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New Mexico Register

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

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The New Mexico Register

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New Mexico Register

Volume XXXIV, Issue 4

February 28, 2023

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Notices of Rulemaking and Proposed Rules

REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

NOTICE OF PROPOSED RULEMAKING AND RULE HEARING

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, and via Microsoft Teams, please use the following link:

Microsoft Teams Meeting
https://teams.microsoft.com/registration/9GuqBDbUb0K_pAS3pw5g_w,UY0BuTGxyUCMAYc-bx5gGg,s_4k-_Yqk6FkGpHv0sgOw,MOKytC68PEK-P29IZVQsHA,0-FyIIgMR0eB8R3EuAT2Cw,v7qwV6dsHkaX-OcbGq4BIA?mode=read&tenantId=04aa6bf4-d436-426f-bfa4-04b7a70e60ff&webinarRing=gcc

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 28th, 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 28th, 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-%20laws-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 needs 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 or 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 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 INVESTIGATIONSE 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 investigating in another state; the investigator is prohibited from soliciting business in New Mexico and from establishing a business or setting up a residence while investigating 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.

**SUPERINTENDENT OF
INSURANCE, OFFICE
OF**

The Office of Superintendent of Insurance (OSI) is providing notice to terminate the public rule hearing scheduled for March 29, 2023, at 10:00 a.m., in accordance with Subsection C of Section 14-4-5 NMSA 1978. The proposed rule, which would have repealed 13.10.22.8 NMAC – ACCESS TO HEALTH CARE SERVICES and added 13.10.38 NMAC – NETWORK ADEQUACY, is being terminated and may be promulgated at a later date.

**End of Notices of
Rulemaking and
Proposed Rules**

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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.

PUBLIC REGULATION COMMISSION

The New Mexico Public Regulation Commission, approved at its 12/7/2022 open meeting, and affirmed at its 1/25/2023 open meeting, to repeal its rule 17.9.572 NMAC - Renewable Energy for Electric Utilities (filed 4/21/2021) and replace it with 17.9.572 NMAC - Renewable Energy for Electric Utilities, effective 2/28/2023.

PUBLIC REGULATION COMMISSION

TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 572 RENEWABLE ENERGY FOR ELECTRIC UTILITIES

17.9.572.1 ISSUING AGENCY: New Mexico Public Regulation Commission.
 [17.9.572.1 NMAC - Rp, 17.9.572.1 NMAC, 2/28/2023]

17.9.572.2 SCOPE: This rule applies to all electric investor-owned public utilities under the commission’s jurisdiction.
 [17.9.572.2 NMAC - Rp, 17.9.572.2 NMAC, 2/28/2023]

17.9.572.3 STATUTORY AUTHORITY: Sections 62-13-13.1 NMSA 1978 and 62-16-1 to 62-16-10 NMSA 1978.
 [17.9.572.3 NMAC - Rp, 17.9.572.3 NMAC, 2/28/2023]

17.9.572.4 DURATION: Permanent.

[17.9.572.4 NMAC - Rp, 17.9.572.4 NMAC, 2/28/2023]

17.9.572.5 EFFECTIVE DATE: February 28, 2023, unless a later date is cited at the end of a section.

[17.9.572.5 NMAC - Rp, 17.9.572.5 NMAC, 2/28/2023]

17.9.572.6 OBJECTIVE: The purpose of this rule is to implement the Renewable Energy Act, Sections 62-16-1 to 62-16-10 NMSA 1978, and to bring significant economic development and environmental benefits to New Mexico.

[17.9.572.6 NMAC - Rp, 17.9.572.6 NMAC, 2/28/2023]

17.9.572.7 DEFINITIONS: Unless otherwise specified, as used in this rule:

A. Definitions
beginning with “A”: “average annual levelized cost” means a calculation to produce the present value of the total cost of building and operating a new resource over an assumed lifetime, assuming equal unit costs each year over the life of the resource. Average annual levelized cost is calculated by dividing the present value of the assumed lifetime total cost of a new resource by the present value of the assumed lifetime generation production of that new resource. The equation for calculating average annual levelized cost is as follows:

$$\frac{\sum_{t=1}^n \frac{I_t + M_t + F_t}{(1+r)^t}}{\sum_{t=1}^n \frac{E_t}{(1+r)^t}}$$

where, I_t equals investment expenditures in year t (including financing) in nominal dollars; M_t equals operations and maintenance expenditures in year t in nominal dollars, including but not limited to

return, depreciation, property taxes, and income taxes, net of tax credits that are passed on to customers; F_t equals fuel expenditures and variable operations and maintenance in year t in nominal dollars; E_t equals electricity generated in year t including any degradation; r equals a discount rate equal to the utility’s after-tax weighted average cost of capital as authorized in the utility’s most recent rate case; and n equals the assumed lifetime of the new resource. Fuel expenditures would not be applicable for determining the levelized cost of renewable resources but may be applicable for determining the levelized cost of proposed zero-carbon resources.

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

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

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

E. Definitions
beginning with “E”: “emissions” means all emissions regulated by state or federal authorities, including but not limited to: all criteria pollutants and hazardous air pollutants, methane, mercury, and carbon dioxide.

F. Definitions
beginning with “F”: “financial incentive” means money or additional earnings that a public utility is authorized to collect from ratepayers by the commission or capital investment opportunities to encourage certain behaviors or actions that would not otherwise have occurred in order to further the outcomes described in Section 62-16-4 NMSA 1978. The financial incentive, or monetary benefit, motivates certain behaviors or actions.

G. Definitions
beginning with “G”: “greenhouse gas emissions” means emissions of gases including carbon dioxide,

methane, nitrous oxide, fluorinated gases, or other gases that trap heat in the atmosphere.

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”: “IRP” means integrated resource plan.

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”: [RESERVED]

M. Definitions

beginning with “M”:
[RESERVED]

N. Definitions

beginning with “N”: [RESERVED]

O. Definitions

beginning with “O”: [RESERVED]

P. Definitions

beginning with “P”:

(1) “plan

year” means the calendar year for which approval is sought;

(2) “plan

year total retail energy sales” means retail energy sales in kilowatt-hours projected for the plan year adjusted for projected energy efficiency reductions based on approved energy efficiency and load management programs in effect at the time of the filing, less energy sales to voluntary program participants under Section 62-16-7 NMSA 1978;

(3) “political

subdivision of the state” means a division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of the state which, by long usage and inherent necessities of government, have always been regarded as public;

(4)

“procure or procurement” means a competitive process conducted by an investor-owned electric utility for soliciting and evaluating purchased power, facility self-build, or facility build-transfer options as proposals for any new, additional, or amended renewable energy resource, including but not limited to, instructions to bidders, bid specifications, conditions,

forms, or other requirements included in a request for proposals, and all methods, practices, and assumptions used by an investor-owned electric utility to model or evaluate such proposals or to negotiate with bidders, in order to generate or purchase any renewable energy resource or to commit to generate or purchase any renewable energy resource, but does not include agreements to purchase energy or capacity from a qualifying facility pursuant to 17.9.570 NMAC;

(5) “public

utility” means 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”:

(1)

“reasonable cost threshold” (RCT) means an average annual levelized cost of \$60.00 per megawatt-hour at the point of interconnection of the renewable energy resource with the transmission systems, adjusted for inflation after 2020. The reasonable cost threshold is a customer protection mechanism that limits the customer bill impact resulting from annual Renewable Energy Act plans;

(2)

“renewable energy” means electric energy generated by use of renewable energy resources and delivered to a public utility;

(3)

“renewable energy certificate” (REC) means a certificate or other record, in a format approved by the commission, that represents all the environmental attributes from one megawatt-hour of electricity generated from renewable energy delivered to a public utility and assigned to its New Mexico customers;

(4)

“renewable energy resource” means the following energy resources with or without energy storage:

(a)

solar, wind, and geothermal;

(b)

hydropower facilities brought in service on or after July 1, 2007;

(c)

biomass resources, limited to agriculture of animal waste, small diameter timber not to exceed eight inches, salt cedar, and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, provided that these resources are from facilities certified by the energy, minerals and natural resources department to:

(i)

be of appropriate scale to have sustainable feedstock in the near vicinity;

(ii)

have zero life cycle carbon emissions; and

(iii)

meet scientifically determined restoration, sustainability and soil nutrient principles;

(d)

fuel cells that do not use fossil fuels to create electricity; and

(e)

landfill gas and anaerobically digested waste biogas.

(5)

“renewable portfolio standard”

(RPS) means the minimum percentage of retail sales of electricity by a public utility to electric consumers in New Mexico that is required by the Renewable Energy Act to be from renewable energy;

(6)

“renewable purchased power agreement” means an agreement that binds an entity generating power from renewable energy resources to provide power at a specified price, for a specified term, and binds the purchaser to that price.

S. Definitions

beginning with “S”: [RESERVED]

T. Definitions

beginning with “T”: [RESERVED]

U. Definitions

beginning with “U”: [RESERVED]

V. Definitions

beginning with “V”: [RESERVED]

W. Definitions
beginning with “W”: “WREGIS” means the western renewable energy generation information system.

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

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

Z. Definitions
beginning with “Z”:

(1) “zero carbon resource” means an electricity generation resource that emits no carbon dioxide into the atmosphere, or that reduces methane emitted into the atmosphere in an amount equal to no less than one-tenth of the tons of carbon dioxide emitted into the atmosphere, as a result of electricity production;

(2) “zero carbon resource standard” means providing New Mexico public utility customers with electricity generated from one hundred percent zero carbon resources.

[17.9.572.7 NMAC - Rp, 17.9.572.7 NMAC, 2/28/2023]

17.9.572.8 LIBERAL CONSTRUCTION: This rule shall be liberally construed to carry out its intended purposes. If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the application of such provision to other persons or circumstances, shall not be affected thereby.

[17.9.572.8 NMAC - Rp, 17.9.572.8 NMAC, 2/28/2023]

17.9.572.9 RELATIONSHIP TO OTHER COMMISSION

RULES: Unless otherwise specified, this rule does not supersede any other rule of the commission but supplements rules applying to public utilities.

