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# New Mexico Register

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

Volume XXXIV - Issue 3 - February 14, 2023

# The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division
1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is $270.00. Individual copies of any Register issue may be purchased for $12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7941; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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# New Mexico Register

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February 14, 2023

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# Notices of Rulemaking and Proposed Rules

## AUDITOR, OFFICE OF THE STATE

### AMENDED NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Office of the State Auditor is in the process of amending 2.2.2 NMAC, Requirements for Contracting and Conducting Audits of Agencies ("Audit Rule"). The Audit Rule establishes policies, procedures, rules, and requirements for contracting and conducting financial audits, special audits, attestation engagements, performance audits, and forensic engagements of governmental agencies and local public bodies of the state of New Mexico and is governed by Sections 12-6-1 to 12-6-14 NMSA 1978 ("Audit Act"). The amendments to the Audit Rule are proposed pursuant to the Audit Act, at Section 12-6-12 NMSA 1978 and Subsection A of Section 12-6-3 NMSA 1978. Section 12-6-12 NMSA 1978 states "[t]he state auditor shall promulgate reasonable regulations necessary to carry out the duties of his office, including regulations required for conducting audits in accordance with generally accepted auditing standards."

A copy of the full text of the proposed amendments to the Audit Rule is available on the Office of the State Auditor's website, at https://www.saonm.org/auditing/financial-audits/state-auditor-rule.

The Office of the State Auditor will consider adopting the proposed new Audit Rule at a public hearing on March 3, 2023, at 1:30 p.m. The hearing will be a virtual meeting and members of the public may attend, listen, and participate via live streaming or telephone. Please see the prior link for additional information on attending the virtual public hearing. Public comment is allowed prior to and at the public hearing on March 3, 2023. Please e-mail written comments on the proposed Audit Rule to Liza Kerr, Financial Audit Director, at Liza.Kerr@osa.state.nm.us between January 31, 2023, through March 2, 2023. If you are unable to e-mail comments, you may deliver written comments to the Office of the State Auditor, 2540 Camino Edward Ortiz, Suite A, Santa Fe, New Mexico 87507, as soon as possible and no later than March 2, 2023. All written comments will be posted on the Office of the State Auditor's website within 3 days of receipt.

Proposed amendments to the Audit Rule include the following: (i) adding or clarifying certain definitions; (ii) removing references to his or him, to make the Audit Rule gender neutral; (iii) removing the phrase comprehensive annual financial report and replacing it with the acronym ACFR; (iv) updating requirements for component unit audits of housing departments of a local government or a regional housing authority to be conducted by the same auditor that does the local government audit, consistent with the language of the Audit Act; (v) adding a requirement for the auditor to review annual reports and performance measures submitted by the agency; (vi) adding a requirement for an SOC 2 audit to be done for the SHARE financial system. To the extent applicable, the full text for relevant technical information that served as a basis for proposed changes is available at gasb.org, and gao.gov.

If you are an individual with a disability who is in need of auxiliary aid or service to attend or participate in the public hearing, please contact the Office of the State Auditor at least one week prior to the public hearing. Please contact Christopher Hall at 505-476-3800 or Christopher.Hall@osa.state.nm.us if any such assistance is needed.

At the start of the meeting, the Office of the State Auditor shall announce the names of those members of the public body participating remotely. All members of the Office of the State Auditor participating remotely shall identify themselves whenever they speak and be clearly audible to the other members of the public body and to the public. The Office of the State Auditor shall suspend discussion if the audio or video is interrupted until restored.

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## ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

### ENERGY CONSERVATION AND MANAGEMENT DIVISION

### NOTICE OF PUBLIC HEARING AND RULEMAKING

The State of New Mexico, The Energy Conservation and Management Division (ECMD) of the Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice of the following proposed rulemaking. EMNRD proposes to adopt 19.1.10 NMAC, Community Energy Efficiency Development (CEED) Program.

**Purpose of Rule.** In 2022, the Legislature passed the Community Energy Efficiency Development Block Grant Act, directing ECMD to establish a Community Energy Efficiency Development (CEED) Program. The statute delineated entities eligible for CEED Program funding, established project requirements and selection consideration, and provided a definition of community energy efficiency projects. The Act required EMNRD to promulgate rules to establish requirements and procedures for applying for a CEED Program grant.-

**19.1.10 NMAC, Community Energy Efficiency Development (CEED) Program.** ECMD proposes to solicit community

energy efficiency projects that provide improvements to residential buildings in underserved communities that will, in the aggregate, reduce energy consumption, energy-related operating costs, carbon intensity of energy consumption, or a combination thereof. These projects will target the adoption of energy-efficient consumer behavior, equipment, or devices that result in a decrease in energy consumption without reducing the amount or quality of energy services.

The rule establishes procedures for administering the program, adopts application requirements and evaluation criteria, and defines the purposes and qualifications for which CEED Program funding may be utilized. The rule will apply to all eligible entities, which includes Indian nations, tribes, or pueblos; counties; municipalities; or the New Mexico Mortgage Finance Authority. Stakeholders were engaged in the development of the Rule.

**Legal Authority.** EMNRD proposes the rules under the authority of Subsection B of 62-17A-3 and Subsection E of 9-1-5, NMSA 1978.

**The full text of the proposed rules are available** from the EMNRD, Energy Conservation and Management Division, 1220 S. St Francis Drive, Santa Fe, NM 87505; at https://www.emnrd.nm.gov/ecmd/ecmd-public-notices; or by contacting Dana Howard at Dana.Howard@emnrd.nm.gov; telephone (505) 395-0855.

**Public Hearing and Comment.** EMNRD will hold a virtual public hearing on the proposed rules at 10 am on March 17, 2023. The public may join the hearing virtually through WebEx using one of the following:

**Grid Modernization Grant Program Rule Public Hearing**
Date and time:
Tuesday, March 17, 2023, 10:00 am | (UTC-06:00) Mountain Time (US & Canada)

Join link:
https://nmemnrd.webex.com/nmemnrd/j.php?MTID=m525cd97fc6e980d11257f2a618ab9734

Webinar number:
2483 485 9855

Webinar password:
1qQASZX887 (17727998 from phones)

Join by phone
1-844-992-4726 United States Toll Free
+1-408-418-9388 United States Toll

Access code: 2483 485 9855

Those wishing to comment on the proposed rules may make oral comments or submit written comments at the hearing or may submit written comments by March 17, 2023, by 5:00 p.m. by mail or e-mail. Please mail written comments to Dana Howard, EMNRD, Energy Conservation and Management Division, 1220 S. St Francis Drive, Santa Fe, New Mexico 87505 or submit them by e-mail to Dana.Howard@emnrd.nm.gov.

If you are an individual with a disability who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Dana Howard at (505) 395-0855 or the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Dana Howard at (505) 395-0855 if a summary or other type of accessible format is needed.

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## ENVIRONMENT DEPARTMENT
### ENVIRONMENTAL IMPROVEMENT BOARD

**NOTICE OF SCHEDULED PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO 11.5.1.16 NMAC OF THE OCCUPATIONAL HEALTH AND SAFETY – GENERAL PROVISIONS EIB 22-64(R)**

The Environmental Improvement Board (EIB) will hold a public hearing on April 28, 2023, beginning at 9:00 a.m. MDT via internet (WebEx), telephone, and in person.

If you would like to attend the public hearing in person, please go to the following address:

Marquez Building
525 Camino de los Marquez
Santa Fe, New Mexico 87505

If you would like to join the public hearing online via video conference, go to:

https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mda58846efa570b4af6fc64e6d3429433

Meeting Number: 2460 675 2296

Password: ThPqwRXm252

If you would like to join the public hearing via telephone, please dial the following number:

+1-415-655-0001 US Toll

Access code: 2460 675 2296

Comments will be received via electronic mail or smart comment through the conclusion of the hearing. To comment via electronic mail, send correspondence to: pamela.jones@env.nm.gov. To comment via smart comment, use the following link: https://commentinput.com/comment-manager/comment/commentEntry?projectID=200062.

At the public hearing, the EIB will consider proposed amendments to 11.5.1.16 NMAC, Occupational Health and Safety – General Provisions as proposed in the Petition to Amend 11.5.1.16 NMAC of the Occupational Health and Safety Regulations and Request for

Hearing (Petition), docket number EIB 22-64(R). The Occupational Health and Safety Bureau (Bureau) of the New Mexico Environment Department filed the Petition. The proposed amendments will remove a requirement that employers must report an employee's positive test of the novel coronavirus (COVID-19) to the Bureau.

While COVID-19 caused a public health emergency and continues to pose a threat to the health, safety, wellbeing, and property of the residents of New Mexico, the state has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts; additionally, the Governor's declaration of a public health emergency expired on November 11, 2022. New Mexico has the effective tools and practices to minimize the spread of COVID-19, and immediate knowledge of an employee's positive test result for the novel coronavirus is no longer necessary for the Bureau to help assure safe and healthful working conditions for employees. Additionally, the apparatus necessary to successfully manage immediate reporting from employers is no longer sustainable.

A copy of the proposed amendment is posted on the Department's website at https://commentinput.com/comment-manager/comment/commentEntry?projectID=200062. The EIB has also posted a copy of the proposed amendment on the EIB website as an attachment to the Petition under docket number EIB 22-64(R).

To obtain a physical or electronic copy of the proposed amendment, please contact: Pamela Jones, Board Administrator, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New Mexico, 87502; pamela.jones@env.nm.gov; (505) 660-4305. In your correspondence, reference docket number EIB 22-64(R).

The hearing will be conducted in accordance with the EIB's Rulemaking Procedures found at 20.1.1 NMAC, the Environmental Improvement Act under Section 74-1-9, and other applicable procedures and procedural orders. You may obtain written comments regarding the proposed amendment from Pamela Jones at the contact information listed 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 exhibits; and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony must file such statement prior to the close of the hearing via electronic mail to: pamela.jones@env.nm.gov or via smart comment at the following link: https://commentinput.com/comment-manager/comment/commentEntry?projectID=200062.

Persons wishing to present technical testimony must file with the EIB a written notice of intent to do so. Notices of intent for the hearing must be received by the EIB by 5:00 p.m. MDT Monday, April 10, 2023, and should reference the name of the regulations, the date of the hearing (April 28, 2023), and docket number EIB 22-64(R).

You may find the requirements for a notice of intent to present technical testimony at 20.1.1.302 NMAC.

The notice of intent shall:

- Identify the person or entity for whom the witness(es) will testify;
- Identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of his or her education and work background;
- If the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
- Include a copy of the direct testimony of each technical witness in narrative form;
- Include the text of any recommended modifications to the proposed regulatory change; and
- List and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of the rule language being proposed.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g., sign language interpreter, to participate in any aspect of this process, please contact Pamela Jones, Board Administrator, at least 14 days prior to the hearing date at P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, New Mexico, 87502, telephone (505) 660-4305 or email Pamela.Jones@env.nm.gov. (TDD or TTY) users please access the number via the New Mexico Relay Network, 1-800-659-1779 (voice); TTY users: 1-800-659-8331).

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

**STATEMENT OF NON-DISCRIMINATION**

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. Parts 5 and 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:
Kathryn Becker, 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@env.nm.gov.

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 or visit our website at https://www.env.nm.gov/non-employee-discrimination-complaint-page/ to learn how and where to file a complaint of discrimination.

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## ENVIRONMENT DEPARTMENT
### JUNTA DE MEJORA AMBIENTAL DE NUEVO MÉXICO

### AVISO DE AUDIENCIA PÚBLICA PROGRAMADA PARA CONSIDERAR LAS ENMIENDAS PROPUESTAS A 11.5.1.16 NMAC DE LA SEGURIDAD Y SALUD OCUPACIONAL - DISPOSICIONES GENERALES EIB 22-64(R)

La Junta de Mejora Ambiental (EIB, por sus siglas en inglés) realizará una audiencia pública el 28 de abril de 2023, a partir de las 9:00 a. m. MDT a través de Internet (WebEx), teléfono y en persona.

Si desea asistir personalmente a la audiencia pública, diríjase a la siguiente dirección:

Edificio Marquez
525 Camino de los Marquez
Santa Fe, NM 87505

Si desea unirse a la audiencia pública en línea a través de una videoconferencia, vaya a: https://nmed-oit.webex.com/nmed-oit/j.php?MTID=mda58846efa570b4af6fc64e6d3429433

Número de reunión: 2460 675 2296

Contraseña: ThPqwRXm252

Si desea unirse a la audiencia pública por teléfono, marque el siguiente número:

+1-415-655-0001 Peaje en EE. UU.

Código de acceso: 2460 675 2296

Los comentarios se recibirán por correo electrónico o comentario inteligente hasta la conclusión de la audiencia. Para hacer comentarios por correo electrónico, envíe la correspondencia a: pamela.jones@env.nm.gov. Para hacer comentarios a través de comentario inteligente, use el siguiente enlace: https://commentinput.com/comment-manager/comment/commentEntry?projectID=200062.

En la audiencia pública, la EIB considerará las enmiendas propuestas a 11.5.1.16 NMAC, Salud y Seguridad Ocupacional - Disposiciones Generales como se propone en la Petición para enmendar 11.5.1.16 NMAC de las Regulaciones de Salud y Seguridad Ocupacional y Solicitud de Audiencia (Petición), expediente número EIB 22-64(R). La Oficina de Salud y Seguridad Ocupacional (Oficina) del Departamento de Medio Ambiente de Nuevo México presentó la Petición. Las enmiendas propuestas eliminarán el requisito de que los empleadores deben informar a la Oficina la prueba positiva del nuevo coronavirus (COVID-19) de un empleado.

Si bien la COVID-19 causó una emergencia de salud pública y continúa representando una amenaza para la salud, la seguridad, el bienestar y la propiedad de los residentes de Nuevo México, el estado ha tomado medidas enérgicas para reducir la propagación de COVID-19 y mitigar sus impactos; además, la declaración de la gobernadora de una emergencia de salud pública expiró el 11 de noviembre de 2022. Nuevo México tiene las herramientas y prácticas efectivas para minimizar la propagación de COVID-19, y el conocimiento inmediato del resultado positivo de la prueba de un empleado para el nuevo coronavirus ya no es necesario para que la Oficina ayude a garantizar condiciones de trabajo seguras y saludables para los empleados. Además, el aparato necesario para gestionar con éxito la notificación inmediata de los empleadores ya no es sostenible.

Una copia de la enmienda propuesta está publicada en el sitio web del Departamento en https://commentinput.com/comment-manager/comment/commentEntry?projectID=200062. La EIB también ha publicado una copia de la enmienda propuesta en el sitio web de la EIB como un archivo adjunto a la Petición con el número de expediente EIB 22-64(R).

Para obtener una copia física o electrónica de la enmienda propuesta, comuníquese con: Pamela Jones, administradora de la junta, P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, NM, 87502; pamela.jones@env.nm.gov; (505) 660-4305. En su correspondencia, haga referencia al número de expediente EIB 22-64(R).

La audiencia se llevará a cabo de acuerdo con los Procedimientos de Elaboración de Normas de la EIB que se encuentran en 20.1.1 NMAC, la Ley de Mejora Ambiental bajo la Sección 74-1-9 y otros procedimientos y órdenes procesales aplicables. Puede obtener comentarios por escrito con respecto a la enmienda propuesta de Pamela Jones en la información de contacto mencionada anteriormente.

Todas las personas interesadas tendrán una oportunidad razonable en la audiencia para presentar pruebas, datos, puntos de vista y

argumentos pertinentes, en forma oral o por escrito; presentar pruebas instrumentales; y para interrogar a los testigos. Cualquier persona que desee presentar una declaración no técnica por escrito para el registro en lugar de un testimonio oral debe presentar dicha declaración antes del cierre de la audiencia por correo electrónico a: pamela.jones@env.nm.gov o por comentario inteligente al siguiente enlace: https://commentinput.com/comment-manager/comment/commentEntry?projectID=200062

Las personas que deseen presentar testimonio técnico deben presentar ante la EIB una notificación por escrito de su intención de hacerlo. La EIB debe recibir los avisos de intención para la audiencia antes de las 5:00 p. m. MDT del lunes 10 de abril de 2023, y debe hacer referencia al nombre de las regulaciones, la fecha de la audiencia (28 de abril de 2023) y el número de expediente EIB 22-64(R).

Puede encontrar los requisitos para un aviso de intención de presentar testimonio técnico en 20.1.1.302 NMAC.

El aviso de intención deberá:

- Identificar a la persona o entidad por la cual testificarán los testigos;
- Identificar cada testigo técnico que la persona pretende presentar e indicar las calificaciones del testigo, incluida una descripción de historial educativo y laboral;
- Si la audiencia se lleva a cabo en varios lugares, indicar el lugar o los lugares en los que estarán presentes los testigos;
- Incluir una copia del testimonio directo de cada testigo técnico en forma narrativa;
- Incluir el texto de cualquier modificación recomendada al cambio regulatorio propuesto; y
- Enumerar y adjuntar todas las pruebas instrumentales que se anticipa esa persona ofrecerá en la audiencia, incluida cualquier declaración propuesta de razones para la adopción de la redacción de la norma propuesta.

Si usted es una persona con una discapacidad y necesita asistencia, por ejemplo, un intérprete de lenguaje de señas, o un dispositivo auxiliar para participar en cualquier aspecto de este proceso, comuníquese con Pamela Jones, administradora de la Junta, al menos 14 días antes de la fecha de la audiencia en P.O. Box 5469, 1190 St. Francis Drive, Suite S-2103, Santa Fe, NM, 87502, teléfono (505) 660-4305 o correo electrónico Pamela.Jones@env.nm.gov. (TDD o TTY), los usuarios deben acceder al número a través de New Mexico Relay Network, 1-800-659-1779 (voz); Usuarios de TTY: 1-800-659-8331).

La EIB puede tomar una decisión sobre los cambios regulatorios propuestos al final de la audiencia o puede convocar una reunión después de la audiencia para considerar la acción sobre la propuesta.

**DECLARACIÓN DE NO DISCRIMINACIÓN**

El NMED no discrimina por motivos de raza, color, origen nacional, discapacidad, edad o sexo en la administración de sus programas o actividades, según lo exigen las leyes y reglamentos aplicables.

El NMED es responsable de la coordinación de los esfuerzos de cumplimiento y la recepción de consultas sobre los requisitos de no discriminación implementados por 40 C.F.R. Partes 5 y 7, incluido el Título VI de la Ley de Derechos Civiles de 1964, según enmendada; Sección 504 de la Ley de Rehabilitación de 1973; la Ley de Discriminación por Edad de 1975, el Título IX de las Enmiendas de Educación de 1972 y la Sección 13 de las Enmiendas de la Ley Federal de Control de la Contaminación del Agua de 1972. Si tiene alguna pregunta sobre este aviso o cualquiera de los programas, políticas o procedimientos de no discriminación de NMED, puede comunicarse con:

Kathryn Becker, coordinadora de no discriminación, New Mexico Environment Department, 1190 St. Francis Dr., Suite N4050, P.O. Box 5469, Santa Fe, NM 87502, (505) 827-2855, nd.coordinator@env.nm.gov.

Si cree que ha sido discriminado con respecto a un programa o actividad de NMED, puede comunicarse con la coordinadora de no discriminación identificada anteriormente o visitar nuestro sitio web en https://www.env.nm.gov/non-employee-discrimination-página-queja/ para saber cómo y dónde presentar una queja por discriminación.

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## PUBLIC EDUCATION COMMISSION

### NOTICE OF PROPOSED RULEMAKING

**Public Hearing.** The New Mexico Public Education Commission (PEC) gives notice that it will conduct a public hearing on Friday, March 24, 2023 beginning at 9:15 a.m. (MDT) via Zoom and in -person in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501. The purpose of the public hearing is to receive and review public input, discuss and take final action on the proposed new rule, **6.2.9 NMAC - Public Education Commission Procedures Related to State Charter Schools.** At the hearing, the PEC will provide a verbal summary statement on record of the proposed rule, take input, and review comments received and review the most updated draft of the proposed rule. The PEC will then discuss and take possible action to adopt the rule on this same date.

**Explanation and Summary of Purpose of Text**

The PEC is establishing rules for the adoption of policies and processes and time-lines for high stakes decisions of the PEC related to the state chartered schools that it authorizes. The PEC is considering establishing the rule in one of two ways. 1) by creating a new rule, 6.2.9 NMAC, or 2) adding new provisions to Title 6, Primary and Secondary Education; Chapter 80, Alternative Education

– Charter School, Part 4; Charter School Application and Appeal Requirements; 6.80.4 NMAC. For option 2, the existing text of 6.80.4 NMAC would not be changed, rather new provisions would be added. Both versions are posted on the website and contain the same proposed new text.

The proposed rule contains the following substantive sections:

Schedule for commission policy-making,
Policy review,
Out-of-cycle policy-making; emergency circumstances,
State charter school evaluation,
Annual site visit and annual report,
Correcting unsatisfactory performance and rescission of notice of possible non-renewal,
Renewal,
Intervention ladder, and
Revocation or suspension

**Statutory Authorization(s):**
Subsection B of Section 22-8B-2 NMSA 1978, Sections 22-8B-5.3, 22-8B-16, and Subsection A of Section 14-4-2 NMSA 1978.

No technical information serves as a basis for this proposed rule.

**Public Comment on the Proposed Rule.** Interested parties may provide public comment as follows:

Written comment:
To Perea, Sharyn, PED
New Mexico Public Education Department,
300 Don Gaspar Avenue, Santa Fe, New Mexico 87501 or by electronic mail to sharyn.perea@ped.nm.gov
To be received on or before 5:00 p.m. (MST) on March 15, 2023

Oral comment, virtual location.
Agendas and Zoom information for each meeting will be posted at https://webnew.ped.state.nm.us/bureaus/public-education-commission/2023-public-education-commission-meeting-information/ at least 72 hours prior to each meeting.

Oral Comment, in-person location
Mabry Hall
Jerry Apodaca Education Building
300 Don Gaspar Avenue, Santa Fe, New Mexico 87501

February 16, 2023, 10:00 a.m. Working session of the PEC
March 23, 2023, 10:00 a.m. Working session of the PEC
March 24, 2023, 9:15 a.m. Hearing on the Proposed Rule

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Perea, Sharyn, New Mexico Public Education Department, 300 Don Gaspar Avenue, Santa Fe, New Mexico 87501, by electronic mail to sharyn.perea@ped.nm.gov as soon as possible before the date set for the working sessions or public hearing. The PEC requires at least 10 calendar days advance notice to provide any special accommodations requested.

The PEC may discuss and take action on the proposed rule on March 24, 2023.

Copies of the proposed rule may be accessed through the PEC website https://webnew.ped.state.nm.us/bureaus/public-education-commission/policies-and-processes/ or may be obtained from Julia Barnes, attorney for the PEC, jhbnm1@gmail.com or at (505) 470-7349 during regular business hours.

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## REGULATION AND LICENSING DEPARTMENT
### ACUPUNCTURE AND ORIENTAL MEDICINE, BOARD OF

### NOTICE OF PROPOSED RULEMAKING AND RULE HEARING

The New Mexico Board of Acupuncture and Oriental Medicine will hold a rule hearing on Wednesday, March 29, 2023, at 9:00 a.m. Following the rule hearing, the Board will convene a board meeting to consider adoption of the rules and address regular business. The rule hearing and board meeting will be held at 5500 San Antonio Dr. NE, Albuquerque, NM in the Sandia Conference Room for those wishing to attend in person. The rule hearing and board meeting will also be held via Teams Meetings for those desiring to attend virtually.

Teams Meeting:
https://teams.microsoft.com/registration/9GuqBDbUb0K_pAS3pw5g_w,Qa8htQQ7oE69qHpPH0i6Sg,h5-71cuIikqyLB7uNmcfUQ,xyHYkDIicE2sq1BhrwHDaQ,TtEBw-_PhkGgoLFYdgAjPg,v-N18iXT70SkuSAckKUssw?mode=read&tenantId=04aa6bf4-d436-426f-bfa4-04b7a70e60ff&webinarRing=gcc

Event number: 2493 527 0370

To join the meeting by phone, please call:

United States Toll

+1-415-655-0002

Access code: 2493 527 0370

The purpose of the rule hearing is to consider the proposed rule amendments to Title 16, Chapter 2, Parts 16.2.1, 16.2.5, 16.2.7, 16.2.17, 16.2.18 of the New Mexico Administrative Code as follows:
16.2.1 NMAC - General Provisions
16.2.5 NMAC - Temporary Licensing
16.2.7 NMAC - Educational Programs
16.2.17 NMAC - Licensure by Endorsement
16.2.18 NMAC - Educational Courses for Expanded Practice

On February 14, 2023, you may obtain and review copies of the proposed changes and public comments, by going to the Board of Acupuncture and Oriental Medicine website at: https://www.rld.nm.gov/boards-and-commissions/

individual-boards-and-commissions/acupuncture-and-oriental-medicine or by contacting Alyssa Flores, Senior Board Administrator via email at acuormedboard@rld.nm.gov, or by calling (505) 476-4622.

The Board/Commission will begin accepting public comments on the proposed amended rules beginning February 14, 2023. Please submit written comments on the proposed changes to, Senior Board Administrator via electronic mail at: acuormedboard@rld.nm.gov, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Tuesday, March 28, 2023. Comments received prior to the rule hearing will be posted to the RLD website at: https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/acupuncture-and-oriental-medicine. Every person attending the rule hearing will be given the opportunity to present their public comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Alyssa Flores, Senior Board Administrator (505) 476-4622.

**Statutory Authority:** The proposed rule changes are authorized by the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-1 through 61-14A-22 NMSA 1978, and specifically Section 61-14A-2 NMSA 1978 (empowering the Board to protect the public, public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of acupuncture and oriental medicine), Section 61-14A-8 NMSA 1978 (authorizing the Board to enforce the provisions of the Acupuncture and Oriental Medicine Practice Act and promulgate rules to that effect) and Section 61-14A-9 NMSA 1978 (authorizing the Board to provide rules establishing fees, examinations for licensing, and to maintain records of all persons so licensed under the Acupuncture and Oriental Medicine Practice Act). The public hearing is governed by the New Mexico Attorney General's default rules for rulemaking proceedings, Sections 1.24.25.1 through 1.24.25.16 NMAC and the State Rules Act, Sections 14-4-1 through 14-4-11 NMSA 1978.

**Summary of Proposed Amended Rules:**
16.2.1 NMAC - General Provisions: to rectify the name change of the "accreditation commission for acupuncture and oriental medicine" to "accreditation commission for acupuncture and herbal medicine."
16.2.5 NMAC - Temporary Licensing: to render the rule consistent with 2022 rule changes to 16.2.6 NMAC, 16.2.10 NMAC, and 16.2.12 NMAC.
16.2.7 NMAC - Educational Programs: to rectify the name change of the "accreditation commission for acupuncture and oriental medicine" to "accreditation commission for acupuncture and herbal medicine."
16.2.17 NMAC - Licensure by Endorsement: to rectify the name change of the "accreditation commission for acupuncture and oriental medicine" to "accreditation commission for acupuncture and herbal medicine."
16.2.18 NMAC - Educational Courses for Expanded Practice: to rectify the name change of the "accreditation commission for acupuncture and oriental medicine" to "accreditation commission for acupuncture and herbal medicine."

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## REGULATION AND LICENSING DEPARTMENT
### PRIVATE INVESTIGATIONS ADVISORY BOARD

The Private Investigations Advisory Board will hold a rule hearing on Friday, March, 31st, 2023 at 10:00 a.m. The rule hearing will be held at 5500 San Antonio Dr. NE, Albuquerque, NM 87109. via Cisco Webex please use the following link:

https://nmrld.webex.com/nmrld/onstage/g.php?MTID=e96336860d9b3c0227ae3e3b8464f859

To join the meeting by phone: 1-415-655-0002 United States Toll

Access Code: 2488 317 5098

The purpose of the rule hearing is to consider the proposed rule amendments to Title 16, Chapter 48, Part 1 and Part 2 of the New Mexico Administrative Code as follows:

16.48.1 NMAC – General Provisions

16.48.2 NMAC – Requirements for Licensure and Registration

On February 14th, 2023 you may obtain and review copies of the proposed changes and public comments, by going to the Private Investigations Advisory Board (Board) website at: https://www.rld.nm.gov/boards-and-commissions/individual-boards-and- commissions/private-investigations/pi-board-information/pi-board-meetings/ or by contacting the Board Administrator at (505) 476-4650.

The Board/Commission will begin accepting public comments on the proposed amended rules beginning February 14th, 2023. Please submit written comments on the proposed changes to Richard Espinoza, Board Administrator, via electronic mail at: pipolygraphbd@rld.nm.gov, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Wednesday, March 29th, 2023. Comments received prior to the rule hearing will be posted to the RLD website at: https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/private-investigations/pi- laws-rules-and-policies/ . Every person attending the rule hearing will be given the opportunity to present their public comments at the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Richard Espinoza, Board Administrator (505) 476-4658.

**Statutory Authority:**
The proposed rule changes are authorized by the Private Investigations Act, Section 61-27B-5 NMSA 1978, which provides explicit authority for the Regulation and Licensing Department (Department) to promulgate rules to carry out the provisions of the Private Investigations Act.

Summary of Proposed Changes:
Changing licensure requirements for all licenses issued by the Board:
All applicants seeking licensure under the Private Investigations Act, pursuant to Section 61-27B-34, NMSA 1978, are required to submit to a biometric federal criminal history background check. Owners, directors, and officers of private investigation companies and private patrol companies are also required to submit to a biometric federal criminal history background check. Private patrol companies must provide employed security guards, or those providing security guard services under contract, with a company-specific photo identification badge.
A private investigations company must retain a surety bond in the amount of ten thousand dollars to maintain licensure with the department. A private investigations company that provides personal protection or bodyguard services must maintain a general liability insurance certificate in the amount of one million dollars. A private patrol company must maintain a general liability insurance policy in the amount of one million dollars.
Applicants who have a current active license to practice polygraphy is another jurisdiction whose standards are equal of greater than those in New Mexico for a minimum of two years immediately preceding the date of application, and no pending or formal disciplinary actions issued against the license for the last five years, are not required to complete the 6-month probationary period.
Training and examination for Level One, Level Two, and Level Three Security officers must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor.
Adds a limited exemption to licensure for private investigators. Adds a section outlining the requirements for reciprocal licensure for applicants from other states.

**Purpose of the Proposed Changes:**
The purpose of the proposed rules is to comply with the current New Mexico statutes governing the Private Investigations Act. The proposed rules also address the requirements for reciprocal licensure under the Act. More generally, the proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, and to satisfy the Department's statutory obligation to promulgate rules necessary to carry out the provisions of the Act.

**16.48.1.14 Display of Registration or License and Notification of Changes**

- A private patrol company must provide employed, or contracted, licensees with a photo identification badge displaying a photo of the licensee and providing the name of the employer and name of the licensee.

**16.48.2.8 Bond General Liability and Biometric Criminal History Report Requirement**

- A private investigations company must retain a surety bond in the amount of ten thousand dollars to maintain licensure with the department.
- A private investigations company that provides personal protection or bodyguard services must maintain a general liability insurance certificate in the amount of one million dollars.

**16.48.2.10 Qualifications and Experience Requirements for Applicants for a Private Investigation Company License**

- Each owner, director, and officer must submit to a biometric federal criminal history background check.
- Requires a private investigation company to retain and file with the department a surety bond in the amount of ten thousand dollars.

**16.48.2.11 Qualifications and Experience Requirements for Applicants for a Private Investigation Manager License**

- A private investigations manager must be employed by, or provide services on a contract basis to, a private investigation company and be responsible for managing the daily operations of the company.

**16.48.2.12 Qualifications and Experience Requirements for Applicants for a Private Investigations Employee Registration**

- A private investigations employee who is employed by, or provides services on a contract basis, must be under the direct supervision of a New Mexico licensed private investigator in good standing.

**16.48.2.13 Qualifications and Experience Requirements for Applicants for a Private Patrol Operator License**

- Pursuant to Section 61-27B-10, NMSA 1978, the applicant must submit proof of at least three years' experience of actual work performed as a security guard or the equivalent.

**16.48.2.14 Qualifications and Experience Requirements for Applicants for a Private Patrol Company License**

- The private patrol company must provide the name and license number of an owner who is licensed as a private patrol officer, or a licensed private patrol manager, and certification that they will manage the daily operations of the company.
- A private patrol company must maintain a general liability insurance policy in the amount of one million dollars.

- Each owner, director, and officer must submit to a biometric federal criminal history background check.

**16.48.2.15 Qualifications and Experience Requirements for Applicants for a Private Patrol Operations Manager License**

- A private patrol operations manager must be employed by, or provide services on a contract basis to, a private patrol company and be responsible for managing the daily operations of the company.

**16.48.2.16 Qualifications and Experience Requirements for Applicants for a Polygraph Examiner License**

- Applicants who have not been licensed for a minimum of two years immediately prior to the date of the application must complete a six-month probationary period under the supervision of a New Mexico Licensed Polygraph Examiner.
- Applicants who have a current active license to practice polygraphy in another jurisdiction whose standards are equal of greater than those in New Mexico for a minimum of two years immediately preceding the date of application, and no pending or formal disciplinary actions issued against the license for the last five years, are not required to complete the probationary period.

**16.48.2.17 Level One Security Guard Applicant Qualifications and Experience Requirements**

- Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. (Removes requirement that the instructor must be approved by the superintendent)

**16.48.2.18 Level Two Security Guard Applicant Qualifications and Experience Requirements**

- Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. (Removes requirement that the instructor must be approved by the superintendent)
- Electronic non-lethal device training shall be done in accordance with manufacturer requirements for any device carried or utilized by the registrant.

**16.48.2.19 Level Three Security Guard Applicant Qualifications and Experience Requirements**

- Training and examination must be conducted pursuant to the curriculum provided by the department and must be taught by an in-person department approved instructor. (Removes requirement that the instructor must be approved by the superintendent)

**16.48.2.24 Limited Exemption to Licensure**

- An investigator licensed in another state may conduct business in New Mexico only if the investigation must be initiated in the investigator's home state, the investigator may spend no more than 30 days per case while conducting an investigation in another state; the investigator is prohibited from soliciting business in New Mexico and from establishing a business or setting up a residence while conducting an investigation in New Mexico.

**16.48.2.25 Reciprocity**

- An applicant for licensure or registration by reciprocity may not engage in the practice of private investigations, private patrol operator, polygraph examiners or security guard in New Mexico until approval for licensure by reciprocity has been given and the department has issued an initial license.
- Acceptance of a reciprocity applicant for licensure or registration is subject to department approval. All applicants for licensure or registration by reciprocity shall: (1) be duly and currently licensed or registered, for at least one year, in at least one other state; (2) have no history of disciplinary action within the last year against any professional license or registration; (3) provide proof of having met education and experience requirements in the state of licensure similar to or better than those required in New Mexico.

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## SUPERINTENDENT OF INSURANCE, OFFICE OF

### NOTICE OF TERMINATION OF PUBLIC HEARING

The Office of Superintendent of Insurance (OSI) is providing notice to terminate the public rule hearing scheduled on February 20, 2023, at 10:00 a.m., in accordance with Subsection C of Section 14-4-5 NMSA 1978. The proposed rule, repealing of 13.10.22.8 NMAC - "Access to Health Care Services" and adding 13.10.38 NMAC – "Network Adequacy" is being terminated and shall be promulgated at a later date.

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## SUPERINTENDENT OF INSURANCE, OFFICE OF

### NOTICE OF PROPOSED RULEMAKING

**NOTICE IS HEREBY GIVEN** that the Superintendent of Insurance ("OSI" or "Superintendent") will hold a public hearing via videoconference regarding the repealing of 13.10.22.8 NMAC – ACCESS TO HEALTH CARE SERVICES and adding 13.10.38 NMAC – NETWORK ADEQUACY. This hearing will commence on **March 29, 2023, at 10:00 a.m.**

**PURPOSE OF THE PROPOSED RULE:** The purpose of this rule is to formalize OSI's network adequacy expectations and standards, which thus far, have been issued through Guidance. Additionally, New Mexico is now a State-Based Exchange and many federal regulations that previously governed Qualified Health Plans no longer apply. OSI needs to promulgate state-based regulations to address the gaps left by the transition from a Federally Facilitated Exchange to State-Based Exchange. OSI further intends to simplify Network Adequacy standards by ensuring that all plans under our jurisdiction are subject to the same standards.

