021. Comments may be submitted via email to OSI-docketfiling@state.nm.us or may be filed by sending original copies to:

OSI Records and Docketing, NM
Office of Superintendent of Insurance
1120 Paseo de Peralta, P.O. Box 1689,
Santa Fe, NM 87504-1689

Docket No.: 20-00060-RULE-LH
IN THE MATTER OF ADOPTION
OF DENTAL AND VISION PLAN
RULES PURSUANT TO CHAPTER
59A, ARTICLE 23G NMSA 1978

Only signed statements, proposals, or comments will be accepted. Scanned or electronic signatures conforming to federal and state court

requirements will be accepted with the understanding that if there is any dispute regarding a signature, OSI reserves the right to require that original signatures be provided to verify the electronic signature. All filings must be received between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. Any filings after 4:00 will be filed to the docket the next business day.

SPECIAL NEEDS: Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other auxiliary aid or service to attend or participate in the hearing should contact Melissa Gutierrez at 505-476-0333 ten (10) business days prior to the hearing.

The Superintendent will consider all oral comments, and will review all timely submitted written comments and responses.

ISSUED this 9th day of February 2021
/S/RUSSELL TOAL

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.

GAME AND FISH DEPARTMENT

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 34 WILDLIFE HABITAT AND LANDS PART 6 PUBLIC LAND USER STAMP (SIKES ACT)

19.34.6.1 ISSUING
AGENCY: New Mexico department of game and fish.
[19.34.6.1 NMAC - Rp 19.34.6.1 NMAC, 4/1/2021]

19.34.6.2 SCOPE: The department of game and fish and all persons who hunt, fish or trap on land administered by the U.S. forest service or the U.S. bureau of land management in the state.
[19.34.6.2 NMAC - Rp 19.34.6.2 NMAC, 4/1/2021]

19.34.6.3 STATUTORY AUTHORITY: 17-1-14 and 17-1-26 NMSA 1978 provide the state game commission the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected species. Public Law 93-452 (Sikes Act) permits the state, secretary of agriculture and secretary of interior to enter into agreements for the issuance of public land management stamps.
[19.34.6.3 NMAC - Rp 19.34.6.3 NMAC, 4/1/2021]

19.34.6.4 DURATION:
March 31, 2031.
[19.34.6.4 NMAC - Rp 19.34.6.4 NMAC, 4/1/2021]

19.34.6.5 EFFECTIVE DATE: April 1, 2021.
[19.34.6.5 NMAC - Rp 19.34.6.5 NMAC, 4/1/2021]

19.34.6.6 OBJECTIVE: To provide for a public land management stamp for hunting, fishing or trapping on certain public lands in New Mexico, requires purchase of stamp, creates a citizen advisory committee, and provides for expenditure of funds from stamp revenues.
[19.34.6.6 NMAC - Rp 19.34.6.6 NMAC, 4/1/2021]

19.34.6.7 DEFINITIONS:
A. "Public land"
means those lands which surface areas are under the management authority of the United States forest service or the United States bureau of land management, except those lands under the management authority of the United States bureau of land management in game management unit 28.

B. "Public land management stamp" or "habitat stamp" means a stamp or validation that is affixed to or printed on a hunting, trapping, or fishing license to demonstrate compliance with this regulation.
[19.34.6.7 NMAC - Rp 19.34.6.7 NMAC, 4/1/2021]

19.34.6.8 PURCHASE:
A. Each person hunting on any public land, must purchase a public land management stamp.
B. Resident trappers twelve years of age and older trapping for protected furbearers, and non-resident trappers trapping on any public land, must purchase a public land management stamp.
C. Anglers twelve years of age and older, except resident anglers 70 years of age and older, fishing on any public land, must purchase a public land management stamp.
D. Only one public land management stamp is required

for each individual to hunt, trap, or fish on public land during any license year.

E. Purchase price for each public land management stamp shall be ten dollars (\$10.00). Starting in 2022 the purchase price will be adjusted annually based on the consumer price index from the United States department of labor, bureau of labor statistics, and may be rounded. The state game commission may defer annual adjustments; deferral of annual adjustments may not exceed five consecutive years.
[19.34.6.8 NMAC - Rp 19.34.6.8 NMAC, 4/1/2021]

19.34.6.9 EXPENDITURE OF FUNDS COLLECTED:
A. The expenditure of funds collected under this regulation shall be consistent with the most current management plans developed by the United States forest service, the United States bureau of land management and the New Mexico department of game and fish.

B. A minimum of fifty percent of the funds over a five-year period will be spent on projects that benefit fish, excluding administrative fees.
[19.34.6.9 NMAC - Rp 19.34.6.11 NMAC, 4/1/2021]

19.34.6.10 CITIZEN ADVISORY COMMITTEE: A citizen advisory committee shall be created. The committee will be comprised of nine members, seven of which shall follow the district and representation requirements as defined in 17-1-2 NMSA 1978. All members shall be selected and appointed by the state game commission from a list of applicants provided by the department. The committee will provide citizen advice to the agencies and will prioritize eligible projects.

[19.34.6.10 NMAC - Rp 19.34.6.12 NMAC, 4/1/2021]

HISTORY OF 19.34.6 NMAC:

Pre-NMAC History:

Regulation No. 648, Regulation Establishing a User Stamp Requirement on Public Lands Contained Within the Game Management Units 29, 30, 34, 36 and 37, 1/5/1987.

Order No. 8-86, 4/10/1987.

Order No. 4-88, 6/28/1988.

Order No. 3-90, 9/4/1991.

Regulation No. 676, Regulation Establishing a User Stamp Requirement on Public Lands Within the State of New Mexico, 1/12/1990.

NMAC History:

19 NMAC 34.1, Public Land User Stamp (Sikes Act), 1/18/1996.

19 NMAC 34.1, Public Land User Stamp (Sikes Act), filed – 12/17/2001 duration expired 3/31/2021.

GAME AND FISH DEPARTMENT

This as an amendment to 19.35.7 NMAC, Sections 2, 7, 8, 14, 15 and 19, effective 2/9/2021.

19.35.7.2 SCOPE: Persons who desire to bring wildlife species into the state of New Mexico. It may include the general public, pet importers, holders of Class “A” park licenses, department [permittees] permittees and others.

[19.35.7.2 NMAC - Rp, 19.35.7.2 NMAC, 1/31/2014; A, 2/9/2021]

19.35.7.7 DEFINITIONS:

A. “Accredited laboratory” A lab recognized for CWD testing by the New Mexico department of game and fish.

B. “Animal health emergency” A situation in which people or animals are at risk of exposure to infectious or contagious diseases as determined by the director.

C. “APHIS” Animal and plant health inspection service, United States department of agriculture.

D. “Applicant”

Any person or entity that causes or submits a department application for importation.

~~[E.] “Carnivore”~~ Any animal within the order carnivora.]

~~[F.] E.~~ **“Certificate of compliance”** An official department document declaring an applicant’s ability to resume importation application eligibility.

~~[G.] E.~~ **“Certified Herd”** A herd that has attained certified status as defined in the current USDA chronic wasting disease program standards.

~~[H.] G.~~ **“Closed herd sales”** Sales of animals from a herd directly to the buyer in a manner that allows the buyer to transport the animals from the producer’s premises directly to the buyer’s premises without contact with animals from another herd, and without contact with other pens or transport facilities used by any other herd.

~~[I.] H.~~ **“Chronic Wasting Disease”** or **“CWD”** is a transmissible spongiform encephalopathy of cervids.

~~[J.] I.~~ **“CWD-Exposed Animal”** is an animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 60 months.

~~[K.] J.~~ **“CWD-Exposed herd”** is a herd in which a CWD-positive animal resided within 60 months prior to that animal’s diagnosis as CWD-positive.

~~[L.] K.~~ **“CWD-Positive herd”** is a herd in which a CWD-positive animal resided at the time it was diagnosed and which has not been released from quarantine.

~~[M.] L.~~ **“CWD-Suspect animal”** is an animal for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been inconclusive or not yet conducted.

~~[N.] M.~~ **“CWD-Suspect herd”** is a herd for which laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which laboratory results have been

inconclusive or not yet conducted.

~~[O.] N.~~ **“CWD-Trace-Back herd”** is an exposed herd in which a CWD-positive animal has resided during the 60 months prior to the diagnosis.

~~[P.] O.~~ **“CWD-Trace-Forward herd”** is a CWD-exposed herd that has received CWD-exposed animals from a CWD-positive herd during the 60 months prior to the diagnosis of CWD in the CWD-positive herd.

~~[Q.] P.~~ **“Dangerous animal”** An animal that due to its nature, biology or its behavior, including predatory or venomous animals, that may present a risk to the health, safety or well-being of the public or other animals including native wildlife, domestic pets or livestock.

~~[R.] Q.~~ **“Department”** Shall mean New Mexico department of game and fish.

~~[S.] R.~~ **“Director”** Shall mean the director of the department of game and fish.

~~[T.] S.~~ **“Importer”** Any person or entity that causes an animal to be brought, transported or shipped into New Mexico with the exception of common mail carriers and delivery service providers during the course of their regular duties.

~~[U.] T.~~ **“Invasive animal”** Any non-native animal, except protected wildlife, including any aquatic invasive species (AIS), whose introduction into New Mexico may cause or is likely to cause harm to the economy, environment, protected wildlife, human health or safety.

~~[V.] U.~~ **“Isolation”** A period of time imported animals are separated and observed. The observation pen must have fences at least eight feet high. The isolation pen must prevent nose-to-nose contact with all wild ungulates during the observation period.

~~[W.] V.~~ **“Mixed herd”** A herd comprised of animals from different sources and held to allow contact or commingling.

~~[X.] W.~~ **“Mixed herd sales”** Sales from sale barns, auctions, private arrangements, or other

facilities that allow joint penning or adjacent penning of animals from more than one closed herd, or otherwise facilitate or permit commingling, direct contact, or holding, boarding, or sharing the premises by more than one herd simultaneous or successively in time.

~~[Y:]~~ **X.** “**Non-domesticated animal**” For the purposes of this rule, any animal species that is wild by nature not listed as semi-domesticated or protected under chapter 17 NMSA, 1978.

~~[Z:]~~ **Y.** “**NPIP**” National poultry improvement program.

~~[AA:]~~ **Z.** “**Official Animal Identification**” A device or means of animal identification approved by USDA to uniquely identify individual animals nationally. The animal identification must include a nationally unique identification number that adheres to one of the following:

- (1) national uniform ear tagging system;
- (2) animal identification number (AIN);
- (3) premises-based number system using a premises identification number (PIN) in conjunction with a livestock production numbering system; or
- (4) any other numbering system approved by USDA for the identification of animals in commerce.

~~[BB:]~~ **AA.** “**Protected wildlife**” Shall mean those taxonomic groups of mammals, birds and fish listed in Chapter 17 NMSA, 1978, including any species that are listed as either state or federally threatened or endangered.

~~[CC:]~~ **BB.** “**Release from captivity**” For the purpose of this rule, the act of removing from confinement, letting go, liberating or setting free any imported, live non-domesticated animal into the wild.

~~[DD:]~~ **CC.** “**Semi-domesticated animal**” For the purpose of this rule, the director may designate an animal species as semi-domesticated in those instances where individual members of such species are commonly tamed, raised, bred or sold in captivity.