[17.9.572.9 NMAC - Rp, 17.9.572.9 NMAC, 2/28/2023]

17.9.572.10 RENEWABLE PORTFOLIO STANDARD:

A. Each public utility shall develop an annual Renewable Energy Act plan to comply with the renewable portfolio standard

during the plan year. The plan shall demonstrate reasonable and consistent progress toward meeting the renewable portfolio standard to be effective following the end of the plan year. Renewable energy resources that are in a public utility’s electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this rule. However, renewable energy sold to customers through a voluntary renewable energy program tariff approved by the commission shall not be counted in determining compliance with this rule. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

B. Renewable portfolio standards: For public utilities other than rural electric cooperatives and municipalities, requirements of the renewable portfolio standard are:

(1) no later than January 1, 2015, renewable energy shall comprise no less than fifteen percent of each public utility’s total retail sales to New Mexico customers;

(2) no later than January 1, 2020, renewable energy shall comprise no less than twenty percent of each public total retail sales to New Mexico customers;

(3) no later than January 1, 2025, renewable energy shall comprise no less than forty percent of each public utility’s total retail sales to New Mexico customers;

(4) no later than January 1, 2030, renewable energy shall comprise no less than fifty percent of each public utility’s total retail sales to New Mexico customers;

(5) no later than January 1, 2040, renewable energy resources shall supply no less than eighty percent of all retail sales of electricity in New Mexico, provided that compliance with this standard until December 31, 2047 shall not require the public utility to displace zero carbon resources in the utility’s generation portfolio as of June 14, 2019; and

(6) no later than January 1, 2045, zero carbon resources shall supply one hundred percent of all retail sales of electricity in New Mexico. Reasonable and consistent progress shall be made over time toward this requirement.

C. Demonstration of compliance: In accordance with Section 62-16-5 NMSA 1978:

(1) compliance with the renewable portfolio standard shall be demonstrated by the retirement of renewable energy certificates, provided that the associated renewable energy is delivered to the public utility and assigned to the public utility’s New Mexico customers;

(2) a public utility shall not retire renewable energy certificates associated with renewable energy from generation resources for which it has traded, sold, or transferred the associated renewable energy certificate for purposes of compliance with the renewable portfolio standard; and

(3) for any REC that a public utility claims to own pursuant to the exceptions stated in Subparagraphs (a), (b), and (c) of Paragraph (1) of Subsection B of Section 62-16-5 NMSA 1978, the public utility shall have purchased the associated renewable energy. In the case of qualifying facilities that are net metered pursuant to 17.9.570.10 NMAC, only the excess net energy delivered from the qualifying facility to the utility shall be deemed to be purchased by the utility for the purposes of this rule, unless a different purchasing scheme is permitted in a specific agreement or contract pursuant to Subparagraphs (a) and (c) of Paragraph (1) of Subsection B of Section 62-16-5 NMSA 1978.

[17.9.572.10 NMAC - Rp, 17.9.572.10 NMAC, 2/28/2023]

17.9.572.11 COMMISSION ADMINISTRATION OF RPS AND ZERO CARBON STANDARDS:

After consultation with the department of environment, the commission may not approve a public

utility’s annual Renewable Energy Act plan that results in material increases to greenhouse gas emissions from entities not subject to commission oversight and regulation.
[17.9.572.11 NMAC - Rp, 17.9.572.11 NMAC, 2/28/2023]

17.9.572.12 REASONABLE COST THRESHOLD:

A. The reasonable cost threshold in any plan year is adjusted for inflation starting in 2021 by the amount of the cumulative increase change in the consumer price index, urban, all items, published by the bureau of labor statistics between January 1 of the year prior to the procurement plan year and January 1 of the procurement plan year. Each public utility shall include in its annual Renewable Energy Act plan a reasonable cost threshold analysis by proposed procurement for the plan year for which it seeks commission approval. This analysis shall show how each procurement compares for that plan year with the inflation adjusted reasonable cost threshold.

B. If, in any given year, a public utility determines that the average annual leveled cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the public utility shall not be required to incur that excess cost; provided that the existence of this condition excusing performance under the renewable portfolio standard in any given year shall not operate to delay compliance with the renewable portfolio standard in subsequent years. The provisions of this rule do not preclude a public utility from accepting a project with a cost that would exceed the reasonable cost threshold. When a public utility can generate or procure renewable energy resources at or below the reasonable cost threshold, it shall be required to do so to the extent necessary to meet the applicable renewable portfolio standard. To the extent a procurement is greater than the reasonable cost threshold and results in excess costs,

the public utility shall explain in detail why the public utility cannot procure renewable energy resources at a cost less than or equal to the reasonable cost threshold along with a demonstration of the public utility’s efforts to procure renewable energy resources at or below the reasonable cost threshold.

C. A public utility that believes its procurement will exceed the reasonable cost threshold may file with the commission a request for waiver of the renewable portfolio standard for the applicable plan year. The waiver request shall:

(1) explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold;

(2) include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the reasonable cost threshold; and

(3) be deemed granted if not acted upon within sixty days of the date the waiver request was filed.

[17.9.572.12 NMAC - Rp, 17.9.572.12 NMAC, 2/28/2023]

17.9.572.13 RESOURCE SELECTION:

The utility shall select resources to satisfy the renewable portfolio standard through a competitive resource selection process that includes opportunities for bidders to propose purchased power, facility self-build or facility build-transfer options. The utility shall determine all commercially available resources available through a competitive procurement process that are necessary to make reasonable and consistent progress toward the renewable portfolio standards and the zero-carbon standard. The utility shall, at a minimum, use the net present value methodology to identify the costs of a proposed new renewable energy resource necessary to satisfy the renewable portfolio standard. The utility may propose additional methodologies to identify the costs of a proposed new renewable energy resource.

[17.9.572.13 NMAC - Rp, 17.9.572.13 NMAC, 2/28/2023]

17.9.572.14 ANNUAL RENEWABLE ENERGY ACT PLAN:

A. An annual Renewable Energy Act plan shall include plan year and next plan year data. The plan year shall be presented for commission approval and the next plan year shall be presented for informational purposes.

B. On or before July 1 of each year, each public utility shall file with the commission an annual Renewable Energy Act plan. The filing schedule shall be staggered, as follows, with each of the investor-owned utility filings occurring one month apart, the last filing to be made July 1 of each year. The utilities shall file alphabetically each year (el paso electric company shall file on May 1; public service company of New Mexico shall file on June 1; and southwestern public service company shall file on July 1 each year).

C. The annual Renewable Energy Act plan shall include:

(1) testimony and exhibits providing a full explanation of the utility’s determination of the plan year and next plan year renewable portfolio standard and reasonable cost threshold;

(2) the cost of procurement in the plan year and the next plan year for all new renewable energy resources required to comply with the renewable portfolio standard selected by the utility pursuant to 17.9.572.10 NMAC;

(3) the amount of renewable energy the public utility plans to provide in the plan year and the next plan year required to comply with the renewable portfolio standard;

(4) testimony and exhibits demonstrating how the cost and amount specified in Paragraphs (2) and (3) of this subsection were determined;

(5) testimony and exhibits demonstrating the plan year and next plan year procurement

amounts and costs expected to be recovered by the utility;

(6) the capital, operating, and fuel costs on a per-megawatt-hour basis during the preceding calendar year of each nonrenewable generation resource rate-based by the utility, or dedicated to the utility through a power purchase agreement of one year or longer, and the nonrenewable generation resources' carbon dioxide emissions on a per-megawatt-hour basis during that same year;

(7) testimony and exhibits demonstrating the plan year and next plan year procurement amounts and costs expected to be recovered by the utility if limited by the reasonable cost threshold;

(8) testimony demonstrating that the cost of the proposed procurement is reasonable compared with the price of electricity from renewable resources in the bids received by the public utility to recent prices for comparable energy resources elsewhere in the southwestern united states;

(9) testimony regarding strategies used to minimize costs of renewable energy integration, including location, diversity, balancing area activity, demand-side management, rate design, and load management;

(10) testimony demonstrating that the portfolio procurement plan is consistent with the integrated resource plan and explaining any material differences;

(11) testimony demonstrating that acceptable system reliability will be maintained with the proposed new renewable resource additions;

(12) information, including exhibits, as applicable, that demonstrates that the proposed procurement was the result of a competitive procurement that included opportunities for bidders to propose purchased power, facility self-build, or facility build-transfer options;

(13) demonstration that the plan is otherwise in the public interest,

considering factors such as overall cost and economic development opportunities;

(14) a mechanism, with supporting testimony, to prevent the public utility's voluntary program customers from being subject to charges by the public utility to recover RPS compliance costs pursuant to Subsection B of Section 62-16-7 NMSA 1978; and

(15) any other information the commission may deem necessary.

D. In addition to electronically filing and serving in accordance with 1.2.2 NMAC, a public utility shall serve notice and a copy of its annual renewable energy plan filing by first class mail on renewable resource providers requesting such notice from the commission, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. A public utility shall also post on its website the most recent and the pending annual Renewable Energy Act plans.

[17.9.572.14 NMAC - Rp, 17.9.572.14 NMAC, 2/28/2023]

17.9.572.15 COST RECOVERY FOR RENEWABLE ENERGY AND EMISSIONS REDUCTIONS:

A. A public utility shall recover the reasonable costs of complying with this rule through the rate making process, including its reasonable interconnection and transmission costs, costs to comply with electric industry reliability standards, and other costs attributable to acquisition and delivery of renewable energy and zero carbon energy to retail New Mexico customers.

B. Costs that are consistent with commission-approved annual Renewable Energy Act plans are deemed to be reasonable.

C. A public utility that is permitted to defer the recovery of renewable energy costs pursuant to commission order may, through the

ratemaking process, recover from customers that are not subject to the rate impact limitations of Subsection C of Section 62-16-4 NMSA 1978 the cumulative sum of those deferred amounts, plus a carrying charge on those amounts.

D. Any financial benefits resulting to customers qualified pursuant Subsection C of Section 62-16-4 NMSA 1978 shall accrue to the customer immediately as of June 14, 2019 and shall be reflected in customer bills each month, subject to annual true-up and reconciliation.

E. The financial incentive established pursuant to 17.9.572.22 NMAC shall be recovered or credited through a separate rider during the calendar year following the determination of the financial incentive, and subject to reconciliation for under- or over-recovery in a subsequent calendar year.

F. Any renewable energy procurement costs recovered through the utility's fuel clause shall be separately identified in its monthly and annual fuel and purchased power clause adjustment filings and its continuation filings.

G. The commission shall not disallow the cost associated with any expired renewable energy certificate.

H. If a public utility has been granted a certificate of public convenience and necessity prior to January 1, 2015 to construct or operate an electric generation facility and the investment in that facility has been allowed recovery as part of the utility's rate-base, the commission may require the facility to discontinue serving customers within New Mexico if the replacement has less or zero carbon dioxide emissions into the atmosphere; provided that no order of the commission shall disallow recovery of any undepreciated investments or decommissioning costs associated with the facility.

[17.9.572.15 NMAC - Rp, 17.9.572.15 NMAC, 2/28/2023]

17.9.572.16 CUSTOMERS QUALIFIED PURSUANT TO SUBSECTION C OF SECTION 62-16-4 NMSA 1978:

A. Any customer that is a political subdivision of the state, or any educational institution designated in Article 12, Section 11 of the Constitution of New Mexico with an enrollment of twenty thousand students or more during the fall semester on its main campus, with consumption exceeding twenty million kilowatt-hours per year at any single location or facility, and that owns renewable energy generation or hosts such facilities through a renewable purchased power agreement, shall not be charged by the utility for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. The customer shall annually certify to the state auditor and notify the commission and the customer's serving electric utility of the amount of renewable energy produced at the customer-owned or customer-hosted facilities that generate renewable energy. The customer shall also certify to the state auditor and notify the commission that the customer will retire all renewable energy certificates associated with the renewable energy produced by those facilities. Any financial benefits as a result of the provisions of this subsection shall accrue to the customer immediately upon June 14, 2019, and shall be reflected in customer bills each month subject to annual true-up and reconciliation. The provisions of this rule shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs. That customer shall also certify that it will retire all renewable energy certificates associated with the energy produced by those facilities.