**STATUTORY AUTHORITY**: Sections 59A-1-18, 59A-2-9, 59A-4-1, 59A-16-1, 59A-18-16.2, 59A-22-1, 59A-22A-7, 59A-23-1, 59A-44-41, 59A-46-23, 59A-47-5, 59A-57-4., and 59A-61-5 NMSA 1978.

**TO ATTEND THE HEARING:**
To Attend via Teams Meeting: https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjBjMWJjYmQtMTAzYi00YTZjLTkxMWItYmU5ZjkxMmIxMzdl%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%2255707194-18fe-41f7-a090-b1807740620b%22%7d
Meeting ID: 283 035 129 478
Passcode: svrYML

To Attend via Telephone: (505) 312-4308ID: 425 470 470

The Superintendent designates R. Alfred Walker to act as the hearing officer for this rulemaking. Oral comments will be accepted at the public hearing from members of the public and other interested parties. Any updates concerning the hearing date, time, or location will be available by subscribing to the "Rulemaking and Ratemaking" newsletter at: https://newsletter.osi.state.nm.us/.

Copies of the Notice of Proposed Rulemaking and proposed new rules are available by electronic download from the OSI eDocket https://edocket.osi.state.nm.us/guest/case-view/5832 or by requesting a copy by calling (505) 490-7103. Written comments will be accepted through 4:00 p.m. on March 29, 2023. Responses to written comments or oral comments will be accepted through 4:00 p.m. on April 8, 2023. All comments shall be filed electronically through the OSI eDocket https://edocket.osi.state.nm.us/guest/case-view/5832 or mailed to:

**OSI Records and Docketing**
**NM Office of Superintendent of Insurance**
**P.O. Box 1689, Santa Fe, NM 87504-1689**

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. The Superintendent will consider all oral comments and will review all timely submitted written comments and responses. For help submitting a filing, please contact OSI_docketfiling@osi.nm.gov. The below docket number must be indicated on filed comments.

**Docket No. 2023-0008**
**IN THE MATTER OF NEW RULE CODIFIED AT 13.10.38 NMAC - NETWORK ADEQUACY**

**SPECIAL NEEDS**: Any person with a disability requiring special assistance to participate in the hearing should contact Louella Pacheco at (505) 490-7103 no later than ten (10) business days prior to the hearing.

DONE AND ORDERED this 14th day of February 2023.
/S/ JENNIFER A. CATECHIS

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## 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.

## ENVIRONMENT DEPARTMENT

**This is an amendment to 20.3.3 NMAC, Sections 307, 315, 317, & 318 effective 02/14/2023.**

**20.3.3.307 FILING APPLICATION FOR SPECIFIC LICENSES:**

**A.** Except where otherwise determined by the department, applications for specific licenses shall be filed in duplicate on a form prescribed by the department (*application for a radioactive material license*) in accordance with the instructions to the form. Additional copies of the application may be required by the department. Information contained in previous application, statements or reports filed with the department may be incorporated by reference, provided that the reference is clear and specific.

**B.** The department may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the department to determine whether the application shall be granted or denied or whether a license shall be modified or revoked.

**C.** Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on their behalf.

**D.** An application for a license may include a request for a license authorizing more than one activity, provided that the application specifies the additional activities for which licenses are requested and complies with the requirements in this chapter as to applications for such licenses. In such cases, annual fees for all types of activities authorized by the license may be charged as determined by 20.3.16 NMAC.

**E.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

**(1)** any reference to the commission or NRC shall be deemed a reference to the department;

**(2)** 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

**(3)** 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

**(4)** the license required report of events or notification in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 71, 10 CFR 37.77(a) through (d), and 10 CFR 37.81 shall use the following address when applicable: New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469.

**F.** An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must identify the source and (or) the device by manufacturer name and model number as registered with the *sealed source and device registry*.

**(1)** Except as provided in Paragraph (2), (3) and (4) of this Subsection, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either:

**(a)** identify the source or device by manufacturer and model number registered with the NRC pursuant to 10 CFR 32.210, with an agreement state, or for a source or a device containing radium-226 or accelerator-produced radioactive material with a state under provisions comparable to 10 CFR 32.210; or

**(b)** contain the information identified in 10 CFR 32.210(c).

**(2)** For sources or devices manufactured before October 23, 2012 that are not registered with the NRC under 10 CFR 32.210 or with an agreement state, and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c), the application must include:

**(a)** all available information identified in 10 CFR 32.210(c) concerning the source, and, if applicable, the device; and

**(b)** sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

**(3)** For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

**(4)** If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

**G.** As provided by 20.3.3.311 NMAC, certain applications for a new or renewal specific license must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning.

**H.** An application for a license to receive and possess radioactive material for the conduct of any activity which the department has determined pursuant to Subpart A of 10 CFR 51 will significantly affect the quality of the environment shall be filed at least nine months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by an environmental impact report required pursuant to Subpart A of 10 CFR 51.

**I.** None of the following applications shall be accepted for review unless it is accompanied by an environmental impact report, submitted by the applicant, that specifically addresses the short-term and long-term environmental, radiological and public health and safety aspects of the applications and alternatives to the proposed action:

**(1)** an initial application for a radioactive material license for a commercial radioactive waste disposal site license;

**(2)** the first renewal of any such license not previously accompanied by an environmental impact report;

**(3)** an application for an amendment to an existing license that may result in additional significant impacts from radiation on the environment or public health or safety beyond those impacts addressed in the existing license and accompanying documents; and

**(4)** any other application that the secretary determines may have significant impacts from radiation on the environment or public health or safety.

**J.** The application for a radioactive material license for a commercial radioactive waste disposal site, or for any renewal thereof, or for an amendment thereto as described in Paragraph (3) of Subsection H of this section, shall demonstrate that the activity for which such license is requested will comply with all laws and regulations enforceable by the department.

**K.** An application from a medical facility or educational institution to produce PET radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use under 20.3.7 NMAC shall include:

**(1)** a request for authorization for the production of PET radionuclides or evidence of an existing license issued under 20.3.3 NMAC or under equivalent NRC or agreement state requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides;

**(2)** evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subparagraph (b) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC;

**(3)** identification of individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Subparagraph (b) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC; and

**(4)** information identified in Subparagraph (c) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC on the PET drugs to be non-commercially transferred to members of its consortium.

**L. An application for a specific license to transfer source material under this section.**

**(1)** An application for a specific license to initially transfer source material for use under 20.3.3.307 NMAC, will be approved if:

**(a)** the applicant satisfies the general requirements specified in this section; and

**(b)** the applicant submits adequate information on, and the department approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

**(2)** Each person licensed under this section shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

**(3)** Each person licensed under this section shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

**(4)** Each person licensed under this section shall provide the information specified in this paragraph to each person to whom source material is transferred for use under this section. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes;

**(a)** a copy of Subsection B of 20.3.3.304 NMAC and 10 CFR 40.51 or equivalent regulations under Subsection L of 20.3.3.307 NMAC; and

**(b)** appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

**(5)** Each person licensed under this section shall report transfers as follows:

**(a)** File a report with the department under 20.3.1.116 NMAC. The report shall include the following information:

**(i)** The name, address, and license number of the person who transferred the source material; and

**(ii)** for each general licensee under 10 CFR 40.22 or 20.3.3.304 NMAC

to whom greater than 50 grams (0.11 lb) of source material has been transferred in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

**(iii)** the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

**(b)** File a report with each responsible agreement state agency that identifies all persons, operating under the provisions equivalent to 10 CFR 40.22, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the agreement state:

**(i)** The name, address, and license number of the person who transferred the source material;

**(ii)** the name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

**(iii)** the total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State.

**(c)** Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under 10 CFR 40.22 or equivalent agreement state provisions during the current period, a report shall be submitted to the NRC indicating so. If no transfers have been made to general licensees in a particular agreement state during the reporting period, this information shall be reported to the responsible agreement state agency upon request of the agency.

**(d)** Each person licensed under 20.3.3.304 NMAC shall maintain all information that supports the reports required by this section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the NRC or to an agreement state agency.

[20.3.3.307 NMAC - Rp, 20.3.3.307 NMAC, 04/30/2009; A, 02/14/2023]

**20.3.3.315 SPECIAL REQUIREMENTS FOR A SPECIFIC LICENSE TO MANUFACTURE, ASSEMBLE, REPAIR OR DISTRIBUTE COMMODITIES, PRODUCTS OR DEVICES WHICH CONTAIN RADIOACTIVE MATERIAL:**

**A. Introduction of radioactive material in exempt concentrations into products or materials.**

**(1) Licensing.** A specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product or material containing the radioactive material to be transferred to persons exempt under Paragraph (1) of Subsection A of 20.3.3.302 NMAC will be issued by NRC pursuant to 10 CFR 32.11.

**(2) Prohibition of introduction.** No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection A of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, except in accordance with a license issued by NRC pursuant to 10 CFR 32.11.

**B. Radioactive material in exempt quantities or in certain items.**

**(1) Manufacture, distribution and transfer of exempt quantities of byproduct material**. An application for a specific license to manufacture, process, produce, package, repackage or transfer exempt quantities of byproduct material for commercial distribution to persons exempt pursuant to Subsection B of 20.3.3.302 NMAC or the equivalent regulations of the NRC or an agreement state shall be issued by NRC pursuant to 10 CFR 32.18.

**(2) Certain items containing byproduct material.** An application for a specific license to apply byproduct material to, or to incorporate byproduct material into, the products specified in Paragraph (1) of Subsection C of 20.3.3.302 NMAC or to initially transfer for sale or distribution such products containing byproduct material for use pursuant to Paragraph (1) of Subsection C of 20.3.3.302 NMAC to persons exempt from 20.3 NMAC shall be submitted to NRC pursuant to 10 CFR 32.14.

**(3)** Except as specified in Paragraphs (1) and (2) of this subsection, in addition to the requirements set forth in 20.3.3.308 NMAC, an application for a specific license to manufacture, process, produce, package, repackage or initially transfer naturally occurring or accelerator produced radioactive material (NARM) in exempt quantities as specified in 20.3.3.330 NMAC of this part to persons exempt from licensing pursuant to Subsection B of 20.3.3.302 NMAC will be approved if:

**(a)** the radioactive material is not contained in any food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

**(b)** the radioactive material is in the form of processed chemical elements, compounds, mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its

radioactive properties, but is not incorporated into any manufactured or assembled commodity, product or device intended for commercial distribution; and

**(c)** the applicant submits copies of prototype labels and brochures and the department approves such labels and brochures.

**(4)** The license issued under Paragraph (3) of Subsection B of this subsection is subject to the following conditions:

**(a)** no more than 10 exempt quantities shall be sold or transferred in any single transaction; however, an exempt quantity may be composed of fractional parts of one or more of the exempt quantity provided the sum of the fractions shall not exceed unity;

**(b)** each exempt quantity shall be separately and individually packaged; no more than 10 such packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to Subsection B of 20.3.3.302 NMAC; the outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour;

**(c)** the immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable and legible label which:

**(i)** identifies the radionuclide and the quantity of radioactivity; and

**(ii)** bears the words "*radioactive material*"; and

**(d)** in addition to the labeling information required by Subparagraph (c) of this paragraph, the label affixed to the immediate container, or an accompanying brochure shall

**(i)** state that the contents are exempt from these regulations;

**(ii)** bear the words "*radioactive material - not for human use - introduction into foods, beverages, cosmetics, drugs or medicinal product, or into products manufactured for commercial distribution is prohibited - exempt quantities shall not be combined*"; and

**(iii)** set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

**(5)** Each person licensed under Subsection B of 20.3.3.315 NMAC shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under Subsection B of 20.3.3.302 NMAC and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the department. Each report shall cover the year ending June 30 and shall be filed within 30 days thereafter. If no transfers of radioactive material have been made pursuant to Subsection B of 20.3.3.315 NMAC, during the report period, the report shall so indicate.

**C. Licensing of byproduct material by NRC.**

**(1) Gas and aerosol detectors.** An application for a specific license to manufacture, process or produce gas and aerosol detectors containing byproduct material and designed to protect life or property from fires and airborne hazards, or to initially transfer such products for use pursuant to Paragraph (4) of Subsection C of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, shall be submitted to NRC pursuant to 10 CFR 32.26.

**(2) Self-luminous products.** An application for a specific license to manufacture, process or produce self-luminous products containing tritium, krypton-85, promethium-147 or radium-226, or to initially transfer such products for use pursuant to Paragraph (2) of Subsection C of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, shall be submitted to NRC pursuant to 10 CFR 32.22 and for distribution submit to the NRC pursuant to 10 CFR 32.53.

**(3) Capsules containing carbon-14.** An application for a specific license to manufacture, prepare, process, produce, package, repackage or transfer for commercial distribution capsules containing 1 microcurie (37 kilobecquerels) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each for *in vivo* diagnostic use, to persons exempt from licensing under Subsection D of 20.3.3.302 NMAC or the equivalent regulations of the NRC or an agreement state shall be submitted to NRC pursuant to 10 CFR 32.21.

**D. [RESERVED]**

**E. Licensing the manufacture and distribution of devices to persons generally licensed under Subsection B of 20.3.3.305 NMAC:**

**(1) Requirements for approval of a license application**. An application for a specific license to manufacture or initially transfer devices containing radioactive material to persons generally licensed under Subsection B of 20.3.3.305 NMAC or equivalent regulations of the NRC or an agreement state will be approved if:

**(a)** the applicant satisfies the general requirements of 20.3.3.308 NMAC;

**(b)** the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions and potential hazards of the device to provide reasonable assurance that:

**(i)** the device can be safely operated by persons not having training in radiological protection;

**(ii)** under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or

inadvertently removed from the device, and it is unlikely that any person will receive in one year a dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC; and

**(iii)** under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses: *1)* whole body, head and trunk, active blood-forming organs, gonads or lens of eye: 15 rems (150 millisieverts); *2)* hands and forearms, feet and ankles, and localized areas of skin averaged over areas no larger than 1 square centimeter: 200 rems (2 sieverts); and *3)* other organs: 50 rems (500 millisieverts);

**(c)** each device bears a durable, legible, clearly visible label or labels approved by the department, which contain in a clearly identified and separate statement:

**(i)** instructions and precautions necessary to assure safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

**(ii)** the requirement, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity; and date of determination of the quantity; and

**(iii)** the information called for in the following statement in the same or substantially similar form:
*The receipt, possession, use and transfer of this device model _____, serial number _____, are subject to general license or the equivalent and the regulations of the United States nuclear regulatory commission or a state with which the nuclear regulatory commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited. The model, serial number, and name of manufacturer or distributor may be omitted from this label provided this information is specified elsewhere in labeling affixed.*
*Caution-radioactive material _____;*
*(name of manufacturer or distributor)*

**(d)** each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "*caution-radioactive material*," the radiation symbol described in 20.3.4.427 NMAC, and the name of the manufacturer or initial distributor; and

**(e)** each device meeting the criteria of Item (i) in Subparagraph (m) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC, bears a permanent (e.g., embossed, etched, stamped or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "*caution-radioactive material*," and, if practicable, the radiation symbol described in 20.3.4.427 NMAC.

**(f)** The device has been registered in the Sealed Source and Device Registry.

**(2) Requests for lengthening of test intervals:** In the event the applicant desires that the device be required to be tested at longer intervals than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in its application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the department will consider information which includes, but is not limited to:

**(a)** primary containment (source capsule);

**(b)** protection of primary containment;

**(c)** method of sealing containment;

**(d)** containment construction materials;

**(e)** form of contained radioactive material;

**(f)** maximum temperature withstood during prototype test;

**(g)** maximum pressure withstood during prototype test;

**(h)** maximum quantity of contained radioactive material;

**(i)** radiotoxicity of contained radioactive material; and

**(j)** operating experience with identical devices or similarly designed and constructed devices.

**(3) Authorizations for general licensees to perform certain activities.** In the event the applicant desires that the general licensee under Subsection B of 20.3.3.305 NMAC, or under equivalent regulations of the NRC or an agreement state, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator or remove the device from installation, the applicant shall include in its application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities and the bases for such

estimates. The submitted information must demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage and use of devices under the general license, is unlikely to cause that individual to receive a yearly dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC.

**(4) Transfer provisions:**

**(a) [RESERVED]**

**(b)** If radioactive material is to be transferred in a device for use under an equivalent general license of the NRC or an agreement state, each person that is licensed under this subsection shall provide the information specified in this subparagraph to each person to whom a device is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

**(i)** a copy of the NRC's or agreement state's regulations equivalent to Subsection B of 20.3.3.305 NMAC, Subsection F of 20.3.3.317 NMAC, 20.3.3.326 NMAC, 20.3.4.451 NMAC, and 20.3.4.452 NMAC or a copy of 10 CFR Sections 31.5, 31.2, 30.51, 20.2201 and 20.2202; if a copy of the NRC regulations is provided to a prospective general licensee in lieu of the agreement state's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the agreement state; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

**(ii)** a list of the services that can only be performed by a specific licensee;

**(iii)** information on acceptable disposal options including estimated costs of disposal; and

**(iv)** the name or title, address and phone number of the contact at the agreement state regulatory agency from which additional information may be obtained.

**(c)** An alternative approach to informing customers may be proposed by the licensee for approval by the department.

**(d)** Each device shall meet the labeling requirements in Subparagraphs (c) through (e) of Paragraph (1) of this Subsection.

**(e)** If a notification of bankruptcy is submitted under Subsection E of 20.3.3.317 NMAC of this part and each specific licensee or the license is to be terminated, each person licensed under Paragraph (1) of this subsection shall provide, upon request, to the department, NRC and any agreement state, records of final disposition required under 10 CFR30.34(h).

**(5) Material transfer reports and records:** Each person licensed under 20.3.3.305 NMAC of this subsection to initially transfer devices to generally licensed persons shall comply with the requirements of this section.

**(a)** The person shall report to the department in accordance with 20.3.1.116 NMAC, all transfers of such devices to persons for use under the general license in Subsection B of 20.3.3.305 NMAC and all receipts of devices from persons licensed under Subsection B of 20.3.3.305 NMAC. The report shall be clear and legible, submitted on a quarterly basis containing all of the following data.

**(i)** The required information for transfers to general licensees includes: *1)* the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; *2)* the name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; *3)* the date of transfer; *4)* the type, model number, and serial number of the device transferred; and *5)* the quantity and type of radioactive material contained in the device.

**(ii)** If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

**(iii)** For devices received from a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

**(iv)** If the licensee makes changes to a device possessed by a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, such that the label must be changed to update required information, the report shall identify the general licensee, the device and the changes to information on the device label.

**(v)** The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

**(vi)** The report shall clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

**(vii)** If no transfers have been made to or from persons generally licensed under Subsection B of 20.3.3.305 NMAC during the reporting period, the report shall so indicate.

**(b)** The person shall report all transfers of devices to persons for use under a general license under NRC's or an agreement state's regulations that are equivalent to Subsection B of 20.3.3.305 NMAC, and all receipts of devices from general licensees in the NRC's or agreement state's jurisdiction, to the responsible NRC or agreement state agency. The report shall be clear and legible, containing all of the data required as described below.

**(i)** The required information for transfers to general licensees includes: *1)* the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; *2)* the name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; *3)* the date of transfer; *4)* the type, model number and serial number of the device transferred; and *5)* the quantity and type of radioactive material contained in the device.

**(ii)** If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

**(iii)** For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

**(iv)** If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report shall identify the general licensee, the device and the changes to information on the device label.

**(v)** The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

**(vi)** The report shall clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

**(vii)** If no transfers have been made to or from NRC or a particular agreement state during the reporting period, this information shall be reported to NRC or the responsible agreement state agency upon request of the agency.

**(c)** The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subparagraphs (a) and (b) of this paragraph. Records required by this paragraph shall be maintained for a period of three years following the date of the recorded event.

**F. Special requirements for the manufacture, assembly, repair or initial transfer of luminous safety devices for use in aircraft.** An application for a specific license to manufacture, assemble, repair or initially transfer luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under Subsection C of 20.3.3.305 NMAC will be approved subject to the following conditions:

**(1)** the applicant satisfies the general requirements specified in 20.3.3.308 NMAC;

**(2)** the applicant satisfies the requirements of 10 CFR 32.53, 10 CFR 32.54, 10 CFR 32.55 and 10 CFR 32.56 or their equivalent;

**(3)** each person licensed under 10 CFR 32.53 shall file an annual report with the director, office of Nuclear Materials Safety and Safeguards, ATTN: document control desk/ GLTS by an appropriate method listed in 10 CFR 30.6(a) which must state the total quantity of tritium or promethium-147 transferred to persons generally licensed under 10 CFR 31.7. The report must identify each general licensee by name, state the kinds and number of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. Each report must cover the year ending June 30 and must be filed within 30 days thereafter. If no transfers have been made to persons generally licensed under 10 CFR 31.7 during the reporting period, the report must so indicate; and

**(4)** each person licensed under 10 CFR 32.53 shall report annually all transfers of devices to persons for use under a general license in an agreement state's regulations that are equivalent to 10 CFR 31.7 of this paragraph to the responsible agreement state agency. The report must state the total quantity of tritium or promethium-147 transferred, identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. If no transfers have been made to a particular agreement state during the reporting period, this information must be reported to the responsible agreement state agency upon request of the agency.

**G. Special requirements for license to manufacture or initially transfer calibration or reference sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection D of 20.3.3.305 NMAC.** An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection

D of 20.3.3.305 NMAC will be approved subject to the following conditions:

**(1)** the applicant satisfies the general requirements of 20.3.3.307 NMAC and 20.3.3.308 NMAC, and

**(2)** the applicant satisfies the requirements of 10 CFR 32.57, 10 CFR 32.58, 10 CFR 32.59 and 10 CFR 70.39 or their equivalent.

**H. Manufacture and distribution of radioactive material for certain in-vitro clinical or laboratory testing under general license.** An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection F of 20.3.3.305 NMAC will be approved if:

**(1)** the applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

**(2)** the radioactive material is to be prepared for distribution in prepackaged units of:

**(a)** iodine-125 in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(b)** iodine-131 in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(c)** carbon-14 in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(d)** hydrogen-3 (tritium) in units not exceeding 50 microcuries (1.85 megabecquerels) each;

**(e)** iron-59 in units not exceeding 20 microcuries (740 kilobecquerels) each;

**(f)** cobalt-57 in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(g)** selenium-75 in units not exceeding 10 microcuries (370 kilobecquerels) each; or

**(h)** mock iodine-125 reference or calibration sources in units not exceeding 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (185 becquerels) of americium-241 each;

**(3)** each prepackaged unit bears a durable, clearly visible label:

**(a)** identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 microcuries (370 kilobecquerels) of iodine-125, iodine-131, carbon-14, cobalt-57 or selenium-75; 50 microcuries (1.85 megabecquerels) of hydrogen-3 (tritium); 20 microcuries (740 kilobecquerels) of iron-59; or 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (185 becquerels) of americium-241; and

**(b)** displaying the radiation caution symbol described in Paragraph (1) of Subsection A of 20.3.4.427 NMAC and the words, "*caution, radioactive material*" and "*not for internal or external use in humans or animals*";

**(4)** the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

*This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in-vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the United States nuclear regulatory commission or of a state with which the NRC has entered into an agreement for the exercise of regulatory authority.*

_____

*(name of manufacturer)*; and

**(5)** the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling, storing and disposal of such radioactive material; in the case of the mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in 20.3.4.433 NMAC.

**I. Licensing the manufacture and distribution of ice detection devices.** An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection G of 20.3.3.305 NMAC will be approved subject to the following conditions:

**(1)** the applicant satisfies the general requirements of 20.3.3.307 NMAC and 20.3.3.308 NMAC; and

**(2)** the criteria of 10 CFR 32.61 and 32.62 are met.

**J. Manufacture, preparation or transfer for commercial distribution of radioactive drugs containing [~~radioactive~~] byproduct material for medical use under 20.3.7 NMAC.**

**(1)** An application for a specific license to manufacture, prepare or transfer for commercial distribution, radioactive material for use by persons authorized pursuant to 20.3.7 NMAC will be approved if the following conditions are met.

**(a)** The applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

**(b)** The applicant submits evidence that the applicant is at least one of the following:

**(i)** registered with the FDA as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding or processing of a drug under 21 CFR 207.20(a);

**(ii)** registered or licensed with a state agency as a drug manufacturer;

**(iii)** licensed as a pharmacy by a state board of pharmacy;

**(iv)** operating as a nuclear pharmacy within a federal medical institution; or

**(v)** a PET drug production facility registered with a state agency.

**(c)** The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees.

**(d)** The applicant [~~satisfies~~] commits to the following labeling requirements.

**(i)** A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic or other material, of a radioactive drug to be transferred for commercial distribution; the label must include the radiation symbol and the words "*caution, radioactive material*" or "*danger, radioactive material*"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted; and

**(ii)** A label is affixed to each syringe, vial or other container used to hold a radioactive drug to be transferred for commercial distribution; the label must include the radiation symbol and the words "*caution, radioactive material*" or "*danger, radioactive material*" and an identifier that ensures that the syringe, vial or other container can be correlated with the information on the transport radiation shield label.

**(2)** A licensee described by Items (iii) or (iv) of Subparagraph (b) of Paragraph (1) of this subsection:

**(a)** may prepare radioactive drugs for medical use, as defined in 20.3.7.7 NMAC, provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subparagraphs (b) and (d) of this paragraph, or an individual under the supervision of an authorized nuclear pharmacist as specified in Subsection F of 20.3.7.702 NMAC;

**(b)** may allow a pharmacist to work as an authorized nuclear pharmacist if:

**(i)** the individual qualifies as an authorized nuclear pharmacist as defined in 20.3.7.7 NMAC;

**(ii)** the individual meets the requirements specified in Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(b) and Subsection E of 20.3.7.714 NMAC, incorporating 10 CFR 35.59, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

**(iii)** the individual is designated as an authorized nuclear pharmacist in accordance with Subparagraph (d) of this paragraph;

**(c)** may conduct the actions authorized in Subparagraphs (a) and (b) of this paragraph in spite of more restrictive language in license conditions;

**(d)** may designate a pharmacist (as defined in 20.3.7.7 NMAC) as an authorized nuclear pharmacist if:

**(i)** the individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material, and

**(ii)** the individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies in non-licensing states, as defined in 20.3.1.7 NMAC, before August 8, 2009, or an earlier date as noticed by the NRC;

**(e)** may designate a pharmacist (as defined in 20.3.7.7 NMAC) as an authorized nuclear pharmacist if the individual is identified as of May 3, 1995, as an "authorized user" in a nuclear pharmacy license issued by the department under this part; and

**(f)** shall provide to the commission a copy of

**(i)** each individual's certification by a specialty board whose certification process has been recognized by the [~~department, NRC~~] commission or agreement state as specified in [~~Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(a), with the written attestation signed by a preceptor as required by Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(b)(2)~~] 10 CFR 35.55(a); or

**(ii)** the [~~department, NRC~~] commission or agreement state license, or

**(iii)** [~~the permit issued by a NRC~~] commission master material licensee permit, or

**(iv)** the permit issued by a [~~department, NRC or agreement state licensee, or NRC~~] licensee or commission master materials permittee of broad scope, or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist, or

**(v)** documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies in non-licensing states, as defined in 20.3.1.7 NMAC, before August 8, 2009, or an earlier date as noticed by the NRC; and

**(vi)** the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, under Items (i) and (iii) of Subparagraph (b) of this paragraph, the individual to work as an authorized nuclear pharmacist.

**(3)** A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta or photon emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

**(a)** perform tests before initial use, periodically and following repair, on each instrument for accuracy, linearity and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

**(b)** check each instrument for constancy and proper operation at the beginning of each day of use.

**(4)** [~~Nothing in this section relieves the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs~~] A licensee shall satisfy the labeling requirements in Subparagraph (d) of Paragraph (1) of Subsection J of this section.

**(5)** Nothing in this section relieves the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs.

**K. Manufacture and distribution of sources or devices containing radioactive material for medical use.** An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to 20.3.7 NMAC for use as a calibration, transmission or reference source or for the uses listed in 20.3.7.710 NMAC, 20.3.7.711 NMAC and 20.3.7.712 NMAC will be approved if:

**(1)** the applicant satisfies the general requirements in 20.3.3.307 NMAC and 20.3.3.308 NMAC; and

**(2)** the applicant satisfies the requirements in 10 CFR 32.74.

**L. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications:**

**(1)** An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection E of 20.3.3.304 NMAC or equivalent regulations of the NRC or an agreement state will be approved if:

**(a)** the applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

**(b)** the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling and marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in one year a radiation dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC; and

**(c)** the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

**(2)** In the case of an industrial product or device whose unique benefits are questionable, the department will approve an application for a specific license under this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

**(3)** The department may deny application for a specific license under this subsection if the end use of the industrial product or device cannot be reasonably foreseen.

**(4)** Each person licensed pursuant to this subsection shall:

**(a)** maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

**(b)** label or mark each unit to:

**(i)** identify the manufacturer or initial transferor of the product or device and the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

**(ii)** state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the NRC or of an agreement state;

**(c)** assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "*depleted uranium*";

**(d)** furnish a copy of the general license contained in Subsection C of 20.3.3.304 NMAC and a copy of the department form to each person to whom they transfer depleted uranium in a product or device for use pursuant to the general license contained in Subsection C of 20.3.3.304 NMAC; or furnish a copy of the general license contained in the NRC or agreement state's regulation equivalent to Subsection C of 20.3.3.304 NMAC and a copy of the NRC or agreement state's certificate; or alternatively, furnish a copy of the general license contained

in Subsection C of 20.3.3.304 NMAC and a copy of department form to each person to whom they transfer depleted uranium in a product or device for use pursuant to the general license of the NRC or an agreement state, with a note explaining that use of the product or device is regulated by the NRC or an agreement state under requirements substantially the same as those in Subsection C of 20.3.3.304 NMAC;

**(e)** report to the department all transfers of industrial products or devices to persons for use under the general license in Subsection C of 20.3.3.304 NMAC; such report shall identify each general licensee by name and address, an individual by name and (or) position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device; the report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person; if no transfers have been made to persons generally licensed under Subsection C of 20.3.3.304 NMAC during the reporting period, the report shall so indicate;

**(f)** report to the director of the office of nuclear material safety and safeguards, by an appropriate method listed in 10 CFR 40.5 all transfers of industrial products or devices to persons for use under the U.S. nuclear regulatory commission general license in 10 CFR 40.25; the report shall contain all information described in Subparagraph (e) of this paragraph;

**(g)** report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection L of 20.3.3.315 NMAC for use under a general license in that agreement state's regulations equivalent to Subsection C of 20.3.3.304 NMAC; the report shall contain all information described in Subparagraph (e) of this paragraph;

**(h)** keep records showing the name, address and point of contact for each general licensee to whom they transfer depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection C of 20.3.3.304 NMAC or equivalent regulations of the NRC or of an agreement state; the records shall be retained for three years and show the date of each transfer, the quantity of depleted uranium in each product or device transferred and compliance with the report requirements of this subsection.

**M. Licensing the manufacture, assembly, repair or distribution of commodities, products or devices which contain radioactive material other than those enumerated above.** The department shall require substantially the same information as required for licensing of similar items by 10 CFR Part 32 not specifically named in this section.

**N. Serialization of nationally tracked sources.** Each licensee who manufactures a nationally tracked source, as defined in 20.3.4.7 NMAC, after February 6, 2007 shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

[20.3.3.315 NMAC - Rp, 20.3.3.315 NMAC, 04/30/2009; A, 02/14/2023]

**20.3.3.317 TERMS AND CONDITIONS OF LICENSES:**

**A.** Each license issued pursuant to the requirements in this part shall be subject to all the provisions of the act, now or hereafter in effect, and to all rules, regulations and orders of the board or department:

**(1)** no right to the special nuclear material shall be conferred by the license except as defined by the license;

**(2)** neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of 20.3.3.317 NMAC;

**(3)** the license shall be subject to and the licensee shall observe, all applicable rules, regulations, and orders of the department.

**B.** No license issued or granted under this part nor any right under a license issued pursuant to this part shall be transferred, assigned, or in any manner disposed of, either voluntarily, or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the department shall, after securing full information, find that the transfer is in accordance with the provisions of the act, and shall give its consent in writing. An application for transfer of license must include:

**(1)** the identity, technical and financial qualifications of the proposed transferee; and

**(2)** financial assurance for decommissioning information required by 20.3.3.311 NMAC.

**C.** Each person licensed by the department pursuant to this part shall confine their use and possession of material licensed to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the rules in this part shall carry with it the right to receive, acquire, own and possess radioactive material. Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of 20.3.3.306 NMAC, incorporating 10 CFR 71.

**D.** Each license issued pursuant to the regulations in this part shall be deemed to contain the applicable provisions set forth in the act and 20.3 NMAC, whether or not these provisions are expressly set forth in the license.

**E. Filing for bankruptcy.**

**(1)** Each general licensee that is required to register by Paragraph (m) of Subsection B of 20.3.3.305 NMAC and each specific licensee shall notify the department and appropriate NRC regional administrator in writing,

immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (bankruptcy) of the United States Code by or against:

**(a)** the licensee;

**(b)** an entity (as that term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

**(c)** an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

**(2)** The notification must indicate:

**(a)** the bankruptcy court in which the petition for bankruptcy was filed; and

**(b)** the date of the filing of the petition.

**F.** The general licenses provided in this part are subject to the provisions in 20.3.1 NMAC, Paragraph (4) of Subsection A of 20.3.3.302 NMAC, Subsection A of 20.3.3.317 NMAC, 20.3.3.322 NMAC, 20.3.3.323 NMAC, 20.3.3.326 NMAC, 20.3.4 NMAC and 20.3.10 NMAC unless indicated otherwise by a particular provision of the general license.

**G.** Licensees required submitting emergency plans by 20.3.3.309 NMAC shall follow the emergency plan approved by the department. The licensee may change the approved plan without department approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the department and to affected offsite response organizations prior to the effective date of the change. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the department.

**H. Security requirements for portable gauges.** Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

**I. Generators.** Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with 20.3.7.706 NMAC of this chapter. The licensee shall record the results of each test and retain each record for 3 years after the record is made. The licensee shall report the results of any test that exceeds the permissible concentration listed in 10 CFR 35.204(a) at the time of generator elution, in accordance with 10 CFR 35.3204.

**J. PET drugs for non-commercial distribution.**

**(1)** Authorization under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs.

**(2)** Each licensee authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium shall:

**(a)** satisfy the labeling requirements in Subparagraph (d) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC for each PET radioactive drug transport radiation shield and each syringe, vial or other container used to hold a PET radioactive drug intended for non-commercial distribution to members of its consortium; and

**(b)** possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for non-commercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check and instrument adjustment requirements in Paragraph (3) of Subsection J of 20.3.3.315 NMAC.

**(3)** A licensee that is a pharmacy authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

**(a)** an authorized nuclear pharmacist that meets the requirements in Subparagraph (b) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC; or

**(b)** an individual under the supervision of an authorized nuclear pharmacist as specified in Subsection F of 20.3.7.702 NMAC.

**(4)** A pharmacy, authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subparagraph (e) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC.

[20.3.3.317 NMAC - Rp, 20.3.3.317 NMAC, 4/30/2009; A, 6/30/2011; A, 6/13/2017; A, 02/14/2023]

**20.3.3.318 EXPIRATION AND TERMINATION OF LICENSES AND DECOMMISSIONING OF SITES AND SEPARATE BUILDINGS OR OUTDOOR AREAS:**

**A.** The term of a specific license is five years unless the department granted a different term. Except as provided in Subsection B of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under 20.3.3.319 NMAC not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed

at least 30 days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the department makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

**B.** If the licensee failed to pay outstanding annual fees to the department as required by 20.3.16 NMAC, the specific license expires at the end of the day on the expiration date stated in the license. The licensee shall follow the requirements in Subsection F through [~~M~~] L of this section for termination of the specific license, or apply for a license pursuant to 20.3.3.307 NMAC after the outstanding annual fee(s) has been paid.