~~[EE:]~~ **DD.** “**Species importation list**” A list containing protected, non-game and semi-domesticated animal species established, maintained, updated or amended by the director of the New Mexico department of game and fish. The species importation list may contain importation requirements, restrictions and conditions for each animal species listed.

~~[FF:]~~ **EE.** “**Qualified expert**” Only a person officially designated by the director to import a specific non-domesticated animal.

~~[GG:]~~ **FF.** “**Undesirable animal**” An animal that may have adverse impacts to health, management or safety.

~~[HH:]~~ **GG.** “**USDA**” United States department of agriculture.
[19.35.7.7 NMAC - Rp, 19.35.7.7 NMAC, 1/31/2014; A, 12/15/2014; A, 2/9/2021]

19.35.7.8 IMPORTATION OF LIVE NON-DOMESTICATED ANIMALS: It shall be unlawful to import any live non-domesticated animal into New Mexico without first obtaining appropriate permit(s) issued by the director except those animals identified within the species importation list group I.

~~[The state game commission must review any permit application for the importation of any carnivore that will be held, possessed or released on private property for the purpose of recovery, reintroduction, conditioning, establishment or reestablishment in New Mexico. The director shall only issue a department permit in accordance with commission direction following their review of an application submitted under this section of rule.]~~ Permits will only be issued when all application requirements and provisions have been met. Failure to adhere to or violation of permit provisions may result in the applicant/importer becoming ineligible for importation(s). The pendency or determination of any administrative action or the pendency or determination of a criminal

prosecution for the same is not a bar to the other.
[19.35.7.8 NMAC – Rp, 19.35.7.8 NMAC, 1/31/2014; A, 12/15/2014; A, 2/9/2021]

19.35.7.14 IMPORTATION OF CERTAIN FISH OR FISH EGGS INTO NEW MEXICO:

All fish species or eggs of the families salmonidae, esocidae, [pereichthyidae] moronidae, ictaluridae, centrarchidae, percidae, and the genus oreochromis may be imported into the state provided that all conditions stated on the application and permit are met, including the following:

- A. the name of department approved supplier pursuant to this regulation;
- B. description of water into which fish will be released is provided; description must include: legal owner of water; legal description of location (township, range, section); county; name of water; size of water (surface acres-lake; miles-stream); source and discharge of water; major use of water; a map of sufficient size and detail to allow the water to be located by someone unfamiliar with the area shall be included;
- C. species, size, pounds, and number of fish to be imported will be specified;
- D. purpose of importation will be specified;
- E. full description of person or persons requesting importation, to include: name, address, telephone number, name of contact person;
- F. GPS coordinates (latitude and longitude in degree decimal minutes (DDM) using WGS 84 datum for each location where fish are stocked.

G. Oreochromis niloticus and oreochromis mossambicus may be imported into the state provided that:

- (1) All requirements set forth in the application and on the permit are met.
- (2) All other regulatory requirements, including those set forth herein, are met.

[19.35.7.14 NMAC - Rp, 19.35.7.14 NMAC, 1/31/2014; A, 10/15/2015; A, 2/9/2021]

19.35.7.15 APPROVED SUPPLIERS OF FISH OR FISH EGGS FOR IMPORTATION INTO NEW MEXICO:

A. The department will maintain a listing of approved fish suppliers.

B. All approved fish suppliers or their agent must carry a department-issued copy of the importation permit while transporting fish to the approved release site in New Mexico.

C. Approved supplier or their agent must notify the department of intended port of entry for importation of fish or fish eggs into New Mexico.

D. Approved supplier may be required to provide a presence/absence disease history (e.g., furunculosis bacterium, enteric redmouth bacterium, proliferative kidney disease, ceratomyxosis of salmonids, etc.) of the hatchery facility if requested by the New Mexico department of game and fish.

E. Approved suppliers shall meet the criteria and provide pathogen-free certification as specified herein.

F. Salmonids:

(1) For the infectious hematopoietic necrosis virus (IHNV), infectious pancreatic necrosis virus (IPNV), ~~and~~ viral hemorrhagic septicemia (VHS), and bacterial kidney disease (BKD).

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(b) Disease testing of fish must use American fisheries society (AFS) blue book or meet OIE (office international des epizooties) standards.

(c) Disease testing will be conducted on an annual basis; annual inspection must have occurred within the

previous 12 months of application date.

(d) ~~[60]~~ Sixty fish per lot will be sampled.

(e) For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

(2) ~~Salmonids~~ ~~for~~ For the whirling disease pathogen ~~[and bacterial kidney disease].~~

(a) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

~~[b]~~ ~~Lots of fish older than six months will be sampled.]~~

~~[c]~~ ~~[60]~~ Sixty fish per lot will be sampled.

~~[d]~~ **(c)** Inspection will include at least one lot of susceptible salmonids (rainbow trout, cutthroat trout, rainbow-cutthroat hybrids) which has been on the hatchery's water source for at least 10 months. If no lot of susceptible salmonids has been on the hatchery's water source for at least 10 months, then inspection shall include at least one lot of susceptible salmonid at least six months of age or older.

~~[e]~~ **(d)** Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

~~[f]~~ **(e)** Positive findings of whirling disease by pepsin-trypsin digestion shall be considered presumptive; positive findings of whirling disease by histology shall be considered confirmatory.

~~[g]~~ **(f)** For all lots of fish not originating on facility, supplier must provide a historical account documenting fish were reared only at New Mexico department of game and fish approved aquaculture facilities.

~~[h]~~ **(g)** Supplier may be required to provide a whirling disease history of the hatchery facility if requested by the New Mexico department of game and fish.

~~[i]~~ **(h)** Presumptive findings: Any presumptive findings of disease with no confirmatory testing shall be deemed a positive finding of the disease.

~~[j]~~ **(i)** Positive findings of disease: Any facility deemed to have tested positive, by confirmatory findings or presumptive findings without confirmatory testing, under this rule shall be barred from importation into the state of New Mexico until the facility is shown to be pathogen free for a minimum of two consecutive years and has met all other requirements.

~~[k]~~ **(j)** Renovated facilities: A facility that has been deemed positive under this rule and has undergone complete renovation may apply for importation privileges as a new facility once it has had at least one annual inspection and has met all other requirements. Complete renovation for the purposes of this rule shall be defined as a facility that has: ~~[1) closed, secured, and sanitized all water sources, 2) confined all water conveyance to closed sealed pipes, and 3) constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after renovation may be required prior to authorization to import.]~~

~~[l]~~ **(i)** closed, secured, and sanitized all water sources;

~~[m]~~ **(ii)** confined all water conveyance to closed sealed pipes; and

~~[n]~~ **(iii)** constructed all rearing spaces out of hard surfaced materials. Proof of renovation must be provided with the application for importation privileges. On-site inspection of the facility after

renovation may be required prior to authorization to import.

G. Warm water fish:

(1) Disease testing will be conducted by another state wildlife agency, United States fish and wildlife service; USDA certified source or other source approved by the New Mexico department of game and fish.

(2) Disease testing of fish must use American Fisheries Society (AFS) blue book procedures or meet OIE standards.

(3) Disease testing will be conducted on an annual basis. Annual inspection must have occurred within the previous 12 months of application date.

(4) [60] Sixty warm water fish per lot shall be tested for viruses and bacteria.

~~(5)~~ —

~~Oreochromis niloticus and oreochromis mossambicus shall be certified as to species and as either all male or otherwise sterile by a qualified independent laboratory or by other means approved by the director.~~

~~(6)~~ —

~~Oreochromis niloticus and oreochromis mossambicus capable of reproduction and certified as to species by a qualified, independent laboratory or by other means approved by the director may be approved for import only to a qualified expert.]~~

~~(7)~~ (5) Approved supplier will document whether fish on the facility have ever been diagnosed with channel catfish virus.

H. Oreochromis niloticus and oreochromis mossambicus shall be certified as to species and as either all male or otherwise sterile by a qualified independent laboratory or by other means approved by the director. Oreochromis niloticus and oreochromis mossambicus capable of reproduction and certified as to species by a qualified, independent laboratory or by other means approved by the director may be approved for import only to a qualified expert.

[H:] L. Triploid grass carp: A notarized certificate of triploidy

issued by another state wildlife agency, United States fish and wildlife service, USDA certified source or other source approved by the New Mexico department of game and fish must be provided for all grass carp imported into New Mexico.

[H:] J. Approved suppliers shall provide signed written assurance to the department that the fish rearing facilities are free of aquatic nuisance species (ANS) and aquatic invasive species (AIS). Failure to provide this assurance shall be reason to deny importation privileges. Approved suppliers shall be liable for any introduction of ANS or AIS caused by their actions.

[19.35.7.15 NMAC - Rp, 19.35.7.15 NMAC, 1/31/2014; A, 10/15/2015; A, 2/9/2021]

19.35.7.19 RELEASE FROM CAPTIVITY FOR IMPORTED ANIMALS:

No person shall release from captivity an imported animal into New Mexico except by obtaining a release permit from the director. The transfer of an imported animal from one person to another person does not constitute a release from captivity.

A. Prior to approval by the director an applicant must:

(1) submit a plat of the release area;

(2) submit verification that landowners, tribal officials, state officials, federal officials and county officials that may be directly affected by the release have been notified of the potential release in writing and have been given 20 days to respond to the release; responses must be submitted with the application; it is the responsibility of the applicant to notify the above and submit responses to the department; failure to notify as indicated herein or to submit responses will result in the application being rejected until this condition is met and any compliance fees are paid;

(3) demonstrate that the intended release is provided for in state or federal resource or species management plans or strategies (CWCS).

B. Any individual or group of isolated animals in which signs of infectious or contagious disease is evident will not be released, will remain in isolation, and, at the recommendation of the state veterinarian:

(1) the animals shall be treated and restored to health until they no longer pose a threat of infection to wild, free ranging wildlife or to other captive animals in the facility; or

(2) the isolated animals shall be destroyed and remains will be disposed in a manner conforming to state, federal or local rules and regulations.

C. The director shall not approve any release permit that conflicts with current conservation management.

~~D. — The state game commission must review any permit application for any carnivore that will be held, possessed or released on private land for the purpose of recovery, reintroduction, conditioning, establishment or reestablishment in New Mexico. The director shall only issue a department permit in accordance with commission direction following their review of an application submitted under this section of rule.]~~

[19.35.7.19 NMAC - Rp, 19.35.7.19 NMAC, 1/31/2014; A, 12/15/2014; A, 2/9/2021]

PUBLIC EDUCATION DEPARTMENT

This is an emergency amendment to 6.12.14 NMAC, Sections 7, 8, 9, 10 and 11, effective 1/29/2021.

6.12.14.7 DEFINITIONS:

A. “At-risk students” means students who are English learners, economically disadvantaged, Native American, highly mobile, or who have a disability.

B. “Formative assessment” means measures of academic achievement during the learning process.

C. “Full reentry operating category” means the instructional model that permits all students to return to in-person learning for the full school week, with continued use of preventative measures including ~~[mask-wearing, temperature-screening, and minimizing of group activities]~~ COVID-Safe Practices and other practices in department guidance.