B. The notice to the commission and the customer's serving utility shall:

- (1) be timely;
- (2) state the plan year during which the renewable

energy is expected to be produced or hosted;

(3) quantify the amount of renewable energy expected to be produced or hosted; and

(4) shall include a copy of the customer's certification to the state auditor.

C. Rule 17.9.572.16 NMAC only exempts customers from charges for power purchases of one year or less or fuel on the amount of electricity purchased from the utility equal to the amount of renewable energy produced or hosted by the customer. Rule 17.9.572.16 NMAC shall not prevent the utility from recovering all of its reasonable and prudent fuel and purchased power costs.

D. A public utility shall not retire any RECs retired per the certification of a customer made pursuant to Subsection C of Section 62-16-4 NMSA 1978 for the renewable portfolio standard or voluntary renewable energy program compliance.

[17.9.572.16 NMAC - Rp, 17.9.572.16 NMAC, 2/28/2023]

17.9.572.17 RENEWABLE ENERGY CERTIFICATES:

A. Each public utility shall annually establish its compliance with the renewable portfolio standard through the filing of an annual report, as provided in 17.9.572.19 NMAC, documenting the retirement of renewable energy certificates.

B. Non-WREGIS registered RECs shall contain the following information:

(1) the name and contact information of the renewable energy generating facility owner or operator;

(2) the name and contact information of the public utility or rural electric distribution cooperative purchasing the renewable energy certificate;

(3) the type of generator technology and fuel type;

(4) the generating facility's physical location, nameplate capacity in megawatts,

location and ID number of revenue meter and date of commencement of commercial generation;

(5) the public utility to which the generating facility is interconnected;

(6) the control area operator for the generating facility; and

(7) the quantity in kilowatt-hours and the date of the renewable energy certificate creation.

C. Renewable energy certificates:

(1) shall be owned by the generator of the renewable energy unless:

(a) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator;

(b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certificates are owned by the public utility purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility purchaser of the energy; or

(c) a contract for the purchase of renewable energy is in effect prior to January 1, 2019, in which case the purchaser of the energy owns the renewable energy certificates for the term of such contract; and

(2) may be traded, sold or otherwise transferred by their owner, unless the certificates are from a rate-based public utility plant, in which case the entirety of the renewable energy certificates from that plant shall be retired by the utility on behalf of itself or its customers. Any contract to purchase renewable energy entered into by a public utility on or after July 1, 2019 shall include conveyance to the purchasing utility of all renewable energy certificates, and the entirety of those certificates shall be retired by that utility on behalf of itself or its customers or subsequently transferred to a retail

customer for retirement under a voluntary program for purchasing renewable energy approved by the commission;

(3) that are used once by a public utility to satisfy the renewable portfolio standard and are retired shall not be further used by the public utility; and

(4) that are not used by a public utility to satisfy the renewable portfolio standard may be carried forward for up to four years from the date of creation and, if not used by that time, shall be retired by the public utility.

D. Public utilities shall be responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party. Public utilities shall maintain records sufficient to meet the demonstration requirement of this subsection.

E. The acquisition, sale or transfer, and retirement of any renewable energy certificates used to meet renewable portfolio standards on or after January 1, 2008 shall be registered with the WREGIS or its direct successor(s), except as provided in Subsection F of 17.9.572.17

NMAC. Certificates whose retirement has been registered by the public utility with WREGIS shall be deemed to meet the requirements of Subsection D of 17.9.572.17 NMAC.

F. Renewable energy certificates representing electricity delivered to the public utility and assigned to the public utility's New Mexico customers and registered with a tracking system other than WREGIS may be used to meet renewable portfolio standards so long as WREGIS lacks the capability to import certificates from that other tracking system.

[17.9.572.17 NMAC - Rp, 17.9.572.17 NMAC, 2/28/2023]

17.9.572.18 VOLUNTARY RENEWABLE TARIFFS:

A. The commission

may require that a public utility offer its retail customers a voluntary program for purchasing renewable energy that is in addition to electricity provided by the public utility pursuant to the renewable portfolio standard, under rates and terms that are approved by the commission.

B. The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility shall develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

C. All renewable energy purchased by a retail customer through an approved voluntary program shall:

(1) have all associated renewable energy certificates retired by the retail customer, or on that customer's behalf, by the public utility, and the certificates shall not be used to meet the public utility's renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978;

(2) be excluded from the total retail sales to New Mexico customers used to determine the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978; and

(3) not be subject to charges by the public utility to recover costs of complying with the renewable portfolio standard requirements pursuant to Subsection A of Section 62-16-4 NMSA 1978.

[17.9.572.18 NMAC - Rp, 17.9.572.18 NMAC, 2/28/2023]

17.9.572.19 ANNUAL RENEWABLE ENERGY PORTFOLIO REPORT:

A. Concurrent with the filing of an annual renewable energy plan, each public utility shall file with the commission a report on

its renewable energy generation or purchases of renewable energy during the prior plan year. This report shall:

(1) itemize all renewable energy generation or renewable energy certificate purchases and sales;

(2) list, and include copies of, all renewable energy certificates, including acquired, issued or retired certificates;

(3) document from WREGIS or its successor the renewable energy certificates acquired, sold, retired, transferred, or expired; such documentation shall include reports from WREGIS or its successor which allow the commission to determine, by fuel type, the number of RECs in each calendar year:

(a) acquired;

(b) sold;

(c) retired;

(d) transferred; and

(e) expired;

(4) describe the retirements made to meet renewable portfolio standard compliance based on actual retail sales and procurement costs, for the most recent reporting period including, the reductions, if any, to the RPS for:

(a) purchases by retail customers through an approved voluntary program; or

(b) due to the reasonable cost threshold;

(c) explain and demonstrate how the reduction was determined; and

(d) quantity of renewable energy certificates banked for future compliance use;

(5) describe and quantify the implementation of the voluntary renewable tariff requirements in 17.9.572.18 NMAC;

(6) present a full explanation of approved recovery mechanisms for approved annual

renewable energy plan costs and a complete accounting of all collected and deferred amounts; and

(7) describe and tabulate the utility’s compliance with its renewable portfolio standard for a given report year and describe how the compliance relates to the first year a new renewable portfolio standard becomes effective as established in Subsection A of Section 62-16-4 NMSA 1978 and Subsection A of 17.9.572.10 NMAC and describe how the compliance relates the first year of the next new renewable portfolio standard.

B. The report shall include the following to demonstrate compliance with the renewable portfolio standard:

(1) report year total utility renewable portfolio standard requirement in megawatt-hours;

(2) report year total utility renewable portfolio standard compliance in megawatt-hours;

(3) report year total utility renewable portfolio standard provided by eligible renewable energy resources in megawatt-hours listed by resource and totaled;

(4) percentage of report year total utility renewable portfolio standard megawatt-hours provided by eligible renewable energy resources; and

(5) report year kilowatt-hour generation by facility from coal-fired generating facilities allocated to New Mexico retail customers.

[17.9.572.19 NMAC - Rp, 17.9.572.19 NMAC, 2/28/2023]

17.9.572.20 REVIEW BY COMMISSION:

A. Interested parties wishing to protest an annual Renewable Energy Act plan shall do so by stating the bases for the protest within 30 days after the filing of the utility’s annual renewable energy plan.

B. The commission shall approve or modify annual

Renewable Energy Act plans within 90 days and may approve such plans without a hearing, unless a protest is filed that demonstrates to the commission’s reasonable satisfaction that a hearing is necessary.

C. The commission may modify a plan after notice and hearing, and may, for good cause, extend the time to approve an annual Renewable Energy Act plan for an additional 90 days.

D. If the commission does not act within the 90-day period, a plan is deemed approved.

E. The commission may reject a plan, within 40 days of filing, if the commission finds that the plan does not contain the required information; upon such rejection the public utility’s obligation to procure additional resources will be suspended for the time necessary to file a revised plan. In such instances, the total amount of renewable energy to be procured by the public utility will not change.

[17.9.572.20 NMAC - Rp, 17.9.572.20 NMAC, 2/28/2023]

17.9.572.21 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. Such 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.

[17.9.572.21 NMAC - Rp, 17.9.572.21 NMAC, 2/28/2023]

17.9.572.22 FINANCIAL INCENTIVE:

A. In accordance with Subsection D of Section 62-16-4 NMSA 1978, a public utility or any other person may, by motion or application, request that the commission develop and provide the public utility with financial or other incentives to encourage the public utility to produce or acquire renewable energy that:

(1) exceeds the applicable annual renewable portfolio standard set forth in Section 62-16-4 NMSA 1978;

(2) results in reductions in carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978; or

(3) causes a reduction in the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico.

B. A financial or other incentive proposed under 17.9.572.22 NMAC shall be to encourage the public utility to produce or to acquire renewable energy to accomplish, in the future, at least one of the following purposes:

(1) exceeding the public utility’s annual RPS requirements;

(2) reducing carbon dioxide emissions earlier than required by Subsection A of Section 62-16-4 NMSA 1978; or

(3) reducing the generation of electricity by coal-fired generating facilities, including coal-fired generating facilities located outside of New Mexico that serve the utility’s customers.

C. A public utility shall not be eligible to receive financial or

other incentives for renewable energy that was produced or acquired prior to the date that the commission approves the public utility's application for a financial or other incentive for the specific renewable energy investments.

D. The public utility or other person requesting a financial or other incentive shall have the burden to prove by a preponderance of evidence that the terms and duration of the proposed incentive meet the requirements of this rule and are just and reasonable in light of the utility's costs, its authorized return, and the magnitude of any other incentives that have been authorized by the commission. Any application or motion requesting a financial or other incentive shall be supported by written testimony and exhibits.

E. No incentive shall be awarded under 17.9.572.22 NMAC with respect to a particular investment if the cost of that investment exceeds the demonstrable value of the corresponding reduction in carbon dioxide or other emissions. A utility requesting a financial or other incentive under this rule shall establish that the benefits of achieving the goals set out in Subsection B of 17.9.572.22 NMAC above are not exceeded by the costs it incurred to achieve them. To establish this, the utility shall provide detailed analysis for each applicable period, including but not limited to:

(1) the utility's total carbon dioxide emissions;

(2) the reduction in the utility's carbon dioxide emissions attributable to the measures described in Subsection B of 17.9.572.22 NMAC;

(3) the estimated value of the reduction in carbon dioxide emissions described in Paragraph (2) of this subsection based on an analysis of relevant carbon dioxide markets;

(4) the cost of the measures implemented by the utility that resulted in the lower carbon dioxide emissions identified in Paragraph (2) of this subsection and the dates when each measure was implemented; and

(5) any other costs necessary to implement each of the measures identified in Subsection B of 17.9.572.22 NMAC.