**C.** Each specific license revoked by the department expires at the end of the day on the date of the department's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by department order.

**D.** Expiration of the specific license does not relieve the licensee from the requirements in 20.3 NMAC. All license provisions continue in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the department notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

**(1)** limit actions involving radioactive material to those related to decommissioning; and

**(2)** continue to control entry to restricted areas until they are suitable for release in accordance with department requirements.

**E.** Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the department in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with department requirements, or submit within 12 months of notification a decommissioning plan, if required by Subsection H of this section, and begin decommissioning upon approval of that plan if:

**(1)** the license has expired or has been revoked pursuant to Subsections A, B or C of this section; or

**(2)** the licensee has decided to permanently cease principal activities, as defined in 20.3.3.7 NMAC, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements; or

**(3)** no principal activities under the license have been conducted for a period of 24 months; or

**(4)** no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

**F.** Coincident with the notification required by Subsection E of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to 20.3.3.311 NMAC in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subparagraph (e) of Paragraph (4) of Subsection H of this section.

**G.** The department may grant a request to extend the time periods established in Subsection E of this section, if the department determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection E of this section. The schedule for decommissioning set forth in Subsection E of this section may not commence until the department has made a determination on the request.

**H. Decommissioning Plan.**

**(1)** A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

**(a)** procedures would involve techniques not applied routinely during cleanup or maintenance operations;

**(b)** workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

**(c)** procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

**(d)** procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

**(2)** The department may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection E of this section if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

**(3)** Procedures, such as those listed in Paragraph (1) of this subsection, with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

**(4)** The proposed decommissioning plan for the site or separate building or outdoor area must include:

**(a)** a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

**(b)** a description of planned decommissioning activities;

**(c)** a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

**(d)** a description of the planned final radiation survey;

**(e)** an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

**(f)** for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection J of this section.

**(5)** The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

**I. Deadline for Decommissioning.**

**(1)** Except as provided in Subsection J of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

**(2)** Except as provided in Subsection J of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

**J.** The department may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted by consideration of the following:

**(1)** whether it is technically feasible to complete decommissioning within the allotted 24-month period;

**(2)** whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;

**(3)** whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

**(4)** whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

**(5)** other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

**K.** As the final step in decommissioning, the licensee shall:

**(1)** certify the disposition of all licensed material, including accumulated wastes, by submitting a completed c*ertificate - disposition of radioactive material* form or equivalent information; and

**(2)** conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 20.3.4.426 NMAC; the licensee shall, as appropriate:

**(a)** report levels of gamma radiation in units of millisievert (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters, removable and fixed, for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

**(b)** specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

**L.** Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

**(1)** radioactive material has been properly disposed;

**(2)** reasonable effort has been made to eliminate residual radioactive contamination, if present; and

**(3)** a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 20.3.4.426 NMAC; or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 20.3.4.426 NMAC; and

**(4)** records required by Subsections D and F of 20.3.3.326 NMAC, have been received by the department.

[20.3.3.318 NMAC - Rp, 20.3.3.318 NMAC, A, 02/14/2023]

## ENVIRONMENT DEPARTMENT

**This is an amendment to 20.3.5 NMAC, Section 10, effective 02/14/2023.**

**20.3.5.10 SPECIFIC LICENSE FOR INDUSTRIAL RADIOGRAPHY:** An application for a specific license for the use of licensed material in industrial radiography will be approved if the applicant meets the following requirements:

**A.** The applicant satisfies the general requirements specified in Part 3 of 20.3 NMAC for byproduct material, as appropriate, and any special requirements contained in this part.

**B.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

**(1)** any reference to the commission or NRC shall be deemed a reference to the department;

**(2)** 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

**(3)** 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

**(4)** for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81 the licensee shall use the following address when applicable: New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**C.** The applicant submits an adequate program for training radiographers and radiographers' assistants that meets the requirements of Paragraph (1) of Subsection A of 20.3.5.11 NMAC. License applicants need not describe the initial training and examination program for radiographers in the subjects outlined in Paragraph (1) of Subsection A of 20.3.5.11 NMAC.

**D.** The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

**E.** The applicant submits written operating and emergency procedures as described in 20.3.5.29 NMAC.

**F.** The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographers' assistant. The intervals for these performance inspections are not to exceed six months as described in Subsection B of 20.3.5.13 NMAC.

**G.** The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

**H.** The applicant identifies and lists the qualifications of the individual(s) designated as the RSO and potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures. Refer to Subsection C of 20.3.5.11 NMAC for RSO qualification requirements.

**I.** If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the:

**(1)** instruments to be used;

**(2)** methods of performing the analysis; and

**(3)** pertinent experience of the person who will analyze the wipe samples.

**J.** If the applicant intends to perform "in-house" calibrations of survey instruments the applicant must describe methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in 20.3.5.16 NMAC.

**K.** The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

**L.** The applicant identifies the location(s) where all records required by this part and other parts of 20.3 NMAC will be maintained. If a license is issued to the applicant, the licensee shall maintain copies of records required by this Part and other applicable Parts of 20.3 NMAC at the specified location(s).

[20.3.5.12 NMAC - N, 5/19/02; A, 02/14/2023]

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## ENVIRONMENT DEPARTMENT

**This is an amendment to 20.3.7.7 NMAC, Sections 7, 700, 702, 706, 708, 710, 711, 712, 714 & 716, effective 02/14/2023.**

**20.3.7.7 DEFINITIONS:**

**A. "Address of use"** means the building or buildings that are identified on the license and where radioactive material may be prepared, received, used or stored.

**B. "Area of use"** means a portion of an address of use that has been set aside for the purpose of preparing, receiving, using or storing radioactive material.

**C. "Associate Radiation Safety Officer (ARSO)"** means an individual who:

**(1)** meets the requirements in 10 CFR § 35.50 and 10 CFR §35.59; and

**(2)** is currently identified as an associate radiation safety officer for the types of use of byproduct material for which the individual has been assigned duties and tasks by the radiation safety officer on:

**(a)** A specific medical use license issued by the commission or an agreement state; or

**(b)** A medical use permit issued by a commission master material licensee.

**[C] D. "Authorized medical physicist"** means an individual who:

**(1)** meets the requirements in Subsection B of 20.3.7.714 NMAC, incorporating 10 CFR 35.51(a), and Subsection E of 20.3.7.714 NMAC; or

**(2)** is identified as an authorized medical physicist or teletherapy physicist on:

**(a)** a specific medical use license issued by the department, NRC or agreement state;

**(b)** a medical use permit issued by a NRC master material licensee;

**(c)** a permit issued by the department, NRC or agreement state broad scope medical use licensee; or

**(d)** a permit issued by a NRC master material license broad scope medical use permittee.

**[D] E. "Authorized nuclear pharmacist"** means a pharmacist who:

**(1)** meets the requirements in Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(a), and Subsection E of 20.3.7.714 NMAC; or

**(2)** is identified as an authorized nuclear pharmacist on:

**(a)** a specific license issued by the department, NRC or agreement state that authorizes medical use or the practice of nuclear pharmacy;

**(b)** a permit issued by a NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

**(c)** a permit issued by a department, NRC or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

**(d)** a permit issued by a NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

**(3)** is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

**(4)** is designated as an authorized nuclear pharmacist in accordance with Subparagraph (e) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC.

**[E] F. "Authorized user"** means a physician, dentist or podiatrist who:

**(1)** meets the requirements in Subsection E of 20.3.7.714 NMAC and any of the following subsections of 20.3.7.714 NMAC: Subsection F, incorporating 10 CFR 35.190(a); Subsection G, incorporating 10 CFR 35.290(a); Subsection H, incorporating 10 CFR 35.390(a); Subsection I, incorporating 10 CFR 35.392(a); Subsection J, incorporating 10 CFR 35.394(a); Subsection L, incorporating 10 CFR 35.490(a); Subsection N, incorporating 10 CFR 35.590(a); or Subsection O, incorporating 10 CFR 35.690(a); or

**(2)** is identified as an authorized user on:

**(a)** a department, NRC or agreement state license that authorizes the medical use of radioactive material;

**(b)** a permit issued by a NRC master material licensee that is authorized to permit the medical use of radioactive material;

**(c)** a permit issued by a department, NRC or agreement state specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

**(d)** a permit issued by a NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

**[F] G. "Brachytherapy"** means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal or interstitial application.

**[G] H. "Brachytherapy source"** means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

**[H] I. "Client's address"** means the area of use or a temporary job site for the purpose of providing mobile medical service in accordance with Subsection J of 20.3.7.703 NMAC.

**[I] J. "Dedicated check source"** means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

**[J] K. "Dentist"** means an individual licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to practice dentistry.

**[K] L. "High dose-rate remote afterloader"**, as used in this part, means a brachytherapy device that remotely delivers a dose rate in excess of 12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

**[L] M. "Low dose-rate remote afterloader"**, as used in this part, means a brachytherapy device that remotely delivers a dose rate of less than or equal to two grays (200 rads) per hour at the point or surface where the dose is prescribed.

**[M] N. "Management"** means the chief executive officer or other individual having the authority

to manage, direct or administer the licensee's activities or those persons' delegate or delegates.

**[~~N~~] O. "Manual brachytherapy"**, as used in this part, means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

**[~~O~~] P. "Medical event"** means an event that meets the criteria in Paragraph (1) or (2) of Subsection A of 20.3.7.716 NMAC.

**[~~P~~] Q. "Medical institution"** means an organization in which more than one medical discipline is practiced.

**[~~Q~~] R. "Medical use"** means the intentional internal or external administration of radioactive material or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

**[~~R~~] S. "Medium dose-rate remote afterloader"**, as used in this part, means a brachytherapy device that remotely delivers a dose rate of greater than two grays (200 rads) per hour, but less than or equal to12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

**[~~S~~] T. "Mobile medical service"** means the transportation of radioactive material to and its medical use at the client's address.

**[~~T~~] U. "NIST"** means the national institute of standards and technology which is the standards-defining agency of the United States government, formerly the national bureau of standards. It is one of three agencies that fall under the technology administration (www.technology.gov), a branch of the United States commerce department that is devoted to advancing American economic growth through the use of technology.

**V. "Ophthalmic physicist"** means an individual who:

**(1)** meets the requirements in 10 CFR § 35.433(a)(2) and 10 CFR § 35.59; and

**(2)** is identified as an ophthalmic physicist on a:

**(a)** specific medical use license issued by the commission or an agreement State;

**(b)** permit issued by a commission or agreement state broad scope medical use licensee;

**(c)** medical use permit issued by a commission master material licensee; or

**(d)** permit issued by a commission master material licensee broad scope medical use permittee.

**[~~U~~] W. "Output"** means the exposure rate, dose rate or a quantity related in a known manner to these rates from a brachytherapy source or a teletherapy, remote afterloader or gamma stereotactic radiosurgery unit for a specified set of exposure conditions.

**[~~V~~] X. "Patient intervention"** means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

**[~~W~~] Y. "Pharmacist"** means an individual licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to practice pharmacy.

**[~~X~~] Z. "Physician"** means a medical doctor or doctor of osteopathy licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

**[~~Y~~] AA. "Podiatrist"** means an individual licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to practice podiatry.

**[~~Z~~] BB. "Positron emission tomography (PET) radionuclide production facility"** is defined as a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

**[~~AA~~] CC. "Preceptor"** means an individual who provides, directs or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, [~~or a~~] radiation safety officer or a associate radiation officer.

**[~~BB~~] DD. "Prescribed dosage"** means the specified activity or range of activity of unsealed radioactive material as documented:

**(1)** in a written directive; or

**(2)** in accordance with the directions of the authorized user for procedures performed pursuant to 20.3.7.704 NMAC and 20.3.7.705 NMAC.

**[~~CC~~] EE. "Prescribed dose"** means:

**(1)** for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

**(2)** for teletherapy, the total dose and dose per fraction as documented in the written directive;

**(3)** for manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

**(4)** for remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

**[~~DD~~] FF. "Pulsed dose-rate remote afterloader"**, as used in this part, means a special type of remote afterloading brachytherapy device that uses a single source capable of delivering dose rates in the "high dose-rate" range, but:

**(1)** is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and

**(2)** is used to simulate the radiobiology of a low dose-rate treatment by inserting the

source for a given fraction of each hour.

**[~~EE~~] GG.**

**"Radiation safety officer"** means an individual who:

**(1)** meets the requirements in Subsection E of 20.3.7.714 NMAC and either Subsection A of 20.3.7.714 NMAC, incorporating 10 CFR 35.50(a), or Subsection A of 20.3.3.714 NMAC, incorporating 10 CFR 35.50(c)(1); or

**(2)** is identified as a radiation safety officer on:

**(a)** a specific medical use license issued by the department, NRC or agreement state; or

**(b)** a medical use permit issued by a NRC master material licensee.

**[~~FF~~] HH.**

**"Stereotactic radiosurgery"** means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

**[~~GG~~] II. "Structured educational program"** means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

**[~~HH~~] JJ.**

**"Teletherapy"**, as used in this part, means a method of radiation therapy in which collimated gamma rays are delivered at a distance from the patient or human research subject.

**[~~II~~] KK.**

**"Temporary job site"** means a location where mobile medical services are conducted other than those location(s) of use authorized on the license.

**[~~JJ~~] LL.**

**"Therapeutic dosage"** means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

**[~~KK~~] MM.**

**"Therapeutic dose"** means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

**[~~LL~~] NN.**

**"Treatment site"** means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

**[~~MM~~] OO. "Type of use"** means use of radioactive material under the following sections: 20.3.7.704 NMAC, 20.3.7.705 NMAC, 20.3.7.708 NMAC, 20.3.7.710 NMAC, 20.3.7.711 NMAC, 20.3.7.712 NMAC and 20.3.7.713 NMAC.

**[~~NN~~] PP. "Unit dosage"** means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

**[~~OO~~] QQ. "Written directive"** means an authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research object, as specified in Subsection G of 20.3.7.702 NMAC.

[20.3.7.7 NMAC - Rp, 20 NMAC 3.1.7.701, 04/30/2009; A, 02/14/2023]

**20.3.7.700 GENERAL REGULATORY REQUIREMENTS:**

**A. Provisions for research involving human subjects.**

**(1)** A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on the license.

**(2)** If the research is conducted, funded, supported or regulated by a federal agency that has implemented the *federal policy for the protection of human subjects* (45 CFR Part 46), the licensee shall, before conducting research:

**(a)** obtain review and approval of the research from an "institutional review board," as defined and described in the *federal policy for the protection of human subjects*; and

**(b)** obtain "informed consent," as defined and described in the *federal policy for the protection of human subjects*, from the human research subject.

**(3)** If the research will not be conducted, funded, supported or regulated by a federal agency that has implemented the *federal policy for the protection of human subjects*, the licensee shall, before conducting research, apply for and receive a specific amendment to its medical use license issued by the department. The amendment request must include a written commitment that the licensee will, before conducting research:

**(a)** obtain review and approval of the research from an "institutional review board," as defined and described in the *federal policy for the protection of human subjects*; and

**(b)** obtain "informed consent," as defined and described in the *federal policy for the protection of human subjects*, from the human research subject.

**(4)** Nothing in this subsection relieves licensees from complying with the other requirements in this part.

**B. FDA, federal and state requirements.** Nothing in this part relieves the licensee from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.

**C. Implementation.**

**(1)** When a requirement in this part differs from the requirement in an existing license condition, the requirement in this part shall govern.

**(2)** A licensee shall continue to comply with any license condition that requires it to implement procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC until there is a license amendment or renewal that modifies the license condition.

**D. License required.**

**(1)** A person may manufacture, produce, acquire, receive, possess, prepare, use or

transfer radioactive material for medical use only in accordance with a specific license issued by the department or as allowed in Paragraph (2) of this subsection.

**(2)** A specific license is not needed for an individual who:

**(a)** receives, possesses, uses or transfers radioactive material in accordance with the requirements in this chapter under the supervision of an authorized user as provided in Subsection F of 20.3.7.702 NMAC unless prohibited by license condition; or

**(b)** prepares unsealed radioactive material for medical use in accordance with the requirements in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Subsection F of 20.3.7.702 NMAC unless prohibited by license condition.

**E. Application for license, amendment or renewal.**

**(1)** An application must be signed by the applicant or licensee, or a person duly authorized to act for or on their behalf.

**(2)** An application for a license for medical use of radioactive material as described in 20.3.7.704 NMAC, 20.3.7.705 NMAC, 20.3.7.708 NMAC, 20.3.7.710 NMAC, 20.3.7.711 NMAC, 20.3.7.712 NMAC and 20.3.7.713 NMAC must be made by:

**(a)** filing in duplicate of a department form, *application for radioactive material license*, completed according to the instructions in the form; and

**(b)** submitting written procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable.

**(3)** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

**(a)** any reference to the commission or NRC shall be deemed a reference to the department;

**(b)** 10 CFR 37.5 Definitions of: agreement state, byproduct material, commission and person shall not be applicable,

**(c)** 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

**(d)** for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address when applicable: New Mexico environment department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**(4)** A request for a license amendment or renewal must be made by:

**(a)** filing in duplicate of a department form, *application for radioactive material license*, as described in Paragraph (2) of this subsection; and

**(b)** submitting procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable.

**(5)** In addition to the requirements in Paragraphs (2) and (3) of this subsection, an application for a license or amendment for medical use of radioactive material described in 20.3.7.713 NMAC must also include information regarding any radiation safety aspects of the medical use of the material that are not addressed in sections 20.3.7.702 NMAC and 20.3.7.703 NMAC. The applicant shall also provide specific information on:

**(a)** radiation safety precautions and instructions;

**(b)** methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

**(c)** calibration, maintenance and repair of instruments and equipment necessary for radiation safety.

**(6)** The applicant or licensee shall also provide any other additional information requested by the department in its review of the application, license renewal or amendment, within 30 days of the request or other time as may be specified in the request.

**(7)** An applicant that satisfies the requirements specified in Subsection B of 20.3.3.314 NMAC may apply for a type "A" specific license of broad scope.

**F. License amendments.** A licensee shall apply for and must receive a license amendment:

**(1)** before it receives, prepares or uses radioactive material for a type of use that is permitted under 20.3.7 NMAC but that is not authorized on the licensee's current license issued under this part;

**(2)** before it permits anyone to work as an authorized user, authorized nuclear pharmacist or authorized medical physicist under the license, except:

**(a)** for an authorized user, an individual who meets the definition of an *authorized user* as defined in 20.3.7.7 NMAC;

**(b)** for an authorized nuclear pharmacist, an individual who meets the definition of an *authorized nuclear pharmacist* as defined in 20.3.7.7 NMAC;

**(c)** for an authorized medical physicist, an individual who meets the definition of an *authorized medical physicist* as defined in 20.3.7.7 NMAC; or

**(d)** a physician, podiatrist or dentist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or a nuclear pharmacist who used only accelerator-produced radioactive materials in the practice of nuclear pharmacy at a government agency

or federally recognized Indian tribe before November 30, 2007 or at all other locations of use in non-licensing state (as defined in 20.3.1.7 NMAC) before August 8, 2009, or an earlier date as noticed by the NRC, and for only those materials and uses performed before these dates;

**(3)** before it changes radiation safety officers, except as provided in Paragraph (4) of Subsection A of 20.3.7.702 NMAC;

**(4)** before it receives radioactive material in excess of the amount or in a different form, or receives a different radioactive material than is authorized on the license;

**(5)** before it adds to or changes the areas of use identified in the application or on the license, including areas used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC if the change includes the addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide/PET radioactive drug production area; other areas of use where radioactive material is used only in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC are exempt;

**(6)** before it changes the address(es) of use identified in the application or on the license; and

**(7)** before it revises procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable, where such revision reduces radiation safety.

**G. Notifications.**

**(1)** For each individual, no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist or an authorized medical physicist under Paragraph (2) of Subsection F of this section:

**(a)** the licensee shall verify the training and experience and provide the department with a copy the documentation demonstrating the training and experience as listed in the definitions of authorized user, authorized nuclear pharmacist or authorized medical physicist in 20.3.7.7 NMAC; or

**(b)** the licensee shall verify the training and experience and provide the department of a copy of the documentation demonstrating that only accelerator-produced radioactive materials, discrete sources, or both, were used for medical use or in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007 or at all other locations of use in non-licensing states (as defined in 20.3.1.7 NMAC) before August 8, 2009, or an earlier date as noticed by the NRC.

**(2)** A licensee shall notify the department by letter no later than 30 days after:

**(a)** an authorized user, an authorized nuclear pharmacist, radiation safety officer or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

**(b)** the licensee permits an authorized user or an individual qualified to be a radiation safety officer, under Subsection A of 20.3.7.714 NMAC, incorporating 10 CFR 35.50 and Subsection E of 20.3.7.714 NMAC, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer in accordance with Paragraph (4) of Subsection A of 20.3.7.702 NMAC.

**(c)** the licensee's mailing address changes;

**(d)** the licensee's name changes, but the name change does not constitute a transfer of control of the license as described in Subsection B of 20.3.3.317 NMAC; or

**(e)** the licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC if the change does not include addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide or PET radioactive drug production area.

**(3)** A licensee shall notify the department by letter no later than 30 days after a calibration, transmission or reference source under Subsection E of 20.3.7.703 NMAC is acquired. The notification shall contain a description of the source, manufacturer name, model and serial number of the source, and the license number of the manufacturer of the specific license issued by the department, NRC or an agreement state under Subsection K of 20.3.3.315 NMAC or equivalent NRC or agreement state requirements.

**(4)** The licensee shall send the documents required in this subsection to the appropriate address identified in 20.3.1.116 NMAC.

**H. Exemptions regarding type A specific licenses of broad scope.** A licensee possessing a type "A" specific license of broad scope for medical use, issued under 20.3.3.314 NMAC, is exempt from:

**(1)** the provisions of Paragraph 4 of Subsection E of 20.3.7.700 NMAC regarding the need to file an amendment to the license for medical use of radioactive materials, for use described in 20.3.7.713 NMAC;

**(2)** the provisions of Paragraph (2) of Subsection F of 20.3.7.700 NMAC;

**(3)** the provisions of Paragraph (5) of Subsection F of 20.3.7.700 NMAC regarding additions to or changes in the areas of use at the addresses specified in the application or on the license;

**(4)** the provisions of Paragraph (1) of Subsection G of 20.3.7.700 NMAC;

**(5)** the provisions of Subparagraph (a) of Paragraph (2) of Subsection G of 20.3.7.700 NMAC for an authorized user, an authorized nuclear pharmacist or an authorized medical physicist;

**(6)** the provisions of Subparagraph (e) of Paragraph (2) of Subsection G of 20.3.7.700 NMAC regarding additions to or changes in the areas of use identified in the application or on the license where radioactive material is used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC;

**(7)** the provisions in Paragraph (3) of Subsection G of 20.3.7.700 NMAC; and

**(8)** the provisions of Paragraph (1) of Subsection I of 20.3.7.702 NMAC. [20.3.7.700 NMAC - Rp, 20 NMAC 3.1.7.700, 04/30/2009; A, 06/13/2017; A, 02/14/2023]

**20.3.7.702 GENERAL ADMINISTRATIVE REQUIREMENTS:**

**A. Radiation safety officer.**

**(1)** A licensee or licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing a radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements. A licensee's management may appoint, in writing, one or more associate radiation safety officers to support the radiation safety officer. The radiation safety officer, with written agreement of the licensee's management, must assign the specific duties and tasks to each associate radiation safety officer. These duties and tasks are restricted to the types of use for which the associate radiation safety officer is listed on a license. The radiation safety officer may delegate duties and tasks to the associate radiation safety officer but shall not delegate the authority or responsibilities for implementing the radiation protection program.

**(2)** A licensee shall establish the authority, duties and responsibilities of the radiation safety officer in writing.

**(3)** A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources and management prerogative to:

**(a)** identify radiation safety problems;

**(b)** initiate, recommend or provide corrective actions;

**(c)** prevent or order the cessation of unsafe operations; and

**(d)** verify implementation of corrective actions.

**(4)** For up to 60 days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under Subsections A and E of 20.3.7.714 NMAC, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, as provided in Paragraph (3) of this subsection, if the licensee takes the actions required in Paragraphs (1), (2), (3) and (5) of this subsection and notifies the department in accordance with Paragraph (2) of Subsection G of 20.3.7.700 NMAC.

**(5)** A licensee may simultaneously appoint more than one temporary radiation safety officer in accordance with Paragraph (4) of this subsection, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.

**B. Authority and responsibilities for the radiation protection program.** In addition to the radiation protection program requirements of 20.3.4.404 NMAC, a licensee or licensee's management shall approve in writing:

**(1)** requests for a license application, renewal or amendment before submittal to the department;

**(2)** any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist or authorized medical physicist; and

**(3)** radiation protection program changes that do not require a license amendment and are permitted under Subsection E of this section.

**C. Record keeping.** A licensee shall retain a record of actions taken under Subsections A and B of this section in accordance with Subsection A of 20.3.7.715 NMAC.

**D. Radiation safety committee.** Licensees that are authorized for two or more different types of use of radioactive material under 20.3.7.708, 20.3.7.710 and 20.3.7.711 NMAC or two or more types of units under 20.3.7.711 NMAC shall establish a radiation safety committee to oversee all uses of radioactive material permitted by the license. The radiation safety committee shall meet the following administrative requirements.

**(1)** The radiation safety committee must include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service and a representative of management who is neither an authorized user, nor a radiation safety officer. The radiation safety committee may include other members who the licensee considers appropriate.

**(2)** The radiation safety committee shall meet at least once each calendar quarter. To establish a quorum and to conduct business, one-half of the committee's membership shall be present, including the radiation safety officer and the management's representative.

**(3)** The licensee shall maintain minutes of each radiation safety committee meeting, promptly provide each member with a copy of the meeting minutes and retain one copy for the duration of the license.

**(4)** To oversee the use of licensed material, the radiation safety committee shall:

**(a)** review and verify the training and experience documentation (such as the board certification, preceptor statement(s), or any additional required training) and approve or disapprove any individual who is to be listed on a license as an authorized user, an authorized nuclear pharmacist, a radiation safety officer or an authorized medical physicist before submitting a license application or request for amendment or renewal;

**(b)** review and verify the training and experience documentation (such as the board certification, preceptor statement(s), the license or the permit identifying an individual as an authorized user, authorized nuclear pharmacist, authorized medical physicist or a radiation safety officer) and approve or disapprove any individual prior to allowing that individual to work as an authorized user, authorized nuclear pharmacist, a radiation safety officer or an authorized medical physicist;

**(c)** review, on the basis of safety, and approve or disapprove each proposed method of use of radioactive material;

**(d)** review, on the basis of safety, and approve or disapprove with the advice and consent of the radiation safety officer and the management representative, licensee's procedures and radiation protection program changes prior to submittal to the department for licensing action;

**(e)** review quarterly records of the radiation protection program indicating non-ALARA occurrences and all incidents and medical events involving radioactive material with respect to cause and subsequent actions taken; and

**(f)** review, annually, with the assistance of the radiation safety officer, the radiation protection program.

**E. Radiation protection program changes.**

**(1)** A licensee may revise its radiation protection program without department approval if:

**(a)** the revision does not require a license amendment under Subsection F of 20.3.7.700 NMAC;

**(b)** the revision is in compliance with the requirements in 20.3 NMAC and the license;

**(c)** the revision has been reviewed and approved by the radiation safety officer and licensee's management; and

**(d)** the affected individuals are instructed on the revised program before the changes are implemented.

**(2)** A licensee shall retain a record of each change in accordance with Subsection B of 20.3.7.715 NMAC.

**F. Supervision.**

**(1)** A licensee that permits the receipt, possession, use or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Subparagraph (a) of Paragraph (2) of Subsection D of 20.3.7.700 NMAC, shall:

**(a)** in addition to the requirements in 20.3.10.1002 NMAC, instruct the supervised individual in the licensee's written radiation protection program and quality assurance procedures, written directive procedures, requirements of this chapter and license conditions with respect to the use of radioactive material;

**(b)** require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection program and quality assurance procedures established by the licensee, written directive procedures, the requirements in 20.3 NMAC and license conditions with respect to the medical use of radioactive material;

**(c)** require the supervising authorized user to periodically review the supervised individual's use of radioactive material and the records kept to reflect this use; and

**(d)** document the performance of the supervised individual with respect to the medical use of radioactive material.

**(2)** A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Subparagraph (b) of Paragraph (2) of Subsection D of 20.3.7.700 NMAC shall:

**(a)** in addition to the requirements in 20.3.10.1002 NMAC, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material;

**(b)** require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, the licensee's written radiation protection program and quality assurance procedures, the requirements of 20.3 NMAC and license conditions;

**(c)** require the supervising authorized nuclear pharmacist or authorized user to periodically review the work of the supervised individual as it pertains to radiation safety and quality assurance in preparing radioactive material for medical use and the records kept to reflect that work; and

**(d)** document the performance of the supervised individual with respect to the medical use of radioactive material.

**(3)** A licensee who permits supervised activities under Paragraphs (1) and (2) of this subsection is responsible for the acts and omissions of the supervised individual.

**G. Written directive.** Each applicant or licensee under this part, as applicable, shall establish and maintain written directive procedures to provide high confidence that [~~radioactive~~] byproduct material or radiation from radioactive material will be administered as directed by the authorized user. The written directive procedures must include written policies and procedures that meet the following specific requirements.

**(1)** A written directive must be prepared, dated and signed by an authorized user before the administration of I-131 sodium iodide of quantities greater than 30 microcuries (1.11 megabecquerels), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material. If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive is acceptable. The information contained in the oral directive must be documented as soon as possible in writing in the patient's record. A written directive documenting the oral directive must be prepared, dated and signed by the authorized user within 48 hours of the oral directive.

**(2)** A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed [~~radioactive~~] byproduct material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose or the next fractional dose. If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable, provided that the oral revision is documented as soon as possible in writing in the patient's record. A revised written directive documenting the oral revision must be prepared, dated and signed by the authorized user within 48 hours of the oral revision.

**(3)** The written directive must contain the patient's or human research subject's name and the following information:

**(a)** for any administration of quantities greater than 30 microcuries (1.11 megabecquerels) of I-131 sodium iodide: the dosage;

**(b)** for an administration of a therapeutic dosage of unsealed radioactive material other than I-131 sodium iodide: the radioactive drug, dosage and route of administration;

**(c)** for gamma stereotactic radiosurgery: the total dose, treatment site and values for the target coordinate settings per treatment for each anatomically distinct treatment site;

**(d)** for teletherapy: the total dose, dose per fraction, number of fractions and treatment site;

**(e)** for high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions and total dose; or

**(f)** for permanent implant brachytherapy:

**(i)** before implantation: The treatment site, the radionuclide, and the total source strength; and

**(ii)** after implantation but before the patient leaves the post-treatment recovery area: The treatment site, the number of sources implanted, the total source strength implanted, and the date; or [~~for all other brachytherapy, including low, medium and pulsed dose rate remote afterloaders, before implantation: treatment site, the radionuclide and dose; and after implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, total source strength and exposure time (or the total dose).~~]

**(g)** for all other brachytherapy, including low, medium and pulsed dose rate remote afterloaders: before implantation: the treatment site, [~~the~~] radionuclide and dose; and after implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, total source strength and exposure time (or the total dose); and date.

**(4)** A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed byproduct material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose. If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable. The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user within 48 hours of the oral revision.

[~~**(4)**~~] **(5)** The licensee shall retain a copy of the written directive in accordance with Subsection C of 20.3.7.715 NMAC.

**H. Procedures for administrations requiring a written directive.**

**(1)** For any administration requiring a written directive, the licensee shall develop, implement and maintain written procedures to provide high confidence that:

**(a)** the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive before each administration; and

**(b)** each administration is in accordance with the written directive.

**(2)** At a minimum, the procedures required by Paragraph (1) of this subsection must address the following items that are applicable to the licensee's use of radioactive material:

**(a)** verifying the identity of the patient or human research subject;

**(b)** verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

**(c)** checking both manual and computer-generated dose calculations; and

**(d)** verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by 20.3.7.711 NMAC or 20.3.7.713 NMAC;

**(e)** determining if a medical event, as defined in 20.3.7.716 NMAC and 10 CFR 35.3045, has occurred; and

**(f)** determining, for permanent implant brachytherapy, within 60 calendar days from the date the implant was performed, the total source strength administered outside of the treatment site compared to the total source strength documented in the post-implantation portion of the written directive, unless a written justification of patient unavailability is documented.

**(3)** A licensee shall retain a copy of the procedures required under Paragraph (1) of this subsection in accordance with Subsection D of 20.3.7.715 NMAC.

**I. Suppliers of sealed sources or devices for medical use.** For medical use, a licensee may only use:

**(1)** sealed sources or devices manufactured, labeled, packaged and distributed in accordance with a license issued under Subsection K of 20.3.3.315 NMAC or equivalent requirements of NRC or an agreement state;

**(2)** sealed sources or devices non-commercially transferred from a 20.3.7 NMAC licensee, a NRC or agreement state licensee; or

**(3)** teletherapy sources manufactured and distributed in accordance with a license issued under 20.3.3 NMAC or the equivalent requirements of NRC or an agreement state.

[20.3.7.702 NMAC - Rp, 20 NMAC 3.1.7.702, 04/30/2009; A 02/14/2023]

**20.3.7.706 PERMISSIBLE MOLYBDENUM-99, STRONTIUM-82 AND STRONTIUM-85 CONCENTRATIONS:**

**A. Maximum concentrations.** A licensee may not administer to humans a radiopharmaceutical containing:

**(1)** more than 0.15 microcurie of molybdenum-99 per each millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per each megabecquerel of technetium-99m); or

**(2)** more than 0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride injection (0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride); or more than 0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride injection (0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82).

**B. Measurement.**

**(1)** A licensee preparing technetium-99m radiopharmaceutical from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration [~~of the first eluate after the receipt of the generator to demonstrate compliance with Subsection A of this section~~] in each eluate from a generator to demonstrate compliance with Subsection A of this section.

**(2)** A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with Subsection A of this section.

**C. Record keeping.** If a licensee is required to measure the molybdenum-99 concentration or strontium-85 and strontium-85 concentrations, the licensee shall retain a record of each measurement in accordance with Subsection M of 20.3.7.715 NMAC.

**D. Reporting.** The licensee shall report any measurement that exceeds the limits in Subsection A of this section at the time of generator elution, in accordance with Subsection D of 20.3.7.716 NMAC and 10 CFR § 35.3204.

[20.3.7.706 NMAC - Rp, 20 NMAC 3.1.7.706, 04/30/2009, A, 02/14/2023]

**20.3.7.708 USE OF UNSEALED RADIOACTIVE MATERIAL FOR WHICH A WRITTEN DIRECTIVE IS REQUIRED:** A licensee may use any unsealed [~~radioactive~~] byproduct material identified in 10 CFR 35.390(b)(1)(ii)(G) prepared for medical use and for which a written directive is required that is [~~either~~]:

**A. Obtained from a manufacturer or preparer** licensed under Subsection J of 20.3.3.315 NMAC or equivalent agreement state or NRC requirements; or

**B. Prepared by:**

**(1)** an authorized nuclear pharmacist;

**(2)** a physician who is an authorized user and who meets the requirements specified in either Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290, or Subsection H of 20.3.7.714 NMAC, incorporating 10 CFR 35.390; or

**(3)** an individual under the supervision, as specified in Subsection F of 20.3.7.702 NMAC, of the authorized nuclear pharmacist in Paragraph (1) of this subsection or the physician who is an authorized user in Paragraph (2) of this subsection; or

**C. Obtained from and prepared by a department, NRC or agreement state licensee** for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug protocol accepted by FDA; or

**D. Prepared by the licensee** for use in research in accordance with a radioactive drug research committee-approved application or an investigational new protocol accepted by FDA.