D. “High-risk staff” means adult persons employed by a school or school district with [certain] the following underlying conditions that make them more at risk for severe illness from the virus that causes COVID-19: ~~[including but not limited to:]~~

- (1) cancer;
- (2) chronic kidney disease;
- (3) chronic obstructive pulmonary disease;
- (4) heart conditions such as heart failure, artery disease or cardiomyopathy;
- (5) body mass index greater than or equal to 30kg/m²;
- (6) pregnancy;
- (7) sickle cell disease;
- (8) smoking;
- (9) type 1 diabetes mellitus;
- (10) type 2 diabetes mellitus;
- (11) moderate-to-severe asthma;
- (12) cerebrovascular disease;
- (13) cystic fibrosis;
- (14) hypertension or high blood pressure;
- (15) immunocompromised state from blood or bone marrow transplant;
- (16) immune deficiencies;
- (17) HIV;
- (18) use of corticosteroids or other immune-weakening medications;
- (19) neurologic conditions such as dementia;

(21) liver disease;

(22) pulmonary fibrosis; and

(23) thalassemia.

E. “High-risk students” means students with certain underlying health conditions that may make them more at risk for severe illness from the virus that causes COVID-19, including but not limited to:

- (1) obesity;
- (2) medical complexity;
- (3) severe genetic disorders;
- (4) severe neurologic disorders;
- (5) inherited metabolic disorders;
- (6) sickle cell disease;
- (7) congenital heart disease;
- (8) diabetes;
- (9) chronic kidney disease;
- (10) asthma and other chronic lung disease; and
- (11) immunosuppression due to malignancy or immune-weakening medications.

F. “Hybrid operating category” means the instructional model wherein schools assign a combination of some in-person learning days and some remote learning days, while limiting the number of students who may be in the school building at any given time by the number that can be accommodated while adhering to at least six feet of social distancing ~~[or 50 percent classroom capacity]~~ and other criteria provided in guidance documents.

G. “Interim assessment” means an assessment conducted three to four times a year to assess specific skills and to identify those at risk academically.

H. “Remote operating category” means the instructional model that requires all students to engage in online learning, with limited possible exceptions for

small groups of students with disabilities and students in grades pre-kindergarten through grade three to engage in in-person learning, such as students receiving special education services. The student to teacher ratio in small groups shall be provided in department guidance. Schools should ~~[ensure each student has]~~ take all practical measures to provide each student with a digital device and to provide support for in-home connectivity.

[6.12.14.7 NMAC – N/E, 12/3/2021, A/E, 1/29/2021]

6.12.14.8 GENERAL REQUIREMENTS AND CONSIDERATIONS FOR SCHOOLS IN ALL OPERATING CATEGORIES:

A. All public schools and local school districts shall:

- (1) follow guidelines appropriate to the school or school district’s safe reentry category, as determined by criteria established by the New Mexico department of health [medical advisory team assessment] and the department;

- (2) participate in a surveillance and rapid response testing program for all staff;

- (3) adhere to social distancing requirements according to their safe reentry category;

- (4) avoid large group gatherings;

- (5) require all staff and students to wear face ~~[masks, except while eating, drinking, or exercising, unless the student or staff has a medical reason for not being able to wear a mask or face shield]~~ coverings per department guidance and current statewide public health orders;

- (6) administer daily temperature checks and review of potential symptoms, as well as working with state and local health officials to have a plan for contract-tracing;

- (7) when providing transportation:

- (a) require all staff and students to wear face ~~[masks]~~ coverings;

(b) limit the number of students permitted on ~~[one bus seat to one for those schools in the hybrid category]~~ each bus seat pursuant to department guidance;

(8) provide meals to students during both in-person instruction and remote learning; and

(9) to the extent possible, consider practices to promote social emotional learning, support high quality teaching and learning, and effectively communicate with tribal communities and families.

B. COVID-19 safe practices. All local school districts and public schools shall maintain communication with local and state department of health officials, and participate in contact-tracing efforts and specimen collection efforts as directed by state and local health officials, and shall:

(1) work with school administrators, school nurses, and other healthcare providers to identify an isolation room or area to separate anyone who exhibits COVID-like symptoms;

(2) require school nurses and other healthcare providers to use centers for disease control and prevention (CDC) recommended standard precautions when caring for sick people, including:

(a) engaging in frequent hand hygiene;

(b) using personal protective equipment when there is an expectation of possible exposure to infectious material;

(c) following respiratory hygiene and coughing etiquette;

(d) ensuring appropriate patient placement in quarantine or isolation;

(e) proper handling and disinfection of patient care equipment and instruments;

(f) careful handling of textiles and laundry;

(g) following safe injection practices; and

(h) ensuring healthcare provider safety, including proper handling and disposal of needles and other sharps.

(3) require school nurses and other healthcare providers to use CDC recommended transmission-based precautions when caring for sick people, including:

(a) establish procedures for safely transporting anyone who is sick home or to a healthcare facility;

(b) notify local health officials, staff, and families immediately of a possible case while maintaining confidentiality consistent with the Americans with Disabilities Act and other applicable federal and state privacy laws;

(c) close off school building if used by a COVID-19-positive sick person and do not use again before cleaning and disinfection;

(d) wait 24 hours before cleaning and disinfecting, unless it is impossible to wait 24 hours, in which case wait as long as possible;

(e) advise sick staff members and children not to return until they have met New Mexico department of health criteria to discontinue home isolation;

(f) inform those who have had close contact with a person diagnosed with COVID-19 to stay home and follow New Mexico department of health guidance if symptoms develop or if a person does not have symptoms, follow appropriate New Mexico department of health guidance for home quarantine; and

(g) contact New Mexico department of health to activate contact tracing.

C. Staffing. All school personnel and contractors shall follow guidelines in current statewide public health orders. All local school districts and public schools shall:

(1) train staff in local and state rules regarding

health and safety procedures, such as appropriate use of personal protective equipment and procedures for when school personnel or students exhibit symptoms of COVID-19;

(2) establish processes, aligned with school district or charter school human resource departments to:

(a) ~~[identify personnel considered to be in a COVID-19 high risk staff, and to consider formal requests from such high-risk staff to continue working remotely]~~ consider formal requests from COVID-19 high-risk staff to work remotely;

(b) ~~[address]~~ consider the circumstances of school personnel who live with someone who is in a COVID-19 high risk group; and

(c) ~~[require, with appropriate licensing-waivers, high-risk teachers to remotely teach upper grades, in order to prioritize necessary in-person instruction for younger students]~~ other criteria as stated in department of public education guidance.

[6.12.14.8 NMAC – N/E, 12/3/2020, A/E, 1/29/2021]

6.12.14.9 LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE REMOTE OPERATING CATEGORY:

A. COVID-19 safe practices.

(1) Local school districts and public schools shall ~~[consider implementing]~~ implement requirements for COVID-19 safety, including:

(a) closing off and limiting access to areas potentially affected by COVID-19 exposure and, if possible, wait 24 hours before cleaning and disinfecting;

~~[(b) encouraging COVID-19 testing;~~

~~[(c) refraining from blanket reporting requirements for school personnel;]~~

~~[(d) (b) leveraging virtual tools and platforms~~

whenever possible to conduct essential business, and keep in-person reporting to a minimum;

~~(e)~~ (c)

using social media and other methods of communication to inform parents, students, and staff about COVID-19 symptoms, preventative measures, good hygiene, and school district- and school-specific protocols; and

~~(f)~~ (d)

providing support for students, families, and school personnel in their protection of high-risk students and staff; and developing and communicating guidelines for how best to support students, families, and school personnel.

(2) During periods of school closure, local school districts and schools shall require in-person reporting only of staff performing essential services such as food preparation and delivery, cleaning, and sanitation. Provided they wear face ~~[masks]~~ coverings and practice social distancing, teachers may reenter school premises at their own choosing to conduct remote learning.

(3) If feasible, local school districts and public schools may permit school buildings to remain open for limited numbers of students and staff to continue in-person instruction and services for students in prekindergarten to third grade and for students with special needs, at a maximum ratio of five students to one teacher.

B. Transportation of Students. If feasible, local school districts and public schools shall transport students with special needs and students in prekindergarten through third grade who still may be physically attending school on a limited basis.

C. Meal service.

(1) Local school districts and public schools in the remote operating category shall:

(a) establish food distribution sites both at district buildings and at particular bus stops or routes to the greatest extent practicable and in line with the accessibility needs of the local community;

(b) practice social distancing protocols; [and]

(c) ~~[provide personal protective equipment to all participating staff.]~~ provide face coverings to staff pursuant to guidance from the department;

(d) provide face coverings to students who left their face coverings at home; and

(e) provide personal protective equipment to all participating staff.

(2) Local school districts and public schools in the remote category shall also consider additional practices to promote COVID-19 safety for meal service, including:

(a) delivering a week's worth of meals during a designated time; and

(b) distributing supplemental instructional materials and printed school and school district communications along with meals.

(3) During periods of school closure, school buses may be used to deliver meals to students and families.

D. Student movement and gathering. If small groups of prekindergarten to third grade students or students with disabilities are meeting, public schools shall keep cohorts together and minimize all transitions, including those between classrooms, to lunch or recess, and to school buses. Local school districts and public schools shall abide by the maximum number of people allowed to congregate as defined in current statewide public health orders. [6.12.14.9 NMAC – N/E, 12/3/2020, A/E, 1/29/2021]

6.12.14.10 LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE HYBRD OPERATING CATEGORY:

A. COVID-19 safe practices. Local school districts and public schools in the hybrid

operating category shall implement requirements for COVID-19 safety, including requirements to:

(1) afford adequate space for all staff and students to maintain at least six feet of social distance at all times;

(2) post signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19;

(3) screen all students and staff for COVID-19 symptoms to the greatest extent feasible, such as temperature screenings and daily health check questionnaires for all students and staff;

(4) inform and educate parents and families to be alert for signs of illness in their children and to keep their children home from school when they are sick;

(5) establish a protocol for students and staff who feel ill or experience symptoms when they are at school;

(6) isolate and deep-clean COVID-19-impacted classrooms and other areas of school premises;

(7) teach and reinforce good hygiene measures, such as handwashing, covering coughs, and appropriate use of face ~~[masks]~~ coverings;

(8) provide hand soap, hand sanitizer with at least sixty percent alcohol, paper towels, and no-touch trashcans in all bathrooms, classrooms, and other frequently trafficked areas;

(9) clean and disinfect frequently touched surfaces at least daily, and frequently shared objects after each use;

(10) provide face ~~[masks]~~ coverings and other appropriate personal protective equipment to staff;

(11) require students and staff to wear face ~~[masks]~~ coverings unless a valid medical reason is provided;

(12) allow students and staff to bring hand sanitizer and face ~~[masks]~~ coverings and shields from home;

(13) to the extent possible, turn off water fountains and provide bottled water or allow students and staff to bring bottled water from home;

(14) take steps to ensure all water systems and features, including water fountains that cannot be shut off, are safe;

(15) ensure ventilation systems operate properly and increase the circulation of outdoor air as much as possible without posing a safety or health risk to students or staff; and

(16) conduct deep cleaning of schools prior to students and staff returning, and schedule additional cleanings during weekends and school holidays and breaks.