F. The total financial incentive authorized for recovery in rates pursuant to 17.9.572.22 NMAC shall not exceed the product (expressed in dollars) of:

(1) the utility's annual weighted average cost of capital (expressed as a percent); and

(2) the cost of the measures described in Subsection B of 17.9.572.22 NMAC.

G. A financial incentive shall only be granted to encourage a public utility to produce or to acquire renewable energy to accomplish the requirements of Subsection D of Section 62-16-4 NMSA 1978, and it shall not be granted to incentivize only an abandonment or closure of a carbon dioxide emitting generating resource.

H. Public utilities shall file any motion or application under 17.9.572.22 NMAC concurrently with their annual Renewable Energy Act plan.

[17.9.572.22 NMAC - Rp, 17.9.572.22 NMAC, 2/28/2023]

HISTORY OF 17.9.572 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 10.572, Renewable Energy Development Program (filed 11/30/1998) repealed 7/1/2003.

17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6/16/2003) repealed 1/14/2005.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12/29/2004) repealed 8/30/2007.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 8/15/2007) repealed 5/31/2013.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 5/10/2013) repealed 5/4/2021.

17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 4/21/2021) repealed 2/28/2023.

Other History:

17 NMAC 10.572, Renewable Energy

Development Program (filed 11-30-98) replaced by 17.9.572 NMAC, Renewable Energy as a Source of Electricity, effective 7/1/2003, 17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6/16/2003) replaced by 17.9.572, Renewable Energy for Electric Utilities, effective 1/14/2005. 17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12/29/2004) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 8/15/2007) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities effective 5/31/2013. Renewable Energy for Electric Utilities (filed 5/10/2013) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities effective 5/4/2021. Renewable Energy for Electric Utilities (filed 4/21/2021) replaced by 17.9.572 NMAC, Renewable Energy for Electric Utilities effective 2/28/2023.

**REGULATION
AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

The Construction Industries Commission approved at its January 18, 2023 meeting, to repeal its rule 14.10.4 NMAC 2017 New Mexico Electrical Code, filed February 1, 2018, and replace it with 14.10.4 NMAC 2020 New Mexico Electrical Code, adopted on February 14, 2023 and effective March 28, 2023.

**REGULATION
AND LICENSING
DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 10 ELECTRICAL
CODES**

PART 4 2020 NEW MEXICO ELECTRICAL CODE

14.10.4.1 ISSUING AGENCY: The Construction Industries Division of the Regulation and Licensing Department (CID). [14.10.4.1 NMAC - Rp, 14.10.4.1 NMAC, 3/28/2023]

14.10.4.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after March 28, 2023 that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date. [14.10.4.2 NMAC - Rp, 14.10.4.2 NMAC, 3/28/2023]

14.10.4.3 STATUTORY AUTHORITY: Section 60-13-9 NMSA 1978. [14.10.4.3 NMAC - Rp, 14.10.4.3 NMAC, 3/28/2023]

14.10.4.4 DURATION: Permanent. [14.10.4.4 NMAC - Rp, 14.10.4.4 NMAC, 3/28/2023]

14.10.4.5 EFFECTIVE DATE: March 28, 2023, unless a later date is cited at the end of a section. [14.10.4.5 NMAC - Rp, 14.10.4.5 NMAC, 14.10.4.5 NMAC - Rp, 3/28/2023] [From the date of publication of this rule in the New Mexico Register, until September 28, 2023, permits may be issued under either the previously adopted rule, or this rule. After September 28, 2023 permits may be issued only under this rule.]

14.10.4.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for electrical wiring, as defined in CILA Section 60-13-32 NMSA 1978, in New Mexico. [14.10.4.6 NMAC - Rp, 14.10.4.6 NMAC, 3/28/2023]

14.10.4.7 DEFINITIONS: [RESERVED]

14.10.4.8 ADOPTION OF THE 2020 NATIONAL ELECTRICAL CODE:

A. This rule adopts by reference the 2020 National Electrical Code (NEC), as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2020 National Electrical Code.

C. This rule is to be applied in conjunction with 14.7.6 NMAC, the 2018 New Mexico Residential Energy Conservation Code and 14.7.9 NMAC, the 2018 New Mexico Commercial Energy Conservation Code. [14.10.4.8 NMAC - Rp, 14.10.4.8 NMAC, 3/28/2023]

14.10.4.9 ADMINISTRATION AND ENFORCEMENT:

A. Inspectors. See 14.6.5 NMAC, Inspectors.

B. Disconnect orders. See CILA Section 60-13-42.

C. Stop orders. See 14.5.3 NMAC, Inspections.

D. Unsafe wiring. See 14.5.1 NMAC, General Provisions.

E. Electrical plan review. See 14.5.2 NMAC, Permits.

F. Electrical permit. See 14.5.2 NMAC, Permits.

G. Electrical inspections.

(1) Inspections required: See 14.5.3 NMAC, Inspections.

(2) Electrical customer-owned distribution system requirements. See 14.5.3 NMAC, Inspections. [14.10.4.9 NMAC - Rp, 14.10.4.9 NMAC, 3/28/2023]

14.10.4.10 ARTICLE 90 INTRODUCTION: See this article of the NEC. [14.10.4.10 NMAC - Rp, 14.10.4.10 NMAC, 3/28/2023]

14.10.4.11 CHAPTER 1 GENERAL:

A. Article 100 - Definitions. See this article of the NEC.

B. Article 110 - Requirements for electrical installations. See this article of the NEC except as provided below.

(1) Section 110.2 Approval. See this section of the NEC and add the following:

(a) product listing and labeling - electrical wiring, equipment or material approval shall be based on listing and labeling by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration;

(b) field evaluation - electrical wiring, equipment or material that is not listed and labeled, but for which a (UL) safety standard exists may be approved upon certification by a nationally recognized testing laboratory recognized by the federal occupational safety and health administration or by a field evaluation body accredited by the international accreditation service, inc.;

(c) engineer certification - electrical wiring, equipment or material for which a (UL) safety standard does not exist may be approved upon certification by an electrical engineer licensed to practice in New Mexico; such a certification will not be valid unless based on a verification of the manufacturer's safety and performance test data for the product.

(d) engineer certification - electrical equipment assemblies that contain only nationally recognized testing laboratories (NRTL) labeled components that are not NRTL listed as an assembly may be approved upon certification by an electrical engineer licensed to practice in New Mexico; such a certification will not be valid unless based on a verification of the UL standard if applicable, NEC 110.3 and the manufacturer's safety and performance test data for the product.

(2) Section 110.21 Marking. See this section of the NEC except as provided below: **Section 110.21(A) Equipment markings.** See this section of the NEC except as provided below.

Section 110.21(A)(1) General. See this section of the NEC and add the following: all equipment used on circuits over 300 volts between conductors shall have a warning sign either on or adjacent to the equipment. Warning signs shall be made in accordance with ANSI Z535 environmental and safety signs. The language shall read:

(a)

for voltages over 300 volts but less than 600 volts: "480 VOLTS". (Label dimensions shall be 1" x 4"); and

(b)

for voltages over 600 volts and there are exposed parts: "DANGER - HIGH VOLTAGE - KEEP OUT".

(3) **Section**

110.26 Spaces about electrical equipment.

(a)

110.26 (A) Working space. See this section of the NEC and add the following exception: Disconnects that do not provide over-current, overload, short circuit, or ground fault protection are not required to maintain the dimensions of 110.26(A)(1), (A)(2) and (A)(3) where adequate space is not readily available and the disconnect is permanently labeled "INADEQUATE WORKING SPACE-DO NOT WORK ON WHILE ENERGIZED". The label shall be readily visible on the exterior of the disconnect.

(b)

110.26 (A)(3) Height of working space. See this section of the NEC and add the following exception: Exception No. 4: In underground water well pump enclosures, service equipment or panel boards that do not exceed 200 amperes, operating at 250 volts or less and only feeding equipment associated with the water well enclosure, shall be permitted in spaces where the headroom is less than six and one half feet (6 1/2 ft.) but greater than five feet (5 ft.) provided the enclosure is supplied with a removable lid, that when removed would allow a minimum of six and one half feet (6 1/2 ft.) headroom.

[14.10.4.11 NMAC – Rp, 14.10.4.11 NMAC, 3/28/2023]

**14.10.4.12 CHAPTER 2
WIRING AND PROTECTION:**

A. Article 210.

Branch circuits. See this article of the NEC except as provided below.

(1)

Section 210.8 Ground-fault circuit-interrupter protection for personnel. See this section of the NEC except as provided below.

Section 210.8 (F) Outdoor outlets. See this section of the NEC and add the following exception: Exception No. 2 GFCI protection shall not be required for listed HVAC equipment.

(2) **Section**

210.11 Branch circuits required.

See this section of the NEC except as provided below.

(a)

210.11 (A) Number of branch circuits. See this section of the NEC and add: In dwelling units, branch circuits for 125-volt, 15- and 20-ampere general purpose lighting and receptacles outlets shall be limited to a maximum of ten (10) lighting and/or receptacle outlets per branch circuit. Single and duplex receptacle outlets are considered to be one receptacle outlet. Exception: Branch circuits serving only lighting loads may be calculated per article 220 of the NEC.

(b)

210.11 (C) Dwelling units. See this section of the NEC except as provided below.

(i)

(1) Small appliance branch circuits. See this section of the NEC and add: not more than four (4) 20 ampere 125 volt receptacle outlets shall be connected to these circuits. Single and duplex receptacle outlets are considered to be one receptacle outlet. Exception: small appliance circuits that supply only dining area receptacles may serve not more than six (6) receptacle outlets.

(ii)

(2) Laundry branch circuits. Delete the text of this section of the NEC and substitute: in addition to the number of branch circuits required by other parts of this section, at least one additional 20-ampere branch circuit shall be provided to supply the laundry receptacle outlet. Such circuits shall have no other outlets.

(3) **Section**

210.19 Conductors - minimum ampacity and size. See this section of the NEC except as follows: **(A) Branch circuits not more than 1000 volts:**

(a)

General. See this section and add: conductors for branch circuits shall be sized to prevent excessive voltage drop.

(b)

Branch circuits with more than one receptacle. Conductors of general-purpose branch circuits supplying more than one receptacle outlet for cord-and-plug connected portable loads shall have an ampacity of not less than the rating of the branch circuit and shall be not less than 12 AWG CU or 10 AWG CU-CLAD.