[20.3.7.708 NMAC - Rp, 20 NMAC 3.1.7.708, 04/30/2009, A, 02/14/2023]

**20.3.7.710 MANUAL BRACHYTHERAPY:**

**A.** Use of sources for manual brachytherapy. [~~A licensee shall use only brachytherapy sources for therapeutic medical uses.~~] The regulations of the NRC set forth in 10 CFR 35.400 are hereby incorporated by reference:

[~~(1) as approved in the sealed source and device registry; or~~

~~(2) in research in accordance with an active investigational device exemption application accepted by the FDA provided the requirements of Paragraph (1) of Section I of 20.3.7.702 NMAC are met.~~]

**B.** Surveys after source implant and removal.

**(1)** Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.

**(2)** Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.

**(3)** A licensee shall retain a record of the surveys required by Paragraphs (1) and (2) of this subsection in accordance with Subsection P of 20.3.7.715 NMAC.

**C.** Brachytherapy sources accountability.

**(1)** A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.

**(2)** As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.

**(3)** A licensee shall maintain a record of the brachytherapy source accountability in accordance with Subsection Q of 20.3.7.715 NMAC.

**D.** Safety instructions. In addition to the requirements in 20.3.10.1002 NMAC:

**(1)** the licensee shall provide radiation safety instructions, initially and at least annually, to personnel caring for patients or the human research subjects who are receiving brachytherapy and cannot be released under Subsection I of 20.3.7.703 NMAC; to satisfy this requirement, the instructions must be commensurate with the duties of the personnel and include:

**(a)** the size and appearance of the brachytherapy sources;

**(b)** safe handling of the brachytherapy sources and shielding instructions;

**(c)** a patient or human research subject control;

**(d)** visitor control, including both routine visitation of hospitalized individuals in accordance with Paragraph (1) of Subsection A of 20.3.4.413 NMAC, and visitation authorized in accordance with Subsection F of 20.3.4.413 NMAC; and

**(e)** notification of the radiation safety officer, or their designee, and an authorized user if the patient or human research subject has a medical emergency or dies;

**(2)** a licensee shall retain a record of individuals receiving safety instructions in accordance with Subsection O of 20.3.7.715 NMAC.

**E.** Safety precautions.

**(1)** For each patient or human research subject receiving brachytherapy and cannot be released under Subsection I of 20.3.7.703 NMAC a licensee shall:

**(a)** not quarter the patient or the human research subject in the same room with an individual who is not receiving brachytherapy;

**(b)** visibly post the patient's or human research subject's door with a "Radioactive Materials" sign; and

**(c)** note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

**(2)** A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

**(a)** dislodged from the patient; and

**(b)** lodged within the patient following removal of the source applicators.

**(3)** A licensee shall notify the radiation safety officer, or their designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

**F.** Calibration measurements of brachytherapy sources.

**(1)** Before the first medical use of a brachytherapy source, a licensee shall have:

**(a)** determined the source output or activity using a dosimetry system that meets the requirements of Paragraph (1) of Subsection F of 20.3.7.711 NMAC;

**(b)** determined source positioning accuracy within applicators; and

**(c)** used published protocols currently accepted by nationally recognized bodies to meet the requirements of Subparagraphs (a) and (b) of this paragraph.

**(2)** Instead of a licensee making its own measurements as required in Paragraph (1) of this subsection, the licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American association of physicists in medicine that are made in accordance with Paragraph (1) of this subsection.

**(3)** A licensee shall mathematically correct the

outputs or activities determined in Paragraph (1) of this subsection for physical decay at intervals consistent with one percent physical decay.

**(4)** A licensee shall retain a record of each calibration in accordance with Subsection R of 20.3.7.715 NMAC.

**G.** Decay of strontium-90 sources for ophthalmic treatments.

[~~(1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under Subsection F of 20.3.7.710 NMAC.~~

~~(2) A licensee shall retain a record of the activity of each strontium-90 source in accordance with Subsection S of 20.3.7.715 NMAC.~~] The regulations of the NRC set forth in 10 CFR 35.433 are hereby incorporated by reference.

**H.** Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing must include, as applicable, verification of:

**(1)** the source-specific input parameters required by the dose calculation algorithm;

**(2)** the accuracy of dose, dwell time and treatment time calculations at representative points;

**(3)** the accuracy of isodose plots and graphic displays; and

**(4)** the accuracy of the software used to determine sealed source positions from radiographic images.

[20.3.7.710 NMAC - Rp, 20 NMAC 3.1.7.709, 04/30/2009; A, 02/14/2023]

**20.3.7.711 PHOTON EMITTING REMOTE AFTERLOADER UNITS, TELETHERAPY UNITS AND GAMMA STEREOTACTIC RADIOSURGERY UNITS:**

**A.** Use of a sealed source in a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit. A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units or gamma stereotactic radiosurgery units for therapeutic medical uses:

**(1)** as approved in the sealed source and device registry; or

**(2)** in research in accordance with an active investigational device exemption application accepted by the FDA provided the requirements of Paragraph (1) of Subsection I of 20.3.7.702 NMAC are met.

**B.** Surveys of patients and human research subjects treated with a remote afterloader unit.

**(1)** Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the source(s) has been removed from the patient or human research subject and returned to the safe shielded position.

**(2)** A licensee shall retain a record of these surveys in accordance with Subsection P of 20.3.7.715 NMAC.

**C.** Installation, maintenance, adjustment and repair.

**(1)** Only a person specifically licensed by the department, NRC or an agreement state shall install, maintain, adjust or repair a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit that involves work on the source(s) shielding, the source(s) driving unit, or other electronic or mechanical component that could expose the source(s), reduce the shielding around the source(s) or compromise the radiation safety of the unit or the source(s).

**(2)** Except for low dose-rate remote afterloader units, only a person specifically licensed by the department, NRC or an agreement state shall install, replace, relocate or remove a sealed source or source contained in other remote afterloader units, teletherapy units or gamma stereotactic radiosurgery units.

**(3)** For a low dose-rate remote afterloader unit, only a person specifically licensed by the department, NRC, an agreement state or an authorized medical physicist shall install, replace, relocate or remove a sealed source(s) contained in the unit.

**(4)** A licensee shall retain a record of the installation, maintenance, adjustment and repair of remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units in accordance with Subsection T of 20.3.7.715 NMAC.

**D.** Safety procedures and instructions for remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units.

**(1)** A licensee shall:

**(a)** secure the unit, the console, the console keys and the treatment room when not in use or unattended;

**(b)** permit only individuals approved by the authorized user, radiation safety officer or authorized medical physicist to be present in the treatment room during treatment with the source(s);

**(c)** prevent dual operation of more than one radiation producing device in a treatment room if applicable; and

**(d)** develop, implement and maintain written procedures for responding to an abnormal situation when the operator is unable to place the source(s) in the shielded position or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures must include:

**(i)** instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

**(ii)** the process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

**(iii)** the names and telephone numbers of the authorized users, the authorized medical physicist and the radiation safety officer to be contacted if the unit or console operates abnormally.

**(2)** A copy of the procedures required by Subparagraph (d) of Paragraph (1) of this subsection must be physically located at the unit console.

**(3)** A licensee shall post instructions at the unit console to inform the operator of:

**(a)** the location of the procedures required by Subparagraph (d) of Paragraph (1) of this subsection; and

**(b)** the names and telephone numbers of the authorized users, the authorized medical physicist and the radiation safety officer to be contacted if the unit or console operates abnormally.

**(4)** Prior to the first use for patient treatment of a new unit or an existing unit with a manufacturer upgrade that affects the operation and safety of the unit, a licensee shall ensure that vendor operational and safety training is provided to all individuals who will operate the unit. The vendor operational and safety training must be provided by the device manufacturer or by an individual certified by the device manufacturer to provide the operational and safety training.

[~~(4)~~] **(5)** A licensee shall provide operational and safety instruction, initially and at least annually, to all individuals who operate the unit at the facility, as appropriate to the individual's assigned duties, in:

**(a)** the procedures identified in Subparagraph (d) of Paragraph (1) of this subsection; and

**(b)** the operating procedures for the unit.

[~~(5)~~] **(6)** A licensee shall ensure that operators, authorized medical physicists and authorized users participate in drills of the emergency procedures, initially and at least annually.

[~~(6)~~] **(7)** A licensee shall retain a record of individuals receiving instruction required by Paragraph (5) of this subsection, in accordance with Subsection O of 20.3.7.715 NMAC.

[~~(7)~~] **(8)** A licensee shall retain a copy of the procedures required by Subparagraph (d) of Paragraph (1) and Subparagraph (b) of Paragraph (4) of this subsection in accordance with Subsection U of 20.3.7.715 NMAC.

**E.** Safety precautions for remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units.

**(1)** A licensee shall control access to the treatment room by a door at each entrance.

**(2)** A licensee shall equip each entrance to the treatment room with an electrical interlock system that will:

**(a)** prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

**(b)** cause the source(s) to be shielded when an entrance door is opened; and

**(c)** prevent the source(s) from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source(s) on-off control is reset at the console.

**(3)** A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

**(4)** Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

**(5)** For licensed activities where sources are placed within the patient's or human research subject's body, a licensee shall only conduct treatments which allow for expeditious removal of a decoupled or jammed source.

**(6)** In addition to the requirements specified in Paragraphs (1) through (5) of this subsection, a licensee shall:

**(a)** for medium dose-rate and pulsed dose-rate remote afterloader units, require:

**(i)** an authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

**(ii)** an authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator(s) in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit;

**(b)** for high dose-rate remote afterloader units, require:

**(i)** an authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

**(ii)** an authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit;

**(c)** for gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit;

**(d)** notify the radiation safety officer, or their designee and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

**(7)** A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source which:

**(a)** remains in the unshielded position; or

**(b)** is lodged within the patient following completion of the treatment.

**F.** Dosimetry equipment.

**(1)** Except for low dose-rate remote afterloader sources where the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions must be met.

**(a)** The system must have been calibrated using a system or source traceable to the NIST and published protocols accepted by nationally recognized bodies, or by a calibration laboratory accredited by the American association of physicists in medicine. The calibration must have been performed within the previous 2 years and after any servicing that may have affected system calibration.

**(b)** The system must have been calibrated within the previous 4 years. Eighteen to 30 months after that calibration, the system must have been inter-compared with another dosimetry system that was calibrated within the past 24 months by NIST or by a calibration laboratory accredited by the American association of physicists in medicine. The results of the inter-comparison must indicate that the calibration factor of the licensee's system had not changed by more than two percent. The licensee may not use the inter-comparison result to change the calibration factor. When inter-comparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

**(2)** The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with Paragraph (1) of this subsection. This comparison must have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in Paragraph (1) of this subsection.

**(3)** The licensee shall retain a record of each calibration, inter-comparison and comparison in accordance with Subsection V of 20.3.7.715 NMAC.

**G.** Full calibration measurements on teletherapy units.

**(1)** A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

**(a)** before the first medical use of the unit;

**(b)** before medical use under the following conditions:

**(i)** whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

**(ii)** following replacement of the source or following reinstallation of the teletherapy unit in a new location;

**(iii)** following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

**(c)** at intervals not exceeding one year.

**(2)** To satisfy the requirement of Paragraph (1) of this subsection, full calibration measurements must include determination of:

**(a)** the output within plus or minus three percent for the range of field sizes and for the distance or range of distances used for medical use;

**(b)** the coincidence of the radiation field and the field indicated by the light beam localizing device;

**(c)** the uniformity of the radiation field and its dependence on the orientation of the useful beam;

**(d)** timer accuracy and linearity over the range of use;

**(e)** on-off error; and

**(f)** the accuracy of all distance measuring and localization devices in medical use.

**(3)** A licensee shall use the dosimetry system described in Paragraph (1) of Subsection F of 20.3.7.711 NMAC to measure the output for one set of exposure conditions. The remaining radiation measurements required in Subparagraph (a) of Paragraph (2) of this subsection may be made using a dosimetry system that indicates relative dose rates.

**(4)** A licensee shall make full calibration measurements required by Paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

**(5)** A licensee shall mathematically correct the outputs determined in Subparagraph (a) of Paragraph (2) of this subsection for physical decay for intervals not exceeding 1 month for cobalt-60, 6 months for cesium-137, or at intervals consistent with one percent decay for all other nuclides.

**(6)** Full calibration measurements required by Paragraph (1) of this subsection and physical decay corrections required by Paragraph (5) of this subsection

must be performed by the authorized medical physicist.

**(7)** A licensee shall retain a record of each calibration in accordance with Subsection W of 20.3.7.715 NMAC.

**H.** Full calibration measurements on remote afterloader units.

**(1)** A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

**(a)** before the first medical use of the unit;

**(b)** before medical use under the following conditions:

**(i)** following replacement of the source or following reinstallation of the unit in a new location; and

**(ii)** following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly;

**(c)** at intervals not exceeding one quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds 75 days; and

**(d)** at intervals not exceeding one year for low dose-rate remote afterloader units.

**(2)** To satisfy the requirement of Paragraph (1) of this subsection, full calibration measurements must include, as applicable, determination of:

**(a)** the output within plus or minus five percent;

**(b)** source positioning accuracy to within plus or minus 1 millimeter;

**(c)** source retraction with backup battery upon power failure;

**(d)** length of the source transfer tubes;

**(e)** timer accuracy and linearity over the typical range of use;

**(f)** length of the applicators; and

**(g)** function of the source transfer tubes, applicators and transfer tube-applicator interfaces.

**(3)** A licensee shall use the dosimetry system described in Paragraph (1) of Subsection F of 20.3.7.711 NMAC to measure the output.

**(4)** A licensee shall make full calibration measurements required by Paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

**(5)** In addition to the requirements for full calibrations for low dose-rate remote afterloader units in Paragraph (2) of this subsection, a licensee shall perform an autoradiograph of the source(s) to verify inventory and source(s) arrangement at intervals not exceeding one quarter.

**(6)** For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with Paragraphs (1) through (5) of this subsection.

**(7)** A licensee shall mathematically correct the outputs determined in Subparagraph (a) of Paragraph (2) of this subsection for physical decay at intervals consistent with one percent physical decay.

**(8)** Full calibration measurements required by Paragraph (1) of this subsection and physical decay corrections required by Paragraph (7) of this subsection must be performed by the authorized medical physicist.

**(9)** A licensee shall retain a record of each calibration in accordance with Subsection W of 20.3.7.715 NMAC.

**I.** Full calibration measurements on gamma stereotactic radiosurgery units.

**(1)** A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

**(a)** before the first medical use of the unit;

**(b)** before medical use under the following conditions:

**(i)** whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

**(ii)** following replacement of the sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and

**(iii)** following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and

**(c)** at intervals not exceeding one year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

**(2)** To satisfy the requirement of Paragraph (1) of this subsection, full calibration measurements must include determination of:

**(a)** the output within plus or minus three percent;

**(b)** relative helmet factors;

**(c)** isocenter coincidence;

**(d)** timer accuracy and linearity over the range of use;

**(e)** on-off error;

**(f)** trunnion centricity;

**(g)** treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

**(h)** helmet microswitches;

**(i)** emergency timing circuits; and

**(j)** stereotactic frames and localizing devices (trunnions).

**(3)** A licensee shall use the dosimetry system described in Paragraph (1) of Subsection F of 20.3.7.711 NMAC to measure the output for one set of exposure conditions. The remaining radiation measurements required in Subparagraph (a) of Paragraph (2) of this subsection of this subsection may be made using a dosimetry system that indicates relative dose rates.

**(4)** A licensee shall make full calibration measurements required by Paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

**(5)** A licensee shall mathematically correct the outputs determined in Subparagraph (a) of Paragraph (2) of this subsection at intervals not exceeding 1 month for cobalt-60 and at intervals consistent with one percent physical decay for all other radionuclides.

**(6)** Full calibration measurements required by Paragraph (1) of this subsection and physical decay corrections required by Paragraph (5) of this subsection must be performed by the authorized medical physicist.

**(7)** A licensee shall retain a record of each calibration in accordance with Subsection W of 20.3.7.715 NMAC.

**J.** Periodic spot-checks for teletherapy units.

**(1)** A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:

**(a)** timer accuracy and timer linearity over the range of use;

**(b)** on-off error;

**(c)** the coincidence of the radiation field and the field indicated by the light beam localizing device;

**(d)** the accuracy of all distance measuring and localization devices used for medical use;

**(e)** the output for one typical set of operating conditions measured with the dosimetry system described in Paragraph (2) of Subsection F of 20.3.7.711 NMAC; and

**(f)** the difference between the measurement made in Subparagraph (e) of this paragraph and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

**(2)** A licensee shall perform measurements required by Paragraph (1) of this subsection in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot-check measurements.

**(3)** A licensee shall have the authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

**(4)** A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:

**(a)** electrical interlocks at each teletherapy room entrance;

**(b)** electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

**(c)** source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;

**(d)** viewing and intercom systems;

**(e)** treatment room doors from inside and outside the treatment room; and

**(f)** electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

**(5)** If the results of the checks required in Paragraph (4) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

**(6)** A licensee shall retain a record of each spot-check required by Paragraphs (1) and (4) of this subsection, and a copy of the procedures required by Paragraph (2), in accordance with Subsection X of 20.3.7.715 NMAC.

**K.** Periodic spot-checks for remote afterloader units.

**(1)** A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

**(a)** before the first use of a high dose-rate, medium dose-rate or pulsed dose-rate remote afterloader unit on a given day;

**(b)** before each patient treatment with a low dose-rate remote afterloader unit; and

**(c)** after each source installation.

**(2)** A licensee shall perform the measurements required by Paragraph (1) of this subsection in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot check measurements.

**(3)** A licensee shall have the authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

**(4)** To satisfy the requirements of Paragraph (1) of this subsection, spot-checks must, at a minimum, assure proper operation of:

**(a)** electrical interlocks at each remote afterloader unit room entrance;

**(b)** source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

**(c)** viewing and intercom systems in each high dose-rate, medium dose-rate and pulsed dose-rate remote afterloader facility;

**(d)** emergency response equipment;

**(e)** radiation monitors used to indicate the source position;

**(f)** timer accuracy;

**(g)** clock (date and time) in the unit's computer; and

**(h)** decayed source(s) activity in the unit's computer.

**(5)** If the results of the checks required in Paragraph (4) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

**(6)** A licensee shall retain a record of each check required by Paragraph (4) of this subsection and a copy of the procedures required by Paragraph (2) of this subsection in accordance with Subsection Y of 20.3.7.715 NMAC.

**L.** Periodic spot-checks for gamma stereotactic radiosurgery units.

**(1)** A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

**(a)** monthly;

**(b)** before the first use of the unit on a given day; and

**(c)** after each source installation.

**(2)** A licensee shall:

**(a)** perform the measurements required by Paragraph (1) of this subsection in accordance with written procedures established by the authorized medical physicist; that individual need not actually perform the spot check measurements;

**(b)** have the authorized medical physicist review the results of each spot-check within 15 days; the authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

**(3)** To satisfy the requirements of Subparagraph (a) of Paragraph (1) of this subsection, spot-checks must, at a minimum:

**(a)** assure proper operation of:

**(i)** treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

**(ii)** helmet microswitches;

**(iii)** emergency timing circuits; and

**(iv)** stereotactic frames and localizing devices (trunnions); and

**(b)** determine:

**(i)** the output for one typical set of operating conditions measured with the dosimetry system described in Paragraph (2) of Subsection F of 20.3.7.711 NMAC;

**(ii)** the difference between the measurement made above (Item (i) of Subparagraph (b) of Paragraph (3) of Subsection L of 20.3.7.711 NMAC) and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay);

**(iii)** source output against computer calculation;

**(iv)** timer accuracy and linearity over the range of use;

**(v)** on-off error; and

**(vi)** trunnion centricity.

**(4)** To satisfy the requirements of Subparagraphs (b) and (c) of Paragraphs (1) of this subsection, spot-checks must assure proper operation of:

**(a)** electrical interlocks at each gamma stereotactic radiosurgery room entrance;

**(b)** source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

**(c)** viewing and intercom systems;

**(d)** timer termination;

**(e)** radiation monitors used to indicate room exposures; and

**(f)** emergency off buttons.

**(5)** A licensee shall arrange for the repair of any system identified in Paragraph (3) of this subsection that is not operating properly as soon as possible.

**(6)** If the results of the checks required in Paragraph (4) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

**(7)** A licensee shall retain a record of each check required by Paragraphs (3) and (4) and a copy of the procedures required by Paragraph (2) of this subsection in accordance with Subsection Z of 20.3.7.715 NMAC.

**M.** Additional technical requirements for mobile remote afterloader units.

**(1)** A licensee providing mobile remote afterloader service shall:

**(a)** check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

**(b)** account for all sources before departure from a client's address of use.

**(2)** In addition to the periodic spot-checks required by Subsection K of 20.3.7.711 NMAC, a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks must be made to verify the operation of:

**(a)** electrical interlocks on treatment area access points;

**(b)** source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

**(c)** viewing and intercom systems;

**(d)** applicators, source transfer tubes and transfer tube-applicator interfaces;

**(e)** radiation monitors used to indicate room exposures;

**(f)** source positioning (accuracy); and

**(g)** radiation monitors used to indicate whether the source has returned to a safe shielded position.

**(3)** In addition to the requirements for checks in Paragraph (2) of this subsection, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

**(4)** If the results of the checks required in Paragraph (2) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

**(5)** A licensee shall retain a record of each check required by Paragraph (2) of this subsection in accordance with Subsection AA of 20.3.7.715 NMAC.

**N.** Radiation surveys.

**(1)** In addition to the survey requirements in Subsection H of 20.3.7.703 NMAC and 20.3.4.416 NMAC, a person subject to this section shall make surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the source(s) in the shielded position do not exceed the levels stated in the sealed source and device registry.

**(2)** The licensee shall make the survey required by Paragraph (1) of this subsection at installation of a new source and following repairs to the source(s) shielding, the source(s) driving unit or other electronic or mechanical component that could expose the source, reduce the shielding around the source(s) or compromise the radiation safety of the unit or the source(s).

**(3)** A licensee shall retain a record of the radiation surveys required by Paragraph (1) of this subsection in accordance with Subsection BB of 20.3.7.715 NMAC.

**O.** Five-year inspection for teletherapy and gamma stereotactic radiosurgery units.

**(1)** A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement [~~or at intervals not to exceed 5 years, whichever comes first,~~] to assure proper functioning of the source exposure mechanism and other safety components. The interval between each full inspection servicing shall not exceed 5 years for each teletherapy unit and shall not exceed 7 years for each gamma stereotactic radiosurgery unit.

**(2)** This inspection and servicing may only be performed by persons specifically licensed to do so by the department, NRC or an agreement state.

**(3)** A licensee shall keep a record of the inspection and servicing in accordance with Subsection CC of 20.3.7.715 NMAC.

**P.** Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing must include, as applicable, verification of:

**(1)** the source-specific input parameters required by the dose calculation algorithm;

**(2)** the accuracy of dose, dwell time and treatment time calculations at representative points;

**(3)** the accuracy of isodose plots and graphic displays;

**(4)** the accuracy of the software used to determine sealed source positions from radiographic images; and

**(5)** the accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

[20.3.7.711 NMAC - Rp, 20 NMAC 3.1.7.710, 04/30/2009; A, 02/14/2023]

**20.3.7.712 SEALED SOURCES FOR DIAGNOSIS:**

**A.** Use of sealed sources for diagnosis. A licensee shall use only sealed sources for diagnostic medical uses [~~as approved in the sealed source and device registry~~] if the sealed sources are approved in the *Sealed Source and Device Registry* for diagnostic medicine. The sealed sources may be used for diagnostic medical uses that are not explicitly listed in the *Sealed Source and Device Registry* but must be used in accordance with the radiation safety conditions and limitations described in the *Sealed Source and Device Registry*.

**B.** A licensee must only use medical devices containing sealed sources for diagnostic medical uses if both the sealed sources and

medical devices are approved in the *Sealed Source and Device Registry* for diagnostic medical uses. The diagnostic medical devices may be used for diagnostic medical uses that are not explicitly listed in the *Sealed Source and Device Registry* but must be used in accordance with the radiation safety conditions and limitations described in the *Sealed Source and Device Registry*.

**C.** Sealed sources and devices for diagnostic medical uses may be used in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration provided the requirements of 10 CFR § 35.49(a) are met.

[~~B~~] **D.** Survey instrument. A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation survey meter capable of detecting dose rates ranging from 0.1 millirem (1 millisievert) per hour to 1000 millirems (10 millisieverts) per hour. The instrument shall be operable and calibrated in accordance with section Subsection C of 20.3.7.703 NMAC. [20.3.7.712 NMAC - Rp, 20 NMAC 3.1.7.711, 04/30/2009; A, 02/14/2023]

**20.3.7.714 TRAINING REQUIREMENTS:**

**A. Radiation safety officer and associate radiation safety officer.** The regulations of the NRC set forth in 10 CFR 35.50 are hereby incorporated by reference.

**B. Training for an authorized medical physicist.** The regulations of the NRC set forth in 10 CFR 35.51 are hereby incorporated by reference.

**C. Training for an authorized nuclear pharmacist.** The regulations of the NRC set forth in 10 CFR 35.55 are hereby incorporated by reference.

**D. Training for experienced radiation safety officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist and authorized nuclear pharmacist.** The regulations of the NRC set forth in 10 CFR 35.57 are hereby incorporated by reference.

**E. Recentness of training.** The training and experience specified in Subsections A, B, C, F, G, H, I, J, K, L, M, N and O of this section must have been obtained within the 7 years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

**F. Training for uptake, dilution, and excretion studies.** (For use of unsealed radioactive material under 20.3.7.704 NMAC) The regulations of the NRC set forth in 10 CFR 35.190 are hereby incorporated by reference.

**G. Training for imaging and localization studies.** (For use of unsealed radioactive material under 20.3.7.705 NMAC) The regulations of the NRC set forth in 10 CFR 35.290 are hereby incorporated by reference.

**H. Training for use of unsealed radioactive material for which a written directive is required.** (For use of unsealed radioactive material under 20.3.7.708 NMAC) The regulations of the NRC set forth in 10 CFR 35.390 are hereby incorporated by reference.

**I. Training for the oral administration of sodium iodide i-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 gigabecquerels).** The regulations of the NRC set forth in 10 CFR 35.392 are hereby incorporated by reference.

**J. Training for the oral administration of sodium iodide i-131 requiring a written directive in quantities greater than 33 millicuries (1.22 gigabecquerels).** The regulations of the NRC set forth in 10 CFR 35.394 are hereby incorporated by reference.

**K. Training for the parenteral administration of unsealed byproduct material requiring a written directive.** The regulations of the NRC set forth in 10 CFR 35.396 are hereby incorporated by reference.

**L. Training for use of manual brachytherapy sources.** (For use of radioactive material under 20.3.7.710 NMAC) The regulations of the NRC set forth in 10 CFR 35.490 are hereby incorporated by reference.

**M. Training for ophthalmic use of strontium-90.** (For use of radioactive material under 20.3.7.710 NMAC) The regulations of the NRC set forth in 10 CFR 35.491 are hereby incorporated by reference.

**N. Training for use of sealed sources for diagnosis:** (For use of radioactive material under 20.3.7.712 NMAC) The regulations of the NRC set forth in 10 CFR 35.590 are hereby incorporated by reference.

**O. Training for use of remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units** (For use of radioactive material under 20.3.7.711 NMAC). The regulations of the NRC set forth in 10 CFR 35.690 are hereby incorporated by reference.

**P. Modifications.** The following modifications are made to the incorporated federal regulations in this section.

**(1)** "Commission" means the *department or NRC*.

**(2)** "Act" means the *Radiation Protection Act*, Sections 74-3-1 through 74-3-16 NMSA 1978.

**(3)** "Byproduct material" means *radioactive material* as defined in this chapter.

**(4)** "10 CFR 35.100" means 20.3.7.704 NMAC.

**(5)** "10 CFR 35.200" means 20.3.7.705 NMAC.

**(6)** "10 CFR 35.300" means 20.3.7.708 NMAC.

**(7)** "10 CFR 35.400" means 20.3.7.710 NMAC.

**(8)** "10 CFR 35.500" means 20.3.7.712 NMAC.

**(9)** "10 CFR 35.600" means 20.3.7.711 NMAC.

**(10)** "At all other locations of use" in Subsection D of this section, incorporating 10 CFR 35.57 means *at all other*

*locations of use in non-licensing state*, as defined in 20.3.1.7 NMAC.
[20.3.7.714 NMAC - Rp, 20 NMAC 3.1.7.712; A, 02/14/2023]

**20.3.7.716 REPORTS:**

**A. Report and notification of a medical event.**

**(1)** A licensee shall report any event, except for an event that results from patient intervention, in which the administration of [~~radioactive~~] byproduct material or radiation from [~~radioactive~~] byproduct material, except permanent implant brachytherapy, results in:

**(a)** a dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rems (50 millisieverts) effective dose equivalent, 50 rems (0.5 sievert) to an organ or tissue or 50 rems (0.5 sievert) shallow dose equivalent to the skin; and:

**(i)** the total dose delivered differs from the prescribed dose by twenty percent or more;

**(ii)** the total dosage delivered differs from the prescribed dosage by twenty percent or more or falls outside the prescribed dosage range; or

**(iii)** the fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty percent or more;

**(b)** a dose that exceeds 5 rems (50 millisieverts) effective dose equivalent, 50 rems (0.5 sievert) to an organ or tissue, or 50 rems (0.5 sievert) shallow dose equivalent to the skin from any of the following:

**(i)** an administration of a wrong radioactive drug containing byproduct [~~radioactive~~] material;

**(ii)** an administration of a radioactive drug containing radioactive material by the wrong route of administration;

**(iii)** an administration of a dose or dosage to the wrong individual or human research subject;

**(iv)** an administration of a dose or dosage delivered by the wrong mode of treatment; or

**(v)** a leaking sealed source; and

**(c)** a dose to the skin or an organ or tissue other than the treatment site that exceeds by 50 rems (0.5 sievert) to an organ or tissue and fifty percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

**(d)** For permanent implant brachytherapy, the administration of byproduct material or radiation from byproduct material (excluding sources that were implanted in the correct site but migrated outside the treatment site) that results in:

**(i)** the total source strength administered differing by twenty percent or more from the total source strength documented in the post-implantation portion of the written directive;

**(ii)** the total source strength administered outside of the treatment site exceeding twenty percent of the total source strength documented in the post-implantation portion of the written directive; or

**(iii)** an administration that includes any of the following: the wrong radionuclide; the wrong individual or human research subject; sealed source(s) implanted directly into a location discontiguous from the treatment site, as documented in the post-implantation portion of the written directive; or a leaking sealed source resulting in a dose that exceeds 0.5 Sv (50 rem) to an organ or tissue.

**(2)** A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

**(3)** The licensee shall notify by telephone the department no later than the next calendar day after discovery of the medical event.

**(4)** The licensee shall submit a written report to the department within 15 days after discovery of the medical event.

**(a)** The written report must include:

**(i)** the licensee's name;

**(ii)** the name of the prescribing physician;

**(iii)** a brief description of the event;

**(iv)** why the event occurred;

**(v)** the effect, if any, on the individual(s) who received the administration;

**(vi)** what actions, if any, have been taken or are planned to prevent recurrence; and

**(vii)** certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

**(b)** The report may not contain the individual's name or any other information that could lead to identification of the individual.

**(5)** The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result

of the medical event, because of any delay in notification. To meet the requirements of this paragraph, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual or appropriate responsible relative or guardian that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

**(6)** Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event or to that individual's responsible relatives or guardians.

**(7)** A licensee shall:

**(a)** annotate a copy of the report provided to the department with the:

**(i)** name of the individual who is the subject of the event; and

**(ii)** social security number or other identification number, if one has been assigned, of the individual who is the subject of the event; and

**(b)** provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

**B. Report and notification of a dose to an embryo, fetus or a nursing child.**

**(1)** A licensee shall report any dose to an embryo or fetus that is greater than 5 rems (50 millisieverts) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo or fetus was specifically approved, in advance, by the authorized user.

**(2)** A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:

**(a)** is greater than 5 rems (50 millisieverts) total effective dose equivalent; or

**(b)** has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

**(3)** The licensee shall notify by telephone the department no later than the next calendar day after discovery of a dose to the embryo, fetus or nursing child that requires a report in Paragraphs (1) or (2) in this subsection.

**(4)** The licensee shall submit a written report to the department within 15 days after discovery of a dose to the embryo, fetus or nursing child that requires a report in Paragraphs (1) or (2) in this subsection.

**(a)** The written report must include:

**(i)** the licensee's name;

**(ii)** the name of the prescribing physician;

**(iii)** a brief description of the event;

**(iv)** why the event occurred;

**(v)** the effect, if any, on the embryo, fetus or the nursing child;

**(vi)** what actions, if any, have been taken or are planned to prevent recurrence; and

**(vii)** certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

**(b)** The report must not contain the individual's or child's name or any other information that could lead to identification of the individual or child.

**(5)** The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than 24 hours after discovery of an event that would require reporting under Paragraph (1) or (2) of this subsection, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo, fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this paragraph, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

**(6)** A licensee shall:

**(a)** annotate a copy of the report provided to the NRC with the:

**(i)** name of the pregnant individual or the nursing child who is the subject of the event; and

**(ii)** social security number or other identification number, if one has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

**(b)** provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

**C. Report of a leaking source.** A licensee shall file a report within five days if a leak test required by Subsection F of 20.3.7.703

NMAC reveals the presence of 0.005 microcurie (185 becquerels) or more of removable contamination. The report must be filed with the department and it must include the model number and serial number, if assigned, of the leaking source, the radionuclide and its estimated activity, the results of the test, the date of the test and the action taken.

**D. Report and notification for an eluate exceeding permissible molybdenum-99, strontium-82, and strontium-85 concentrations**:

**(1)** The licensee shall notify by telephone the department and NRC operations center and the distributor of the generator within 7 calendar days after discovery that an eluate exceeded the permissible concentration listed in 10 CFR § 35.204(a) at the time of generator elution. The telephone report to the department and NRC must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether dosages were administered to patients or human research subjects, when the distributor was notified, and the action taken.

**(2)** By an appropriate method listed in 10 CFR § 30.6(a) of this chapter, the licensee shall submit a written report to the department and appropriate NRC Regional Office listed in 10 CFR § 30.6 of this chapter within 30 calendar days after discovery of an eluate exceeding the permissible concentration at the time of generator elution. The written report must include the action taken by the licensee; the patient dose assessment; the methodology used to make this dose assessment if the eluate was administered to patients or human research subjects; and the probable cause and an assessment of failure in the licensee's equipment, procedures or training that contributed to the excessive readings if an error occurred in the licensee's breakthrough determination; and the information in the telephone report as required by Paragraph (1) of this section.

[20.3.7.716 NMAC - N, 04/30/2009; A, 02/14/2023]

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## ENVIRONMENT DEPARTMENT

**This is an amendment to 20.3.12 NMAC, Section 9, effective 02/14/2023.**

**20.3.12.9 SPECIFIC LICENSES FOR WELL LOGGING:** The department will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements.

**A.** The applicant shall satisfy the general requirements specified in 10 CFR 30.33 for byproduct material, 10 CFR 40.32 for source material and in 10 CFR 70.23 for special nuclear material and in 20.3.3.308 NMAC and any special requirements contained in this part.

**B.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

**(1)** any reference to the commission or NRC shall be deemed a reference to the department;

**(2)** 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

**(3)** 10 CFR 37.7, 10 CFR 37.9, 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

**(4)** for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address when applicable: New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**C.** The applicant shall develop a program for training logging supervisors and logging assistants and submit to the department a description of this program which specifies the:

**(1)** initial training;

**(2)** on-the-job training;

**(3)** annual safety reviews provided by the licensee;

**(4)** means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the department's regulations and licensing requirements and the applicant's operating and emergency procedures; and

**(5)** means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

**D.** The applicant shall submit to the department written operating and emergency procedures as described in 20.3.12.12 NMAC or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

**E.** The applicant shall establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure that the department's regulations, license requirements and the applicant's operating and emergency procedures are followed. Inspection records must be retained for three years after each internal inspection.