B. Entering School Buildings. Local school districts and public schools in the hybrid operating category shall ~~[consider]~~ implement practices for safely entering school buildings, including:

(1) mandating face ~~[masks]~~ coverings for all students and staff ~~[, except while eating or drinking or exercising, including exercise during recess, with limited exceptions for students or staff that have medical reasons for not being able to wear a mask]~~ pursuant to department guidance;

(2) while maintaining confidentiality, screening all staff daily before being permitted to enter school buildings, including temperature checks and reviews of potential symptoms ~~[, while maintaining confidentiality]~~;

(3) isolating and sending home ~~[those who register temperatures of greater than 100.4 degrees fahrenheit or 38 degrees celsius]~~ students and staff who register temperatures greater than 100.4 degrees fahrenheit or 38 degrees celsius or exhibit COVID-19 symptoms;

(4) working with state and local health officials to ~~[have a plan for]~~ implement school contact-tracing;

~~[(5) to the extent practicable and while~~

~~maintaining confidentiality, screening all students for temperature before they enter school buildings, and isolating and sending home those who register a temperature of greater than 100.4 degrees fahrenheit or 38 degrees celsius;~~

~~[(6) (5) restricting non-essential school visitors and volunteers;~~

~~[(7) (6) establishing a protocol for essential visitors, including calling the front office before entering school premises and requiring the use of face [masks] coverings;~~

~~[(8) (7) avoiding large group gatherings;~~

~~[(9) (8) marking spaced lines to enter school buildings and designating entrance and exit flow paths;~~

~~[(10) (9) establishing a protocol for student drop-off and pick-up, such as staggered entry and release by grade, class, or bus number, with marked spacing for pick-up;~~

~~[(11) (10) posting signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19; and~~

~~[(12) (11) establishing a protocol for students and staff who feel ill or experience symptoms when they come to school.~~

C. Protecting high-risk students and staff. Local school districts and public schools in the hybrid operating category shall:

(1) when possible, employ additional nurses, healthcare aides, and fulltime substitute employees;

~~[(2) survey high-risk staff members to gauge their intentions to return to work while maintaining confidentiality consistent with the Americans with Disabilities Act and other applicable state and federal privacy laws;~~

~~[(3) survey families with high-risk students to gauge their intentions in returning to a traditional school setting, when available, while maintaining confidentiality consistent with the Americans with Disabilities Act and~~

~~other applicable federal and state privacy laws;~~

~~[(4) in consultation with parents and public health officials, provide remote learning opportunities for high-risk student and staff populations;]~~

~~[(2) provide a remote learning option;~~

~~[(5) (3) consult with local school board attorneys and school district human resources officials to offer special accommodations to personnel who are members of high-risk populations, such as alternative teaching assignments;~~

~~[(6) (4) adhere to the requirements of the federal Family Educational Rights and Privacy Act and the federal Health Insurance Portability and Accountability Act; and~~

~~[(7) (5) adhere to state and federal employment law and extended leave allowances.~~

D. Transportation of students. Local school districts and public schools in the hybrid operating category shall consider practices for the safe transportation of students, including:

(1) limiting students to one per bus seat to the best of their ability, including encouraging parents to drive their children to school when possible, staggering bus routes, and expanding the minimum radius of eligibility for bus service;

(2) requiring students to sit in spaced and assigned seating of no more than two per bus seat when not possible to limit students to one per bus seat;

(3) assigning bus attendants or other additional staff to help with safety and screening of students, to the extent possible;

(4) providing hand sanitizer for students, bus drivers, and bus attendants;

(5) providing face ~~[masks]~~ coverings for bus drivers and attendants;

(6) requiring students, bus drivers, and bus attendants to wear face ~~[masks]~~ coverings;

(7) screening students, bus drivers, and bus attendants for symptoms of illness;

(8) eliminating field trips and other non-essential travel, except for travel conducted under New Mexico activities association guidelines for sports and extracurricular activities;

(9) cleaning and disinfecting frequently touched surfaces on school uses at least daily;

(10) establishing protocols for bus stops and the loading and unloading of students to minimize congregation of students from different households;

(11) airing out buses not in use; and

(12) restricting group transportation, including carpooling.

E. Meal service. Local school districts and public schools in the hybrid operating category shall provide meals to students participating in remote learning on a given day per remote guidelines, according to Subsection C of Section 6.12.14.9 NMAC. Local school districts and public schools in the hybrid category shall [~~consider~~] implement additional practices to promote COVID-19 safety for meal service, including:

(1) using disposable plates and utensils;

(2) if serving meals in the school cafeteria:

(a) marking spaced lines to enter the cafeteria and serving lines, and designating entrance and exit flow paths;

(b) scheduling longer meal periods to accommodate more staggered meal delivery;

(c) maximizing social distancing to space seating and utilizing outdoor seating as practicable and appropriate; and

(d) conducting cleaning of cafeterias and high-touch surfaces throughout the day;

(3) if serving meals in classrooms:

(a) serving pre-packaged boxed or bagged lunches for each student instead of traditional serving lines; and

(b) avoid sharing of food [~~an~~] and utensils.

F. Student movement and gathering. Local school districts and public schools in the hybrid operating category shall consider practices to keep student and student groups' movements and gatherings safe, including:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day:

(a) providing additional time to reach destinations;

(b) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(c) planning staggered class changes to decrease the number of students in the hallways at one time;

(d) having the same group of students stay with the same staff – all day for children in prekindergarten through third grade, and as much as feasible for other children; and

(~~e~~) ~~when self-contained classrooms are not feasible, having teachers rotate, rather than students~~;

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current statewide public health orders;

(b) [~~discouraging~~] prohibiting the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces as weather permits for social distancing;

(e) working with local officials and partners to identify other community spaces, such as libraries, churches, recreational centers, and unused municipal offices or conference rooms, in which classes can be convened with maximum social distancing;

(f) following the New Mexico activities association's guidelines for extracurricular activities and similar congregate events to the greatest extent possible;

(g) having all coaches and student athletes tested for COVID-19 before the competitive season, to the extent possible; and

(h) when possible, holding professional development sessions and staff meetings virtually or in small groups with maximum social distancing. [6.12.14.10 NMAC – N/E, 12/3/2020, A/E, 1/29/2021]

6.12.14.11 LOCAL SCHOOL DISTRICTS AND PUBLIC SCHOOLS OPERATING UNDER THE FULL REENTRY OPERATING CATEGORY:

A. COVID-19 safe practices. Local school districts and public schools in the hybrid operating category shall [~~consider implementing~~] implement requirements for COVID-19 safety, including requirements to:

(1) mandate that all persons on school premises practice social distancing to the greatest extent possible at all times;

(2) post signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19;

(3) establish a protocol for students and staff who feel ill or experience symptoms when they are at school;

(4) teach and reinforce good hygiene measures, such as handwashing, covering coughs, and appropriate use of face coverings;

(5) provide hand soap, hand sanitizer with at least sixty percent alcohol, paper towels, and no-touch trashcans in all bathrooms, classrooms, and other frequently trafficked areas;

(6) require students and staff to wear face coverings unless they have a valid medical reason why they cannot;

(7) post signs in classrooms, hallways, and entrances, to communicate how to stop the spread of COVID-19;

(8) clean and disinfect frequently touched surfaces at least daily, and frequently shared objects after each use;

(9) provide face ~~[masks]~~ coverings and other appropriate personal protective equipment to staff;

(10) require students and staff to wear face ~~[masks]~~ coverings unless a valid medical reason is provided;

(11) allow student and staff to bring hand sanitizer and face ~~[masks]~~ coverings and shields from home;

(12) to the extent possible, turn off water fountains and provide bottled water or allow students and staff to bring bottled water from home;

(13) take steps to ensure all water systems and features, including water fountains that cannot be shut off, are safe;

(14) ensure ventilation systems operate properly and increase the circulation of outdoor air as much as possible without posing a safety or health risk to students or staff; and

(15) conduct deep cleaning of schools prior to students and staff returning, and schedule additional cleanings during weekends and school holidays and breaks.

B. Entering school buildings. Local school districts

and public schools in the full reentry operating category shall consider practices for safely entering school buildings, including:

(1) mandating face ~~[masks]~~ coverings for all students and staff ~~[,except while eating or drinking or exercising, including exercise during recess, with limited exceptions for students or staff that have medical reasons for not being able to wear a mask]~~ per department guidance and current statewide public health orders;

(2) while maintaining confidentiality, screening all staff daily before being permitted to enter school buildings, including temperature checks and reviews of potential symptoms;

(3) isolating and sending home students and staff who register temperatures of greater than 100.4 degrees fahrenheit or 38 degrees celsius;

(4) working with state and local health officials to have a plan for contact-tracing;

~~[(5) to the extent practicable, and while maintaining confidentiality, screening all students for temperature before they enter school buildings, and isolating and sending home those who register a temperature of greater than 100.4 fahrenheit or 38 degrees celsius;]~~

~~[(6) (5) restricting non-essential school visitors and volunteers;~~

~~[(7) (6) establishing a protocol for essential visitors, including calling the front office before entering school premises and requiring the use of face [masks] coverings;~~

~~[(8) (7) avoiding large group gatherings;~~

~~[(9) (8) marking spaced lines to enter school buildings and designating entrance and exit flow paths;~~

~~[(10) (9) establishing a protocol for student drop-off and pick-up, such as staggered entry and release by grade, class, or bus number, with marked spacing for pick-up;~~

~~[(11) (10) posting signs in classrooms, hallways, and entrances to communicate how to stop the spread of COVID-19; and~~

~~[(12) (11) establishing a protocol for students and staff who feel ill or experience symptoms when they come to school.~~

C. Protecting high-risk students and staff. Local school districts and public schools in the full reentry operating category shall:

(1) establish a point of contact with the local health department;

(2) identify local COVID-19 testing sites;

(3) provide hand sanitizer of at least sixty percent alcohol content to students and staff;

(4) allow high-risk students to complete coursework virtually;

(5) establish a process for regular check-ins with high risk staff and students;

(6) allow an early transition period for high-risk students to go to classes; and

(7) avoid large group gatherings and interactions

D. Transportation of students. Local school districts and public schools in the hybrid operating category shall consider practices for the safe transportation of students, including:

(1) following current department guidance; at the time of publication this includes limiting students to ~~[one]~~ two students per bus seat to the best of their ability, encouraging parents to drive their children to school when possible, staggering bus routes, and expanding the minimum radius of eligibility for bus service;

(2) when not possible to limit students to ~~[one]~~ two per bus seat, requiring students to sit in spaced and assigned seating of no more than two per bus seat;

(3) assigning bus attendants or other additional staff to help with safety and screening of students, to the extent possible;

(4) providing hand sanitizer for students, bus drivers, and bus attendants;

(5) providing face [masks] coverings for bus drivers and attendants;

(6) requiring students, bus drivers, and bus attendants to wear face [masks] coverings;

(7) screening students, bus drivers, and bus attendants for symptoms of illness;

(8) eliminating field trips and other non-essential travel, except for travel conducted under New Mexico activities association guidelines for sports and extracurricular activities;

(9) cleaning and disinfecting frequently touched surfaces on school uses at least daily;

(10) establishing protocols for bus stops and the loading and unloading of students to minimize congregation of students from different households;

(11) airing out buses not in use; and

(12) restricting group transportation, including carpooling.