(4) **Section**

210.52 Dwelling unit receptacle outlets. See this section of the NEC except as follows:

(a)

Section 210.52 (A)(2) Wall space. See this section and add: Exception: free-standing cabinets designed to be used as an eating or drinking bar where stools or chairs are pulled up to a counter top which extends at least one (1) foot from the front of the cabinet, shall not be considered as wall space.

(b)

Section 210.52 (C)(2) Island and peninsular countertops and work surfaces. See this section of the NEC except as follows: **Section 210.52(C)(2) subsection (a)** delete this subsection and replace with the following: Island countertop spaces. At least one (1) receptacle shall be installed at each island countertop space with a long dimension of 600 mm (24 in.) or greater and a short dimension of 300 mm (12in.) or greater.

(c)

Section 210.52 (G) Basement, garages, and accessory buildings. See this section of the NEC and add: receptacle outlets must be installed a minimum of eighteen (18) inches above finished floor, in attached or detached garages.

(5) Section 210.70 Lighting outlets required. See this section of the NEC except as follows: **Section 210.70 (A)(2) Dwelling units.** See this section of the NEC and add a new subsection as follows: (d) on single family dwellings at least one wall switch, located within five (5) feet from each entrance or exit or automatic lighting control such as a motion detector shall be installed to control exterior illumination.

B. Article 215. Feeders. See this article of the NEC except as provided below: **Section 215.1. Scope.** See this section of the NEC and add: approved wiring methods for feeders: nonmetallic-sheathed cable types NM, NMC and NMS (Article 334) , and service entrance cable type SER (Article 338), shall be permitted to be used for feeders in dwelling units providing that the cables shall not pass through or under any other dwelling unit(s). Underground feeder and branch circuit cable type UF cable (Article 340) shall be permitted to be used underground for any occupancy, and indoors only in accordance with nonmetallic-sheathed cable (Article 334) providing that the cable shall not pass through or under any other dwelling unit(s).

C. Article 225. Outside branch circuits and feeders. See this article of the NEC except as follows.

(1) Section 225.19 Clearance from buildings for conductors of not over 1000 volts, nominal. See this section of the NEC except as follows: **Section 225.19(A) Above roofs.** See this section of the NEC but delete exception number two (2) in its entirety.

(2) Section 225.32 Location. Delete this section of the NEC and replace with the following: The disconnecting means shall be installed either inside or outside of the building or structure served. The disconnecting means shall be a readily accessing location and comply with one of the following: (1) Where the disconnecting means is located outside the building or

structure served, the disconnecting means enclosure shall be installed within ten (10) feet from the building or structure and visible, or on the exterior wall of the building or structure served. (2) Where the disconnecting means is installed inside the building or structure served, the disconnecting means enclosure shall be located within forty-eight (48) inches from where the feeder conductor raceway enters the building or structure.

Exception No. 1 – see this section of the NEC.

Exception No. 2 – see this section of the NEC.

Exception No. 3 – see this section of the NEC.

Exception No. 4 – see this section of the NEC.

D. Article 230. Services. See this article of the NEC except as provided below.

(1) Section 230.24 Clearances. See this section of the NEC except as provided below: **(A) Above roofs.** Delete exception no. 2 and exception no. 5 in their entirety.

(2) Section 230.28. Service masts as supports. See this section of the NEC and add: where a service mast is used for the support of service drop conductors, it shall be a minimum two inch (2”) rigid metal conduit, intermediate metal conduit or must comply with local utility requirements.

(3) Section 230.31 Size and ampacity. See this section of the NEC except as provided below: **(A) General.** See this section of the NEC and add: where the underground service lateral is customer owned, the service lateral conductors shall be sized to prevent excessive voltage drop. The maximum voltage drop on the service lateral conductors shall not exceed five percent (5%). For the purpose of this calculation, the ampacity shall be based on the calculated demand load of the building or structure served. Customer owned includes all non-utility owned or operated service lateral conductors.

(4) Section 230.43. Wiring methods for 1000 volts, nominal, or less. See this section of the NEC but delete subsection (1) open wiring on insulators, and subsection (6), Electrical nonmetallic tubing (ENT).

(5) Section 230.54 Overhead service locations. See this section of the NEC and add a new section as follows: (H) overhead service support shall comply with the serving utility requirements or be at least six inch by six inch (6” x 6”) pressure-treated timber or equivalent round poles (minimum 6” diameter crown) installed to a depth not less than four (4) feet below finish grade.

(6) Section 230.70 Service equipment - disconnecting means.

(a) 230.70 General. (A) Location. See this section of the NEC and add: the disconnecting means for each occupant of a multiple occupancy building shall be grouped at a common location.

(b) 230.70 General. (A) Location. (1) Readily accessible location. Delete the text of this section of the NEC and substitute:

(i) Service disconnects located outside the building or structure. Where the service disconnect is located outside of the building or structure it shall be located in a readily accessible location within 48 inches of the metering equipment. Remote service disconnects that are located not more than 10 feet from the building or structure shall be considered to be located on the building or structure.

Exception: Where metering equipment is installed at the utility transformer, the disconnecting means on the outside of the building shall be installed within 48 inches from where the service conductors emerge from the earth.

(ii) Service disconnects located inside the building or structure. Where the service disconnect is located inside of a building or structure it shall be located in a readily accessible

location within 48 inches from the metering equipment or the service equipment enclosure shall be installed within 48 inches of where the service conductors penetrate the building or structure.

(7) Section

230.72 Grouping of disconnects.

(A) **General.** See this section of the NEC and add: all building or structure disconnects of each service shall be grouped at one location and shall be separated by the least practical distance, within sight of each other and not to exceed an overall distance of fifty (50) feet.

E. Article 250 -

Grounding and bonding. See this article of the NEC except as provided below.

(1) Section

250.50 Grounding electrode

system. See this section of the NEC and add: on new construction, a concrete encased electrode shall be considered available and installed in compliance with NEC 250.52(A) (3). If a concrete encased electrode is not present, then at least 20 feet of 2 AWG bare copper in direct contact with the earth at a depth below the earth's surface of not less than thirty (30) inches shall be installed in a continuous trench that is at least twenty (20) feet in length, augmented with a minimum of two (2), eight (8) foot grounds rods one at each end of the 2 AWG conductor.

(2) Section

250.52 (A) Grounding electrodes.

(5) **Rod and pipe electrodes.** See this section of the NEC but delete subsection (a) in its entirety.

(3) Section

250.53 (A) (2) See this section of the NEC and add the following exception: Exception No. 2 See this section of the NEC and add: A single grounding electrode consisting of a rod or plate may be utilized on temporary construction services rated 200 amperes or less.

(4) Section

250.66 Size of alternating-current grounding electrode conductor. (B) Connections to concrete-encased electrodes. See this section of the NEC and add the following to

the end: The grounding electrode conductor shall not be smaller than 4 AWG copper.

(5) Section

250.104. Bonding of piping systems and exposed structural steel. (B) Other metal piping.

See this section of the NEC and add: CSST gas piping systems shall be bonded to the electrical service grounding electrode system at the point where the gas service enters the building. The bonding jumper shall not be smaller than (6) AWG copper wire.

(6) Section

250.106. Lightning protection

systems. See this section of the NEC and add: Where a lightning protection system is installed, the bonding of the gas piping system shall be in accordance with NFPA 780, standard for installation of lightning protection systems.

(7) Section

250.118. Types of equipment

grounding conductors. See this section of the NEC and add the following new subsection: (15) an equipment grounding conductor shall be installed in all branch circuit and feeder raceways on or above a roof. The equipment grounding conductor shall be a wire type sized in accordance with table 250.122.

[14.10.4.12 NMAC – N, 3/28/2023]

**14.10.4.13 CHAPTER
3 WIRING METHODS AND
MATERIALS:**

A. Article 300.

General requirements for wiring methods and materials. See this article of the NEC except as provided below.

(1) Section

300.6 Protection against corrosion

and deterioration. See this section of the NEC except as provided below. **Section 300.6 (A) Ferrous metal equipment.** Delete the first sentence of this section and substitute the following language: All ferrous metal raceways, cable trays, cablebus, auxiliary gutters, cable armor, boxes, cable sheathing, cabinets, metal elbows, couplings, nipples, fittings, supports, and support hardware shall be suitably protected against

corrosion inside and outside (except threads at joints) by a coating of approved corrosion-resistant material.

(2) Section

300.11 Securing and supporting.

See this section of the NEC except as provided below.

(a)

Section 300.11(A) Secured in

place. See this section of the NEC and add: independent support wires shall be limited to support of flexible wiring methods from the last means of support or junction box for connections within an accessible ceiling to luminaire(s) or equipment served.

(b)

Section 300.11 (B) (1). Fire rated

assemblies. Delete the text of this section of the NEC and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets that have been tested as part of a fire-rated assembly.

(c)

Section 300.11 (B) (2). Non-fire

rated assemblies. Delete the text of the exception and substitute: the ceiling support system shall be permitted to support listed junction boxes and/or support brackets where installed in accordance with the ceiling system manufacturer's instructions.

(3) Section

300.14 Length of free conductors

at outlets, junctions, and switch

points. Delete the text of this section

of the NEC and substitute: at least six (6) inches of free conductor, measured from the point in the box where it emerges from its raceway or cable sheath, shall be left at each outlet, junction, and switch point for splices or the connection of luminaire (fixtures) or devices. Where the opening of an outlet, junction, or switch point is less than eight (8) inches in any dimension, each conductor shall be long enough to extend at least six (6) inches outside of the opening.

B. Article 310.

Conductors for general wiring.

See this article of the NEC except as provided below. **Section 310.3**

Conductors. See this section of the NEC except as provided below. **Section 310.3 (B) Conductor material.** See this section of the NEC and add the following subsection 310.3 (B)(1) The use of aluminum current carrying conductors shall be of the AA-8000 series or equivalent and shall be limited to size 8 AWG or larger. Exception: the equipment-grounding conductor shall be limited to size 10 AWG or larger if in a listed cable assembly.

C. Article 314. Outlet, device, pull, and junction boxes; conduit bodies; fittings; and handhole enclosures. See this article of the NEC except as provided below. **Section 314.27 Outlet Boxes.** See this section of the NEC except as provided below. **Section 314.27 (C) Boxes at ceiling-suspended (paddle) fan outlets.** See this section of the NEC except add the following exception to the end of the section:

Exception No. 1 Fan boxes in habitable rooms shall not be required over islands, peninsulas, or above kitchen sinks.

D. Article 340. Underground feeder and branch circuit cable: type UF. See this article of the NEC except as provided below. **Section 340.10 Part II. Installation** See this section of the NEC except as provided below: **Section 340.10 Uses permitted.** See this section of the NEC and add the following new subsections:

- (1) (7) type UF cable shall be permitted to be embedded in adobe construction;
- (2) (8) type UF cable, or an approved electrical raceway shall be installed on straw bale

residential construction.

E. Article 352 Rigid polyvinyl chloride conduit : Type PVC. See this article of the NEC and add the following to section 352.10 uses permitted. (F) Exposed: PVC conduit, type schedule 40 shall not be used where the raceway is exposed and under eight (8) feet from finished floor or grade.