**F.** The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

**G.** If an applicant wants to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the

model numbers of the leak test kits to be used. If the applicant wants to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the department. The description must include the:

**(1)** instruments to be used;

**(2)** methods of performing the analysis; and

**(3)** pertinent experience of the person who will analyze the wipe samples.

[20.3.12.9 NMAC- N, 6/30/2011; A, 06/13/2017; A, 02/14/2023]

## ENVIRONMENT DEPARTMENT

**This is an amendment to 20.3.15 NMAC, Section 1502, effective 02/14/2023.**

**20.3.15.1502 SPECIFIC LICENSES FOR IRRADIATORS:** The department will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section.

**A.** The applicant shall satisfy the general requirements specified in 20.3.3 NMAC and the requirements contained in this part (20.3.15 NMAC).

**B.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

**(1)** any reference to the commission or NRC shall be deemed a reference to the department;

**(2)** 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

**(3)** 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

**(4)** for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), 10 CFR 37.81, the licensee shall use, when applicable, New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**C.** The application must describe the training provided to irradiator operators including:

**(1)** classroom training;

**(2)** on-the-job or simulator training;

**(3)** safety reviews;

**(4)** means employed by the applicant to test each operator's understanding of these regulations and licensing requirements, and the irradiator operating and emergency procedures; and

**(5)** minimum training and experience of personnel who may provide training.

**D.** The application must include an outline of the written operating and emergency procedures listed in 20.3.15.1518 NMAC that describes the radiation safety aspects of the procedures.

**E.** The application must describe the organizational structure for managing the irradiator, specifically the radiation safety responsibilities and authorities of the radiation safety officer, and those management personnel who have important radiation safety responsibilities or authorities. In particular, the application must specify who within the management structure has the authority to stop unsafe operations. The application must also describe the training and experience required for the position of radiation safety officer.

**F.** The application must include a description of the access control system required by 20.3.15.1507 NMAC, the radiation monitors required by 20.3.15.1510 NMAC, the method of detecting leaking sources required by 20.3.15.1521 NMAC including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors.

**G.** If the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the department. The description must include the:

**(1)** instruments to be used;

**(2)** methods of performing the analysis; and

**(3)** pertinent experience of the individual who analyzes the samples.

**H.** If licensee personnel are to load or unload sources, the applicant shall describe the qualifications and training of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by an organization specifically authorized by the department to load or unload irradiator sources.

**I.** The applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by 20.3.15.1522 NMAC.

[05/03/95; 20.3.15.1502 NMAC - Rn, 20 NMAC 3.1.15.1502, 04/15/2004; A, 06/13/2017; A, 02/14/2023]

## PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 11/30/2022 open meeting, to repeal its rule 17.9.568 NMAC - Interconnection of Generating Facilities with a Nameplate Rating up to and Including 10 MW Connecting to a Utility System (filed 10/1/2008) and replace it with 17.9.568 NMAC - Interconnection of Generating Facilities with a Nameplate Rating up to and Including 10 MW Connecting to a Utility System effective 2/14/2023.

## PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**
**CHAPTER 9 ELECTRIC SERVICES**
**PART 568 INTERCONNECTION OF GENERATING FACILITIES WITH A NAMEPLATE RATING UP TO AND INCLUDING 10 MW CONNECTING TO A UTILITY SYSTEM**

**17.9.568.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.
[17.9.568.1 NMAC - Rp, 17.9.568.1 NMAC, 02/14/2023]

**17.9.568.2 SCOPE:**

**A.** This rule, and the definitions, standards, procedures and screening processes described herein apply to every electric utility including rural electric cooperatives and investor-owned utilities operating within the state of New Mexico that are subject to the jurisdiction of the New Mexico public regulation commission. These standards and procedures apply to both qualifying and non-qualifying facilities.

**B.** The standards and procedures described in this rule (17.9.568 NMAC) apply only to the interconnection of generating facilities with a nameplate rated capacity up to and including 10 MW. The standards and procedures described in 17.9.569 NMAC apply to the interconnection of generating facilities with a rated capacity greater than 10 MW and are unchanged by this rule.

**C.** Interconnection requests are reviewed based on the combined nameplate ratings of systems accounting for their export capacity and energy storage operating mode. For purposes of review screens, only the capacity that is designed to inject electricity to the utility's distribution or transmission system, other than inadvertent exports and fault contribution, will be used.

**D.** All interconnection contracts between a utility and an interconnection customer existing at the time 17.9.568 NMAC is revised and adopted shall automatically continue in full force and effect. Material modifications to existing facilities or operations require a new interconnection application and agreement and will be subject to review under the current conditions of the electric power system. Any changes made to existing interconnection agreements shall conform to the provisions of 17.9.568 NMAC in effect at the time modification is executed.
[17.9.568.2 NMAC - Rp, 17.9.568.2 NMAC, 02/14/2023]

**17.9.568.3 STATUTORY AUTHORITY:** This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, Section 8-8-1 *et seq.* NMSA 1978, the Public Utility Act, Section 62-3-1 *et seq.* NMSA 1978; the Energy Transition Act, 62-18-1 *et seq.* NMSA 1978; the Grid Modernization Act, Section 62-8-13 NMSA 1978; and the Community Solar Act, Section 62-16B-1 NMSA 1978.
[17.9.568.3 NMAC - Rp, 17.9.568.3 NMAC, 02/14/2023]

**17.9.568.4 DURATION:** Permanent.
[17.9.568.4 NMAC - Rp, 17.9.568.4 NMAC, 02/14/2023]

**17.9.568.5 EFFECTIVE DATE:** February 14, 2023, unless a later date is cited at the end of a section.
[17.9.568.5 NMAC - Rp, 17.9.568.5 NMAC, 02/14/2023]

**17.9.568.6 OBJECTIVE:** The purpose of this rule is to set forth common interconnection requirements and a common interconnection process based on a standard screening process for utilities and interconnection customers to expeditiously interconnect generating facilities with a rated capacity up to and including 10 MW in a safe and reliable manner.
[17.9.568.6 NMAC - Rp, 17.9.568.6 NMAC, 02/14/2023]

**17.9.568.7 DEFINITIONS:** Terms used in rule 17.9.568 NMAC shall have the following meanings:

**A. Definitions beginning with "A":**

**(1) Applicant** means a person or an entity that has filed an application to interconnect a generating facility to an electric power system. An applicant may include:

**(a)** A customer who applies for interconnection of a generating facility that will offset part or all of the load of a utility customer, the applicant is that customer, whether the customer owns the generating facility or a third party owns the generating facility.

**(b)** An owner of a generating facility that applies for interconnection of a generating facility that sells electric power to a utility.

**(c)** A subscriber organization as defined by the Community Solar Act, Subsection M. of Section 62-16B-2 NMSA 1978.

**(2) Area network** means a section of an electric power system served by multiple transformers interconnected in an electrical network circuit, generally used in large, densely populated metropolitan areas, to provide high reliability of service. Area network has the same meaning as the term "grid network" as defined in IEEE Std 1547.6™. An area network is also referred to as a grid network or a street network.

**(3) Auxiliary load** means electrical power consumed by any equipment necessary to operate the generator or energy storage system. This is intended for in-front-of-the-meter systems.

**B. Definitions beginning with "B": Business day** means Monday through Friday, excluding holidays observed by the utility.

**C. Definitions beginning with "C":**

**(1) Certified** means equipment has been tested in accordance with the applicable requirements of IEEE Std 1547™-2018 and IEEE Std 1547.1™-2020 by any nationally recognized testing laboratory (NRTL) recognized by the United States occupational safety and health administration to test and certify equipment pursuant to the applicable standard and the equipment has been labeled and is publicly listed by such NRTL at the time of the interconnection application. Equipment installed prior to March 28, 2023 will also be considered certified if it has been tested in accordance with IEEE Std 1547™-2003 and 1547.1™-2005.

**(2) Customer options meeting** means a meeting designed to review the status of the interconnection application initial review results, or to determine next steps needed to permit safe and reliable interconnection.

**D. Definitions beginning with "D":**

**(1) Detailed study process** means the procedure for evaluating an interconnection application that may include a scoping meeting, feasibility study, system impact study, or facilities study as described in 17.9.568.18 NMAC**.**

**(2) Distributed energy resource (DER)** means the equipment used by an interconnection customer to generate or store electricity that operates in parallel with the electric distribution system. DER may include, but is not limited to: an electric generator or energy storage system, a prime mover, or combination of technologies capable of injecting power and energy into the electric distribution system, which also includes the interconnection equipment necessary to safely interconnect with the distribution system. DER may not always be interconnected with the bulk power system. DERs may include distributed generation (DG) resources, distributed energy storage, demand response energy efficiency, and electric vehicles and chargers that are connected to the electric distribution power grid. DERs may be capable of exporting active power to an electric power system (EPS). The DER includes the customer's interconnection facilities but shall not include the area EPS operator's interconnection facilities.

**(3) Distribution service** means delivering energy over the electric power system pursuant to the approved tariffs of the utility other than services directly related to the interconnection of a generating facility under these interconnection procedures.

**(4) Distribution system** means the utility's facilities and equipment used to transmit electricity to ultimate usage points, known as premises, directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

**(5) Distribution upgrade** means the additions, modifications, and upgrades to the utility's distribution system at or beyond the point of common coupling to facilitate interconnection of the generating facility and render the service necessary to effect the interconnection customer's operation of on-site generation. Distribution upgrades do not include interconnection facilities.

**E. Definitions beginning with "E":**

**(1) Electric power system (EPS)** means the equipment operated and maintained by a utility (may include: independent system operators, transmission owner/operator, vertically integrated utilities, electric cooperatives, municipals, and distribution companies) to deliver electric service to end-users, including transmission and distribution lines, substations, transformers, spot networks and area networks.

**(2) Energy storage system (ESS)** means any commercially available, customer-sited system or utility-sited system, including batteries and batteries paired with on-site generation, that is capable of retaining, storing, and delivering electrical energy by chemical, thermal, mechanical, or other means. For the purposes of this rule, an energy storage system can be considered part of a DER or a DER in whole that operates in parallel with the distribution system.

**(3) Export capacity** means the amount of power that can be transferred from the generating facility to the distribution system. Export capacity is either the nameplate rating, or a lower amount if limited using and acceptable means identified in 17.9.568.12 NMAC.

**F. Definitions beginning with "F":**

**(1) Facilities study** means a study that specifies and estimates the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the system impact study.

**(2) Fast Track** means the process for evaluating an interconnection application utilizing established screens as described in 17.9.568.16 NMAC.

**(3) Fault current** means the current produced during a short circuit on the electric power system measured in amperes**.**

**(4) Feasibility study** means a preliminary technical assessment of the proposed interconnection that identifies any potential adverse system impacts that would result from the interconnection of the generating facility.

**G. Definitions beginning with "G":**

**(1) Generating facility** means the equipment used by an interconnection customer to generate, store, manage, interconnect and monitor electricity. A generating facility includes the interconnection equipment required to safely interconnect the facility with the distribution system. DERs are generating facilities.

**(2) Grid network** Grid network is also commonly referred to as area network or street network. For definition, refer to "Area Network".

**H. Definitions beginning with "H": Host load** means the electrical power, less the DER auxiliary load, consumed by the customer at the location where the generating facility is connected.

**I. Definitions beginning with "I":**

**(1) IEEE** means the institute of electrical and electronic engineers.

**(2) IEEE standards** means the standards published by the IEEE, often in collaboration with American National Standards Institute (ANSI), National Institute of Standards and Technology (NIST), UL, International Electrotechnical Commission (IEC), CIGRE, and National Fire Protection Institute (NFPA), available at www.ieee.org.

**(3) Inadvertent export** means the unscheduled export of active power from a generating facility, exceeding a specified magnitude and for a limited duration generally due to fluctuations in load-following behavior.

**(4) Interconnection agreement** means a standard form agreement between an interconnection customer and a utility that governs the interconnection of a generating facility to a utility's electric delivery system, as well as the ongoing operation of the generating facility after it is interconnected.

**(5) Interconnection application** means the request by an interconnection customer to interconnect a new generating facility, increase the capacity or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the utility's electric power system.

**(6) Interconnection customer** means any person who proposes to interconnect a generating facility with the utility's system.

**(7) Interconnection facilities** means the utility's interconnection facilities and the interconnection customer's interconnection facilities. Collectively, interconnection facilities include all facilities and equipment between the generating facility and the point of common coupling, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the generating facility to the utility's electric power system in a safe and reliable manner. Interconnection facilities are sole use facilities and shall not include distribution upgrades.

**(8) Interconnection upgrade cost sharing** means the allocation of distribution upgrade costs among multiple generator facility projects that utilize the hosting capacity created by a distribution upgrade.

**(9) Interconnection procedures** means the procedures specified in 17.9.568.12 NMAC through 17.9.568.23 NMAC.

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

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

**L. Definitions beginning with "L":**

**(1) Limited export** means the exporting capability of a DER whose generating capacity is limited by the use of any configuration or operating mode described in 17.9.568.12 NMAC.

**(2) Line section** means that portion of a utility's electric power system connected to a customer that is bounded by automatic sectionalizing devices or the end of the distribution line.

**M. Definitions beginning with "M":**

**(1) Material modification** means a modification to machine data, equipment configuration or to the interconnection site of the DER at any time after receiving notification by the utility of a complete interconnection application that has a material impact on the cost, timing, or design of any interconnection facilities or distribution upgrades, or a material impact on the cost, timing, or design of any interconnection application with a later queue priority date or material impact on the safety or reliability of the electric power system. A change to the point of interconnection would require either a new interconnection application or a change in queue position. A material modification does not include, for example;

**(a)** a change of ownership of a generating facility:

**(b)** a change or replacement of generating equipment that is a like-kind substitution in size, ratings, impedances, efficiencies, or capabilities of the equipment specified in the original interconnection application; or

**(c)** a reduction in the output of the generating facility of ten percent or less. Replacement of existing inverters with new inverters that conform to new standards after March 28, 2023, will not be considered a material modification, so long as the generating facilities output or export status does not change as a result.

**(2) Minimum load** means the lowest measured circuit/substation load regardless of time of day.

**(3) Minor modification** means any modification to a utility's electric power system that involves limited work or low costs. Minor modifications include, but are not limited to, activities like changing the fuse in a fuse holder cut-out or changing the settings on a circuit recloser.

**N. Definitions beginning with "N":**

**(1) Nameplate rating** means the sum total of maximum rated power output of a DER's constituent generating units or ESS, as identified on the manufacturer's nameplate, regardless

of whether it is limited by any approved means.

**(2) Network system** means a collection of secondary networks, or combinations of such networks on a primary network feeder or primary network feeders that supply them. This may also consist of primary feeders networked to supply connected loads.

**(3) Network transformer** means a transformer designed for use in a vault to feed a variable capacity system of interconnected secondaries.

**(4) Non-export or non-exporting** means when the DER is sized and designed using any of the methods described in 17.9.568.12 NMAC, such that the output is used for host load only and no electrical energy (except for any inadvertent export) is transferred from the generating facility to the distribution system.

**O. Definitions beginning with "O": Operating mode** means the mode of DER operational characteristics that determines the performance during normal and abnormal conditions. For example, an operating modes can include "export only," "import only," and "no exchange."

**P. Definitions beginning with "P":**

**(1) Parallel Operation** means the simultaneous operation of a generating facility with power delivered or received by the electric power system while interconnected. Parallel operation includes only those generating facilities that are interconnected with the electric power system for more than 60 cycles (one second).

**(2) Parties** means the applicant and the utility in a particular interconnection agreement. "Either party" refers to either the applicant or the utility.

**(3) Person** means, for purposes of this rule, an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the rural electric cooperative act, corporation or lessee, trustee or receiver appointed by any court.

**(4) Point of interconnection** means the point where the interconnection facilities connect with the electric distribution system. Point of interconnection has the same meaning as the term "point of common coupling" as defined in IEEE 1547-2018.

**(5) Power control system** (PCS) means systems or devices which electronically limit or control steady state currents to a programmable limit.

**(6) Primary network feeder** means a feeder that supplies energy to a network system or the combination of a network system and other radial loads. Dedicated primary network feeders are feeders that supply only network transformers for the secondary network.

**(7) Power conversion unit (PCU)** means an inverter or AC generator, not including the energy source.

**(8) Premise** means a piece of land or real estate including buildings and other appurtenances thereon.

**(9) Protective function** means the equipment, hardware, or software in a generating facility (whether discrete or integrated with other functions) for the purpose of protecting against conditions that, if left uncorrected, could result in harm to personnel, damage to equipment, loss of safety or reliability, or operation outside pre-established parameters required by the interconnection agreement.

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

**R. Definitions beginning with "R":**

**(1) Rated capacity** means the total AC nameplate rating of the power conversion unit(s) at the point of common coupling.

**(2) Reference point of applicability (RPA)** means the location where the interconnection and interoperability performance requirements, as specified by IEEE 1547-2018, apply.

**(3) Relevant minimum load** means the lowest measured circuit or substation load coincident with the generating facility's production. For solar-only facilities this shall be the daytime minimum load.

**S. Definitions beginning with "S":**

**(1) Secondary network** means an AC distribution system where the secondaries of the distribution transformers are connected to a common network for supplying electricity directly to consumers.

**(2) Simplified process** means the procedure for evaluating an interconnection application for a small certified inverter-based DER described in 17.9.568.15 NMAC.

**(3) Small utility** means a utility that serves fewer than 50,000 customers.

**(4) Supplemental review** means additional engineering evaluation to determine if a generating facility can be interconnected following the (simplified or fast track) process without the need for detailed study as described in 7.9.568.17 NMAC.

**(5) System emergency** means a condition on a utility system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

**(6) System impact study** means a study that identifies and details the electric system impacts that would result if the proposed generating facility were interconnected without project modifications or electric system modifications, focusing on the adverse system impacts preliminarily identified in the feasibility study (if conducted), or to study potential impacts, including but not limited to those identified in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the safety and reliability of the electric power system.

**T. Definitions beginning with "T": Technical Interconnection and Interoperability Requirements (TIIR)** documents are public documents, often utility specific, which include requirements for interconnection, interoperability, capabilities, and their utilization (settings), and grid integration (e.g., protection coordination, telemetry).

**U. Definitions beginning with "U":**

**(1) UL** means the company by that name which has established technical standards for safe operations of electrical devices, previously known as underwriter's laboratory.

**(2) UL 1741 CRD for PCS** means the certification requirement decision for power control systems for the standard titled "inverters, converters, controllers and interconnection system equipment for use with distributed energy resources". (March 8, 2019), Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook IL 60062-2096.

**(3) Unintentional island** means an unplanned island per IEEE 1547-2018.

**(4) Utility** means a utility or public utility, as defined in Subsection G of Section 62-3-3 NMSA 1978, serving electric customers subject to the jurisdiction of 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]**

[17.9.568.7 NMAC - Rp, 17.9.568.7 NMAC, 02/14/2023]

**17.9.568.8 APPLICABILITY:** All generating facilities that operate in parallel with the utility electric power system are required to have an interconnection review and an interconnection agreement to ensure safety, system reliability, and operational compatibility. These interconnection procedures are applicable to all state-jurisdictional interconnections of generating facilities with a rated capacity up to and including 10 megawatts (MW). Generating facilities with a rated capacity greater than 10 megawatts (MW) shall be conducted pursuant to 17.9.569 NMAC. Neither these procedures nor the requirements included hereunder apply to generating facilities interconnected or approved for interconnection prior to the effective date of these procedures.

[17.9.568.8 NMAC - N, 02/14/2023]

**17.9.568.9 LIBERAL CONSTRUCTION:** If any part or application of this rule is held invalid, the remainder of its parts and any other applications of the rule shall not be affected.

[17.9.568.9 NMAC - N, 02/14/2023]

**17.9.568.10 APPLICABLE CODES AND STANDARDS:**

**A.** The interconnection customer shall install, operate, and maintain the generating facility and the interconnection equipment in a safe manner in accordance with the rules for safety and reliability set forth in the latest editions of the national electrical code, other applicable local, state, and federal electrical codes, and prudent electrical practices.

**B.** In order to qualify for any interconnection procedures, each generating facility generator shall be in conformance with the following codes and standards (or their successors) as applicable, unless otherwise provided by law:

**(1)** IEEE Std 1547™, IEEE standard for interconnection and interoperability of distributed energy resources with associated electric power systems interfaces, as amended by IEEE 1547a™-2020, including use of IEEE 1547.1™-2020 testing protocols to establish conformity;

**(2)** IEEE Std 1547.1™-.2020™, standard conformance test procedures for equipment interconnecting distributed energy resources with electric power systems and associated interfaces;

**(3)** ANSI C84.1-2020, electric power systems and equipment - voltage ratings (60 Hertz);

**(4)** IEEE Std 1547.2™-2008™, application guide for IEEE 1547 standard for interconnecting distributed resources with electric power systems;

**(5)** IEEE Std 1547.6™-2011™, IEEE recommended practice for interconnecting distributed resources with electric power systems distribution secondary networks;

**(6)** IEEE Std 1547.7™-2013™, IEEE guide for conducting distribution impact studies for distributed resource interconnection;

**(7)** IEEE C62,92.6™-2017 IEEE Guide for Application of Neutral Grounding in Electrical Utility Systems, Part VI - Systems Supplied by Current Regulated Sources;

**(8)** UL 1741, Edition 3, September 28, 2021 Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources;

**(9)** NFPA 70, current version, National Electrical Code, including any NM or local modifications;

**(10)** IEEE C2, current version, National Electrical Safety Code, including any NM or local modifications;

**(11)** UL 1741 Certification Requirement Decision for Power Control Systems, March 8, 2019, Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources.

**C.** The interconnection equipment shall be considered certified for interconnected operation if the equipment package has been tested and listed by a nationally recognized testing and certification laboratory (NRTL) for continuous

interactive operation with a utility grid.
[17.9.568.10 NMAC - Rp, 17.9.568.8 NMAC, 02/14/2023]

**17.9.568.11 IEEE 1547-2018 ADOPTION*:***

**A.** Beginning on March 28, 2023 (or another date set by commission order), generating facilities shall be required to comply with IEEE 1547-2018, and shall conform with the following minimum requirements.

**(1) Abnormal performance requirements:** Category III ride through capabilities must be supported for inverter-based generating facilities. Rotating generating facilities must meet category I ride-through capabilities.

**(2) Normal performance requirements:** Inverter-based generating facilities shall meet reactive power requirements with category B. Rotating generating facilities must meet category A.

**B.** Each utility shall post its preferred default settings in their public facing Technical Interconnection and Interoperability Requirements (TIIR) document. As applicable the following shall be identified in the TIIR documents:

**(1)** voltage and frequency trip settings;

**(2)** frequency droop settings;

**(3)** activated reactive power control function and default settings;

**(4)** voltage active power (volt-watt) mode activation and default settings;

**(5)** communication protocols and ports requirements.

**C.** TIIR documents shall be created through a technical advisory group process and submitted to the commission for approval. Subsequent changes to TIIR documents shall also be submitted to the commission for approval.
[17.9.568.11 NMAC - N, 02/14/2023]

**17.9.568.12 DETERMINATION OF EXPORT CAPACITY STATUS:**

**A.** Export Controls: If a DER uses any configuration or operating mode in subsection C to limit the export of electrical power across the point of interconnection, then the export capacity shall be only the amount of power capable of being exported (not including any inadvertent export). To prevent impacts on system safety and reliability, any inadvertent export from a DER must comply with the limits identified in this section. The export capacity specified by the interconnection customer in the interconnection application will be documented as the maximum allowed export capacity of the DER in the interconnection agreement.

**B.** An interconnection application proposing to use a configuration or operating mode to limit the export of electrical power across the point of interconnection shall include proposed control or protection settings.

**C.** Acceptable export control methods:

**(1)** Export control methods for non-exporting DER:

**(a)** Reverse power protection (Device 32R): To limit export of power across the point of interconnection, a reverse power protective function is implemented using a utility grade protective relay. The default setting for this protective function shall be one tenth percent (export) of the service transformer's nominal base nameplate rating, with a maximum two second time delay to limit inadvertent export.

**(b)** Minimum power protection (Device 32F): To limit export of power across the point of interconnection, a minimum import protective function is implemented utilizing a utility grade protective relay. The default setting for this protective function shall be five percent (import) of the generating unit's total nameplate capacity, with a maximum two second time delay to limit inadvertent export.

**(c)** Relative distributed energy resource rating: This option requires the DER facility's nameplate capacity to be no greater than fifty percent of the interconnection customer's verifiable minimum host load during DER operating hours over the past 12 months. This option is not available for interconnections to area networks or spot networks.

**(2)** Export control methods for limited export DER:

**(a)** Directional power protection (Device 32): To limit export of power across the point of interconnection, a directional power protective function is implemented using a utility grade protective relay. The default setting for this protective function shall be the export capacity value, with a maximum 2.0 second time delay to limit inadvertent export.

**(b)** Configured power rating: A reduced output power rating utilizing the power rating configuration setting may be used to ensure the DER does not generate power beyond a certain value lower than the nameplate capacity. The configuration setting corresponds to the active or apparent power ratings in Table 28 of IEEE Std 1547-2018, as described in subclause 10.4. A local DER communication interface is not required to utilize the configuration setting if it can be set by other certified means. The reduced power rating may be indicated by means of a nameplate rating replacement or, a supplemental adhesive de-rating tag to indicate the reduced power output capacity. The customer must also provide a signed attestation confirming the reduced power output capacity. This method must be certified to IEEE 1547.1-2020. Use of a configured power rating not applied to individual power conversion unit(s) shall require evaluation under mutually agreed-upon means.

**(3)** Export control methods for non-exporting DER or limited export DER:

**(a)** Certified power control systems: DER facilities may use certified power control systems to limit export. DER facilities utilizing this option must use a power control system and inverter certified per UL 1741 by a nationally recognized testing laboratory (NRTL) with a maximum open loop response time of no more than 30 seconds. NRTL testing to the UL power control system certification requirements decision shall be accepted until similar test procedures for power control systems are included in a standard. This option is not available for interconnections to area networks or spot networks.

**(b)** Agreed-upon means: DER facilities may be designed with other control systems or protective functions to limit export and inadvertent export if mutual agreement is reached with the distribution provider. The limits may be based on technical limitations of the interconnection customer's equipment or the electric distribution system equipment. To ensure inadvertent export remains within mutually agreed-upon limits, the interconnection customer may use an uncertified power control system, an internal transfer relay, energy management system, or other customer facility hardware or software if approved by the distribution provider.

[17.9.568.12 NMAC - N, 02/14/2023]

**17.9.568.13 APPLICATION REVIEW PROCESS:**

**A.** There are four interconnection review paths:

**(1) Simplified process**: For certified inverter-based generating facilities that have a nameplate rating that does not exceed 50 kilowatts (kW) and an export capacity that does not exceed 25 kilowatts (kW).

**(2) Fast track process**: For generating facilities that have a nameplate rating of up to 5 megawatts (MW), depending on the line capacity and distance from the substation. To qualify for fast track, the generating facility's export capacity shall not exceed the limits identified in the table below, which vary according to the voltage of the line at the proposed point of interconnection. Generating facilities located within 2.5 miles of a substation and on a main distribution line with minimum 600-amp capacity are eligible for the fast track process under higher thresholds. For purposes of the table below, a mainline is the three-phase backbone of a circuit. It will typically constitute lines with wire sizes of 4/0 American wire gauge, 336.4 kcmil, 397.5 kcmil, 477 kcmil and 795 kcmil.

| **Line Voltage** | **Export Capacity for Fast Track Eligibility** | |
|---|---|---|
| | **Regardless of location** | **On > 600 amp line and < 2.5 miles from substation** |
| 5 kV | < 500 kW | < 500 kW |
| 5 kV - 14 kV | < 2 MW | < 3 MW |
| 15 kV - 30 kV | < 3 MW | < 4 MW |
| 31 kV - 69 kV | < 4 MW | < 5 MW |

**(3) Detailed study process:** For all generating facilities with a rated capacity 10 megawatts (MW) or less that do not qualify, or pass through, the simplified or fast track processes or subsequent supplemental review.

**(4) Case specific review process:** Generating facilities with a rated capacity greater than 10 megawatts (MW) shall be reviewed pursuant to 17.9.569 NMAC.

**B. Application submittal:** The interconnection applicant shall submit an interconnection application (see Appendices 1A, 1B or 1C, as appropriate) to the utility, together with the applicable processing fee identified in 17.9.568.23 NMAC. The application shall be date and time-stamped upon receipt for the purposes of any timetable in these procedures**.**

**C. Completeness review**: Utility shall notify the interconnection applicant, via email or other means, that the interconnection-application has been received within three business days of receipt of the interconnection application. Within 10 business days of receipt, the utility shall notify the applicant whether the interconnection application is deemed complete and valid. If the application is incomplete, the utility shall provide the applicant with a list of all information that the applicant must provide to complete the application. The applicant must provide the requested information within 10 business days, or the application will be deemed withdrawn.

**D. Interconnection queue position and posting**: The utility shall assign the interconnection application a queue position based on when it is received under Subsection C of 17.9.568.13 NMAC.

**(1)** The utility shall maintain a single queue, which may be sortable by geographic region (e.g., feeder or substation).

**(2)** The queue position of each interconnection application will be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection.

**(3)** The queue shall be publicly available on the utility's website and shall be updated at least monthly.

**(4)** If an application fails the screening process

under the simplified or fast track process, but the applicant decides to continue with review (including Supplemental review) under another level, the applicant shall retain its original queue position.

**(5)** If an interconnection application fails the screening process under the simplified or fast track process, but the applicant decides to continue with review (including supplemental review) under another level, the applicant shall retain its original queue position.

**E. Modifications to generating facility**:

**(1)** At any time after an interconnection application is deemed complete or an interconnection agreement has been signed, if the applicant wishes to make modifications to the planned generating facility it shall submit to the utility, in writing, all proposed modifications to any information provided in the interconnection application or in the interconnection agreement. Any modification to machine data, equipment configuration, or to the interconnection site of the generating facility not agreed to in writing by the utility and the interconnection customer may be deemed a withdrawal of the interconnection application.

**(2)** Within 10 business days of receipt of a proposed modification, the utility shall notify the applicant whether a proposed modification to either an interconnection application or an existing generating facility constitutes a material modification.

**(a)** If the utility determines the proposed modification is a material modification, then the utility shall notify the interconnection customer in writing that the customer may:

**(i)** withdraw the proposed modification; or

**(ii)** proceed with a new interconnection application for such modification. The interconnection customer shall provide its determination in writing to the utility within 10 business days after being provided the material modification determination results. If the interconnection customer does not provide its determination, the proposed modification shall be deemed withdrawn.

**(b)** If the proposed modification is determined not to be a material modification, then the utility shall notify the interconnection customer in writing that the modification has been accepted and that the customer shall retain its eligibility for interconnection, including its place in the interconnection queue. Existing generating facilities may make the modification without requiring a new interconnection application.

**(3)** Any dispute as to the utility's determination that a modification constitutes a material modification shall proceed in accordance with the dispute resolution provisions in 17.9.568.26 NMAC.

**(4)** Any modification to machine data, equipment configuration, or to the interconnection site of the generating facility not agreed to in writing by the utility and the interconnection customer may be deemed a withdrawal of the interconnection application and may require submission of a new interconnection application, unless proper notifications of each party by the other as described in Paragraphs (1) and (2) of Subsection E of 17.9.568.13 NMAC.

**F. Site Control:** Documentation of site control must be submitted with the interconnection request. Site control may be demonstrated by:

**(1)** ownership of, or a leasehold interest in, or a right to develop a site for the purpose of constructing a generating facility;

**(2)** a fully executed option to purchase or acquire a leasehold site for such purpose; or

**(3)** a fully executed agreement demonstrating exclusivity or other business relationship between the interconnection applicant and the entity having the authority to grant the applicant the right to possess or occupy a site for such purpose.

[17.9.568.13 NMAC - N, 02/14/2023]

**17.9.568.14 OPTIONAL PRE-APPLICATION REPORT:** Potential applicants may request this optional report for a specific site to get information about system conditions at their proposed point of interconnection without submitting a full interconnection application.

**A.** Potential applicants shall provide the following information to the utility to expedite its pre-application review:

**(1)** project contact information including name, address, phone number, and email address;

**(2)** project location (street address with nearby cross streets, and town/city);

**(3)** meter number, pole number, or other equivalent information (such as latitude and longitude coordinates) identifying the potential point of interconnection, if available;

**(4)** generator type (i.e., solar, wind, combined heat and power) and whether energy storage will be collocated with the generation;

**(5)** nameplate capacity (in alternating current kW);

**(6)** single or three phase generator configuration;

**(7)** stand-alone generator with no on-site load (yes or no?);

**(8)** whether new service is requested. If there is existing service, include the customer account number, site minimum and maximum existing or proposed maximum loads in kW and specify if the amount of any anticipated additional load is expected to change.

**B.** The pre-application report shall be completed by the utility per the schedule in Subsection F of this section and include the following information, if available:

**(1)** Total capacity (MW) of substation/area bus or bank and circuit likely to serve proposed site. If substation or circuit planned capacity limits are less than the total capacity the utility shall indicate the planned capacity limits.

**(2)** Aggregate existing export capacity (MW) interconnected to the substation/area bus or bank and circuit likely to serve proposed site.

**(3)** Aggregate queued export capacity (MW) proposing to interconnect to the substation/area bus or bank and circuit likely to serve proposed site.

**(4)** Available capacity (MW) of substation/area bus or bank and circuit likely to serve proposed site. Available capacity is the total capacity less the sum of existing and queued export capacity, accounting for all load served by existing and queued generators.

**(5)** Whether the proposed generating facility is located on an area, spot or radial network.

**(6)** Nominal distribution circuit voltage at the proposed site.

**(7)** Approximate circuit distance between the proposed site and the substation.

**(8)** Relevant line section(s) and substation actual or estimated peak load and minimum load data, when available.

**(9)** Manufacturer model number/type and rating of protective devices and number and type of voltage regulating devices between the proposed site and the substation/area.

**(10)** Whether or not three-phase power is available at the site or distance from three-phase service.

**(11)** Limiting conductor rating from proposed point of interconnection to distribution substation.

**(12)** Based on proposed point of interconnection, existing or known constraints such as, but not limited to, electrical dependencies at that location, short circuit interrupting capacity issues, power quality or stability issues on the circuit, capacity constraints, or secondary networks.

**(13)** Any other information the utility deems relevant to the interconnection application.

**C.** The pre-application report need only include pre-existing data. A pre-application report request does not obligate the utility to conduct a study or other analysis of the proposed project if that data is not available. If the utility cannot complete all or some of a pre-application report due to lack of available data, the utility will provide the potential applicant with a pre-application report that includes the information that is available and identify the information that is unavailable.

**D.** Notwithstanding any of the provisions of this section, the utility shall, in good faith, provide pre-application report data that represents the best available information at the time of reporting.

**E. Costs of pre-application reports:** The party requesting the pre-application report shall pay $300.00 for up to one MW system size, and $500.00 for over one MW. If a utility can provide documentation that the cost is higher, then the requesting party shall pay that additional amount.

**F. Time frames for pre-application reports:** Pre-application reports should be completed in 20 business days for system sizes up to one MW, and 30 business days for system sizes greater than one MW, from the receipt of the completed request form and payment of the fee. If it can be documented that a utility cannot meet this deadline due to circumstances beyond their control, then the utility will be given more time but must notify the applicant.

**G. Length of time for accuracy of information:** Due to the dynamic nature of the electric power system, accuracy cannot be guaranteed past the time of completion of a report. The pre-application report shall be non-binding on the utility and shall not confer any rights to the interconnection customer. The provided information does not guarantee that an interconnection may be completed.