E. Meal service.

Local school districts and public schools in the full reentry operating category shall provide meals to high-risk students participating in remote learning on a given day per remote guidelines, according to Subsection C of Section 6.12.14.9 NMAC. Local school districts and public schools in the full reentry operating category shall also consider additional practices to promote COVID-19 safety for meal service, including:

(1) using disposable plates and utensils;

(2) if serving meals in the school cafeteria:

(a) marking spaced lines to enter the cafeteria and serving lines, and designating entrance and exit flow paths;

(b) scheduling longer meal periods to accommodate more staggered meal delivery;

(c) maximizing social distancing to space

seating and utilizing outdoor seating as practicable and appropriate; and

(d) conducting cleaning of cafeterias and high-touch surfaces throughout the day;

(3) if serving meals in classrooms:

(a) serving pre-packaged boxed or bagged lunches for each student instead of traditional serving lines; and

(b) avoiding sharing of food and utensils.

F. Student movement and gathering. Local school districts and public schools in the full reentry operating category shall consider practices to keep student and student groups' movements and gatherings safe, including:

(1) limiting mixing among different student groups to the greatest extent practicable;

(2) for class changes and other transitions throughout the day:

(a) providing additional time to reach destinations;

(b) designating flow paths in hallways to keep students separated and minimize the congregation of students;

(c) planning staggered class changes to decrease the number of students in the hallways at one time;

(d) having the same group of students stay with the same staff all day for children in prekindergarten through third grade, and as much as feasible for other children; and

(e) when self-contained classrooms are not feasible, having teachers rotate, rather than students;

(3) for student gatherings:

(a) avoiding large group gatherings, and abiding by the maximum number of people allowed to congregate as defined by current statewide public health orders;

(b) discouraging the congregation of students in parking lots and common areas;

(c) staggering the schedules for group gatherings such as recess or meals;

(d) identifying and utilizing large spaces, such as gymnasiums, auditoriums, and outdoor spaces – as weather permits – for social distancing;

(e) working with local officials and partners to identify other community spaces, such as libraries, churches, recreational centers, and unused municipal offices or conference rooms, in which classes can be convened with maximum social distancing;

(f) following the New Mexico activities association's guidelines for extracurricular activities and similar congregate events to the greatest extent possible;

(g) having all coaches and student athletes tested for COVID-19 before the competitive season, to the extent possible; and

(h) when possible, holding professional development sessions and staff meetings virtually or in small groups with maximum social distancing. [6.12.14.11 NMAC – N/E, 12/3/2020, A/E, 1/29/2021]

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 1/6/2021 open meeting, to repeal its rule 17.11.10 NMAC – State Rural Universal Service Fund (filed 12/14/2017) and replace it with 17.11.10 NMAC - State Rural Universal Service Fund, effective 2/9/2021.

**PUBLIC REGULATION
COMMISSION**

**TITLE 17 PUBLIC
UTILITIES AND UTILITY
SERVICES
CHAPTER 11
TELECOMMUNICATIONS
PART 10 STATE RURAL
UNIVERSAL SERVICE FUND**

17.11.10.1 ISSUING

AGENCY: New Mexico Public Regulation Commission.

[17.11.10.1 NMAC - Rp, 17.11.10.1 NMAC, 2/9/2021]

17.11.10.2 SCOPE: This

rule applies to all entities that provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico.

[17.11.10.2 NMAC - Rp, 17.11.10.2 NMAC, 2/9/2021]

17.11.10.3 STATUTORY

AUTHORITY: Sections 8-8-4 and 63-9H-6, NMSA 1978.

[17.11.10.3 NMAC - Rp, 17.11.10.3 NMAC, 2/9/2021]

17.11.10.4 DURATION:

Permanent.

[17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, 2/9/2021]

17.11.10.5 EFFECTIVE

DATE: February 9, 2021, unless a later date is cited at the end of a section.

[17.11.10.5 NMAC - Rp, 17.11.10.5 NMAC, 2/9/2021]

17.11.10.6 OBJECTIVE:

The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund to maintain and support universal service provided by telecommunications carriers that have been designated as eligible telecommunications carriers.

[17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, 2/9/2021]

17.11.10.7 DEFINITIONS:

In addition to the definitions

contained in Section 63-9H-3, NMSA 1978, as used in this rule:

A. Definitions

beginning with "A":

(1) Access

line means: a dial tone line, or its functional equivalent, that provides local exchange service from a carrier's switching equipment to a point of termination at the customer's network interface, and is not limited to wireline or any other technology; for the purposes of this rule, an access line does not include official lines, unbundled network elements/platforms, retail resale, wholesale resale, special access lines and private lines.

(2)

Administrator means: the person designated by the commission to administer the fund.

(3) Area

underserved by broadband means a broadband program proposed project area where at least fifty percent of households lack access to fixed and mobile facilities-based broadband service at the minimum broadband transmission speeds of 25.0 Mbps download/3.0 Mbps upload. A household has access to broadband service if the household can subscribe within 10 business days of a request

(4) Area

unserved by broadband means: a broadband program proposed project area where at least fifty percent of the households lack access to fixed and mobile facilities-based broadband service at the minimum broadband transmission speeds of 10.0 Mbps download/1.0 Mbps upload. A household has access to broadband service if the household can subscribe to that service within 10 business days of a request.

B. Definitions

beginning with "B":

(1) Basic

local exchange rate means: an incumbent local exchange carrier's tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service; for the purposes of this rule, the "residential" and "business" basic local exchange rates shall include

any commission-mandated subscriber line charges or extended area service charges.

(2) Broadband

Internet Access Service means: a mass-market retail service by wire, wireless or other technology that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints including any capabilities that are incidental to and enable the operation of the communications service, or a functionally equivalent service, but excluding dial-up internet access service. For purposes of this rule, broadband internet access service means a service transmission speed of 25.0 Mbps download/3.0 Mbps upload.

C. Definitions

beginning with "C":

(1)

Carrier means: an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

(2)

Commercial mobile radio service (CMRS) means: a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit.

(3)

Commission means the New Mexico public regulation commission.

(4)

Communication connection means: a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection, or other uniquely identifiable functional equivalent as determined by the commission.

(5)

Contributing company means: any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

D. Definitions

beginning with "D": [RESERVED]

E. Definitions

beginning with "E":

(1) Eligible telecommunications carrier (ETC) means: a carrier with New Mexico operations that has been designated as eligible to receive disbursements from the fund or from the federal universal service fund, or both, for a designated service area determined by the commission.

(2) Exempt customer means: an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a Native American customer who resides on tribal or pueblo land; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico.

F. Definitions

beginning with "F":

(1) FCC

means: the federal communications commission.

(2) Fund

means: the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.

G. Definitions

beginning with "G": [RESERVED]

H. Definitions

beginning with "H": [RESERVED]

I. Definitions

beginning with "I":

(1) Imputed

benchmark revenue means: the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier's basic local exchange residential and business rates as of July 1, 2014, multiplied by the number of basic local exchange residential and business access lines served by the carrier as of December 31 of the year that precedes the year during which the revenue requirement is being determined pursuant to Subparagraph E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero.

(2)

Interexchange carrier (IXC) means: an entity that provides intrastate toll services in New Mexico.

(3) Intrastate

retail public telecommunications services means: services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller identification (ID); listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate retail public telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services.

(4) Intrastate

retail public telecommunications services revenue means: the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico.

(5) Intrastate

switched access charge means a charge levied by a carrier for the

availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission.

J. Definitions

beginning with "J": [RESERVED]

K. Definitions

beginning with "K": [RESERVED]

L. Definitions

beginning with "L": Local exchange carrier (LEC) means an entity certificated to provide local exchange service in New Mexico.

M. Definitions

beginning with "M": [RESERVED]

N. Definitions

beginning with "N": New Mexico operations means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico.

O. Definitions

beginning with "O": [RESERVED]

P. Definitions

beginning with "P": [RESERVED]

Q. Definitions

beginning with "Q.": [RESERVED]

R. Definitions

beginning with "R": Rural area means:

(1) any

unincorporated area or;

(2) any city,

town or incorporated area with a population of 20,000 or less as reflected in the most recent decennial United States census together with any applicable tribal census.

S. Definitions

beginning with "S":

(1) Service

area means: a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

(2) State

Rural Universal Service Fund (SRUSF) means: the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.

T. Definitions

beginning with "T": [RESERVED]

U. Definitions beginning with “U”: **Universal service** means basic local exchange service and comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan, and broadband internet access service to unserved and underserved areas of New Mexico as determined by the commission.

V. Definitions beginning with “V”: [RESERVED]

W. Definitions beginning with “W”: [RESERVED]

X. Definitions beginning with “X”: [RESERVED]

Y. Definitions beginning with “Y”: [RESERVED]

Z. Definitions beginning with “Z”: [RESERVED] [17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 2/9/2021]

17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES: The commission may, upon motion of a carrier or the administrator, or upon the commission’s own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier’s tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006. [17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 2/9/2021]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. Effective January 1, 2020, unless changed by the commission in a proceeding pursuant to Subsection B of 17.11.10.09 NMAC, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

(1) the residential benchmark rate for basic local exchange service shall be \$18.00; except that the commission may on its own motion and at

any time conduct a review of the residential benchmark rate and change it accordingly, as per Subsection B of 17.11.10.09 NMAC;

(2) the business benchmark rate for basic local exchange service shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier as of January 1, 2020;

(3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;

(4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after 10 days’ notice to the carrier’s customers and the commission;

B. The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion. [17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 2/9/2021]

17.11.10.10 SELECTION OF ADMINISTRATOR: The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

A. Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission

shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

(1) is able to be neutral and impartial;

(2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;

(3) is an affiliate of any contributing company;

(4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and

(5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

B. Termination of administrator’s contract: the commission may terminate the administrator’s contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract. [17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 2/9/2021]

17.11.10.11 EXPENDITURE AUTHORIZATION: The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund. [17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 2/9/2021]

17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR: The administrator shall manage the day-to-day operation of the fund in

accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

A. Fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight.

B. Establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions.

C. Ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes.

D. Establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule.

E. Report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require.

F. Prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time.

G. Propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies.

H. Create and maintain the databases necessary to administer the program and account for the funds.

I. Develop appropriate forms for use in collecting

information from contributing companies and ETCs.

J. Pay administrative expenses out of the fund in accordance with the budget approved by the commission.

K. Petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law.

L. Conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

M. Advise the commission of any anticipated material changes to, or fluctuations in, the collection of fund revenues in a timely manner and make recommendations to the commission on ways to address or correct such changes or fluctuations.

[17.11.10.12 NMAC - Rp,
17.11.10.12 NMAC, 2/9/2021]

17.11.10.13 DISPUTE

RESOLUTION: The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

A. Mediation:

(1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;

(2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is

not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

(3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

(4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

(5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

B. Arbitration:

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within 10 days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all

parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within 10 days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

C. Arbitration

Procedures:

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within 60 days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least 10 days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of

books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section,

however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp,
17.11.10.13 NMAC, 2/9/2021]

17.11.10.14 VARIANCES AND WAIVERS: Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

A. General requirements:

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

B. Contents of the petition. A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp,
17.11.10.14 NMAC, 2/9/2021]

17.11.10.15 GENERAL REPORTING REQUIREMENTS:

A. Reports require declaration: all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

B. Time for reporting: where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

C. Reporting forms: contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

D. Electronic filing: the administrator shall accept electronic reporting when practicable.

E. Confidentiality: the commission shall have access to all information reported to the administrator. Contributing companies may request that company-

specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

F. The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, including possible addition of a revenue report or to delete information that is not necessary.
[17.11.10.15 NMAC - Rp,
17.11.10.15 NMAC, 2/9/2021]

17.11.10.16 [RESERVED]
[17.11.10.16 NMAC - Repealed,
2/9/2021]

17.11.10.17 REPORTS: ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

A. On or before May 1 of each year, contributing companies, including ETCs, shall report the number and type of

New Mexico access lines and New Mexico communication connections subscribed to in total and the number of such access lines and communication connections that are exempt from paying the SRUSF surcharge.