F. Article 394 Concealed knob and tube wiring. See this article of the NEC and add the following to section 394.12 uses not permitted: concealed knob and tube wiring shall not be permitted to be installed except by special written permission from the electrical bureau.

[14.10.4.13 NMAC – N, 3/28/2023]

14.10.4.14 CHAPTER 4 EQUIPMENT FOR GENERAL USE: Article 422 Appliances. See this article of the NEC and add the following to section 422.19. evaporative cooling units: where an evaporative cooler is installed, a listed raceway shall be installed during rough-in from the control point to the evaporative cooler location. The raceway shall contain a wire-type equipment-grounding conductor from the control point outlet box to the junction box at the unit. The equipment grounding conductor shall be sized in accordance with table 250.122.

[14.10.4.14 NMAC – N, 3/28/2023]

14.10.4.15 CHAPTER 5 SPECIAL OCCUPANCIES:

A. Article 545 Manufactured buildings and relocatable structures. See this article of the NEC except as provided below. Add the following part to the end of the article. Part III. Service and Feeders.

(1) Add the following new section: Section 545.29 For service and feeder calculations for manufactured buildings used as a relocatable structure as defined in this article, for temporary on-site offices and other temporary manufactured buildings other than dwelling units, use the table below for service and feeder calculations:

(2) Add the following new table: **Table 545.29 Service and feeder factors for relocatable structures and manufactured buildings.**

Number of temporary structures	Demand Factor
1	100
2	55
3	44
4	39
5	33
6	29
7-9	28
10-12	27
13-15	26
16-21	25
22-40	24
41-60	23
61 and over	22

B. Article 550. Mobile homes, manufactured homes and mobile home parks. See this article of the NEC except as provided below.

(1) Section 550.32 Service equipment. See this section of the NEC except as provided below: **Section 550.32 (A) Mobile home service equipment.** Delete the text of this section of the NEC and substitute the following: the mobile home service equipment shall be located adjacent to the mobile home and not mounted in or on the mobile home. The service equipment shall be located where visible from and not more than one hundred (100) feet from the exterior wall of the mobile home it serves. The service equipment shall be permitted to be located elsewhere on the premises, provided that a disconnecting means marked "suitable for use as service equipment" is located where visible from and not more than thirty (30) feet from the exterior wall of the mobile home it serves. Grounding at the disconnecting means shall be in accordance with 250.32.

(2) Section 550.32 Service equipment. See this section of the NEC and add the following new subsection. **(I) Overhead services.** Overhead service support shall comply with the serving utility requirements or be at least six inches by six inches (6" x 6") pressure-treated timber or equivalent round poles (minimum 6" diameter crown) installed to a depth not less than four (4) feet below finish grade. [14.10.4.15 NMAC – N, 3/28/2023]

14.10.4.16 CHAPTER 8 COMMUNICATION SYSTEMS: Article 800. Communications circuits. See this article of the NEC and add the following to Section 800.156: Any exterior wall penetration shall be installed in a listed raceway. [14.10.4.16 NMAC - N, 3/28/2023]

14.10.4.17 SMOKE DETECTORS: For smoke detectors, refer to the current adopted edition of the New Mexico residential building code. Smoke detectors installed in

new single family dwellings shall be served by an individual branch circuit. When two or more smoke detectors are required in a dwelling unit, they shall be interconnected with a multi-conductor cable assembly. Location and power back-up requirement shall be in accordance with the current adopted edition of the New Mexico residential building code. [14.10.4.17 NMAC - Rp, 14.10.4.12 NMAC, 3/28/2023]

14.10.4.18 ACCESSIBILITY REQUIREMENTS FOR PERSONS WITH DISABILITIES: Electrical device installation shall comply with accessibility codes adopted for New Mexico. [14.10.4.18 NMAC - Rp, 14.10.4.13 NMAC, 3/28/2023]

14.10.4.19 NIGHT SKY PROTECTION ACT: Outdoor lighting shall comply with the Night Sky Protection Act 74-12-1 through 74-12-11 NMSA 1978. [14.10.4.19 NMAC – Rp, 14.10.4.14 NMAC, 3/28/2023]

14.10.4.20 RESIDENTIAL ENERGY EFFICIENCY: See 14.7.6 NMAC, the 2018 New Mexico residential energy conservation code. [14.10.4.20 NMAC - Rp, 14.10.4.15 NMAC, 3/28/2023]

14.10.4.21 COMMERCIAL ENERGY EFFICIENCY: See 14.7.9 NMAC, the 2018 New Mexico commercial energy conservation code. [14.10.4.21 NMAC - Rp, 14.10.4.16 NMAC, 3/28/2023]

HISTORY OF 14.10.4 NMAC: Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records, state records center and archives under: CIC 71-1, 1971 National Electrical Code, filed 12/1/1971
CIC71-2, 1972 New Mexico Electrical Code, filed 12/1/1971
CID 78-1, 1978 New Mexico Electrical Code, filed 1/31/1978
CID EB 81-3, State of New Mexico Electrical Code Revised to July 24,

1981, Technical Provision based on the 1981 National Electrical Code and Related Codes and Standards, filed 11/24/1981
CID EB 84-1, State of New Mexico Electrical Code, filed 05/11/1984
CID NMEB 93-1, State of New Mexico Electrical Code 1993, filed 2/25/1993.

History of Repealed Material:

14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code (filed 01/15/1997), repealed 07/1/1999.
14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06/01/1999), repealed 12/1/2000.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10/16/2000), repealed 7/30/2002.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 7/30/2002) repealed 7/1/2004.
14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05/27/2004) - part name later changed to 2002 State of New Mexico Electrical Code (filed 10/18/2004) both repealed 07/01/2005.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 5/4/2005) repealed 7/1/2008.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1/24/2008) repealed 8/1/2011.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 6/15/2011) repealed 11/1/2011.
14.10.4 NMAC, Housing and Construction, Electrical Codes, 2011 New Mexico Electrical Code (filed 9/27/2011) repealed 6/28/2013.
14.10.4 NMAC, Housing and Construction Electrical Codes, 2020 New Mexico Electrical Code (filed 2/16/2023)

Other History:

CID NMEB, State of New Mexico Electric Code (filed 2/25/1993)

replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code, effective 1/31/1997.
 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electric Code (filed 1/15/1997) replaced by 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 7/1/1999.
 14 NMAC 10.4, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 06/1/1999) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 12/1/2000.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 10/16/2000) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 7/30/2002.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 07/01/2002) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code, effective 7/1/2004.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, State of New Mexico Electrical Code (filed 05/27/2004) and part name later changed to “2002 State of New Mexico Electrical Code” (filed 10/18/2004) replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code, effective 7/1/2005.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2005 New Mexico Electrical Code (filed 5/4/2005) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code, effective 7/1/2008.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 1/24/2008) was replaced by 14.10.4 NMAC, Housing and Construction,

Electrical Codes, 2008 New Mexico Electrical Code, effective 8/1/2011.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2008 New Mexico Electrical Code (filed 06/15/2011) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2011 New Mexico Electrical Code, effective 11/1/2011.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2011 New Mexico Electrical Code (filed 09/27/2011) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2011 New Mexico Electrical Code, effective 6/28/2013.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2011 New Mexico Electrical Code (filed 05/29/2013) amendment and part name changed to “2014 New Mexico Electrical Code”, effective 8/1/2014.
 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2017 New Mexico Electrical Code (filed 6/28/2013) was replaced by 14.10.4 NMAC, Housing and Construction, Electrical Codes, 2020 New Mexico Electrical Code, effective 3/28/2023.

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

The Board of Pharmacy approved, at its 1/19/2023 hearing, to amend Part 14 sections 1, 3, 6, 7, and add new sections 13 through 20 to 16.19.14 NMAC – Devices; Medical Gas Repackagers and Sellers. The State Records and Archives, Administrative Law Division is requiring a repeal and replacement for 16.19.14 NMAC, since the rule has not been formatted and was last amended in 2002. The new rule, 16.19.14 NMAC - Devices; Medical Gas Repackagers and Sellers, becomes effective on 2/28/2023.

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 14 DEVICES; MEDICAL GAS REPACKAGERS AND SELLERS

16.19.14.1 ISSUING

AGENCY: Board of Pharmacy.
 [16.19.14.1 NMAC – Rp, 16.19.14.1 NMAC, 02/28/2023]

16.19.14.2 SCOPE: All

individuals and entities subject to the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article I NMSA 1978.
 [16.19.14.2 NMAC – Rp, 16.19.14.2 NMAC, 02/28/2023]

16.19.14.3 STATUTORY

AUTHORITY: Paragraph (7) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act. Paragraphs (18) and (19) of Subsection B of Section 61-11-14 NMSA 1978 authorize the board to license and otherwise establish minimum standards for medical gas sellers and repackagers. Section 26-1-18 NMSA 1978, of the Drug, Device and Cosmetic Act, authorizes the board to promulgate regulations for the efficient enforcement of the Act.
 [16.19.14.3 NMAC – Rp, 16.19.14.3 NMAC, 02/28/2023]

16.19.14.4 DURATION:

Permanent.
 [16.19.14.4 NMAC – Rp, 16.19.14.4 NMAC, 02/28/2023]

16.19.14.5 EFFECTIVE

DATE: February 28, 2023, unless a later date is cited at the end of a section.
 [16.19.14.5 NMAC – Rp, 16.19.14.5 NMAC, 02/28/2023]

16.19.14.6 OBJECTIVE:
The objective of Part 14 of Chapter 19 is to establish mandatory controls and performance standards for health care devices so as to minimize the risk of injury from the distribution and use of adulterated or misbranded devices; and to establish standards for the repackaging and selling of medical gases, so as to minimize the risk of injury from the distribution and use of adulterated or misbranded medical gases.
[16.19.14.6 NMAC – Rp, 16.19.14.6 NMAC, 02/28/2023]

16.19.14.7 DEFINITIONS:

A. “Device”, as used in the New Mexico Drug and Cosmetic Act, is any health care product that does not achieve any of its principal intended purpose through chemical action within or on the body of man or other animal and which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

B. “Board” means the New Mexico board of pharmacy.

C. “Distribution of medical gases” means the distribution of medical gas, to persons other than consumers or patients.

D. “Drug order” means a prescription drug order issued by a licensed prescriber for medical gas.

E. “FDA” means the United States Food and Drug Administration.

F. “Federal Act” means the Federal Food, Drug and Cosmetic Act.

G. “Medical gas” means:

- (1) a drug that is manufactured or stored in a liquefied, nonliquefied, or cryogenic state and is administered as a gas; and
- (2) that is labeled for medical use in compliance with federal law and is otherwise a designated medical gas as defined at 21 U.S.C. Section 360ddd(1) of the Federal Act, including each of the following that meets the standards set forth in an official compendium: oxygen, nitrogen, nitrous oxide,

carbon dioxide, helium, and medical air.