[17.9.568.14 NMAC - N, 02/14/2023]

**17.9.568.15 SIMPLIFIED PROCESS:**

**A. Application:** An interconnection customer must submit an interconnection application, pursuant to Subsection B of 17.9.568.13 NMAC, using the standard simplified interconnection application form provided in Appendix 1A, which may be sent electronically to a recipient designated by the utility. The application fee specified in Subsection A of 17.9.568.23 NMAC shall be submitted along with the application. An interconnection customer executes the standard interconnection agreement for the simplified process by submitting a simplified process application.

**B. Simplified screening:** The utility shall evaluate the interconnection application using the following simplified screens.

**(1) Screen 1**: The generating facility must utilize a UL 1741 certified inverter.

**(2) Screen 2**: For interconnection of a proposed generating facility to the load side of network protectors, the proposed generating facility must utilize an inverter-based equipment package and, its nameplate rating, together with the nameplate rating of the aggregated other inverter-based generation, shall not exceed fifty percent of the secondary network's relevant minimum load.

**(3) Screen 3**: Until December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load (or

fifteen percent of maximum load if minimum load data is unavailable) normally supplied by the distribution circuit. After December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load normally supplied by the distribution circuit.

**(4) Screen 4**: If the proposed generating facility is to be interconnected on a single-phase shared secondary, the aggregate export capacity generation capacity on the shared secondary, including the proposed generating facility, shall not exceed sixty-five percent of the transformer nameplate power rating.

**(5) Screen 5**: If the proposed generating facility is single-phase and is to be interconnected on a center tap neutral of a 120/240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than twenty percent of the nameplate rating of the service transformer.

**C. Simplified screening results:** Within seven business days after the utility notifies the applicant that its interconnection application is complete, the utility shall notify the customer whether the generating facility meets the simplified process screens and include with the notification copies of the analysis and data underlying the utility's determinations under the screens. Despite the failure of one or more screens, the utility, at its sole option, may approve the interconnection provided such approval is consistent with safety and reliability.

**(1) Failed screens:** If the utility cannot determine that the generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the utility shall provide the applicant the screen results. If one or more screens are not passed, the utility shall provide, in writing, the specific screens that the interconnection application failed, including the technical reason for failure. The utility shall provide information and detail about the specific system threshold or limitation causing the interconnection application to fail the screen. In addition, the utility shall allow the customer to select one of the following, at the applicant's option:

**(a)** undergo supplemental review in accordance with 17.9.568.17 NMAC; or

**(b)** continue evaluating the interconnection application under detailed study in accordance with 17.9.568.18 NMAC. The applicant must notify the utility of its selection within 10 business days or the interconnection application will be deemed withdrawn.

**(2) Approval**: If the proposed generating facility passes the screens, or the utility determines the proposed generating facility can be interconnected safely and reliably despite the failure of one or more screens, the interconnection application shall be approved. The utility shall return to the applicant an executed simplified process interconnection agreement at the same time it provides the applicant with the screen results. If the utility determines that the generating facility can be interconnected safely and reliably, but requires construction of interconnection facilities or distribution system modifications, the utility shall instead process the interconnection application according to the procedures for the fast track process starting at 17.9.568.16 NMAC.

**D.** Reference point of applicability review:

**(1)** The following process will occur concurrently with the simplified process screening in Subsections B and C of 17.9.568.15 NMAC. Within five business days after the utility notifies the applicant that the interconnection application is complete, the utility shall review the reference point of applicability denoted by the applicant and determine if it is appropriate.

**(2)** If it is determined that the reference point of applicability is appropriate, the utility will notify the applicant when it provides the simplified screen results and proceed according to Subsection C of 17.9.568.15 NMAC.

**(3)** If the utility determines the reference point of applicability is inappropriate, the utility will notify the applicant in writing, including an explanation as to why it requires correction. Applicant shall provide the utility with a corrected interconnection application with the proper reference point of applicability within five business days of notification. During this time the utility will proceed with applying the simplified screens. The utility shall review the revised interconnection request within five business days of receipt to determine if the revised reference point of applicability has been appropriately denoted. If correct, the utility will proceed according to Subsection C of 17.9.568.15 but be provided with a total of 12 business days to provide the simplified results. If the interconnection customer does not provide the appropriate reference point of applicability or a request for an extension of time within the deadline, the interconnection application will be deemed withdrawn.

[17.9.568.15 NMAC - N, 02/14/2023]

**17.9.568.16 FAST TRACK PROCESS:**

**A. Application:** An interconnection customer must submit an interconnection application, pursuant to Subsection B of 17.9.568.13 NMAC, using the standard interconnection application form provided in Appendix 1B, which may be sent electronically to a recipient designated by the utility. The application fee specified in Subsection A of 17.9.568.23 NMAC shall be submitted along with the interconnection application.

**B. Fast track screening:** The utility shall evaluate the interconnection application using the following fast track initial review screens.

**(1) Screen 1**: For interconnection of a proposed generating facility to the load side of network protectors, the proposed generating facility must utilize a certified inverter-based equipment package and its nameplate rating, together with the nameplate rating of the aggregated other inverter-based generation, shall not exceed fifty percent of the secondary network's relevant minimum load.

**(2) Screen 2**: Until December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load (or fifteen percent of maximum load if minimum load data is unavailable) normally supplied by the distribution circuit. After December 31, 2023, for interconnection of a proposed generating facility to a radial distribution circuit, the aggregate export capacity of the generating facilities connected to the distribution circuit, including the proposed generating facility, may not exceed one hundred percent of the relevant minimum load normally supplied by the distribution circuit.

**(3) Screen 3**: For interconnection of a proposed generating facility that can introduce inadvertent export, where the nameplate rating minus the export capacity is greater than 250 kW, the following inadvertent export screen limit is required. With a power change equal to the nameplate rating minus the export capacity, the change in voltage at the point on the medium voltage (primary) level nearest the point of interconnection does not exceed three percent. Voltage change will be estimated applying the following formula:

| | |
|---|---|
| Formula | $\frac{(R_{SOURCE} \times \Delta P) - (X_{SOURCE} \times \Delta Q)}{V^2}$ |
| Where:<br>$\Delta P$ = (DER apparent power Nameplate Rating - Export Capacity) $\times$ PF,<br>$\Delta Q =$ (DER apparent power Nameplate Rating - Export Capacity) $\times \sqrt{(1 - PF^2)}$,<br>$R_{SOURCE}$ is the grid resistance, $X_{SOURCE}$ is the grid reactance,<br>V is the grid voltage, PF is the power factor | |

**(4) Screen 4**: If the proposed generating facility is to be interconnected on a single-phase shared secondary, the aggregate export capacity on the shared secondary, including the proposed generating facility, shall not exceed sixty-five percent of the transformer nameplate power rating.

**(5) Screen 5**: If the proposed generating facility is single-phase and is to be interconnected on a center tap neutral of a 120/240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than twenty percent of the nameplate rating of the service transformer.

**(6) Screen 6**: The starting voltage dip shall be less than five percent and the flicker requirements of IEEE 1547™-2018 must be met. This screen only applies to generating facilities that start by motoring the generator(s).

**(7) Screen 7**: When measured at the primary side (high side) of a dedicated distribution transformer serving a generating facility, the sum of the short circuit current contribution ratios of all generating facilities connected to utility's distribution system circuit that serves the generating facility must be less than or equal to 0.1.

**(8) Screen 8**: The generating facility, aggregated with other generation on the distribution circuit, will not cause any distribution protective devices and equipment (including but not limited to substation breakers, fuse cutouts, and line reclosers), or utility customer equipment on the system, to exceed ninety percent of the short circuit interrupting capability; nor is the interconnection proposed for a circuit that already exceeds ninety percent of the short circuit interrupting capability.

**(9) Screen 9**: The generating facility complies with the applicable type of interconnection, based on the table below. This screen includes a review of the type of electrical service provided to the interconnecting customer, including line configuration and the transformer connection to limit the potential for creating over-voltages on the utility's electric power system due to a loss of ground during the operating time of any anti-islanding function.

| **Primary Distribution Line Type** | **Type of Interconnection to Primary Distribution Line** | **Result/Criteria** |
|---|---|---|
| Three-phase, three-wire | If ungrounded on primary or any type on secondary | Pass screen |
| Three-phase, four-wire | Single-phase line-to-neutral | Pass screen |

| | | |
|---|---|---|
| Three-phase, four-wire or mixed three-wire and four-wire | All others | Pass screen for inverter-based generation if the aggregate nameplate rating, including the nameplate rating of the proposed project, is<br>• ≤ 100% feeder or line section minimum load, or<br>• if minimum load data is not available: ≤ 30% feeder or line section peak load.<br><br>Pass screen for rotating generation if the aggregate nameplate rating, including the nameplate rating of the proposed project, is:<br>• ≤ 33% of feeder or line section minimum load, or<br>• if minimum load data isn't available: ≤ 10% of feeder or line section peak load. |

**(10) Screen 10**: If the generating facility's point of interconnection is behind a line voltage regulator, the generating facility's export capacity is less than 250 kW.

**C. Fast track screening results:** Within 15 business days after the utility notifies the applicant that the interconnection application is complete, the utility shall notify the applicant of the initial review results and include with the notification copies of the analysis and data underlying the utility's determinations under the screens. If one or more screens are not passed, the utility shall provide, in writing, the specific screens that the interconnection application failed, including the technical reason for failure. The utility shall provide information and detail about the specific system threshold or limitation causing the interconnection application to fail the screen.

**D. Approval:** For all interconnection applications that pass initial review and do not require interconnection facilities or distribution upgrades, utility shall provide applicant with an interconnection agreement no later than 15 business days of providing notice of initial review results, except where a utility is required to provide notice to the transmission provider as outlined in Paragraph (1) of Subsection D of 17.9.568.16 NMAC. Despite the failure of one or more screens, the utility, at its sole option, may approve the interconnection provided such approval is consistent with safety and reliability. For interconnection applications that fail initial review but the utility determines the interconnection application can be approved with minor modifications, the utility shall provide the applicant with a non-binding cost estimate of the minor modifications and an interconnection agreement within 5 business days of providing notice of initial review results.

**(1)** If a utility's transmission service agreement requires that it notify the transmission provider of interconnections (of any size or beyond a specific threshold as specified in the transmission service agreement), the utility shall provide the notice to the transmission provider immediately after it has applied the fast track screens. If the transmission provider determines that it does not need to conduct a further analysis of transmission system impacts, the utility shall provide the interconnection agreement to the customer within three business days of receiving the transmission provider's determination. If the transmission provider does require further analysis, the utility shall coordinate with the interconnection applicant and the transmission provider to ensure such analysis is conducted in a timely manner.

**(2)** If the transmission provider determines that there are impacts that require upgrades, the utility shall follow the detailed study process in 17.9.568.18 NMAC for providing the customer with an interconnection agreement.

**E. Failed screens:** For interconnection applications that fail initial review, at the time it provides the screen results, the utility shall provide the applicant the option to either attend a customer options meeting or proceed directly to supplemental review. The applicant must notify the utility of its selection within 10 business days or the interconnection application will be deemed withdrawn.

**F.** The utility shall use the screens identified above to evaluate the interconnection application and shall not impose arbitrary limitations on interconnection (i.e., limiting interconnection to projects less than fifty percent of the circuit's rated capacity) without a valid technical reason. that is provided to the applicant in writing with an explanation. In providing detail about the specific system threshold or limitation causing the interconnection applicant to fail the screen, the utility shall provide an estimate of the cost of and expected timeline for conducting necessary upgrades to accommodate the interconnection application.

**G.** Reference point of applicability review:

**(1)** The following process will occur concurrently with the fast track screening process in Subsection C of 17.9.568.16 NMAC. Within five business days after the utility notifies the applicant that the interconnection application is complete, the utility shall review the reference point of applicability denoted by the applicant and determine if it is appropriate.

**(2)** If it is determined that the reference point of applicability is appropriate, the utility will notify the applicant when it provides the fast track screen results and proceed according to Subsections C through F of 17.9.568.16.

**(3)** If the utility determines the reference point of applicability is inappropriate, the utility will notify the applicant in writing, including an explanation as to why it requires correction. Applicant shall provide the utility with a corrected interconnection application with the proper reference point of applicability within five business days of notification. During this time the utility will proceed with applying the fast track screens. The utility shall review the revised interconnection request within five business days of receipt to determine if the revised reference point of applicability has been appropriately denoted. If correct, the utility will proceed according to Subsections C through F of 17.9.568.16 NMAC. If the applicant does not provide the appropriate reference point of applicability or a request for an extension of time within the deadline, the interconnection application will be deemed withdrawn.

**H. Customer options meeting:** Within 10 business days of the utility's completion of its initial review, the utility shall offer to convene a customer options meeting with the applicant to review possible interconnection customer facility modifications or the screen analysis and related results to determine what further steps are needed to permit the generating facility to be connected safely and reliably. At the time of notification of the utility's determination, or at the customer options meeting, the utility shall:

**(1)** Offer to perform facility modifications or minor modifications to the utility's electric system (e.g., changing meters, fuses, relay settings) and provide a non-binding good faith estimate of the limited cost to make such modifications to the utility's electric system and offer to continue the screening process; or

**(2)** Offer to perform a supplemental review if the utility concludes that the supplemental review might determine that the generating facility could continue to qualify for interconnection pursuant to the fast track process, and provide a non-binding good faith estimate of the costs and time of such review; or

**(3)** Offer to continue evaluating the interconnection application under the full interconnection study process.

[17.9.568.16 NMAC - N, 02/14/2023]

**17.9.568.17 SUPPLEMENTAL REVIEW:**

**A, Agreeing to supplemental review:** To accept the offer of a supplemental review, the applicant shall agree in writing and submit a $2,500 fee for the review, both within 15 business days of the offer. If the written agreement and deposit have not been received by the utility within that timeframe, the interconnection application shall continue to be evaluated under the detailed study process unless it is withdrawn by the applicant.

**B. Supplemental review screens:** The utility shall evaluate the interconnection application using the following supplemental review screens.

**(1) Minimum gross load screen:** Where 12 months of line section minimum load data (including onsite load but not station service load served by the proposed generating facility) are available, can be calculated, can be estimated from existing data, or determined from a power flow model, the aggregate export capacity on the line section is less than one hundred percent of the gross minimum load for all line sections bounded by automatic sectionalizing devices upstream of the proposed generating facility. If minimum load data is not available, or cannot be calculated, estimated or determined, the utility shall include the reason(s) that it is unable to calculate, estimate or determine minimum load in its supplemental review results notification. After December 31, 2023 utility should have minimum load data for all circuits.

**(a)** The type of generation used by the proposed generating facility will be taken into account when calculating, estimating, or determining circuit or line section minimum load relevant for the application of Subsection B of 17.9.568.17 NMAC. Solar photovoltaic (pv) generation systems with no battery storage use daytime minimum load (i.e. 10 a.m. to 4 p.m. for fixed panel systems and 8 a.m. to 6 p.m. for pv systems utilizing tracking systems), while all other generation uses absolute minimum load.

**(b)** When this screen is being applied to a generating facility that serves some station service load, only the net injection into the electric system will be considered as part of the aggregate export capacity.

**(c)** Utility will not consider as part of the aggregate export capacity generation for purposes of this screen generating facility export capacity known to be already reflected in the minimum load data

**(2) Voltage and power quality screen:** In aggregate with existing generation on the line section:

**(a)** the voltage regulation on the line section can be maintained in compliance with relevant requirements under all system conditions;

**(b)** the voltage fluctuation is within acceptable limits as defined by Institute of Electrical and Electronics Engineers (IEEE) Standard 1453, or utility practice similar to IEEE Standard 1453; and (3) the harmonic levels meet IEEE Standard 519 limits. If the generating facility limits export pursuant to 17.9.568.12 NMAC, the export capacity instead of nameplate rating must be utilized in any analysis including power flow simulations.

**(3) Safety and reliability screen:** The location of the proposed generating facility

and the aggregate export capacity on the line section do not create impacts to safety or reliability that cannot be adequately addressed without application of the detailed study process. If the generating facility limits export pursuant to 17.9.568.12 NMAC, the export capacity must be included in any analysis including power flow simulations, except when assessing fault current contribution. To assess fault current contribution, the analysis must use the rated fault current; for example, the customer may provide manufacturer test data (pursuant to the fault current test described in IEEE 1547.1-2020 clause 5.18) showing that the fault current is independent of the nameplate rating. The utility shall give due consideration to the following and other factors in determining potential impacts to safety and reliability in applying this screen.

**(a)** whether the line section has significant minimum loading levels dominated by a small number of customers (e.g., several large commercial customers);

**(b)** whether the loading along the line section is uniform or even;

**(c)** whether the proposed generating facility is located in close proximity to the substation (i.e., less than 2.5 electrical circuit miles), and whether the line section from the substation to the point of interconnection is a mainline rated for normal and emergency ampacity;

**(d)** whether the proposed generating facility incorporates a time delay function to prevent reconnection of the generator to the system until system voltage and frequency are within normal limits for a prescribed time;

**(e)** whether operational flexibility is reduced by the proposed generating facility, such that transfer of the line section(s) of the generating facility to a neighboring distribution circuit/ substation may trigger overloads or voltage issues;

**(f)** whether the proposed generating facility employs equipment or systems certified by a recognized standards organization to address technical issues such as, but not limited to, islanding, reverse power flow, or voltage quality.

**C. Supplemental review screening results:** Within 20 business days of an applicant's election to undergo supplemental review, the utility shall perform supplemental review using the screens set forth above and notify the customer of the results.

**(1) Failed screens and option to revise interconnection application:** If the proposed interconnection fails any of the supplemental review screens, the utility shall specify which screens the interconnection application failed, including the technical reason for failure, and the data and the analysis supporting the supplemental review. The utility shall provide information and detail about the specific system threshold or limitation causing the interconnection application to fail the screen. If the applicant chooses to amend the interconnection application to address the specific failed screens, the applicant must submit an updated interconnection application demonstrating the redesign within 10 business days after receiving the screen results. The redesign shall only include changes to address the screen failures or identified upgrades (which could include, for example, the addition of DC-coupled or AC-coupled energy storage). Increases in export capacity or changes in point of interconnection are not permitted and shall require the interconnection application to be withdrawn and resubmitted. The utility will evaluate whether the redesign addresses the screen failure and notify the applicant of the results of this evaluation within 10 business days. This redesign option to mitigate impacts shall only be available one time during the supplemental review process. If the applicant does not amend or withdraw its interconnection application within 10 business days of receiving results, it shall continue to be evaluated under the detailed study process consistent with Subsection A of 17.9.568.18 NMAC below.

**(2) Approval:**

**(a)** If the proposed interconnection passes the supplemental screens above and does not require construction of facilities by the utility on its own system, the interconnection agreement shall be provided within 10 business days after the notification of the supplemental review results unless the provisions in Paragraph (2) of Subsection D of 17.9.568.17 NMAC apply.

**(b)** If interconnection facilities or minor modifications to the utility's system are required for the proposed interconnection to pass the supplemental screens above, the interconnection agreement, along with a non-binding good faith estimate for the interconnection facilities or minor modifications, shall be provided to the applicant within 15 business days after receiving written notification of the supplemental review results.

**(c)** If the proposed interconnection would require more than interconnection facilities or minor modifications to the utility's system to pass the supplemental screens above, the utility shall notify the applicant, at the same time it notifies the applicant with the supplemental review results, that the interconnection application shall be evaluated under the detailed study process unless the applicant withdraws its interconnection application.

**(d)** If a utility's transmission service agreement requires that it notify the transmission provider of interconnections (of any size or beyond a specific threshold as specified in the transmission service agreement), the utility shall provide the notice to the transmission provider immediately after it has applied the supplemental review screens. If the transmission provider determines that it does not need to conduct a further analysis of transmission system

impacts, the utility shall provide the interconnection agreement to the customer within three business days of receiving the transmission provider's determination. If the transmission provider does require further analysis, the utility shall coordinate with the interconnection applicant and the transmission provider to ensure such analysis is conducted in a timely manner. If the transmission provider determines that there are impacts that require upgrades, the utility shall follow the detailed study process in 17.9.568.18 NMAC for providing the customer with an interconnection agreement. [17.9.568.17 NMAC - N, 02/14/2023]

**17.9.568.18 DETAILED STUDY PROCESS:**

**A, Application:** An interconnection customer must submit an interconnection application, pursuant to Subsection B of 17.9.568.13 NMAC, using the interconnection application form for fast track and detailed study provided in Appendix 1C, which may be sent electronically to a recipient designated by the utility. The application fee specified in Subsection A of 17.9.568.23 NMAC shall be submitted along with the application. An applicant who was unable to proceed through the simplified or fast track process application due to failure of the screening process may request that the utility treat that existing interconnection application as a new detailed study application.

**B. Scoping meeting:**

**(1)** A scoping meeting will be held within 10 business days after the interconnection application is deemed complete., or the applicant agrees to proceed to detailed study after simplified or fast track review or as otherwise mutually agreed to by the parties. By mutual agreement of the parties, the scoping meeting, system impact study or facilities study may be waived. The utility and the applicant will bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

**(2)** The purpose of the scoping meeting is to discuss the interconnection application, the reference point of applicability, and review existing studies relevant to the interconnection application. The parties shall further discuss whether the utility should perform a feasibility study (at the customer's option) or proceed directly to a system impact study, or a facilities study, or an interconnection agreement. If the parties agree that a feasibility study should be performed, the utility shall provide the applicant, as soon as possible, but not later than five business days after the scoping meeting, a feasibility study agreement, provided by the utility, including an outline of the scope of the study and a non-binding, good-faith estimate of the cost to perform the study.

**(a)** the feasibility study will provide a preliminary review of short circuit currents, including contribution from the proposed generation facility, and coordination and potential overloading of distribution circuit protection devices. If the interconnection applicant agrees to the feasibility study, the interconnection applicant shall provide an executed agreement and a deposit for the estimated costs provided by the utility;

**(b)** the scope of the feasibility study can be modified by the parties upon mutual agreement.

**(3)** In order to remain in consideration for interconnection, an applicant who has requested a feasibility study must return the executed feasibility study agreement and any required deposit within 15 business days. If the parties agree not to perform a feasibility study, the utility shall provide the applicant, no later than five business days after the scoping meeting, a system impact study agreement provided by the utility including an outline of the scope of the study and a non-binding, good faith estimate of the cost to perform the study.

**C. Feasibility study:** A feasibility study shall identify any potential adverse system impacts that would result from interconnection of the generating facility.

**(1)** A deposit of the lesser of fifty percent of the good faith estimated feasibility study cost, or earnest money of $1,000.00 may be required by the utility.

**(2)** Once the feasibility study is completed, a feasibility study report shall be prepared and transmitted to the applicant. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted within 30 business days of the applicant's agreement to conduct a feasibility study.

**(3)** If the feasibility study shows no potential for adverse system impacts, but facilities are required, the utility shall send the applicant a facilities study agreement, including an outline of the scope of the study and a non-binding, good faith estimate of the cost to perform the study.

**(4)** If no additional facilities are required, the utility shall provide the applicant an executable interconnection agreement within five business days.

**D. System impact study:** A system impact study shall identify and detail the electric system impacts that would result if the proposed generating facility were interconnected without project modifications or electric system modifications. A system impact study shall consist of a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, as necessary. A system impact study shall state the impact of assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any

problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities that are required as a result of the interconnection application and non-binding good faith estimates of cost responsibility and time to construct. The system impact study must take into account the proposed generating facility's design and operating characteristics, including but not limited to the proposed operating profile, and study the generating facility according to how it is proposed to be operated. If the generating facility limits export pursuant to 17.9.568.12 NMAC, the system impact study must use export capacity instead of the nameplate rating, except when assessing fault current contribution. To assess fault current contribution, the system impact study must use the rated fault current; for example, the customer may provide manufacturer test data (pursuant to the fault_current test described in IEEE 1547.1-2020 clause 5.18) showing that the fault current is independent of the nameplate rating.

**(1)** The utility shall provide the applicant a system impact study agreement within five business days if:

**(a)** a feasibility study is conducted and indicates adverse impacts on either the transmission system or the distribution system;

**(b)** the parties agree at the scoping meeting to proceed directly to a system impact study;

**(c)** the scoping meeting is omitted by mutual agreement; or

**(d)** the simplified process or fast track process has been completed and the applicant has elected to continue with the study process, and a system impact study is required.

**(2)** The system impact study agreement shall include an outline of the scope of the study and a non-binding good-faith estimate of the cost to perform the study. If applicable, the agreement shall list any additional and reasonable technical data on the generating facility needed to perform the system impact study. The scope of and cost responsibilities for a system impact study must be described in the system impact study agreement. A deposit of the good faith estimated costs for each system impact study shall be provided by the applicant when it returns the study agreements. The additional and reasonable technical data, if applicable, shall be returned with the system impact agreement. In order to remain under consideration for interconnection, the applicant must return the executed system impact study agreements and a deposit for the good-faith estimates of the studies within 20 business days.

**(3)** If the feasibility study shows no potential for adverse impacts on either the transmission or distribution systems, (or the parties agree to proceed straight to a facilities study), the utility shall send the applicant a facilities study agreement, including an outline of the scope of the study and a non-binding, good faith estimate of the cost to perform the study, or an executable interconnection agreement, as applicable.

**(4)** A system impact study shall be completed within 40 business days after the system impact study agreement is signed by the parties and delivered with deposit to the utility. The results and, if necessary, facilities study agreement shall be delivered to the applicant within five business days of completion of the system impact study. Upon request, the utility shall provide the applicant supporting documentation and workpapers developed in the preparation of the system impact study.

**(5)** In instances where the system impact study shows potential for transmission system adverse system impacts, within five business days following the identification of such impacts by the utility, the utility shall coordinate with the appropriate transmission provider to have the necessary studies completed to determine if the DER causes any adverse transmission impacts. If the utility's transmission service agreement requires that the transmission provider be notified of an interconnection, it shall provide that notice, regardless of whether the system impact study shows potential for transmission system adverse system impacts, and coordinate with the transmission provider on any studies it may determine are necessary.

**(6)** In order to remain in consideration for interconnection, an applicant must return the executed transmission system impact study agreement within 15 business days of receipt of the agreement.

**(7)** A transmission system impact study, if required, shall be completed and the results transmitted to the applicant in as timely a manner as possible after the transmission system impact study agreement is signed by the parties. The utility shall be responsible for coordination with the transmission provider as needed. Affected systems shall participate in the study and provide all information necessary to prepare the study.

**(8)** A one-time modification of the interconnection application is allowed as a result of information from the system impact study report.

**(a)** if the applicant chooses to amend the interconnection application to address the specific system impacts, the applicant must submit an updated interconnection application demonstrating the redesign within 15 business days after receiving the system impact study results from the utility. The redesign shall only include changes designed to address the specific system impacts or identified upgrades (which could include, for example, the addition of DC-coupled or AC-coupled energy storage). This redesign option to mitigate impacts shall only be available one time during the detailed study process. Increases in export capacity or changes in point of interconnection are not permitted and shall require the interconnection

application to be withdrawn and resubmitted;

**(b)** the utility shall notify the interconnecting customer within ten business days of receipt of the modified interconnection application if any additional information is needed. If additional information is needed or document corrections are required, the applicant shall provide the required information or corrections within 10 business days from receipt of the utility notice;

**(c)** the actual costs to the utility for any necessary restudies as a result of a modification described above shall be paid by the applicant. Such restudies should be limited to the impacts of the modification and shall be billed to the applicant at cost and not for work previously completed. The utility shall use reasonable efforts to limit the scope of such restudies to what is necessary. The revised impact study shall be completed within 15 business days.

**E. Facilities study:** Once the required system impact study/studies are completed, a system impact report shall be prepared and transmitted to the applicant along with a facilities study agreement within five business days.

**(1)** The report and agreement shall provide an outline and non-binding, good faith estimate of the cost of the facilities study.

**(2)** In order to remain under consideration for interconnection, the applicant must return the executed facilities agreement, and a deposit for the good-faith estimates of the studies, within 15 business days. The facilities study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study(s).

**(3)** Design for any required interconnection facilities or upgrades shall be performed under the facilities study agreement. The utility may contract with consultants to perform activities required under the study agreement.

**(4)** The applicant and the utility may agree to allow the applicant to arrange for the design of some of the interconnection facilities, but the proposed deign will be reviewed subject to modification by the utility prior to acceptance.

**(5)** In cases where upgrades are required, the facilities study must be completed within 45 business days of the receipt of the executed facilities study agreement and deposit. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed within 30 business days of the receipt of the executed facilities study agreement and deposit.

**(6)** Once the facilities study is completed, a facilities study report shall be prepared and transmitted to the applicant. Upon request, the utility shall provide applicant supporting documentation and workpapers developed in the preparation of the interconnection facilities study.

**(7)** Upon completion of the facilities study, and with the agreement of the interconnection applicant to pay for interconnection facilities or upgrades identified in the study, the utility shall provide the interconnection applicant with an executable interconnection agreement within five business days.

**F. Payment for study costs:** For each of the studies conducted, any study fees shall be based on the utility's actual costs and will be invoiced to the applicant after the study is completed and delivered and will include a summary of professional time. The applicant must pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund such excess within 30 calendar days of the invoice without interest.

[17.9.568.18 NMAC - N, 02/14/2023]

**17.9.568.19 COST SHARING FOR INTERCONNECTION UPGRADES:**

**A.** The cost of utility system modifications required pursuant to the fast track process or the full interconnection study process shall be borne by the applicant unless otherwise agreed to by the parties or following a determination by the commission that some or all of the costs constitute system benefits eligible for cost-sharing options:

**(1)** The commission may determine on a case-by-case basis whether the cost of distribution system upgrades necessary to interconnect one or more generating facilities may be eligible for some form of cost-sharing:

**(a)** among several developers using the same distribution facilities;

**(b)** among all ratepayers of the qualifying utility via rate base adjustments; or

**(c)** among ratepayers of the same rate class as subscribers to the community solar facility via a rate rider for that class.

**(2)** In making such a determination that there are public benefits to such a cost-sharing mechanism, the commission shall employ the same analysis as provided for cost-sharing or rate basing grid modernization projects as defined by Section 62-8-13 NMSA 1978 (Grid Modernization Act 2019, HB 233) to make a finding that the approved expenditures are:

**(a)** reasonably expected to improve the public utility's electrical system efficiency, reliability, resilience and security; maintain reasonable operations, maintenance and ratepayer costs; and meet energy demands through a flexible, diversified and distributed energy portfolio;

**(b)** reasonably expected to increase access to, and use of, clean and renewable energy, with consideration given to increasing access to low-income subscribers and subscribers in underserved communities;

**(c)** designed to contribute to the reduction of air pollution, including greenhouse gases;

**(3)** Expenditures approved for such cost sharing of necessary interconnection upgrades shall not be considered a "subsidization" subject to the three percent limitations spelled out in this rule or in the Community Solar Act.

[17.9.568.19 NMAC - N, 02/14/2023]

**17.9.568.20 INTERCONNECTION AGREEMENT:**

**A.** For simplified process interconnection projects, the applicant will sign a form interconnection agreement at the time it submits its interconnection application, and the utility will return a counter-signed interconnection agreement with the screen results.

**B.** For fast track and detailed study interconnection projects: after receiving an interconnection agreement from the utility, the applicant shall have 30 business days or another mutually agreeable timeframe to sign and return the interconnection agreement. If the applicant does not sign the interconnection agreement within 30 business days, the interconnection application shall be deemed withdrawn. After the interconnection agreement is signed by the parties, the interconnection of the generating facility shall proceed under the provisions of the interconnection agreement.

[17.9.568.20 NMAC - N, 02/14/2023]

**17.9.568.21 PERMISSION TO OPERATE:**

**A.** The interconnection customer may not commence operations until its interconnection application is deemed complete and the utility has issued a permission to operate (PTO). The interconnection customer shall provide the utility with at least 10 business days' notice of the anticipated start date of the generating facility.

**B.** Within 10 business days of receiving the notice of the anticipated start date of the generating facility, the utility may conduct an inspection of the generating facility at a time mutually agreeable to the parties. The inspection may include verification that the facility complies with applicable codes and standards, the terms of the interconnection agreement, and may include a witness test. The utility may also schedule appropriate metering replacement or programming if necessary. If the generating facility passes the inspection, the utility shall provide written notice of the passage within three business days. If a Generating Facility initially fails a utility inspection, the utility shall offer to redo the inspection at the applicant's expense at a time mutually agreeable to the parties. If the utility determines that the generating facility fails the inspection, the utility must provide the applicant with a written explanation detailing the reasons for the failure and any standards violated. If the utility determines no inspection is necessary, it shall notify the applicant within three business days of receiving the notice of the anticipated start date.

**C.** For simplified process and fast track generating facilities, utility approval for interconnection (i.e. permission to operate) shall normally be processed not later than 10 business days following the utility's receipt of:

**(1)** a completed net energy metering interconnection application, if appropriate, including all supporting documents and required payments;

**(2)** a completed signed interconnection agreement, if appropriate; and

**(3)** evidence of the applicant's final electric inspection clearance from the governmental authority having jurisdiction over the generating facility. If the 10-day period cannot be met, the utility shall notify the applicant.

**D.** A generating facility that has not been approved for parallel operation within one year of execution of the interconnection agreement is subject to withdrawal by utility; however, the utility may not deem the interconnection application withdrawn if:

**(1)** applicant provides reasonable evidence that the interconnection application is still active; or

**(2)** the delay is at no fault of applicant.

[17.9.568.21 NMAC - N, 02/14/2023]

**17.9.568.22 INTERCONNECTION APPLICATION REVIEW FLOW CHART: [RESERVED]**

[17.9.568.22 NMAC - Repealed, 02/14/2023]

**17.9.568.23 GENERAL PROVISIONS APPLICABLE TO INTERCONNECTION APPLICATIONS:**

**A.** An applicant shall pay the following application fee to the utility at the time it delivers its interconnection application to the utility:

**(1)** $150.00 if the proposed generating facilities will have a nameplate rating less than or equal to 25 kW;

**(2)** $300.00 if the proposed generating facilities will have a nameplate rating greater than 25 kW and less than or equal to 100 kW; or

**(3)** $300.00 + $1.00 per kW if the proposed generating facilities will have a nameplate rating greater than 100 kW;

**(4)** if the proposed generating facility is non-export only, it shall pay $150.00, if it has a nameplate rating below 100kW, or $300 if the nameplate rating is greater than 100 kW.

**B.** In addition to the fees authorized by this rule, a small utility may collect from the applicant the reasonable costs incurred to obtain necessary expertise from consultants to review interconnection applications for generating facilities with rated capacities greater than 10 kW. A small utility shall provide a good faith estimate of the costs of such consultants to an applicant within 10 business days of the date

the interconnection application is delivered to the utility.

**C.** Commissioning tests of the interconnection customer's installed equipment shall be performed pursuant to applicable codes and standards, including IEEE 1547.1 "IEEE standard conformance test procedures for equipment interconnecting distributed energy resources with electric power systems." A utility must be given at least five business days written notice of the tests, or as otherwise mutually agreed to by the parties, and may be present to witness the commissioning tests. An interconnection customer shall reimburse a utility for its costs associated with witnessing commissioning tests performed except that a utility may not charge a fee in addition to the interconnection application fee for the cost of witnessing commissioning tests for inverter-based generating facilities that have nameplate capacities that are less than or equal to 25 kW.

**D.** If an interconnection customer requests an increase in capacity for an existing generating facility, the interconnection application shall be evaluated on the basis of the new total capacity of the generating facility. If an interconnection customer requests interconnection of a generating facility that includes multiple energy production devices at a site for which the interconnection customer seeks a single point of common coupling, the interconnection application shall be evaluated on the basis of the aggregate capacity of the multiple devices.

**E.** Confidential information shall remain confidential unless otherwise ordered by the commission. Confidential information shall mean any confidential and proprietary information provided by one party to the other party that is clearly marked or otherwise designated "confidential".

[17.9.568.23 NMAC - N, 02/14/2023]

**17.9.568.24 GENERAL PROVISIONS APPLICABLE TO UTILITIES:**

**A.** A utility shall interconnect any interconnection customer that meets the interconnection criteria set forth in this rule. A utility shall make reasonable efforts to keep the applicant informed of the status and progress.