B. On or before July 1 of each year, ETCs receiving support from the fund (except those receiving only support pursuant to 17.11.11 or 17.11.10.31 NMAC) shall file with the commission a report, in a form approved by the commission, demonstrating that the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. If any ETC required to file information with the commission under Subsection B of 17.11.10.17 NMAC fails to comply on or before the applicable reporting deadline, the administrator shall withhold any disbursements otherwise due to the non-compliant ETC until the ETC has complied.

[17.11.10.17 NMAC - Rp,
17.11.10.17 NMAC, 2/9/2021]

17.11.10.18 CONTACT PERSONS: All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp,
17.11.10.18 NMAC, 2/9/2021]

17.11.10.19 ANNUAL DETERMINATION OF FUND:

A. The administrator shall determine the amount of the fund for the next calendar year and submit its findings to the commission on or before November 10 of each year to enable commission approval on or before November 20 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.

B. In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund amount greater than that which the commission has previously

established, the commission may order an adjustment to the amount of the fund, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

C. The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance; provided however, the total amount of the fund shall not exceed a cap of thirty million dollars (\$30,000,000.00) per year.

D. Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

E. Except where the commission has established an alternative or additional amount pursuant to 17.11.10.25 or 17.11.10.31 NMAC, the revenue requirement for 2018 and each year thereafter for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 2014 SRUSF revenue requirement adjusted by the annual percentage change in the number of access lines served by the carrier as of December 31 of the prior calendar year compared to the number of access lines served by the carrier as of December 31, 2014, and then reduced by the carrier's imputed benchmark revenue. For 2021, the access lines used for the comparison to 2014 shall be as of December 31, 2019.

The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed benchmark revenue.

F. The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with

the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

[17.11.10.19 NMAC - Rp,
17.11.10.19 NMAC, 2/9/2021]

17.11.10.20 DETERMINATION OF SRUSF SURCHARGE RATE AND CONTRIBUTION:

A. The administrator shall recommend the amount of the SRUSF surcharge rate for the next calendar year, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies, broadband program grants awarded by the commission, and any other pertinent and reliable information available to the administrator or the commission, and applying the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

B. The commission shall either set a percentage surcharge rate equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail public telecommunications service revenue, or in the alternative, set a fixed charge applicable to each non-exempt communication connection equal to the annual fund requirement determined by the commission divided by the number of non-exempt communication connections for all contributing carriers in New Mexico. The surcharge rate or fixed charge may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the annual fund cap.

C. Each contributing company's monthly contribution shall equal the state rural universal service fund surcharge rate multiplied by its intrastate retail telecommunications revenues or non-exempt communication connections, as determined by the commission, in New Mexico for the month.

D. If, for any month the administrator finds that the fund balance is insufficient to meet the total obligations of the fund, (including support pursuant

to 17.11.10.19, 17.11.10.25, 17.11.10.31, and 17.11.11 NMAC) plus administrative expenses and maintenance of a prudent fund balance, the administrator shall prorate all payments to each ETC, with the exception of payments pursuant to 17.11.10.31 NMAC and 17.11.11 NMAC. In the event the administrator determines that such a prorated reduction in payments is reasonably likely to occur, the administrator shall immediately notify the commission and the commission will take prompt action to increase contribution requirements, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC, or otherwise account for the shortfall and will provide for true-up payments for any underpayments occurring if prorated reduced payments are required before the contribution requirements can be increased. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

E. Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.

[17.11.10.20 NMAC - Rp,
17.11.10.20 NMAC, 2/9/2021]

17.11.10.21 RECOVERY OF CONTRIBUTIONS:

A. A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

B. A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under

commission approved modifications to those tariffs.

C. The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers.

[17.11.10.21 NMAC - Rp,
17.11.10.21 NMAC, 2/9/2021]

17.11.10.22 FUND DISBURSEMENTS:

A. The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

B. The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

C. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

D. The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

[17.11.10.22 NMAC - Rp,
17.11.10.22 NMAC, 2/9/2021]

17.11.10.23 DESIGNATION OF ETCS:

A. Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

B. Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

C. On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

D. The commission may, upon request, establish the ETC's amount of amount of an ETC's support from the fund, if any in accordance with the requirements of 17.11.10.25 NMAC.

[17.11.10.23 NMAC - Rp,
17.11.10.23 NMAC, 2/9/2021]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND AMOUNT OF SUPPORT:

A. Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition for ETC designation, for state or federal universal service fund the petition shall:

(1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 CFR 54.207;

(2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e)) to be designated as a federal ETC;

(3) for federal USF support, demonstrate how the applicant meets the requirements of 47 CFR 54.101 through 54.203;

(4) demonstrate that the proposed designation is in the public interest;

(5) demonstrate that the proposed ETC is financially and technically competent to provide the supported services for federal or state support;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

(7) demonstrate that the petitioner will satisfy applicable consumer protection and service quality standards;

(8) demonstrate that granting ETC status

to the petitioner in the designated area is likely to result in more customer choice;

(9) address the impact of designation of the petitioner on the size of the state fund or federal USF;

(10) address the unique advantages and disadvantages of the petitioner’s service offering;

(11) demonstrate the petitioner’s willingness and ability to offer service throughout the designated service area within a reasonable time frame, or time frame required by state or federal law; and

(12) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an ETC for an amount of support shall demonstrate that granting the proposed support is in the public interest and, where required, shall include the information required by 17.11.10.25 NMAC.

C. Consideration of the public interest will apply in all ETC designation proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

D. The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company’s petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order approving a petition for an amount of support shall state the amount and type of approved state or federal fund support.

E. The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

F. The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the state fund or federal USF.

[17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, 2/9/2021]

17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:

A. An ETC serving in a rural area of the state may petition the commission for support from the fund when such payments are needed to ensure the widespread availability and affordability of universal service in the rural area(s) of the state served by the ETC.

B. In addition to establishing need as described in subsection A of this section, a petition for support based on need shall identify the geographic area for which support is requested, and shall demonstrate with particularity how the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

C. In support of the petition, the ETC must make available to the commission such information from the ETC that the commission deems necessary, including but not limited to information relating to the ETC’s regulated revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of universal service in the area identified in the petition.

D. The commission shall resolve each petition for support based on need with or without a hearing no later than six months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

E. Companies reporting the use of funds granted by the commission under this section shall provide, on a semi-annual basis, the following:

(1) Specific details of projects for which fund support is used; itemized by the categories of capital expenditures (CapEx) and the related operations expenditures (OpEx).

(a)

Project descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.

(b)

Project prioritizations of buildout plans in technical terms that include locations, maps as applicable, milestones and benchmarks to measure performance and assure compliance. The description shall also provide project status, spending plans and metrics.

(c)

Narratives of the projects that explain the current and ongoing status of completion or ready for service dates (RFS), and other pertinent facts (i.e., project delays, permit status, surveys, right of ways issues) for reporting purposes. The term ready for service (“RFS”) means a description of projects where construction is complete and the project is operational.

(2) The period

for the reporting of project details shall be semi-annual, at a minimum, to continue for the period that funds are awarded.

(3) Semi-

annual financial reporting on a project specific or company-wide basis, depending if the award is specific to network improvements and projects, or for the financial stability of the ETC receiving the award.

[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 2/9/2021]

17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within 21 days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the administrator, a complaint filed by an interested party, or on its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1 NMSA 1978 *et seq.*
[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 2/9/2021]

17.11.10.27 USE OF FUND SUPPORT:

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 NMSA 1978 *et seq.*, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to maintain and support universal service; provided, however, that each ETC receiving support pursuant to 17.11.10.19 or 17.11.10.25 NMAC

must expend no less than sixty percent of the support it receives to deploy and maintain broadband internet access services in rural areas of the state, Subsection F of Section 63-9H-6 NMSA 1978.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service or that the ETC has failed to satisfy the sixty percent minimum expenditure requirement referenced in Subsection A of 17.11.10.27 NMAC, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund and withholding future payments.
[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, 2/9/2021]

17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

B. In the normal course of business, the administrator will give at least three days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.
[17.11.10.28 NMAC - Rp, 17.11.10.28 NMAC, 2/9/2021]

17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND:

The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.
[17.11.10.29 NMAC - Rp, 17.11.10.29 NMAC, 2/9/2021]

17.11.10.30 ADVISORY BOARD:

A. The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: incumbent rural telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three years. Members of the board may

be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

B. The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

C. The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for two years, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum. [17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, 2/9/2021]

17.11.10.31 BROADBAND PROGRAM:

A. It is the goal of

the commission that New Mexico consumers have access to high-quality broadband service from both wireline and mobile broadband providers. Pursuant to Subsection N of Section 63-9H-6, NMSA 1978, ETCs may separately apply to the commission for grants to fund the construction and maintenance of facilities that are capable of providing broadband internet access service to areas unserved or underserved by broadband in the state. Applications must be primarily for coverage of the construction costs of new facilities, but such applications may include a request for maintenance costs of those facilities as well. Each grant that is awarded will provide up to seventy five percent of the budgeted project cost, with the ETC applying the remainder from its own funds. Projects receiving any source of third-party funding other than potential loan funds, FCC high-cost fund legacy support or connect America fund support (including mobility fund support) will not be eligible. Each applicant shall provide a detailed description in their application of the origin and type of funding provided for the carrier match, and a certification that those monies are not duplicative of other purposes or projects other than SRUSF broadband program projects. In evaluating applications, the commission shall seek to avoid duplication of service using the same technology. Awards of support under this section shall be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. For purposes of administering the broadband program, the commission may find that a broadband program proposed project area is a rural area, notwithstanding the definition of rural area in Subsection U of 17.11.10.7 NMAC, if it determines that:

(1) the area otherwise has the characteristics of a rural area;

(2) the area is unserved or underserved by broadband, and;

(3) the public interest requires that the area be classified as rural.

B. Funding of the broadband program. Beginning in 2018, and each year thereafter, at least five million dollars (\$5,000,000.00) of the fund shall be dedicated annually to the broadband program. The amount of funding allocated to the broadband program shall not be subject to proration under Subsection E of 17.11.10.20 NMAC. To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the following year.

C. Applicants for broadband program grants may request that company-specific information contained within an application be treated as confidential. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The commission staff or a third-party contractor, shall keep confidential all company-specific information obtained from applicants for broadband program grants for which confidential treatment is requested, shall not use such information except for purposes of analyzing the applications, and shall not disclose such information in company-specific form unless directed to do so by the commission.

D. Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including, without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

(1) support broadband internet access service at speeds of at least 25.0 Mbps download/3.0 Mbps upload to all households and businesses in the proposed project area;

(2) support voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services and mobile voice services; and

(3) Support access to emergency 911 services.