H. “Medical gas repackager” means a person that manufactures or repackages a medical gas, which includes producing, cascading, distributing, filling, mixing, purifying, separating, transferring, and transfilling medical gases. This includes original manufacturers as defined by the FDA that repackage medical gas and have a valid registration as a drug establishment with the FDA. A medical gas manufacturer shall be issued the license type medical gas repackager.

I. “Medical gas seller” means a person licensed to distribute a medical gas to a person other than a consumer or patient, or to supply medical gases on drug orders to a patient or ultimate user.

J. “Repackage” means persons or entities manufacturing bulk medical gases or transferring gas or liquefied gas product from one container to another (e.g., liquid to gas, gas to gas, liquid to liquid).
[16.19.14.7 NMAC – Rp, 16.19.14.7 NMAC, 02/28/2023]

16.19.14.8 CLASSIFICATION OF DEVICES:
Three regulatory classes are established based on the extent of control necessary to ensure safety and effectiveness of each device:

A. Class I -- General Controls

- (1) prohibiting adulteration or misbranding
- (2) requiring federal registration and listing by the manufacturer
- (3) requiring notification of risks, repairs, replacement or refund
- (4) requirement restricting sale, distribution or use
- (5) requirement with respect to good manufacturing practices, record keeping, reports and inspections
- (6) authority to ban the device

B. Class II -- Performance Standards

- (1) general controls not sufficient to assure safety and effectiveness
- (2) performance standards required by federal FDA
- (3) FDA regulations establishing the performance standard.

C. Class III -- Pre-Market Approval

- (1) represents life sustaining, life-supporting or implanted in the body or which presents a potential unreasonable risk of illness or injury.
- (2) requires investigational device exemption for research (IDE under federal act Sec. 520 (g)).
[16.19.14.8 NMAC – Rp, 16.19.14.8 NMAC, 02/28/2023]

16.19.14.9 ADULTERATION: A device may be considered to be adulterated:

A. It is subject to a performance standard and does not comply with all requirements of such standard.

B. Class II device FDA pre-market approval is not completed.

C. It is a banned device.

D. It is in violation of good manufacturing practice requirements.

E. It fails to comply with the IDE (Investigational Device Exemption) protocol.
[16.19.14.9 NMAC – Rp, 16.19.14.9 NMAC, 02/28/2023]

16.19.14.10 MISBRANDING:
A device may be deemed to be misbranded if:

A. Manufactured in a nonregistered establishment pursuant to federal requirements.

B. If advertising and description literature fails to meet minimum requirements for disclosure of product information.

C. Devices subject to performance standards set by FDA, whose labeling fails to meet those prescribed in the standard.

D. Devices that fail or whose manufacturer refuses to comply with requirements relating to notification and other remedies and requirements or fails to maintain adequate records and necessary reports as required under the federal act Section 518-519.

E. If its label does not bear adequate directions for use and adequate warning against unsafe use.

F. If the labeling is false or misleading.

G. If it is a restricted device and fails to bear required labeling.

[16.19.14.10 NMAC – Rp, 16.19.14.10 NMAC, 02/28/2023]

16.19.14.11 RESTRICTED DEVICE (PRESCRIPTION STATUS):

A. FDA requirements may restrict the sale, distribution, or use of a device if there cannot be reasonable assurance of its safety and effectiveness.

B. Prescription status devices are determined on the basis of its intended use and whether or not the device can be adequately labeled as usable by the layman (i.e., pacemaker, hearing aids, hear valves, etc.).

C. Labeling must contain certain information such as name of device, statement of intended use, relevant warnings, precaution, side effects and contraindications.

D. Labeling of a restricted device, other than surgical instruments, shall bear:

(1)

“CAUTION: Federal law restricts this device to sale by or on the order of a _____, physician, dentist, veterinarian, or with the descriptive designation of any other practitioner licensed by the laws of this State to prescribe or use the device in his practice.

(2) The method of its application or use.

(3) The label meets all other requirements under CFR Title 21, Section 801.109 (c) and (d) and (e).

[16.19.14.11 NMAC – Rp, 16.19.14.11 NMAC, 02/28/2023]

16.19.14.12 CUSTOM DEVICES:

A. A custom device is one which is sometimes ordered from manufacturers by practitioners to conform to their own special needs or to those of their patients (i.e. prosthetic devices, dental devices and specially designed orthopedic footwear).

B. Custom devices are exempt from performance standards or pre-market approval requirements; however, they are subject to FDA requirements for investigational use, banning, restriction of distribution, adulteration and misbranding.

C. The exemption applied only to devices which are not generally available in finished form for dispensing, or on prescription, or for commercial distribution or generally available to other practitioners.

[16.19.14.12 NMAC – Rp, 16.19.14.12 NMAC, 02/28/2023]

16.19.14.13 PROCEDURE FOR LICENSURE OF BUSINESS FOR MEDICAL GAS REPACKAGER OR SELLER AND FOR TRANSFER OF OWNERSHIP OF LICENSED BUSINESSES:

A. An applicant shall submit required application and fee to the board. Applications for a license or license renewal under this section shall be made on a form furnished by the board. The board may require such information as it deems is reasonably necessary to carry out the purposes of this part.

B. After preliminary approval of a new application for licensure, an applicant that is located in New Mexico shall submit a request for inspection and the inspection fee, where applicable, in advance of fourteen days of the requested date for inspection. All subsequent requests for inspection shall be submitted in advance of fourteen days of the requested date for inspection.

C. The license provided for herein shall terminate upon the sale or transfer of ownership. Operation of a business subsequent to the date of such transfer or sale without a new application and approval by the board shall constitute a violation of the law under Subsection I of Section 61-11-14 NMSA 1978, and is subject to the penalties contained in the Pharmacy Act.

[16.19.14.13 NMAC – N, 02/28/2023]

16.19.14.14 LICENSE REQUIREMENTS MEDICAL GAS REPACKAGER OR SELLER:

A. Every medical gas repackager or seller, wherever located, shall be licensed by the board in accordance with the laws and regulations of this state before engaging in repackaging, distribution or selling of medical gases in this state.

B. Repackagers and sellers cannot operate from a place of residence. No primary business location will be operated out of a storage unit. Use of a storage unit shall be consistent with accrediting body approval and allowance.

C. Where operations are conducted at more than one location, each such location shall be licensed by the board.

D. A manufacturer or wholesale drug distributor licensed by the board may distribute medical gas without the requirement of a separate medical gas license. Said licensees shall distribute only to an entity licensed to receive medical gas. A pharmacy, dentist, or licensed prescriber’s license verifies their authority to receive prescription only medical gases.

E. A pharmacy licensed by the board may provide medical gas pursuant to a drug order, or to nearby emergency medical services, i.e., ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners allowed to prescribe medical gases for use in the treatment

of acutely ill or injured persons; to nearby or contracted nursing homes or home care services; or to another pharmacy to alleviate a temporary shortage without the requirement of a separate medical gas license.

F. The Board may prohibit a person or entity from receiving or maintaining licensure if the person or entity:

(1) has been convicted of any felony for conduct relating to manufacturing or distribution, any felony violation of Subsection (i) or (k) of section 301, or any felony violation of Section 1365 of title 18, United States Code, relating to product tampering; or

(2) has been found by the board to have violated the requirements of this part, or state requirements for licensure.

G. The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.
[16.19.14.14 NMAC – N, 02/28/2023]

16.19.14.15 MINIMUM QUALIFICATIONS MEDICAL GAS REPACKAGER OR SELLER:

A. Compliance with federal, state, and local law. Repackagers and sellers shall operate in compliance with all applicable federal, state, and local laws and regulations.

B. Every person or entity subject to this part shall meet the federal requirements to handle medical gas, the Prescription Drug Marketing Act at 21 U.S.C., Sec. 331 et seq., and any other applicable federal, state, or local laws and regulations. Said applicants and licensees shall be registered with the FDA, if required.

C. Every person or entity subject to this part must conform to the Compressed Medical Gases Guidelines published by the FDA.

D. Personnel. As a condition of receiving and retaining a license under this part, the licensee

or applicant shall require each person employed in any medical gas related activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the medical gas quality, safety and security will at all times be maintained by law.
[16.19.14.15 NMAC – N, 02/28/2023]

16.19.14.16 MINIMUM REQUIREMENTS:

A. Written policies and procedures. Repackagers and sellers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the proper receipt, security, storage, handling, repackaging, labeling, inventory, distribution, quarantine, return or disposition of medical gases, for identifying, recording and reporting losses or thefts, for correcting all errors and inaccuracies in inventories, for maintenance of required drug records in proper form, and handling recalls.

B. The facility shall be of suitable size and construction, with adequate lighting, environmental control, quarantine, cleanliness and pest control.

C. The facility shall be secure from unauthorized entry.

D. Recordkeeping. Medical gas repackagers and sellers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of medical gas.

E. Inventories and records shall be made available for inspection and copying by Board inspectors for a period of at least three (3) years.

F. All repackagers or sellers in New Mexico must publicly display or have readily available all required licenses and the most recent inspection report administered by the board.

G. Medical gas repackagers shall distribute only to an entity licensed to receive medical gas. A pharmacy, dentist, or licensed prescriber's license verifies their

authority to receive prescription only medical gases.
[16.19.14.16 NMAC – N, 02/28/2023]

16.19.14.17 CHANGE IN LOCATION OF A MEDICAL GAS REPACKAGER OR SELLER:

Before any person or entity subject to this part located in New Mexico changes the location of the facility, a new application shall be submitted to the board, setting forth such changes. Upon approval and completion of the change, a request for inspection will be submitted to the board. There will be no charge for the new application, but the inspection will carry the same fee as applies for a new facility inspection.
[16.19.14.17 NMAC – N, 02/28/2023]

16.19.14.18 TRANSFER OF OWNERSHIP: A transfer of ownership occurs upon.

A. The sale of the facility to another individual or individuals by the present owner.

B. The addition or deletion of one or more partners in a partnership.

C. The death of a singular or sole owner.

D. The change of ownership of thirty percent or more of the voting stock of a corporation since the issuance of the license or last renewal application.

E. A new license application will be required to be filed in each of the above circumstances.

As stated in the Pharmacy Act, Subsection I of Section 61-11-14 NMSA 1978, licenses are not transferable, and shall expire on December 31 of every other year unless renewed.
[16.19.14.18 NMAC – N, 02/28/2023]

16.19.14.19 PRESCRIPTION REQUIREMENT:

A. Prescription requirement, in general: A designated medical gas shall be subject to the requirements of 21 U.S.C. section 353(b)(1) unless the Secretary of the FDA exercises the authority provided in section 353(b)(3) to remove such medical gas from the requirements of

section 353(b)(1), the gas is approved for use without a prescription pursuant to an application under 21 U.S.C. section 355 or 360b, or the use in question is authorized pursuant to another provision of this part relating to use of medical products in emergencies.