**B.** Utilities shall reasonably endeavor to aid and assist interconnection customers to ensure that a proposed generating facility's interconnection design, operation, and maintenance are appropriate for connection to the utility's system. This may include consultations with the applicant and its engineer and other representatives.

**C.** Utilities shall make reasonable efforts to meet all time frames provided for in this rule unless a utility and an applicant agree to a different schedule. If a utility cannot meet a deadline provided herein, it shall notify the applicant in writing within one business day, explain the reason for its inability to meet the deadline, and provide an estimated time by which it will complete its activity. The utility shall keep the applicant updated of any changes in the expected completion date.

**D.** Utilities shall use the same reasonable efforts in processing and analyzing interconnection applications from all interconnection customers, whether the generating facility is owned or operated by the utility, its subsidiaries or affiliates, or others.

**E.** Utilities shall maintain records for three years of each interconnection application received, the times required to complete each interconnection application approval or disapproval, and justification for the utility's disapproval of any interconnection application. Other reporting requirements are specified in 17.9.568.23 NMAC.

**F.** Utilities shall maintain current, clear, and concise information regarding this rule including the name, telephone number, and email address of contact persons. The information shall be easily accessible on the utility's website beginning within one month of the effective date of this rule, or the information may be provided in bill inserts or separate mailings sent no later than one month after the effective date of this rule and no less often than once each year thereafter. Each utility shall maintain a copy of this rule at its principal office and make the same available for public inspection and copying during regular business hours.

**G.** A small utility that uses a consultant to review a proposal to interconnect a generating facility with the small utility's system may extend each of the time deadlines for review of the fast track process by a period not to exceed 20 business days provided that the small utility shall make a good faith effort to complete the review sooner.

**H.** Compliance with this interconnection process does not constitute a request for, nor provision of any transmission delivery service, or any local distribution delivery service. Interconnection under this rule does not constitute an agreement by the utility to purchase or pay for any energy, inadvertently or intentionally exported.

[17.9.568.24 NMAC - N, NMAC, 02/14/2023]

**17.9.568.25 GENERAL PROVISIONS APPLICABLE TO INTERCONNECTION CUSTOMERS:**

**A.** An interconnection customer is responsible for the prudent maintenance and upkeep of its interconnection equipment.

**B.** Upon the petition of a utility, for good cause shown, the commission may require a customer with a generating facility with a rated capacity of 250 kW or less to obtain general liability insurance prior to connecting with a public utility. A utility may require that an applicant proposing to connect a generating facility with a rated capacity greater than 250 kW provide proof of insurance with reasonable limits not to exceed $1,000,000.00 or other reasonable evidence of financial responsibility.

[17.9.568.25 NMAC - Rp, 17.9.568.14 NMAC, 02/14/2023]

**17.9.568.26 EXTENSIONS:**

**A.** The applicant may request in writing the extension of one timeline set by these rules. The requested extension may be for up to one-half of the time originally allotted (e.g., a 10 business day extension for a 20 business day timeframe). The utility shall not unreasonably refuse this request.

**B.** If further timeline extensions are necessary, the applicant may request an extension and the utility shall grant the extension so long as it does not unreasonably delay the processing of later queued interconnection applications.

[17.9.568.26 NMAC - N, 02/14/2023]

**17.9.568.27 DISPUTE RESOLUTION:**

**A.** Each party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.

**B.** In the event of a dispute, either party shall provide the other party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute. The non-disputing party shall acknowledge the notice within three business days of its receipt and identify a representative with the authority to make decisions for the non-disputing party with respect to the dispute.

**C.** If the dispute has not been resolved in eight business days for timeline related disputes or 20 business days for all other disputes after the receipt of the notice, the parties may, upon mutual agreement:

**(1)** continue negotiations for an additional 10 business days; or

**(2)** seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or qualified technical expert(s)) to assist the parties in resolving their dispute. Each party will be responsible for one-half of any costs paid to neutral third-parties.

**D.** For any technical disputes, both parties shall have a qualified technical representative present in the attempts to resolve the dispute.

**E.** If the dispute remains unresolved after 30 business days, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.

**F.** If the dispute remains unresolved after 90 business days, a formal complaint to the commission has not been submitted, and the dispute is causing delays to other projects in the queue, the utility may adjust the queue position of the disputing project. The disputing party shall be responsible for any additional study costs that may result from the change in queue position.

[17.9.568.27 NMAC - N, 02/14/2023]

**17.9.568.28 REPORTING REQUIREMENTS:**

**A.** For each request for a pre-application report or interconnection application received, the utility shall collect and retain the following data, at a minimum:

**(1)** facility capacity;

**(2)** DER type (technology);

**(3)** number of pre-application reports requested and processed;

**(4)** date of interconnection application submittal;

**(5)** date interconnection application deemed complete;

**(6)** date and disposition at applicable milestones in the interconnection process, including which screens, if any, are failed in the applicable process:

**(a)** initial review, (under the simplified or fast track process);

**(b)** supplemental review;

**(c)** feasibility study;

**(d)** system impact study;

**(e)** facilities study;

**(f)** interconnection agreement; and

**(g)** permission to operate.

**(7)** interconnection fees and study costs assessed to the customer;

**(8)** interconnection facility and distribution upgrade costs assessed to the customer;

**(9)** number of times outside consultants were utilized and the range of fees assessed to the customer for the consultants services.

**B.** Twice annually each utility shall submit to the commission and make available to the public on its website an interconnection report with the following information. The report shall contain information in the following areas, including relevant totals for both the year.

**(1)** Pre-application reports: total pre-application reports requested, completed within the time limits (20 business days for system sizes up to one MW, and 30 business days for system sizes greater than one MW30), and number completed outside the specified time limits.

**(2)** Interconnection applications: total number received, (noting nameplate rating of proposed systems).

**(3)** Number of interconnection applications processed within specified timeframes and completed outside of specified time limits.

**(4)** Number of interconnection upgrades completed within negotiated timelines and outside of negotiated timelines, including a narrative on how much time it is taking to complete typical upgrades.

**(5)** Number of interconnection applications that required more than initial review: median number of days to complete such reviews.

**(6)** Number of interconnection applications withdrawn.

**(7)** Number of interconnection agreements executed.

**(8)** A table showing the range of fees charged for the feasibility study, system impact study, and facilities study.

**(9)** A table showing how many projects failed each of the interconnection screens in the simplified, fast track and supplemental review processes broken out by project size and type (i.e. solar, storage, solar+storage) in the following increments: up to 25 kW, 25-100 kW, 100-500 kW, 500 kW to 2 MW, 2 to 5 MW.

**(10)** A narrative of how the process is working and where there is potential for improvement by the utility or interconnection applicants.

[17.9.568.28 NMAC - N, 02/14/2023]

**17.9.568.29 SAFETY PROVISIONS:**

**A.** A DER project that operates outside of its approved export status or operational limits may be disconnected by the utility following notification of violation and a 30-day cure period.

**B.** An interconnection customer shall separate from the utility system in the event of any one or more of the following conditions:

**(1)** a fault on the generating facility's system; or

**(2)** a generating facility contribution to a utility system emergency; or

**(3)** abnormal frequency or voltage conditions on the utility's system; or

**(4)** any occurrence or condition that will endanger utility employees or customers; or

**(5)** a generating facility condition that would otherwise interfere with a utility's ability to provide safe and reliable electric service to other customers; or

**(6)** the sudden loss of the system power.

**C.** The utility may temporarily disconnect the generating facility upon the following conditions:

**(1)** for scheduled outages per notice requirements in the utility's tariff or commission rules;

**(2)** for unscheduled outages or emergency conditions pursuant to Subsection B of 17.9.568.29 NMAC;

**(3)** if the generating facility does not operate in the manner consistent with these terms and conditions;

**(4)** the utility shall inform the customer in advance of any scheduled disconnection, or as is reasonable after an unscheduled disconnection.

**D.** A visible-open, load break disconnect switch between the generating facility and the utility system that is visibly marked "generating facility generation disconnect" and is accessible to and lockable by the utility is required for all generating facilities except for those generating facilities with a maximum capacity rating of 10 kW or less that use a certified inverter including a self-contained renewable energy certificate (REC) meter and either:

**(1)** a utility accessible AC load break disconnect; or

**(2)** a utility accessible DC load break disconnect where there is no other source of generated or stored energy connected to the system.

**E.** Interconnection customers shall post a permanent and weatherproof one-line electrical diagram of the generating facility located at the point of service connection to the utility. Generating facilities where the disconnect switch is not located in close proximity to the utility meter must post a permanent and weatherproof map showing the location of all major equipment including the utility meter point, the generating facility generation disconnect, and the generating facility generation breaker. Non-residential generating facilities larger than 10 kW shall include with or attached to the map the names and current telephone numbers of at least two persons authorized to provide access to the generating facility and who have authority to make decisions regarding the generating facility interconnection and operation.

**F.** If the generating facility interconnection equipment package is not certified or if a certified equipment package has been modified, the generating facility interconnection equipment package shall be reviewed and approved by a professional electrical engineer, registered in the state of New Mexico.

[17.9.568.29 NMAC - Rp, 17.9.568.15 NMAC, 02/14/2023]

**17.9.568.30 VARIANCES:** A party may file a request for a variance from the requirements of this rule. Such application shall describe the reasons for the variance; set out the effect of complying with this rule on the parties and the utility's customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.9.568.30 NMAC - Rp, 17.9.568.16 NMAC, 02/14/2023]

**HISTORY OF 17.9.568 NMAC:**
**Pre-NMAC History:** None.

**History of Repealed Material:**
17.9.568 NMAC, Interconnection of Generating Facilities with a Rated Capacity up to and Including 10 MW Connecting to a Utility System (filed 10/15/2008) repealed effective 02/14/2023.

**Other History:**
17.9.568 NMAC, Interconnection of Generating Facilities with a Rated Capacity up to and Including 10 MW Connecting to a Utility System (filed 10/15/2008) was replaced by 17.9.568 NMAC, Interconnection of Generating Facilities with a Rated Capacity up to and Including 10 MW Connecting to a Utility System, effective 02/14/2023.

**APPENDIX 1A**
**Simplified Interconnection Application Certified Inverter-Based Generating Facilities**
**With an Export Capacity up to and including 25 kW AC**
**and a Nameplate Rating not exceeding 50 kW**

This Application is considered complete when it provides all applicable and correct information required below. Additional information to evaluate the Application may be required.

Processing Fee

A fee of $150 must accompany this Application.

Interconnection Customer Name:

Contact Person:

Address:

City: State: Zip:

Telephone (Day): (Evening):

Fax: E-Mail Address: Engineering Firm (If Applicable):

Contact Person:

Address:

City: State: Zip:

Telephone:

Fax: E-Mail Address:

Contact (if different from Interconnection Customer)

Name:

Address:

City: State: Zip:

Telephone (Day): (Evening):

Fax: E-Mail Address:

Owner of the facility (include % ownership by any electric utility):

Generating Facility Information: Location (if different from above):

Electric Service Company:

Account Number:

Inverter Information:

Inverter Manufacturer: Model Nameplate Rating:

(kW) (kVA) (AC Volts)

Export Capacity Value (in kW) (if Export Capacity is less than Nameplate Rating, denote export controls below):

_____

Single Phase _____Three Phase _____

Prime Mover: Photovoltaic, Reciprocating Engine, Fuel Cell, Turbine, Storage Batteries, Other (describe)

Energy Source: Solar, Wind, Hydro, Diesel, Natural Gas, Fuel Oil, Other (describe)

Is the equipment UL1741 Listed? Yes No

If Yes, attach manufacturer's cut-sheet showing UL1741 listing

Estimated Installation Date_____: Estimated In-Service Date:_____

**Limited Export and Non-Export Controls Information**

Manufacturer:_____

Model Number:_____

Limited Export or Non-Export? ____Limited Export ____Non-Export

Control Type: _____Reverse Power Protection ____Minimum Power Protection

_____Relative Distributed Energy Resource Rating

_____Configured Power Rating

_____Power Control System _____Export Control using mutually agreed-upon means

_____Directional Power Protection

Control Power Setting:_____

Control Power Time Delay (if any):_____

When grid-connected, will the PCS employ any of the following? [Select all that apply]

☐ Unrestricted mode
☐ Export only mode
☐ Import only mode
☐ No exchange mode
☐ Export-limiting from all sources
☐ Export limiting from ESS
☐ Import limiting to ESS

## Battery Storage Facility Information (If Applicable)

Do the batteries share an inverter with a renewable energy system? ☐ Yes ☐ No

Does the applicant intend to have the batteries charged by the distribution grid? ☐ Yes ☐ No

System Manufacturer:_____

Model: _____

Battery System Charge/Discharge Rating (kW AC):_____

Maximum Battery System Charge/Discharge Rate (kW AC per second):_____

Battery Energy Capacity (kWh):_____

**Battery Operational Information**

Backup – allows for partial or whole home transition to off-grid during a grid outage ☐ Yes ☐ No

Solar Self-Powered – the battery will charge from the renewable energy source during normal operation and discharge to serve loads behind your meter ☐ Yes ☐ No

Solar Non-Export – limits the export of energy to the grid to zero for both the battery and solar inverter, even if the battery system is fully charged and there is excess renewable source energy ☐ Yes ☐ No

Time-Based Control (sometimes called time-of-use or TOU mode) – the battery charges during off-peak hours and discharges to serve onsite loads during on-peak hours. ☐ Yes ☐ No

Describe any other intended operation of the battery:

_____.

**Reference Point of Applicability (RPA) Designation**

Where is the desired RPA location? [Check one]

☐ Point of DER connection (PoC)
☐ Point of interconnection / point of common coupling (PCC)
☐ Another point between PoC and PCC
☐ Different RPAs for different DER units

Is the RPA location the same as above for detection of abnormal voltage, faults and open-phase conditions?
☐ Yes
☐ No (detection location must be denoted in the one-line diagram)

Why does this DER fit the chosen RPA? [Check all that apply]
☐ Zero-sequence continuity between PCC and PoC is maintained
☐ The DER aggregate Nameplate Rating is less than 500 kVA
☐ Annual average load demand is greater than 10% of the aggregate DER Nameplate Rating, and it is not capable of, or is prevented from, exporting more than 500 kVA for longer than 30 seconds.

**General Information**
Enclose copy of site electrical one-line diagram showing the configuration of all Generating Facility equipment, Reference Point of Applicability, current and potential circuits, and protection and control schemes.

Enclose copy of any site documentation that indicates the precise physical location of the proposed Generating Facility (e.g., USGS topographic map or other diagram or documentation).

Enclose a copy of specification sheets for all applicable interface and control equipment, e.g., inverters, energy storage system, gateway, plant controller, automatic transfer switch and power control system. Are specification sheets enclosed?
_____Yes _____ No

The Simplified Process is available only for inverter-based Generating Facilities that have a nameplate rating that does not exceed 50 kilowatts (kW) and an export capacity that does not exceed 25 kilowatts (kW) and that meets the codes, standards, and certification requirements of Title 17.9.568.12, or the QRU has reviewed the design or tested the proposed Generating Facility and is satisfied that it is safe to operate.

List components of the Generating Facility equipment package that are currently certified:

Equipment Type Certifying Entity 1.

2.

3.

4.

5.

**Interconnection Customer Signature**

I hereby certify that, to the best of my knowledge, the information provided in this Application is true. I agree to abide by the Terms and Conditions for Interconnecting an Inverter-Based Generating Facility with a nameplate rating that does not exceed 50 kilowatts (kW) and an export capacity that does not exceed 25 kilowatts (kW) and return the notice of completion when the Generating Facility has been installed.

Signed:_____

Title:_____

Date:_____

Utility Signature

The undersigned Utility agrees to abide by the Terms and Conditions and that optional paragraph 6.0 Indemnification ÿ applies ÿ does not apply.

Signed: _____

Title:_____

Date_____

**APPENDIX 1B**
**Standard Interconnection Application**

A Customer-Generator applicant ("Applicant") hereby makes application to
(Utility) to install and operate a generating facility interconnected with the utility system.

Written applications should be submitted by mail, e-mail or fax to [*insert utility name*], as follows:

[*Utility*]:
[*Utility's address*]:
Fax Number:
E-Mail Address:
[*Utility*] Contact Name:
[*Utility*] Contact Title:

An application is a Complete Application when it provides all applicable information required below. (Additional information to evaluate a request for interconnection may be required and will be so requested from the Interconnection Applicant by Utility after the application is deemed complete).

**SECTION 1. APPLICANT INFORMATION**
Legal Name of Interconnecting Applicant (or, if an Individual, Individual's Name) Name:_____
Mailing Address:_____
City:_____
State:_____ ; Zip Code_____:

Facility Location (if different from above):

Telephone (Daytime):_____
Telephone (Evening):_____
Fax Number:_____
E-Mail Address:_____

Utility

(Existing Account Number, if generator to be interconnected
on the Customer side of a utility revenue meter)

Type of Interconnect Service Applied for (choose one):_____ Network Resource,
_____Energy Only, _____Load Response (no export) _____Net metering

**SECTION 2. GENERATOR QUALIFICATIONS**
Data apply only to the Generating Facility, not the Interconnection Facilities.

Energy Source:
☐ Solar
☐ Wind
☐ Hydro
☐ Hydro type (e.g. Run-of-River)
☐ Diesel
☐ Natural Gas
☐ Fuel Oil
☐ Other (state type);_____

Prime Mover:
☐ Fuel Cell
☐ Recip Engine
☐ Gas Turbine
☐ Steam Turbine
☐ MicroTurbine
☐ PV
☐ Storage Batteries
☐ Other (state type);_____

Type of Generator:_____ Synchronous_____ Induction_____ Inverter_____
Generator Nameplate Rating:_____ kW (Typical); Generator Nameplate kVA:_____

Number of Units:_____

Total Export Capacity: _____ kW __ kVA ___

Interconnection Customer or Customer-Site Load:_____ kW (if none, so state)

Typical Reactive Load (if known)_____:

List components of the Generating Facility Equipment Package that are currently certified:

| | Equipment Type | Certifying Entity |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |

Is the prime mover compatible with the certified protective relay package?
_____Yes_____ No

Generator (or energy storage or solar collector)
Manufacturer, Model Name & Number:
Version Number:
Nameplate Output Power Rating in kW:
(Summer)_____ ; (Winter)_____
Nameplate Output Power Rating in kVA:
(Summer)_____ ; (Winter)_____

Individual Generator Power Factor
Rated Power Factor Leading:_____ Lagging:_____
Total Number of Generators to be interconnected pursuant to this Interconnection Application:_____ ;
Elevation_____ ; Single phase_____; Three phase_____

Inverter Manufacturer, Model Name & Number (if used):_____

List of adjustable set points for the protective equipment or software:_____

Note: A completed Power Systems Load Flow data sheet must be supplied with the Interconnection Application.

**Generating Facility Characteristic Data (for inverter-based machines)**:
Max design fault contribution current: Instantaneous or RMS ?
Harmonics Characteristics:
Start-up requirements:

**Generating Facility Characteristic Data (for rotating machines):**
RPM Frequency:_____
(*) Neutral Grounding Resistor (If Applicable):_____

**Synchronous Generators:**
Direct Axis Synchronous Reactance, Xd:_____ P.U.
Direct Axis Transient Reactance, X' d:_____ P.U.
Direct Axis Subtransient Reactance, X' d:_____P.U.
Negative Sequence Reactance, X2: _____P.U.
Zero Sequence Reactance, X0:_____P.U.
KVA Base:_____
Field Volts:_____
Field Amperes: _____

**Induction Generators:**
Motoring Power (kW):_____
I2t or K (Heating Time Constant):_____
Rotor Resistance, Rr:_____
Stator Resistance, Rs:_____
Stator Reactance, Xs:_____
Rotor Reactance, Xr: _____
Magnetizing Reactance, Xm:_____
Short Circuit Reactance, Xd: _____
Exciting Current:_____ Temperature

Rise:
Frame Size:
Design Letter:
Reactive Power Required In Vars (No Load):_____
Reactive Power Required In Vars (Full Load):_____
Total Rotating Inertia, H:_____ Per Unit on kVA Base

**SECTION 3. INTERCONNECTION FACILITIES INFORMATION**

Will a transformer be used between the generator and the Point of Common Coupling?
_____Yes _____No

**Transformer Data (If Applicable, for Interconnection Customer-Owned Transformer):**
Is the transformer:_____ single phase_____ three phase? Size:_____ kVA
Transformer Impedance:_____ percent on kVA Base
If Three Phase:
Transformer Primary:_____ Volts_____ Delta____ Wye ____Wye Grounded _____
Transformer Secondary:____ Volts_____ Delta____Wye _____Wye Grounded
Transformer Tertiary:_____ Volts _____Delta ____Wye_____ Wye Grounded

**Transformer Fuse Data (If Applicable, for Interconnection Customer-Owned Fuse)**:
(Attach copy of fuse manufacturer's Minimum Melt and Total Clearing Time-Current Curves)
Manufacturer: _____
Speed: _____
Type:_____
Size: _____

**Interconnecting Circuit Breaker (if applicable):**
Manufacturer: _____Type: _____
Load Rating (Amps):_____ (Cycles):_____
Interrupting Rating (Amps):_____
Trip Speed_____Interconnecting Circuit Breaker (if applicable):

**Interconnection Protective Relays (If Applicable):**

If Microprocessor-Controlled:

List of Functions and Adjustable Setpoints for the protective equipment or software: Setpoint

| Function | Minimum | Maximum |
|---|---|---|
| 1. | | |
| 2. | | |
| 3. | | |
| 4. | | |
| 5. | | |
| 6. | | |

If Discrete Components:

(Enclose Copy of any Proposed Time-Overcurrent Coordination Curves)

| | | | |
|---|---|---|---|
| Manufacturer: | Type: | Style/Catalog No.: | Proposed Setting: |
| Manufacturer: | Type: | Style/Catalog No.: | Proposed Setting: |
| Manufacturer: | Type: | Style/Catalog No.: | Proposed Setting: |
| Manufacturer: | Type: | Style/Catalog No.: | Proposed Setting: |
| Manufacturer: | Type: | Style/Catalog No.: | Proposed Setting: |

**Current Transformer Data (If Applicable):**

(Enclose Copy of Manufacturer's Excitation and Ratio Correction Curves)

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection: _____

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection:_____

**Potential Transformer Data (If Applicable):**

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection:_____

Manufacturer:

Type: Accuracy Class: Proposed Ratio Connection:_____

**Limited Export and Non-Export Controls Information**

Manufacturer: _____

Model Number:_____

Limited Export or Non-Export? ___Limited Export ___Non-Export

Control Type: ___Reverse Power Protection ___Minimum Power Protection

____Relative Distributed Energy Resource Rating ____Configured Power Rating

____Power Control System

____Export Control using mutually agreed-upon means

____Directional Power Protection

Control Power Setting:_____
Control Power Time Delay (if any)_____
Power Control System Open-Loop Response Time: Maximum_____Average_____

When grid-connected, will the PCS employ any of the following? [Select all that apply]

☐ Unrestricted mode
☐ Export only mode
☐ Import only mode
☐ No exchange mode
☐ Export-limiting from all sources
☐ Export limiting from ESS
☐ Import limiting to ESS

**Battery Storage Facility Information (If Applicable)**

| | | |
|---|---|---|
| Do the batteries share an inverter with a renewable energy system? | ☐ Yes | ☐ No |
| Does the applicant intend to have the batteries charged by the distribution grid? | ☐ Yes | ☐ No |

System Manufacturer: _____

Model:_____

Battery System Charge/Discharge Rating (kW AC): _____

Maximum Battery System Charge/Discharge Rate (kW AC per second): _____

Battery Energy Capacity (kWh): _____

**Battery Operational Information**

Backup – allows for partial or whole home transition to off-grid during a grid outage ☐ Yes ☐ No

Solar Self-Powered – the battery will charge from the renewable energy source during normal operation and discharge to serve loads behind your meter ☐ Yes ☐ No

Solar Non-Export – limits the export of energy to the grid to zero for both the battery and solar inverter, even if the battery system is fully charged and there is excess renewable source energy ☐ Yes ☐ No

Time-Based Control (sometimes called time-of-use or TOU mode) – the battery charges during off-peak hours and discharges to serve onsite loads during on-peak hours. ☐ Yes ☐ No

Describe any other intended operation of the battery:_____

**Reference Point of Applicability (RPA) Designation**

Where is the desired RPA location? [Check one]

☐ Point of DER connection (PoC)
☐ Point of interconnection / point of common coupling (PCC)
☐ Another point between PoC and PCC
☐ Different RPAs for different DER units

Is the RPA location the same as above for detection of abnormal voltage, faults and open-phase conditions?

☐ Yes
☐ No (detection location must be denoted in the one-line diagram)

Why does this DER fit the chosen RPA? [Check all that apply]

☐ Zero-sequence continuity between PCC and PoC is maintained
☐ The DER aggregate Nameplate Rating is less than 500 kVA
☐ Annual average load demand is greater than 10% of the aggregate DER Nameplate Rating, and it is not capable of, or is prevented from, exporting more than 500 kVA for longer than 30 seconds.

**SECTION 4. GENERAL INFORMATION**

Enclose copy of site electrical one-line diagram showing the configuration of all Generating Facility equipment, Reference Point of Applicability, current and potential circuits, and protection and control schemes.

This one-line diagram must be signed and stamped by a licensed Professional Engineer if the Generating Facility is larger than 50 kW. Is One-Line Diagram Enclosed?
____Yes ____No

Enclose copy of any site documentation that indicates the precise physical location of the proposed Generating Facility (e.g., USGS topographic map or other diagram or documentation).

Proposed location of protective interface equipment on property (include address if different from the Interconnection Customer's address)

_____

Enclose copy of any site documentation that describes and details the operation of the protection and control schemes. Is Available Documentation Enclosed?
____Yes ____No

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable). Are Schematic Drawings Enclosed?
____Yes ____No

Enclose a copy of specification sheets for all applicable interface and control equipment, e.g., inverters, energy storage system, gateway, plant controller, automatic transfer switch and power control system.
Are specification sheets enclosed?
____Yes ____No

**"Interconnection Customer"** is the person or entity so defined in the first paragraph of this Agreement.
**"Interconnection Facilities"** means the Utility's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Common Coupling, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Utility's System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades.
**"Nameplate rating"** means the sum total of maximum rated power output of a DER's constituent generating units and/or ESS, as identified on the manufacturer's nameplate, regardless of whether it is limited by any approved means.
**"Point of Common Coupling"** means the point where the Interconnection Facilities connect with the Utility's System.
**"System"** means the facilities owned, controlled, or operated by the Utility that are used to provide electric service under a Utility's tariff.
**"System Emergency"** means a condition on the Utility's System that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.
**"Upgrade"** means the required additions and modifications to the Utility's System at or beyond the Point of Common Coupling. Upgrades do not include Interconnection Facilities.
**"Utility"** is the entity so defined in the first paragraph of this Agreement.

**III. GENERATING FACILITY DESCRIPTION**

A) A single-line diagram of the Generating Facility is attached to and made part of this Agreement as Appendix A. The single line diagram shows the general arrangement of how the Generating Facility is interconnected with the Utility's System and shows all major equipment, including visual isolation equipment, Point of Common Coupling, ownership of equipment and meter location(s).
B) A description of the Generating Facility is attached to and made a part of this Agreement as Appendix B. Appendix B is standard form that provides the engineering and operating information about the Generating Facility, including the Generating Facility's Nameplate Rating, Export Capacity and scheduled operational (on-line) date

. **IV. RESPONSIBILITIES OF THE PARTIES**

A) The Parties shall perform all obligations of this Agreement in accordance with all applicable laws and regulations.
B) The Interconnection Customer shall design, construct, operate and maintain the Generating Facility in accordance with the equipment manufacturers' recommended maintenance schedules, and applicable laws and regulations, including local building codes and other applicable ordinances.
C) Interconnection of the Generating Facility in no way effects the Utility's obligation to serve the Utility's customer at whose location the Generating Facility is sited pursuant to the tariffs applicable to the customer's class of service.
D) The cost of utility system modifications required pursuant to the Fast Track process or the full interconnection study process shall be borne by the interconnection customer unless otherwise agreed to by the parties or following a determination by the commission that some or all of the costs constitute system benefits eligible for cost-sharing options as described in Rule 17.9.568.15.
E) The Interconnection Customer shall grant to the Utility, at no expense to the Utility, all easements and rights-of-way necessary for the Utility to install, operate, maintain, replace, and remove the Utility's Interconnection Facilities and Upgrades, including, but not limited to, adequate and continuous access rights to property owned or controlled by the Interconnection Customer. If any part of the Interconnection Facilities or Upgrades is to be installed on property owned by any person who is not a party to this Agreement, the Interconnection Customer shall, at no expense to the Utility, obtain from the owner of the property all such necessary easements and rights-of-way for the Utility. The Utility has no obligation to commence procurement, installation or construction of the Utility's Interconnection Facilities or Upgrades until the Interconnection Customer has provided all documents the Utility deems necessary to enable the

Utility to obtain and record such easements and rights-of-way.

F) Upgrades:

a) The Utility shall design, construct, operate and maintain the Upgrades outlined in Appendix C in a good and workmanlike manner, and in accordance with standard design and engineering practices, and applicable laws and regulations, including local building codes and other applicable ordinances.

b) Once installed, the Upgrades shall be owned and operated by the Utility and all costs associated with the operating and maintenance of the Upgrades, after the Generating Facility is operational, shall be the responsibility of the Utility, unless otherwise agreed.

c) The Interconnection Customer grants permission for the Utility to begin construction and to procure the necessary facilities and equipment to complete the installation of the Upgrades, as outlined in Appendix C. The Interconnection Customer may, for any reason, cancel or modify the Generating Facility project, so that any or all of the Upgrades are not required to be installed. If for any reason, the Generating Facility project is canceled or modified, so that any or all of the Upgrades are not required, the Interconnection Customer shall be responsible for all costs incurred by the Utility, including, but not limited to the additional costs to remove and/or complete the installation of the Upgrades. The Interconnection Customer shall provide written notice to the Utility of cancellation or modification. Upon receipt of a cancellation or modification notice, the Utility shall take reasonable steps to minimize additional costs to the Interconnection Customer, where reasonably possible.

G) Payments:

1) The Interconnection Customer shall provide for the payment of its obligations under this Agreement in one of the following ways:

i. The Interconnection Customer may pay the Utility the costs identified in Appendix C at the time the Parties execute this Agreement; or

ii. The Interconnection Customer may pay the Utility in accordance with Section IV.G(2) if, at the time the Parties execute this Agreement, the Interconnection Customer provides reasonably adequate assurance of its creditworthiness to the Utility. Reasonably adequate assurance may be satisfied by evidence of the Interconnection Customer's creditworthiness, or a letter of credit in an amount sufficient to cover the costs identified in Appendix C, or a guaranty from another entity accompanied by evidence of that entity's creditworthiness.

2) If the Interconnection Customer provides for assurance of creditworthiness in accordance with Section IV.G(1)(ii), the Utility will invoice the Interconnection Customer monthly for all amounts expended and all amounts for which the Utility has become obligated since the execution of this Agreement or the prior monthly invoice. The Interconnection Customer will pay each such invoice within 20 days.

**V. TERM AND TERMINATION**

A) This Agreement becomes effective when the Interconnection Customer and the Utility have both signed this Agreement. The Agreement shall continue in full force and effect until the earliest date that one of the following events occurs:

1) The Parties agree in writing to terminate the Agreement;

2) The Interconnection Customer terminates this Agreement by written notice to the Utility prior to the completion of the final acceptance testing of the Generating Facility by the Utility;

3) The Utility terminates this Agreement after 30 days written notice to the Interconnection Customer if the Interconnection Customer has failed to comply with the payment or creditworthiness terms of Section IV.G and has not taken appropriate corrective action;

4) The Utility terminates this Agreement after three days written notice to the Interconnection Customer if the Interconnection Customer does not obtain and deliver the easements and rights-of-way described in Section IV.E to the Utility within 90 days of the Utility's request for such easements and rights-of-way;

5) Once the Generating Facility is operational, the Interconnection Customer terminates this Agreement after 30 days written notice to the Utility, unless otherwise agreed; or,

6) The Utility terminates this Agreement after 30 days written notice to the Interconnection Customer if the Interconnection Customer fails to:

i. take all corrective actions specified in the Utility's written notice that the Generating Facility is out of compliance with the terms of this Agreement within the time frame set forth in such notice, provided that the terms and timeframes stated by the Utility conform to this Agreement; or

ii. to complete construction of the Generating Facility within 24 months of the date of this Agreement or as otherwise agreed.

B) Upon termination of this Agreement the Utility may disconnected the Generating Facility from the Utility's System. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing, at the time of the termination.

**VI. OPERATIONAL ISSUES**

A) Costs: Each Party will, at its own cost and expense, operate, maintain, repair and inspect, and shall be fully responsible for, the facilities which it now or hereafter may own, unless otherwise specified.

B) Right of Access: At all times, the Utility's personnel shall have access to the disconnect switch of the Generating Facility for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement, to meet its obligation to operate the Utility safely and to provide service to its customers. If necessary for the purposes of this Agreement, the Interconnection Customer shall allow the Utility access to the Utility's equipment and facilities located on the premises.

C) Cooperation and Coordination: Both the Utility and the Interconnection Customer shall communicate and coordinate their operations, so that the normal operation of the Utility does not unduly effect or interfere with the normal operation of the Generating Facility and the Generating Facility does not unduly effect or interfere with the normal operation of the Utility. Under abnormal operations of either the Generating Facility or the Utility system, the responsible Party shall provide timely communication to the other Party to allow mitigation of any potentially negative effects of the abnormal operation of their system.

D) Disconnection of Unit: The Utility may disconnect the Generating Facility as reasonably necessary for the following reasons: termination of this Agreement; non-compliance with this Agreement; System Emergency, and routine maintenance, repairs and modifications to the Utility's System. When reasonably possible the Utility shall provide prior notice to the Interconnection Customer explaining the reason for the disconnection. If prior notice is not reasonably possible the Utility shall after the fact, provide information to the Interconnection Customer as to why the disconnection was required. The Utility shall expend reasonable effort to reconnect the Generating Facility in a timely manner and to mitigate damages and losses to the Interconnection Customer.

E) Modifications to the Generating Facility: The Interconnection Customer shall notify the Utility in writing of any proposed modifications to the Generating Facility that could affect the Utility's System, providing twenty (20) Business Days notice or as many days notice as is reasonably possible. The notice shall provide all information needed by the Utility as part of the review described in this paragraph. Modifications that could affect the Utility's System include any change affecting the Generating Facility's Rated Capacity or Export Capacity and any modification of

Interconnection Facilities, which include without limitation: protective systems, generation control systems, transfer switches/breakers, voltage transformers and current transformers. When reasonably possible the Interconnection Customer agrees not to make any material modifications to the Generating Facility until the Utility has approved the modifications, in writing, which approval shall not be unreasonably withheld. The Utility shall not take longer than ten (10) Business Days to review and respond to the proposed modifications after the receipt of the information required to review the modifications, and if the Utility fails to respond within ten (10) Business Days, the modification(s) shall be considered to be approved by the Utility. When it is not reasonably possible for the Interconnection Customer to provide prior written notice of modifications, the Interconnection Customer shall provide written notice to the Utility as soon as reasonably possible after the modifications have been made.

**VII. PERMITS AND APPROVALS:** The Interconnection Customer shall obtain all environmental and other permits lawfully required by governmental authorities prior to the construction of the Generating Facility. The Interconnection Customer shall also maintain these applicable permits and compliance with these permits during the term of this Agreement.

**VIII. INDEMNIFICATION AND LIMITATION OF LIABILITY**

A) The Interconnection Customer shall indemnify and hold harmless the Utility against all damages, expenses and other obligations to third parties attributable to the negligence, strict liability or intentional acts of the Interconnection Customer. The Utility shall indemnify and hold harmless the Interconnection Customer against all damages, expenses and other obligations to third parties attributable to the negligence, strict liability or intentional acts of the Utility. The terms "Utility" and "Interconnection Customer," for purposes of this indemnification provision, include their officers, directors, trustees, managers, members, employees, representatives, affiliates, successors and assigns.