E. Contents of grant applications. An application for support from the broadband program shall include, at a minimum:

(1) a proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC;

(2) a detailed build plan setting forth a description of the facilities to be deployed, including all costs of constructing facilities;

(3) a map showing where service and coverage will be provided. This requirement can be met by providing:

(a) for a wireline network, a map showing all homes, businesses, and other end user locations passed;

(b) for a wireless network, a coverage map generated using a radio frequency propagation tool generally used in the wireless industry;

(4) an estimate of the number of road miles and square miles to be covered and population and population density of the area covered;

(5) the amount of support requested from the broadband program and the amount of the applicant's financial match, and a description of any type, amount, and purpose of subsidy or financial support the applicant is currently receiving or is scheduled to receive in the area designated in the application;

(6) a description of the technology to be deployed, including data throughput speeds and latency characteristics of the service to be delivered to customers;

(7) a demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC. If the area to be served contains served, unserved and underserved areas, the application and map shall identify which portions of the area are served, unserved and which are underserved. Each served, unserved, and underserved area shall be clearly identified through color coding on the map submitted with the application. Each served, unserved, and underserved area shall be clearly identified through individual color coding indicators on all city street grid maps submitted with the applications. Satellite views are not acceptable for the application's requirement for mapping.

(8) a demonstration of the estimated customer subscription rates and revenues from the services to be offered as a result of the proposed construction sufficient to justify support from the broadband program;

(9) a commitment to provide a minimum twenty-five percent match of funds;

(10) if the project is a wireless network deployment, a commitment to allow collocation on reasonable terms by other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program;

(11) sample terms and conditions for the service and proposed prices;

(12) a certification by an authorized representative affirming that all information set forth in the application is true and correct;

(13) any other requirements to ensure accountability

as the commission may develop and approve in a proceeding to determine the form and contents of grant applications; and

(14) applications and mapping information must also be submitted contemporaneously with the New Mexico department of information technology broadband division.

F. The ETC must make the following commitments and include them in its application:

(1) the broadband service must be offered at reasonably comparable rates for comparable services in urban areas;

(2) the broadband service must be provided for at least seven years following project completion;

(3) the ETC must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended.

(4) the ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-related complaints in a reasonable manner.

G. Procedure for awarding support from the fund:

(1) On or before May 1 of each year, the commission shall open a non-adjudicative, administrative docket and establish a deadline for filing applications for broadband program support for the following calendar year. The telecom bureau, or a third party contractor, shall review and summarize all timely applications.

(2) Interested persons may seek intervention in these proceedings, pursuant to 1.2.2.23 NMAC.

(3) On or before September 1, the telecom bureau, shall make a presentation to the commission with analysis of the applications for awards. The telecom bureau, or a third-party contractor, may communicate with applicants

to request additional information or clarify information presented in the applications in order to prepare its presentation. Such presentations shall be considered by the commission but shall not bind the commission.

(4) At the September 1 presentation, the telecom bureau shall present a summary of projects. The telecom bureau shall provide the following information for each project on a single spreadsheet.

(a) cost per customer served or passed;

(b) type of technology;

(c) whether area is unserved or underserved (or, if area includes both, in what proportions);

(d) download and upload speed of service;

(e) monthly rates that the grantee intends to charge for the service; and

(f) telecom bureau comments on the project.

(5) On or before October 15, the commission shall issue a decision approving or denying in whole or in part, each application. Selection of projects will prioritize unserved, underserved and served areas, in that order, except insofar as the commission may find that other criteria supersede this prioritization.

(6) On or before November 1, any interested person may file with the commission a request for reconsideration, in whole or in part, of any award of funds. Requests for reconsideration will not be valid after November 1.

(7) On or before December 1, the commission shall dispose of any motions for reconsideration.

H. Conditions for disbursement of awarded funds:

(1) The awardee commits to complete construction of its project within three years from the date of the commission's final order approving an award pursuant to 17.11.10.31 NMAC.

(2) For each awarded project, project reports shall be submitted to staff, consultant(s), and administrator(s) semiannually, during June and December and at the mid-point and completion of the project that provide information regarding the status of the project in a form accepted by staff. Semi-annual reports shall be submitted June 30, and December 31 of the calendar year. The midpoint disbursement report shall describe ETC progress on project milestones at the mid-point of the completion of the project pursuant to Paragraph (1) of Subsection E of 17.11.10.25 NMAC, prior to the release of a mid-point disbursement. The mid-point and final reports may be filed concurrently with the submission of the semi-annual reports, but may not be combined into one report. Within 30 days after project completion, the awardee shall submit a final report in a form accepted by staff demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) Prior to the initial disbursement, the ETC must notify the commission in writing that it is prepared to commence the project with regard to project engineering, ordering or delivery of required equipment, labor requirements, and that all permits have been granted to begin construction. The administrator shall disburse one third of the award promptly following receipt of the ETC's written notice that it is prepared to commence the project, one third at the midpoint of the project, and the remaining third upon project completion. The second and third payments may be requested as a single disbursement upon completion and are contingent upon the submission of acceptable project status reports pursuant to Paragraph (2) of Subsection H of 17.11.10.31 NMAC. The commission may, within 30 days after submission of a report, order additional information to be provided, suspend payment by the

administrator, or take other action as necessary after notice and hearing.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, may be subject to refund of award funds or other actions of the commission.

[17.11.10.31 NMAC - Rp, 17.11.10.31 NMAC, 2/9/2021]

HISTORY OF 17.11.10 NMAC:
Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 1/1/2015.
17 11.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) repealed effective 1/29/2016.
17 11.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) repealed effective 1/1/2017.
17 11.10 NMAC, State Rural Universal Service Fund (filed 12/16/2016) repealed effective 1/1/2018.
17 11.10 NMAC, State Rural Universal Service Fund (filed 12/14/2017) repealed effective 2/9/2021.

Other History:

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 1/1/2015.
17.11.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/29/2016.
17.11.10 NMAC State Rural Universal Service Fund (filed 1/19/2016) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/1/2017.
17.11.10 NMAC State Rural Universal Service Fund (filed 12/16/2016) was replaced by 17.11.10 NMAC State Rural Universal Service

Fund, effective 1/1/2018.
17.11.10 NMAC State Rural
Universal Service Fund (filed
12/14/2017) was replaced by 17.11.10
NMAC State Rural Universal Service
Fund, effective 2/9/2021.

End of Adopted Rules

Other Material Related to Administrative Law

**HEALTH,
DEPARTMENT OF**
**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
SECRETARY-DESIGNATE
TRACIE C. COLLINS, M.D.**
JANUARY 29, 2021
**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
to
Impose County-by-County
Restrictions 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. It remains the core purpose of this Order to emphasize that 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 24, 2020 Public Health Emergency Order Temporarily Regulating the Sale and Distribution of Personal Protective Equipment Due to Shortages Caused by COVID-19; and

B. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division.

C. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers.

3. The December 30, 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 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 February 5, 2021;

WHEREAS, confirmed cases in the United States have risen to more than 25.4 million and confirmed COVID-19 infections in New Mexico have risen to over 171,000;

WHEREAS, COVID-19 is a deadly virus and has taken the lives of over 427,000 Americans and over 3,200 New Mexicans;

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, Tracie C. Collins, M.D., Secretary-Designate 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 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.

DEFINITIONS

As used in this 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 more than one-third of their revenue from the sale of canned food, dry goods, fresh fruits and vegetables, pet food, animal feed or supplies, fresh meats, fish, and poultry, and any other consumable household 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, self-storage facilities, 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, 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. Crematoriums, funeral homes, and cemeteries;

p. Banks, credit unions, insurance providers, licensed check cashing businesses, 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 businesses” include barbershops, hair salons, tattoo parlors, nail salons, spas, massage therapy services, esthetician clinics, tanning salons, guided raft tours, and guided balloon tours.

(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, Section 60-6A-26.1; “distillers” are those businesses licensed pursuant to NMSA 1978, Section 60-6A-1; and “wineries” are those businesses licensed pursuant to NMSA 1978, Section 60-A-11.

(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, bowling alleys, casinos, concert venues, indoor ice-skating rinks, 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 for on-premises consumption during the preceding fiscal year.

(6) “Outdoor recreational facilities” include the following outdoor facilities: ice skating rinks, golf courses, public

swimming pools, ski basins, tennis courts, youth programs, youth livestock shows, horseracing tracks, botanical gardens, and zoos.

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

(8) “Retail space” means any business that regularly sells goods or services directly to consumers or end-users at the business location and includes, but is not limited to, the following “essential businesses” identified in the categories above: (1)d, (1)k, (1)m, and (1)n.

(9) “Mass gathering” means any public gathering, private gathering, organized event, ceremony, parade, funeral, or any other grouping that brings together a specified number of individuals in a single room or connected space, confined outdoor space, or open outdoor space. “Mass gatherings” also includes coordinated events in which individuals gather in vehicles. “Mass gathering” does not include the presence of any number of 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.” This document may be obtained at the following link <https://cv.nmhealth.org/covid-safe-practices/>.

THE “RED TO GREEN” FRAMEWORK

1 DIRECT that the State shall continue to reopen according to the following county-by-county framework:

SUMMARY

This Order sets out the

“Red to Green” framework, which includes three levels of operations that are based on a county’s ability to satisfy specified metrics: Green Level, Yellow Level, and Red Level. A county will remain at a given operating level so long as it continues to satisfy the specified metrics for that level. The Department of Health maintains the official map displaying each county’s current level at: <https://cvprovider.nmhealth.org/public-dashboard.html>. The Department of Health updates this map every other Wednesday. If a county fails to meet the specified metrics for a given level, the county must begin operating at the lower level’s restrictions within 48 hours of the map’s update. If a county begins meeting the specified metrics for a less restrictive level, the county may begin operating at that level’s restrictions immediately upon the map’s update.

REOPENING LEVEL METRICS

Counties shall be categorized according to one of the following levels:

(1) Green Level

-Counties seeking to operate at this level must satisfy both of the following metrics:

(a) A new

COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; AND

(b)

An average percent of positive COVID-19 test results over the most recent 14-day period less than or equal to 5%.

(2) Yellow Level

- Counties seeking to operate at this level must meet either of the following metrics:

(a) A new

COVID-19 case incidence rate of no greater than 8 cases per 100,000 inhabitants during the most recent two-week period; OR

(b)

An average percent of positive COVID-19 test results over the

most recent 14-day period less than or equal to 5%.

(3) Red Level -All other counties shall operate at the Red Level.

REQUIREMENTS FOR EACH LEVEL

Green Level - Green Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than twenty (20) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to one hundred twenty (120) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate without occupancy limitations but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 50% capacity unless specified otherwise in the pertinent CSP’s, in

which case the CSP’s capacity limits are controlling. The indoor portions of “outdoor recreational facilities” must comply with the requirements contained in paragraph (2)h below unless specified otherwise in the pertinent CSP’s. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide dine-in service, except those restaurants that have completed the NM Safe Certified training program. All “food and drink establishments” that have completed the NM Safe Certified offered at <https://nmsafecertified.org>, and also comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to

Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks may operate at 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables 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, and no bar or counter seating is permitted. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

f. “Places of lodging” which have completed the NM Safe Certified training offered at <https://mnsafecertified.org> may operate up to 75% of maximum occupancy. All other “places of

lodging” shall not operate at more than 40% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed ten (10) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. “Close-contact recreational facilities” may not operate.

h. Any entity that is not identified as an “essential business,” “house of worship,” “outdoor recreational facility,” “food and drink establishment,” “place of lodging,” or “close-contact recreational facility” may operate but may not exceed 50% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

Yellow Level -Yellow Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than ten (10) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to eighty (80) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. “Houses of worship” may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 33% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. “Outdoor recreational facilities” may operate at 25% capacity unless specified otherwise in the pertinent CSP’s, in which case the CSP’s capacity limits are controlling. The indoor portions of “outdoor recreational facilities” must comply with the requirements contained in paragraph (2)i below unless specified otherwise in the pertinent CSP’s. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. “Food and drink establishments” may not provide dine-in service unless they complete the NM Safe Certified training offered at <https://nmsafecertified.org>, as well as comply with all NM Safe Certified requirements, including, but not limited to: screening customers and staff for symptoms of COVID-19 prior to entry, consenting to Department of Health spot-testing of symptomatic employees, requiring dine-in customers to provide limited contact information for contact tracing purposes, and retaining contact tracing information for no less than three weeks. Those “food and drink establishments” that complete the NM Safe Certified training and comply with all attendant requirements mandated by that program may provide dine-in services but they may not exceed more than 25% of the maximum occupancy of any

enclosed space on the premises, as determined by the relevant fire marshal or fire department. All “food and drink establishments,” regardless of compliance with the NM Safe Certified requirements, may provide service in outdoor seating areas up to 75% occupancy, where applicable. In all instances, tables 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, and no bar or counter seating is permitted. Any “food and drink establishment” that is permitted to serve alcohol must close for in person service by 10:00 p.m. and must remain closed until at least 4:00 a.m. “Food and drink establishments” may provide delivery service after 10:00 p.m. but no customers are permitted on the premises. “Food and drink establishments” may provide carryout service, or delivery service if otherwise permitted by law.

f. “Places of lodging” which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may operate up to 60% of maximum occupancy. All other “places of lodging” shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. “Close-contact recreational facilities” may not operate.

h. “Close-contact businesses” may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises,

as determined by the relevant fire marshal or fire department, or twenty (20) customers inside the building at any given time.

i. Any entity that is not identified as an “essential business,” “house of worship,” “outdoor recreational facility,” “food and drink establishment,” “place of lodging,” “close-contact recreational facility,” or “close-contact business” may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or one hundred twenty-five (125) customers inside its building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate, provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department.

Red Level –Red Level counties are subject to the following requirements:

(1) Except as provided in the following paragraph, all “mass gatherings” of more than five (5) individuals are prohibited. “Mass gatherings” in which individuals gather in vehicles are permitted so long as the gathering is limited to forty (40) vehicles, no food or drinks are sold at the gathering, and all individuals remain in their vehicles.

(2) All businesses, houses of worship, and other non-profit entities may operate subject to the following occupancy limits and restrictions:

a. All “essential businesses,” excluding those defined as a “retail space,” may operate but must limit operations to only those absolutely necessary to carry out essential functions.

b. “Essential businesses” identified as a “retail space” may operate but may not

exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

c. "Houses of worship" may hold religious services, indoors or outdoors, or provide services through audiovisual means, but may not exceed 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department.

d. "Outdoor recreational facilities" may operate at 25% capacity unless specified otherwise in the pertinent CSP's, in which case the CSP's capacity limits are controlling. The indoor portions of "outdoor recreational facilities" must comply with the requirements contained in paragraph (2)i below unless specified otherwise in the pertinent CSP's. Notwithstanding any other provision herein, horseracing tracks are prohibited from having spectators.

e. "Food and drink establishments" may not provide indoor dine-in service but may provide service in outdoor seating areas up to 25% occupancy, where applicable. Tables 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, and 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 for in-person service by 9:00 p.m. and must remain closed until at least 4:00 a.m. "Food and drink establishments" may provide delivery service after 9:00 p.m. but no customers are permitted on the premises.

f. "Places of lodging" which have completed the NM Safe Certified training offered at <https://nmsafecertified.org> may

operate up to 40% of maximum occupancy. All other "places of lodging" shall not operate at more than 25% of maximum occupancy. Further, and notwithstanding any other provision herein, any home, apartment, condominium, or other similar space that is offered as a vacation rental may operate but may not exceed five (5) guests. Healthcare providers who are engaged in the provision of care to New Mexico residents, individuals for extended stays as temporary housing, and individuals who are quarantining shall not be counted for purposes of determining maximum occupancy.

g. "Close-contact recreational facilities" may not operate.

h. "Close-contact businesses" may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or ten (10) customers inside the building at any given time.

i. Any entity that is not identified as an "essential business," "house of worship," "outdoor recreational facility," "food and drink establishment," "place of lodging," "close-contact recreational facility," or "close-contact business" may operate but may not exceed the lesser of 25% of the maximum occupancy of any enclosed space on the premises, as determined by the relevant fire marshal or fire department, or seventy-five (75) customers inside the building at any given time. Notwithstanding the foregoing, indoor shopping malls may operate, provided that the total number of persons within the mall does not exceed 25% of the maximum occupancy of the premises, as determined by the relevant fire marshal or fire department.

BASELINE DIRECTIVES

Regardless of a county's level, I **DIRECT** that the following baseline directives apply at all times

and in all instances:

(1) 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 do not satisfy this requirement. "Retail spaces" 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.

(2) In order to minimize the shortage of health care supplies and other necessary goods, "retail spaces" shall limit the sale of medications, durable medical equipment, baby formula, diapers, sanitary care products, and hygiene products to three items per individual.

(3) Any "food and drink establishment," "close-contact business," "place of lodging," "retail space," or other business (including "essential businesses" other than those which meet the definition of a healthcare operation, utility, or indigent care services) in which members of the public regularly visit must immediately close for a period of fourteen (14) days following the occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted on a rolling basis. Notwithstanding this provision, an "essential business" may be permitted to continue operating if the Department of Health, after consultation with the New Mexico Environment Department, determines that the business is a necessary provider of goods or services within the community in light of geographic considerations. Further, "essential businesses" that test each employee every two weeks and regularly provide contact tracing data to the Environment Department shall not be subject to closure under this provision.

(4) All businesses, houses of worship, and other non-

profit entities must adhere to the pertinent CSP's.

(5) 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 50% 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." Private schools shall report to the New Mexico Public Education Department all cases of COVID-19- positive students, staff, contractors and volunteers associated with the school within four hours of the school being notified of the positive case, pursuant to the procedures in the current COVID-19 Response Toolkit for New Mexico's Public Elementary Schools. Private schools must immediately close for a period of fourteen (14) days following the last occurrence of four (4) or more rapid responses within a fourteen (14) day period. Private schools also are subject to inclusion on the New Mexico Environment Department's watchlist and closure list.

(6) State parks shall only be open to New Mexico residents for day-use only. 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.

(7) State museums may operate subject to the occupancy level and restrictions applicable to comparable private museums located in their respective counties.

I FURTHER DIRECT as follows:

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

(2) This 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 Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) This Order shall take effect on January 29, 2021 and remain in effect through February 26, 2021.

(5) 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.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

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 29TH DAY OF JANUARY 2021

ATTEST:

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

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

**/S/ TRACIE C. COLLINS, M.D.
SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH**

**HEALTH,
DEPARTMENT OF**

**PUBLIC HEALTH ORDER
NEW MEXICO DEPARTMENT
OF HEALTH
SECRETARY-DESIGNATE
TRACIE C. COLLINS, M.D.**

JANUARY 29, 2021

**Amended Public Health
Emergency Order Temporarily
Limiting Long-Term Care
Facilities Visitation Due to
COVID-19**

WHEREAS, on January 30, 2020, the World Health Organization announced the emergence of a novel Coronavirus

Disease 2019 (“COVID-19”) that had not previously circulated in humans, but has been found to have adopted to humans such that it is contagious and easily spread from one person to another and one country to another;

WHEREAS, COVID-19 has been confirmed in New Mexico since March 11, 2020, when the New Mexico Department of Health confirmed the first cases of individuals infected with COVID-19 in New Mexico and additional cases have been confirmed each day since then;

WHEREAS, on March 11, 2020, because of the spread of COVID-19, Michelle Lujan Grisham, the Governor of the State of New Mexico, issued Executive Order 2020-004 declaring 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 February 5, 2021;

WHEREAS, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of residents of long-term facilities, who are particularly vulnerable due to their age and underlying health conditions;

WHEREAS, in the effort to stop further spread of COVID-19, the State, through the New Mexico Department of Health, has begun to distribute COVID-19 vaccine to long-term care facility residents and employees but has not yet completed the vaccination process, leaving those residents vulnerable;

WHEREAS, social-distancing remains the most effective ways to minimize the spread of COVID-19; and

WHEREAS, the New Mexico Department of Health possess legal authority pursuant to the Public Health Act, NMSA,

1978, Sections 24-1-1 to -40 the Public Health Emergency Response Act, NMSA 1978, 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 gathering of people when deemed necessary by the Department for the protection of public health.

NOW, THEREFORE, I, Tracie C. Collins, M.D., Secretary-Designate 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 **ORDER** and **DIRECT** as follows:

(1) All Long-Term Care Facilities must stay apprised of and comply with the applicable directives and guidelines issued by the Department of Health in consultation with the Aging and Long-Term Services Department and the Governor’s Long-Term Care Medical Advisory Team, which may be found at: <https://cv.nmhealth.org/long-term-care-guidelines/>.

(2) For purposes of this Order, “Long-Term Care Facilities” include nursing homes, assisted living facilities, adult day cares, hospice facilities, and rehabilitations facilities with older adult patients.

I FURTHER ORDER AND DIRECT as follows:

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

(2) This Order shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Any person who

willfully violates this Order may be subject to civil administrative penalties available at law.

(4) This Order shall take effect on January 29, 2021 and remain in effect for the duration of the public health emergency first declared in Executive Order 2020-004 and any subsequent renewals of that public health emergency declaration unless otherwise rescinded.

I ADVISE other facilities where older adults reside, or that provide services to older adults, to review the restrictions set forth in this Order and to implement whatever lawful restrictions or conditions of entry they deem necessary to protect health and safety.

I ADVISE that nothing in this Order shall be interpreted to prohibit Long-Term Care Facilities from imposing any other lawful restrictions or conditions of entry that they deem necessary to protect the health and safety of their residents.

DONE AT THE EXECUTIVE OFFICE THIS 29TH DAY OF JANUARY 2021

ATTEST:
/S/ MAGGIE TOULOUSE
OLIVER
SECRETARY OF STATE

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

/S/ TRACIE C. COLLINS, M.D.
SECRETARY DESIGNATE OF THE STATE OF NEW MEXICO
DEPARTMENT OF HEALTH

**SUPERINTENDENT OF
INSURANCE, OFFICE OF****NOTICE OF MINOR,
NONSUBSTANTIVE
CORRECTION**

The Office of Superintendent of Insurance gives Notice of a Minor, Nonsubstantive Correction to 13.10.30 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 12, Subsection H was changed to the Subsection G.

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

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

2021 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 12
Issue 2	January 14	January 26
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
Issue 11	May 27	June 8
Issue 12	June 10	June 22
Issue 13	June 24	July 7
Issue 14	July 8	July 20
Issue 15	July 22	August 10
Issue 16	August 12	August 24
Issue 17	August 26	September 14
Issue 18	September 12	September 28
Issue 19	September 30	October 13
Issue 20	October 14	October 26
Issue 21	October 28	November 9
Issue 22	November 15	November 30
Issue 23	December 2	December 14
Issue 24	December 16	December 28

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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