B) Except in the event of acts of willful misconduct, each Party's liability to the other Party for failure to perform its obligations under this Agreement, shall be limited to the amount of direct damage actually incurred. Neither Party shall be liable to the other Party for any punitive, incidental, indirect, special, or consequential damages of any kind whatsoever, including for loss of business opportunity or profits, regardless of whether such damages were foreseen.

C) Notwithstanding any other provision in this Agreement, with respect to Utility's provision of electric service to any customer including the Interconnection Customer, the Utility's liability to such customer shall be limited as set forth in the Utility's tariffs and terms and conditions for electric service, and shall not be affected by the terms of this Agreement.

**IX. DISPUTE RESOLUTION**

A) Each party agrees to attempt to resolve all disputes arising hereunder promptly, equitably and in a good faith manner.

B) In the event of a dispute, either party shall provide the other party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute. The non-disputing party shall acknowledge the notice within three business days of its receipt and identify a representative with the authority to make decisions for the non-disputing party with respect to the dispute.

C) If the dispute has not been resolved in eight business days for timeline related disputes or 20 business days for all other disputes after the receipt of the notice, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or qualified technical expert(s)) to assist the parties in resolving their dispute. Each party will be responsible for one-half of any costs paid to neutral third-parties.

D) For any technical disputes, both parties shall have a qualified technical representative present in the attempts to resolve the dispute.

E) If the dispute remains unresolved after 30 business days, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.

**X. INSURANCE**

[*This Section shall either state that "the Interconnection Customer is not required to maintain insurance unless so ordered by the Commission for good cause upon the petition of a Utility" or, for Generating Facilities with Rated Capacity greater than 250 kW, the Utility may include the following provisions:*

*A) The Interconnection Customer shall maintain, during the term of the Agreement, general liability insurance from a qualified insurance agency with a B+ or better rating by "Best" and with a combined single limit of not more than one million dollars ($1,000,000). Such general liability insurance shall include coverage against claims for damages resulting from (i) bodily injury, including wrongful death; and (ii)*
*property damage arising out of the Interconnection Customer's ownership and/or operation of the Generating Facility under this Agreement.*

*B) The general liability insurance required by Section IX.A shall, by endorsement to the policy or policies, (a) include the Utility as an additional insured; (b) contain a severability of interest clause or cross-liability clause; (c) provide that the Utility shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium for such insurance; and (d) provide for thirty (30) calendar days written notice to the Utility prior to cancellation, termination, alteration, or material change of such insurance.*

*C) The Interconnection Customer shall furnish the insurance certificates and endorsements required by Sections IX.A and IX.B to the Utility prior to the initial operation of the Generating Facility. Thereafter, the Utility shall have the right to periodically inspect or obtain a copy of the original policy or policies of insurance.*

*D) The general liability insurance required by Section IX.A shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by the Utility.*

*E) The Interconnection Customer may elect to self-insure rather than complying with Sections IX.A through IX.D if:*

*1) The Interconnection Customer provides to the Utility, at least thirty (30) days prior to the date of initial operation, a plan reasonably acceptable to the Utility to self-insure to a level of coverage equivalent to that required under Section IX.A; and,*

*2) The Interconnection Customer agrees to immediately obtain the coverage required under Section IX.A if the Interconnection Customer fails to comply with its self-insurance plan. F) Failure of the Interconnection Customer or Utility to enforce the minimum levels of insurance does not relieve the Interconnection Customer from maintaining such levels of insurance or relieve the Interconnection Customer of any liability.*

*G) All insurance certificates, statements of self-insurance, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following address:*

*[Utility]*
*Attention: Manager of Generation Insurance*

_____]

**XI. MISCELLANEOUS**

A) Force Majeure: Force majeure shall mean any cause beyond the control of the Party affected, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, [labor dispute, ] labor or material shortage, sabotage, restraint by court order or public authority, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence, it shall be unable to overcome. If either Party, because of force majeure, is rendered wholly or partly unable to perform its obligations under this Agreement, except for the obligation to make payments of money, that Party shall be excused from whatever performance is affected by the force majeure to the extent so affected, provided that:

1) the nonperforming Party, within a reasonable time after the occurrence of the force majeure, gives the other Party written notice describing the particulars of the occurrence;

2) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure; and

3) the nonperforming Party uses its best efforts to remedy its inability to perform. [This subparagraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party involved in the disputes.]

B) Notices: Any written notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person, sent by first class mail with postage prepaid, or sent by electronic mail as specified below:

1) To the Utility:

_____

_____

_____

Email:

_____

2) To the Interconnection Customer:

_____

_____

_____

Email:

_____

2) A Party may change its address for notices at any time by providing the other Party written notice of the change, in accordance with this Section.

3) The Parties may also designate operating representatives to conduct the daily communications, which may be necessary or convenient for the administration of this Agreement. Such designations, including names, addresses, phone numbers and electronic mail addresses may be communicated or revised by one Party's notice to the other Party.

C) Assignment: The Interconnection Customer shall not assign its rights nor delegate its duties under this Agreement without the Utility's written consent. Any assignment or delegation the Interconnection Customer makes without the Utility's written consent shall not be valid. The Utility shall not unreasonably withhold its consent to the Generating Entities assignment of this Agreement.

D) Non-waiver: None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

E) Governing Law and Inclusion of Utility's Tariffs and Rules:

1) This Agreement shall be interpreted, governed and construed under the laws of the State of New Mexico as if executed and to be performed wholly within the State of New Mexico without giving effect to choice of law provisions that might apply to the law of a different jurisdiction.

2) The interconnection and services provided under this Agreement shall at all times be subject to the terms and conditions set forth in the tariff schedules and Commission rules applicable to the electric service provided by the Utility, which tariff schedules and Commission rules are hereby incorporated into this Agreement by this reference.

3) Notwithstanding any other provisions of this Agreement, the Utility shall have the right to unilaterally file with the Commission, pursuant to the Commission's rules and regulations, an application for change in rates, charges, classification, service, tariff or rule or any agreement relating thereto.

F) Amendment and Modification: This Agreement can only be amended or modified by a writing signed by both Parties.

G) Entire Agreement: This Agreement, including its Appendices, constitutes the entire Agreement between the Parties with regard to the interconnection of the Generating Facility of the Parties at the Point(s) of Common Coupling expressly provided for in this Agreement and supersedes all prior agreements or understandings, whether verbal or written. It is expressly acknowledged that the Parties may have other agreements covering other services not expressly provided for herein, which agreements are unaffected by this Agreement. Each Party also represents that in entering into this Agreement, it has not relied on the promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement or in the incorporated attachments and appendices.

H) Confidential Information: Except as otherwise agreed or provided herein, each Party shall hold in confidence and shall not disclose confidential information, to any person (except employees, officers, representatives and agents, who agree to be bound by this section). Confidential information shall be clearly marked as such on each page or otherwise affirmatively identified. If a court, government agency or entity with the right, power, and authority to do so, requests or requires either Party, by subpoena, oral disposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose confidential information, that Party shall provide the other Party with prompt notice of such request(s) or requirements(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. In the absence of a protective order or waiver the Party shall disclose such confidential information which, in the opinion of its counsel, the party is legally compelled to disclose. Each Party will use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any confidential information so furnished.

I) Non-warranty: Neither by inspection, if any, or non-rejection, nor in any other way, does the Utility give any warranty, expressed or implied, as to the adequacy, safety, or other characteristics of any structures, equipment, wires, appliances or devices owned, installed or maintained by the Interconnection Customer or leased by the Interconnection Customer from third parties, including without limitation the Generating Facility and any structures, equipment, wires, appliances or devices appurtenant thereto.

J) No Partnership: This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

**XII. SIGNATURES**

IN WITNESS WHEREOF, the Parties hereto have caused two originals of this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

Interconnection Customer

By:

_____

Name:

_____

Title:

_____

Date:

_____

Utility

By:

_____

Name:

_____

Title:

_____

Date:

_____

###

1575659.2

## PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**
**CHAPTER 9 ELECTRIC SERVICES**
**PART 574 APPLICATIONS TO EXPAND TRANSPORTATION ELECTRIFICATION**

**17.9.574.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.
[17.9.574.1 NMAC - N, 2/14/2023]

**17.9.574.2 SCOPE:** This rule applies to all investor-owned electric utilities under the commission's jurisdiction.
[17.9.574.2 NMAC N, 2/14/2023]

**17.9.574.3 STATUTORY AUTHORITY:** Paragraph (10) of Subsection B of Section 62-19-9 NMSA 1978 and Section 62-8-12 NMSA 1978.
[17.9.574.5 NMAC - N, 2/14/2023]

**17.9.574.4 DURATION:** Permanent.
[17.9.574.6 NMAC - N, 2/14/2023]

**17.9.574.5 EFFECTIVE DATE:** February 14, 2023, unless a later date is cited at the end of a section.
[17.9.574.7 NMAC - N, 2/14/2023]

**17.9.574.6 OBJECTIVE:** The purpose of this rule is to implement Section 62-8-12 NMSA 1978, applications to expand transportation electrification, and to bring to New Mexico the economic development and environmental benefits of expanded electrification of the State's transportation modalities and transportation infrastructure.
[17.9.574.8 NMAC - N, 2/14/2023]

**17.9.574.7 DEFINITIONS:** Unless otherwise specified, as used in this rule:

**A. Definitions beginning with "A": [RESERVED]**

**B. Definitions beginning with "B": [RESERVED]**

**C. Definitions beginning with "C": "charging station"** means any publicly available infrastructure that delivers electricity from a source outside an electric vehicle into one or more electric vehicles.

**D. Definitions beginning with "D": [RESERVED]**

**E. Definitions beginning with "E": "electric vehicle"** or **"EV"** means a passenger automobile, truck, bus, train, boat, or other equipment that transports goods or people that is powered in part or in whole by the use of electricity from external sources.

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

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

**H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": "investment"** means utility incurred expenditures on an asset, on a program or a project, or on research and development, associated with the expansion and facilitation of transportation electrification.

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

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

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

**M. Definitions beginning with "M": "measure"** means an investment, incentive, program, rate design, or expenditure in a transportation electrification plan that is reasonably expected to achieve the goals of Section 62-8-12 NMSA 1978.

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

**O. Definitions beginning with "O":**

**(1) "off-peak hours"** means hours not included in the on-peak period as set forth in a public utility's commission approved tariff;

**(2) "on-peak hours"** means hours included in the on-peak period as set forth in a public utility's commission approved tariff.

**P. Definitions beginning with "P":**

**(1) "planning horizon"** means the two calendar years immediately following the plan years;

**(2) "plan years"** means the three calendar years for which TEP approval is sought;

**(3) "public utility"** or **"utility"** means an investor-owned electric utility certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act and does not include rural electric cooperatives or municipalities.

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

**R. Definitions beginning with "R": [RESERVED]**

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

**T. Definitions beginning with "T": "transportation electrification plan**" or **"TEP"** means a plan to expand transportation electrification in a utility's service territory over the three plan years, which additionally contains the informational outlook for the planning horizon.

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

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

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

**Z. Definitions beginning with "Z": [RESERVED]**
[17.9.574.9 NMAC - N, 2/14/2023]

**17.9.574.8 IMPACT ON OTHER RULES:** Except as specifically provided herein, this rule does not supersede any other rule of the commission but is to be construed as a supplement to such rules.
[17.9.574.8 NMAC - N, 2/14/2023]

**17.9.574.9 SEVERABILITY:** If any part or application of this rule is held invalid, the remainder of its application shall not be affected.
[17.9.574.9 NMAC - N, 2/14/2023]

**17.9.574.10 LIBERAL CONSTRUCTION:** This rule shall be liberally construed to carry out its intended purposes.
[17.9.574.10 NMAC - N, 2/14/2023]

**17.9.574.11 APPLICATIONS TO EXPAND TRANSPORTATION ELECTRIFICATION:**

**A.** In accordance with the filing schedule provided in 17.9.574.12 NMAC, a public utility shall file with the commission an application for approval of a proposed three-year plan to expand transportation electrification in the utility's service area. The three-year plan may include planned investments, incentives, programs, rate designs, and expenditures that are reasonably expected to achieve the goals of Section 62-8-12 NMSA 1978 during the plan years.

**B.** A public utility's proposed three-year plan shall include, at minimum:

**(1)** strategies and measures for expanding transportation electrification among low-income customers and underserved communities, including but not limited to:

**(a)** a percentage budgetary carveout for measures aimed at increasing EV awareness and adoption among low-income customers and in underserved communities;

**(b)** outreach and marketing strategies and measures for expanding transportation electrification among low-income customers and in underserved communities; and

**(c)** strategies and measures for mass transit operations, ride-sharing programs, and multi-family dwelling units in the utility's service area that serve low-income customers and underserved communities;

**(2)** strategies and measures for expanding transportation electrification across multiple EV classes, including but not limited to personal and commercial light-duty, medium-duty, and heavy-duty EVs, and electric bicycles;

**(3)** expected customer participation estimates and the methods used to derive such estimates;

**(4)** strategies and measures for servicing multiple market segments, including but not limited to commercial businesses, multi-family dwelling units, single-family homes, and ride-sharing and public transit programs;

**(5)** strategies and measures for coordinating with State or federal EV infrastructure planning;

**(6)** strategies and measures for coordinating with existing business locations that sell and dispense transportation fuel to the public; and

**(7)** identification of key performance indicators for program success and how these indicators are utilized to further the success of the program.

**C.** Strategies and measures for low-income customers shall permit self-certification of eligibility and shall be provided with public-facing materials in English and Spanish, and any incentives shall be made available prior to or at the time of purchase.

**D.** In addition to the proposed three-year plan, the TEP shall include a planning outlook addressing the two-year period beyond the three-year plan. The two-year planning outlook shall be presented for informational purposes to inform the commission of the utility's vision for the transportation electrification sector during the planning horizon. Planning outlooks shall include:

**(1)** the public utility's outlook for projected transportation electrification in its service territory, including estimates of the expected numbers of EVs operating in its service territory, listed by light-duty, medium-duty, and heavy-duty EV classes;

**(2)** expected lead times for coordinating with State and federal EV infrastructure planning, EV charging station operators, existing business locations that sell and dispense transportation fuel to the public, and other stakeholders, and for planned construction or planned deployments, including estimated or expected new or upgraded infrastructure needs;

**(3)** anticipated requests for regulatory approvals to effectuate a future TEP in the planning horizon, to carry out the three-year plan, to support the transition between TEPs, and to coordinate with State or federal EV infrastructure planning;

**(4)** planned or potential integration with neighboring public utility transportation electrification planning and possible strategies for coordinating with rural electric cooperatives, tribes, and pueblos, if any;

**(5)** anticipated grid management requirements and projected peak load requirements to reliably accommodate expanded transportation electrification in the public utility's service territory, and how these requirements may be reduced by improved distribution planning, rate design, or other solutions;

**(6)** forecasted potential for meeting new load growth associated with EV charging infrastructure with renewable energy; and

**(7)** any expected or potential policy or statutory issues that could impact expanded infrastructure or network upgrades required by expanded transportation electrification in the public utility's service territory.

**E.** The application shall include:

**(1)** testimony and exhibits providing a full explanation of the public utility's determination of the plan years' transportation electrification expansion measures to be undertaken and their corresponding budgets;

**(2)** the costs of transportation electrification measures in the plan years;

**(3)** whether the public utility intends to recover costs through a tariff rider, base rates, or both;

**(4)** testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this Subsection were determined;

**(5)** testimony demonstrating that the proposed transportation electrification plan is reasonably and prudently designed and expected to accomplish any or all of the goals of the TEP pursuant to Paragraphs (1) through (6) of Subsection B of Section 62-8-12 NMSA 1978 and 17.9.574 NMAC.

[17.9.574.12 NMAC - N, 2/14/2023]

**17.9.574.12 APPLICATION FILING, SERVICE, AND REVIEW:**

**A.** Public service company of New Mexico shall file its application by June 1, 2023, and every three years thereafter following by the same date. El paso electric company shall file its application by July 1, 2023, and every three years thereafter following by the same date. Southwestern public service company shall file its application by April 1, 2024, and every three years thereafter following by the same date.

**B.** A public utility shall electronically file and serve its application pursuant to 1.2.2 NMAC. A public utility shall electronically serve a copy of its application on intervenors in the public utility's most recent TEP docket, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. The public utility shall also post on its website its most recently approved TEP and any proposed TEP pending before the commission.

**C.** The commission shall complete its review and approval of a public utility's TEP application pursuant to 17.9.574.11 NMAC no later than six months after filing of the application, 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.

**D.** The commission's final order on a public utility's TEP application shall address the utility's proposed cost recovery for TEP costs.

[17.9.574.13 NMAC - N, 2/14/2023]

**17.9.574.13 ANNUAL PROGRESS REPORT:**

**A.** Each public utility shall file an annual progress report of its progress in meeting the requirements and goals of its TEP. Public service company of New Mexico shall file its first annual progress report by June 1, 2024, and shall file annually thereafter by June 1st. El paso electric company shall file its first annual progress report by July 1, 2024, and shall file annually thereafter by July 1st. Southwestern public service company shall file its first annual progress report by April 1, 2025, and shall file annually thereafter by April 1st.

**B.** In addition to any service territory specific reporting requirements carried over from a public utility's previously approved transportation electrification plan, the annual progress report shall include for a utility's service territory:

**(1)** an estimate of EV adoption, including estimated changes in EV adoption since the utility's most recently approved TEP;

**(2)** an estimate of the number and type of TEP-funded EV charging stations and ports and an estimate of required maintenance, frequency of repairs, and station outages;

**(3)** the number of participants in TEP programs, including:

**(a)** estimated low-income customer participation; and

**(b)** participation by customer rate class.

**(4)** an estimate of usage or of the amount of energy sold to program participants during off-peak and on-peak hours, as well as the change in usage since the last annual progress report;

**(5)** TEP spending by measure;

**(6)** estimated electricity consumption by participating EV charging stations in kWh;

**(7)** estimated load from incentivized EV charging infrastructure in kW;

**(8)** geographical distribution of participants and infrastructure investments;

**(9)** descriptions of average load data and load profiles of TEP programs;

**(10)** a listing and summary of all customer outreach activities, the cost of those activities, an estimate of the number of customers reached, and an assessment of the effectiveness of each activity; and

**(11)** readily available data that may inform future measures to help better understand the impact of EV charging on the electric grid.

[17.9.574.14 NMAC - N, 2/14/2023]

**17.9.574.14 BUDGET FLEXIBILITY:**

**A.** A public utility shall be granted budget flexibility between programs in its TEP to shift up to twenty percent of a program's budget to another program.

**(1)** Inter-program budget flexibility may not be used to shift funding from a dedicated low-income program to:

**(a)** a program for standard customers; or

**(b)** any customer outreach and education program.

**(2)** Inter-program budget flexibility between different low-income programs, or into low-income programs from other programs, including low-income programs, is permissible.

**B.** Should a public utility exceed ninety percent of its allocated spending for a program in its current TEP at any point during the plan period, the utility is authorized to exceed that program's original budget

by up to ten percent to supplement funding for that program. This budget flexibility mechanism does not apply to:

**(1)** a pilot program with participation caps;

**(2)** a program for which that program's budget was reduced pursuant to Subsection A of 17.9.574.14 NMAC; or

**(3)** any customer outreach and education program.

**C.** A public utility may request additional budget flexibility funding in its TEP application or at any other time after approval of its current TEP.

**D.** The commission reserves the authority to stipulate additional circumstances when budget flexibility shall not be applicable.

[17.9.574.14 NMAC - N, 2/14/2023]

**17.9.574.15 EXEMPTION AND VARIANCE:**

**A.** The commission, upon its own motion, may issue, or any interested person, may file an application for, an exemption or a variance from the requirements of this rule.

**B.** An exemption or variance motion or application shall:

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

**(2)** describe the situation that necessitates the exemption or variance;

**(3)** set out the effect of complying with this rule on the public utility and its customers if the exemption or variance is not granted;

**(4)** define the result the request will have if granted;

**(5)** state how the exemption or variance will be consistent with the purposes of this rule;

**(6)** state why no other reasonable alternative is preferable; and

**(7)** state why the proposed alternative is in the public interest.

[17.9.574.15 NMAC - N, 2/14/2023]

**HISTORY of 17.9.574 NMAC: [RESERVED]**

## TRANSPORTATION, DEPARTMENT OF

**This is an amendment to 18.11.10 NMAC, Section 7, 8, 9, 11, 14, effective 2/14/2023.**

**18.11.10.7 DEFINITIONS:**

**[~~A. "Aircraft"~~** ~~means airplane.~~

**~~B. "Air carrier"~~** ~~has the same meaning as defined in 49 U.S.C §40102 (a) (2).~~

**~~C. "Department"~~** ~~has the same meaning as defined in Section 64-1-12.D NMSA 1978 (2020).~~

**~~D. "Director"~~** ~~has the same meaning as defined in Section 64-1-12.F NMSA 1978 (2020).~~

**~~E. "Division"~~** ~~has the same meaning as defined in Section 64-1-12.E NMSA 1978 (2020).~~

**~~F. "Eligible recipient"~~** ~~means a municipality or county located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision and have a minimum population of twenty thousand persons residing within a fifty-mile radius of the airport.~~

**~~G. "Enhancement Grant"~~** ~~means an award of financial assistance of rural air service enhancement funds to an eligible entity. Individual grants shall not exceed one million two hundred fifty thousand dollars ($1,250,000) per year for municipalities or counties with existing scheduled air service; or exceed one million seven hundred fifty thousand dollars ($1,750,000) per year for municipalities or counties not served by existing scheduled air service.~~

**~~H. "Grant" or "grant award"~~** ~~means an award of financial assistance though the rural air service enhancement program.~~

**~~I. "Grant Agreement"~~** ~~means a legal instrument of financial assistance between the division and an eligible recipient. "Grant agreement" and "agreement" are used interchangeably.~~

**~~J. "Grantee" or "grant recipient"~~** ~~means the direct recipient of a grant award. The grantee is legally accountable to the department for the use of grant funds and is bound by the provisions and terms and conditions of the grant agreement. The grantee is responsible for ensuring that the selected air carrier carrying out activities under the award comply with the provisions and terms and conditions of the grant agreement.~~

**~~K. "Grant term"~~** ~~means the timeframe for the use of the grant award as set forth in the grant award agreement. Grant awards shall cover a timeframe of at least two years.~~

**~~L. "In-kind contribution"~~** ~~means any non-monetary contribution. Goods or services offered free or at less than the usual charge are considered in an in-kind contribution. Similarly, when a person or entity pays for services on the committee's behalf, the payment is an in-kind contribution.~~

**~~M. "Minimum level of airline service"~~** ~~means:~~

**~~(1)~~** ~~service for one or more New Mexico municipalities or counties to one or more airports by a reliable airline;~~

**~~(2)~~** ~~flights that are at reasonable times considering the needs of passengers and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places; and~~

**~~(3)~~** ~~operated by pilots that meet the minimum requirements of the federal aviation administration based on the type of service provided.~~

**~~N. "Licensed by the state"~~** ~~for purposes of the Rural Air Service Enhancement Act means a common carrier who has obtained from the United States department~~

~~of transportation economic authority from the office of the secretary of transportation in the form of a certificate for interstate or foreign passenger and a safety authority in the form of an air carrier certificate and operations specifications from the federal aviation administration.~~

~~**O. "Passenger"** has the same meaning as defined in Section 64-1-12.C NMSA 1978 (2020).~~

~~**P. "Pilot"** means any person including a co-pilot participating in the operation of an aircraft while it is in flight.~~

~~**Q. "Scheduled air service or "scheduled operation"** means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier for which the air carrier or its representatives offers in advance the departure location, departure time, and arrival location.~~]

**A. Definitions beginning with "A":**

**(1) "Aircraft"** means airplane.

**(2) "Air carrier"** has the same meaning as defined in 49 U.S.C §40102 (a) (2).

**(3) "Air route"** means any scheduled operation or public charter.

**B. Definitions beginning with "B": [RESERVED]**

**C. Definitions beginning with "C": "Charter flight"** means a flight operated under the terms of a charter contract between a direct air carrier and the carrier's customer.

**D. Definitions beginning with "D":**

**(1) "Department"** has the same meaning as defined in Subsection D of Section 64-1-12 NMSA 1978 (2020).

**(2) "Director"** has the same meaning as defined in Subsection F of Section 64-1-12 NMSA 1978 (2020).

**(3) "Division"** has the same meaning as defined in Subsection E of Section 64-1-12 NMSA 1978 (2020).

**E. Definitions beginning with "E":**

**(1) "Eligible recipient"** means a municipality or county located within the state of New Mexico who owns and operates an airport which is located either within its jurisdiction or the jurisdiction of any other political subdivision and have a minimum population of twenty thousand persons residing within a fifty-mile radius of the airport.

**(2) "Enhancement grant"** means an award of financial assistance of rural air service enhancement funds to an eligible entity. Individual grants shall not exceed two million two hundred fifty thousand dollars ($2,250,000) per year for municipalities or counties with existing scheduled air service; or exceed two million seven hundred fifty thousand dollars ($2,750,000) per year for municipalities or counties not served by existing scheduled air service.

**(3) "Expanded air route"** means an air route served by the rural air service enhancement grant program that expands passenger capacity or the number of scheduled operations or public charter flights from what was served at the time a grant was made.

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

**G. Definitions beginning with "G":**

**(1) "Grant" or "grant award"** means an award of financial assistance though the rural air service enhancement program.

**(2) "Grant Agreement"** means a legal instrument of financial assistance between the division and an eligible recipient. "Grant agreement" and "agreement" are used interchangeably.

**(3) "Grantee" or "grant recipient"** means the direct recipient of a grant award. The grantee is legally accountable to the department for the use of grant funds and is bound by the provisions and terms and conditions of the grant agreement. The grantee is responsible for ensuring that the selected air carrier carrying out activities under the award comply with the provisions and terms and conditions of the grant agreement.

**(4) "Grant term"** means the timeframe for the use of the grant award as set forth in the grant award agreement. Grant awards shall cover a timeframe of at least two years.

**H. Definitions beginning with "H": [RESERVED]**

**I. Definitions beginning with "I": "In-kind contribution"** means any non-monetary contribution. Goods or services offered free or at less than the usual charge are considered in an in-kind contribution. Similarly, when a person or entity pays for services on the committee's behalf, the payment is an in-kind contribution.

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

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

**L. Definitions beginning with "L": "Licensed by the state"** for purposes of the Rural Air Service Enhancement Act means a common carrier who has obtained from the United States department of transportation economic authority from the office of the secretary of transportation in the form of a certificate for interstate or foreign passenger and a safety authority in the form of an air carrier certificate and operations specifications from the federal aviation administration.

**M. Definitions beginning with "M":**

**(1) "Minimum level of airline service"** means:

**(a)** service for one or more New Mexico municipalities or counties to one or more airports by a reliable airline;

**(b)** flights that are at reasonable times considering the needs of passengers and at prices that are not excessive compared to the generally prevailing prices of other air carriers for like service between similar places; and

**(c)** operated by pilots that meet the minimum requirements of the federal

aviation administration based on the type of service provided.

**(2) "Minimum revenue guarantee"** means the amount of money guaranteed by a municipality or county to be earned by an airline providing scheduled air services to and from that municipality or county, which is the difference between the minimum flight charge revenue specified in the contract between the municipality or county and the airline and the amount of actual flight charge revenue received by the airline that is less than the contractual amount.

**N. Definitions beginning with "N": "New air route"** means an air route to be served by the rural air service enhancement grant program that was not served prior to January 1, 2021.

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

**P. Definitions beginning with "P":**

**(1) "Passenger"** has the same meaning as defined in Subsection C of Section 64-1-12 NMSA 1978 (2020).

**(2) "Pilot"** means any person including a co-pilot participating in the operation of an aircraft while it is in flight.

**(3) "Public charter"** means a one-way or round-trip charter flight to be performed by one or more direct air carriers that is arranged and sponsored by a charter operator.

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

**R. Definitions beginning with "R": [RESERVED]**

**S. Definitions beginning with "S": Scheduled air service or "scheduled operation"** means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier for which the air carrier or its representatives offers in advance the departure location, departure time, and arrival location.

**T. Definitions beginning with "T": [RESERVED]**

**U. Definitions beginning with "U": [RESERVED]**

**V. Definitions beginning with "V": [RESERVED]**

**W. Definitions beginning with "W": [RESERVED]**

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

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

**Z. Definitions beginning with "Z": [RESERVED]**

[18.11.10.7 NMAC - N, 10/26/2021, A, 2/14/2023]

**18.11.10.8 ELIGIBILITY FOR ASSISTANCE:** Applicants shall meet the following minimum criteria to be eligible for a grant:

**A.** The municipality or county shall have a minimum population of 20,000 persons residing within a 50-mile radius of the airport unless the municipality or county has existing scheduled air service;

**B.** The aircraft to be used to service proposed new air routes served by the rural air service enhancement grant program shall have a passenger capacity of not more than [~~nine~~] 30 persons;

**C.** The route or routes to be served by the program shall be a new air route or routes that were not served at the time the grant was made; and

**D.** The selected air carrier must be licensed by the state.

[18.11.10.8 NMAC - N, 10/26/2021, A, 2/14/2023]

**18.11.10.9 AIR CARRIER PROCUREMENT REQUIREMENTS:**

**A.** In selecting an air carrier, an eligible recipient must comply with:

**(1)** the requirements of the New Mexico Procurement Code, Sections 13-1-28 to13-1-199 NMSA 1978, as amended, or

**(2)** if exempted from complying with the Procurement Code pursuant to Section 13-1-98K, their own purchasing ordinances. Such an eligible recipient must provide a copy of those ordinances to the division.

**(3)** Applicants will be required to provide proof of compliance with the New Mexico Procurement Code or its own purchasing ordinances if exempted from complying with the Procurement Code.

**(4)** An eligible entity must award a contract only to an air carrier who is licensed by the state.

**B.** The division may make available to eligible recipients upon request suggested forms and documents for use in the procurement of the airline services.

**C.** At a minimum an eligible entity should consider including the following in its solicitation:

**(1)** a description of the airport or airports that will serve the proposed new scheduled air service or expanded air route;

**(2)** an estimate of the demand for the proposed new scheduled air service routes;

**(3)** a description of any existing air service, including the carrier(s) providing the service, service frequency, direct and connecting destinations offered, available fares, and equipment types;

**(4)** a description of the requested service options for proposed air service routes or a description of the proposed new air routes or expanded air routes to serve the applicant;

**(5)** a justification for the new proposed scheduled air service routes;

**(6)** a commitment from the selected air carrier that if a grant is awarded to the municipality or county the air carrier will enter into a written operating agreement with the eligible recipient to provide the air service described;

**(7)** a draft operating agreement;

**(8)** a requirement that the air carrier discuss its requested revenue guarantee as well as supporting data for the request, such as traffic assumptions, revenue forecasts, estimated operating costs and potential route profitability.

**(9)** a requirement that the air carrier provide a description of the aircraft to be used on the new scheduled air service route(s);

**(10)** a description by the air carrier of its demonstrated reliability in providing scheduled air service;

**(11)** disclosure on the part of the air carrier of the existence of interline agreements that the air service provider has made with larger carriers to allow passengers and cargo of the air service provider at the hub airport to be transported by the larger carrier(s) through one reservation, ticket, and baggage check in.

[18.11.10.9 - N, 10/26/2021 A, 2/14/2023]

**18.11.10.11 APPLICATION FOR GRANT:**

**A.** In any fiscal year in which funds will be available for distribution from the rural service enhancement fund the director will request applications from eligible recipients interested in receiving a rural air service enhancement grant.

**B.** Two or more communities may enter into a shared or common services arrangements, memorandum of understanding, intergovernmental agreement, joint powers agreements, or other similar agreement to provide air service over a linear route, e.g., community A to community B. The applicant shall submit a fully executed letter of intent together with its application defining the respective responsibilities of the communities in implementing the project and to define the requirements, terms, conditions, type of funds, and considerations attendant upon each party to the agreement. If awarded a grant, prior to the disbursement of any funds by the division, the communities shall execute the agreement in a manner provided by law for entering into binding contractual agreements. Two or more communities entering into such an agreement need to make their own determination of the legality of such a relationship and the form and the content of the agreement.

**C.** Eligible recipients shall submit a single application to the division in a format provided by the division. An applicant shall comply with deadlines and guidelines published by the director. The director shall reject any application that is not submitted by the deadline. Each applicant is solely responsible for soliciting, reviewing and selecting an air carrier for inclusion in the application.

**D.** A grant application shall include the items listed in Section 64-6-4 NMSA, 1978.

[18.11.10.11 NMAC - N, 10/26/2021 A, 2/14/2023]

**18.11.10.14 APPROVAL OF GRANT**:

**A.** If the division approves an application for a grant, the recipient of the grant must enter into an agreement with the division. The agreement must specify:

**(1)** The amount of the grant;

**(2)** The amount of the matching funds from the eligible recipient. Minimum matching funds shall not be less than:

**(a)** ten percent if the eligible recipient has no existing scheduled air service at the time of application; and

**(b)** [~~fifty~~] twenty percent if the eligible recipient has existing scheduled air service at the time of application. In-kind contributions may not be used in satisfying the required minimum matching funds.

**(3)** the proper use of the money obtained from the grant;

**(4)** the date on which the division approved the grant;

**(5)** the specific indicators of performance by which the division and the recipient of the grant will measure the progress of the project;

**(6)** the projected estimates of costs;

**(7)** a requirement that the recipient of the grant report to the division on an annual basis.

**B.** If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed.

[18.11.10.14 NMAC - N, 10/26/2021 A, 2/14/2023]

## End of Adopted Rules

## Other Material Related to Administrative Law

### GOVERNOR, OFFICE OF THE

**EXECUTIVE ORDER 2023-017**

**RENEWING THE STATE OF PUBLIC HEALTH EMERGENCY INITIALLY DECLARED IN EXECUTIVE ORDER 2020-004, OTHER POWERS INVOKED IN THAT ORDER, AND ALL OTHER ORDERS AND DIRECTIVES CONTAINED IN EXECUTIVE ORDERS TIED TO THE ONGOING PUBLIC HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization ("WHO"). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as "COVID-19."

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of January 5, 2023, the Centers for Disease Control and Prevention ("CDC") reported over 102.4 million people have been infected in the United States, with over 1,106,000 related deaths, and the New Mexico Department of Health has reported 665,237 positive COVID-19 cases and 8,958 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states subsequently declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. The Governor has been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State's response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby **ORDER** and **DIRECT**:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-012, 2021-023, 2021-030, 2021-044, 2021-049, 2021-054, 2021-058, 2021-061, 2021-067, 2022-004, 2022-007, 2022-012, 2022-016, 2022-024, 2022-067, 2022-109, 2022-115, 2022-120, 2022-131, 2022-147, 2022-149, 2022-165, and 2023-001 shall be renewed and extended through March 3, 2023.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. Unless previously rescinded, all other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Order 2020-020.

4. This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect immediately, and shall remain in effect until March 3, 2023, unless renewed, modified, or rescinded.

**ATTEST:**
**DONE AT THE EXECUTIVE OFFICE THIS 3RD DAY OF FEBRUARY 2023**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**
**/ S /**
**MAGGIE TOULOUSE OLIVER**
**SECRETARY OF STATE**
**/ S /**
**MICHELLE LUJAN GRISHAM**
**GOVERNOR**

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

# 2023 New Mexico Register

## Submittal Deadlines and Publication Dates

## Volume XXXIV, Issues 1-24

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| Issue 1 | January 5 | January 18 |
| Issue 2 | January 19 | January 31 |
| Issue 3 | February 2 | February 14 |
| Issue 4 | February 16 | February 28 |
| Issue 5 | March 2 | March 14 |
| Issue 6 | March 16 | March 28 |
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