B. Oxygen, no prescription required for certain uses: oxygen may be provided without a prescription for the following uses:

(1) for use in the event of depressurization or other environmental oxygen deficiency; and

(2) for oxygen deficiency or for use in emergency resuscitation, when administered by properly trained personnel.

(3) Labeling - For oxygen provided pursuant to this Subsection B., the requirements of section 353(b)(4) of 21 U.S.C. shall be deemed to have been met if its labeling bears a warning that the oxygen can be used for emergency use only and for all other medical applications a prescription is required.

C. Prescription requirement. Except as provided above, medical gas sellers shall not supply medical gas to a patient or consumer without a drug order.

(1) An original or copy of a prescription drug order must be kept at the licensed location supplying the medical gas.

(2) A prescription drug order shall be valid for a period of time consistent with the indication for which it was prescribed. Prescription drug orders shall be maintained for three years and be readily retrievable and available at inspection. [16.19.14.19 NMAC – N, 02/28/2023]

16.19.14.20 REPORT OF ROBBERY, FIRE AND FLOOD:

When a medical gas repackager or seller located in New Mexico is involved in a robbery, fire, flood or any unusual event in which medical gases might be missing or damaged, the owner shall immediately file with the board, a signed statement of the circumstances of such occurrence and evidence that local authorities were

notified, if applicable. [16.19.14.20 NMAC – N, 02/28/2023]

HISTORY OF 16.19.14 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 14, Devices, 11-25-80. Regulation No. 14, Devices, 10-24-85. Regulation No. 14, Devices, 2-2-87. Regulation No. 14, Devices, 7-27-90.

History of Repealed Material:

16.19.4 NMAC, Devices filed 3/30/2002, was repealed and renamed as 16.19.14 Devices; Medical Gas Repackers and Sellers, effective 2/28/2023.

Other History:

16 NMAC 19.14, Pharmacists - Devices, filed 02-02-1996, reformatted and renumbered to 16.19.14 NMAC, Devices, effective 03-30-2002.

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.12 NMAC, Section 3, 13, & 15, effective 2/28/2023.

16.19.12.3 STATUTORY AUTHORITY: Section 30-31-11 NMSA 1978 authorizes the board of pharmacy (“board”) to charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31B-6 NMSA 1978 authorizes the board to charge reasonable fees for the registration and control of the manufacture, possession, transfer and transportation of drug precursors. Sections 61-11-12, 61-11-13, and 61-11-14 NMSA 1978 authorize the board to charge, and limit the maximum charges for:

A. applications for registration and renewal of

registration as a pharmacist, pharmacist intern, or pharmacy technician; and

B. applications for the registration of retail pharmacies, wholesale drug distributors, nonresident pharmacies, drug manufacturers, hospital pharmacies, drug rooms, nursing homes, industrial or public health clinics, the department of health clinics and health facilities, home care services, wholesalers, retailers and distributors of legend-bearing veterinary drugs, medicinal gas repackagers, medicinal gas sellers, outsourcing facilities, repackagers, and third party logistics providers. Section 61-1-34 NMSA 1978 authorizes the board to waive license fees for the first three years for military service members, spouses, dependents, and veterans where the license is issued by reciprocity. [2/15/1996; 16.19.12.3 NMAC - Rn, 16 NMAC 19.12.3, 3/30/2002; A, 8/2/2019; A, 11/30/2021; A, 02/28/2023]

16.19.12.13 LICENSE FEES:
A. Drug manufacturer \$1000.00

bi-ennially
B. Wholesale drug distributor \$1000.00 bi-ennially

C. Drug manufacturer/re-packager \$1000.00 bi-ennially

D. Re-packager \$1000.00 bi-ennially

E. Retail pharmacy \$300.00 bi-ennially

F. Hospital pharmacy \$300.00 bi-ennially

G. Nonresident pharmacy \$400.00 bi-ennially

H. Nonresident pharmacy, sterile compounding \$600.00 bi-ennially

I. Seller or dispenser of contact lenses [~~\$400~~] \$200.00 bi-ennially

J. Dangerous drug research \$200.00 bi-ennially

K. Drug warehouse
\$200.00
bi-ennially

L. Duplicate license or permit(for all types)
\$10.00 per each request

M. Letter of good standing, verification, and certification
\$10.00 per each request

N. Roster of board of pharmacy facility license
\$30.00 per license category

O. Outsourcing facility
\$2000.00
bi-ennially

P. Third party logistics provider
\$1000.00
bi-ennially

Q. Medical gas repackager, or seller
\$200 bi-ennially
[3/7/1980...5/1/1993; 16.19.12.13 NMAC - Rn, 16 NMAC 19.12.13, 3/30/2002; A, 9/30/2003; A, 7/15/2004; A, 1/15/2005; A, 12/15/2005; A, 1/31/2007; A, 11/15/2010; A, 12/13/2015; A, 3/23/2016; A, 11/28/2017; A, 8/2/2019, A, 12/15/2020; A, 02/28/2023]

16.19.12.15 CLINIC LICENSE FEES:

A. Class A, B, [or] C, or E Clinic
\$300.00 bi-ennially

B. Class D clinic
\$50.00 bi-ennially

C. Animal control clinic
\$100.00 bi-ennially
[3/7/1980...8/6/1994; 12/15/1999; 16.19.12.15 NMAC - Rn, 16 NMAC 19.12.15, 3/30/2002; A, 9/30/2003; A, 10/24/2014; A, 12/13/2015; A, 02/28/2023]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.27 NMAC, Section 3 and 7, effective 2/28/2023

16.19.27.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Paragraph (7) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to enforce the provisions of all state laws pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons, including the New Mexico Drug, Device and Cosmetic Act. Section 61-11-20 NMSA 1978, [Uniform Licensing Act] authorizes the board [of pharmacy] in accordance with the Uniform Licensing Act, to deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant: (1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board; (17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board [of pharmacy] to promulgate rules relating to listing specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board [of pharmacy] from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board [of pharmacy] the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.
[16.19.27.3 NMAC - N, 12/1/2003; A, 11/30/2021; A, 02/28/2023]

16.19.27.7 DEFINITIONS:
Dishonorable conduct by a pharmacist

intern licensed pursuant to Section 61-11-6 NMSA 1978, or pharmacy technician registered pursuant to Section 61-11-6 NMSA 1978.

A. “Dishonorable conduct by a pharmacist intern or pharmacy technician” shall mean, among other things, but not to be limited to:

- (1) violation of any provision of the Pharmacy Act as determined by the board;
- (2) violation of the board of pharmacy regulations as determined by the board;
- (3) violation of the Drug and Cosmetic Act as determined by the board;
- (4) violation of the Controlled Substances Act as determined by the board;
- (5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;
- (6) acquiring prescription stock from unlicensed sources;
- (7) failure to hold on the strictest confidence all knowledge patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms or where required for proper compliance with legal authorities;
- (8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;
- (9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;
- (10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:
 - (a) the inpatient, or institutional setting

(i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or

(b)

a request for therapeutic interchange of a medication prescribed for the patient;

(11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

(12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substances Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(14) suspension, revocation, denial, or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States.

(15)

Disqualifying criminal conviction: “Conviction” means either a plea of guilty or nolo contendere, or any other full adjudication on the merits by a court of competent jurisdiction, including but not limited to a trial. A copy of the record of conviction certified by the clerk of the court entering the conviction is conclusive evidence.

(a)

A felony conviction for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may result in suspension of a license or registration, or disqualify a licensee or applicant from receiving or retaining a license or registration issued by the board.

(i)

Section 30-2-1 NMSA 1978 “Murder”;

(ii)

Sections 30-9-1 and 30-9-11 to 30-9-13 NMSA 1978 Criminal sexual offenses, including of a minor and enticement of a child;

(iii)

Sections 30-37-2 to 30-37-3.3 NMSA 1978, Sexually oriented material harmful to minors, including child solicitation by electronic communication device and criminal sexual communication with a child;

(iv)

Sections 30-6A-3 to 30-6A-4 NMSA 1978, Sexual exploitation of children, including prostitution;

(v)

Section 30-16-2 NMSA 1978 “Robbery”;

(vi)

Section 30-16-6 NMSA 1978 “Fraud”;

(vii)

Section Section 30-16-8 NMSA 1978 “Embezzlement”;

(viii)

Section 30-16-9 NMSA 1978 “Extortion”;

(ix)

Section 30-16-10 NMSA 1978 “Forgery”;

(x)

Section 30-16-11 NMSA 1978 “Receiving stolen property”;

(xi)

Section 30-16-24.1 NMSA 1978 “Theft of identity; obtaining identity by electronic fraud”;

(xii)

Section 30-16-30 NMSA 1978 “Dealing in credit cards of another”;

(xiii)

Section 30-16-31 NMSA 1978 “Forgery of a credit card”;

(xiv)

Section 30-16-33 NMSA 1978 “Fraudulent use of a credit card”;

(xv)

Section 30-28-3 NMSA 1978 “Criminal solicitation”;

(xvi)

Section 30-42-4 NMSA 1978 “Engaging in a pattern of racketeering activity”;

(xvii)

Sections 30-44-4 to 30-44-7 NMSA 1978, Offenses related to Medicaid fraud;

(xviii)

Sections 30-47-4 to 30-47-6 Abuse or neglect of a care facility resident, exploitation of a care facility resident’s property;

(xix)

Section 30-51-4 NMSA 1978 “Money laundering”;

(xx)

Section 30-52-1 NMSA 1978 “Human trafficking”;

(xxi)

Section 24-26-12 NMSA 1978 “Intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act” (Sections 24-26-1 to 24-26-12 NMSA 1978);

(xxii)

Section 27-5-12 NMSA 1978, Making false statement in claim for payment under Indigent Hospital and County Health Care Act (Chapter 27, Article 5);

(xxiii)

Section 66-8-102 NMSA 1978 “Fourth or subsequent conviction for driving under the influence of intoxicating liquor or drugs”

(b)

Unless otherwise specified by law, the board shall not consider a criminal conviction as part of an application for licensure or registration unless the conviction in question is one of the disqualifying criminal convictions listed in Paragraph (15) of Subsection A of 16.19.27.7 NMAC. Any decision by the board to take action against an applicant or licensee (including a registrant) on the basis of a disqualifying criminal conviction shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

(c)

Nothing in this section prevents the board from denying an application or disciplining a licensee (including a registrant) on the basis of the licensee or applicant’s conduct to the extent that such conduct violated the Pharmacy Act (Chapter 61, Article 11 NMSA 1978), the Drug Device and Cosmetic Act (Chapter 26, Article 1 NMSA 1978), the

Controlled Substances Act (Chapter 30, Article 31 NMSA 1978), the Imitation Controlled Substances Act (Chapter 30, Article 31A NMSA 1978), or the Drug Precursor Act (Chapter 30, Article 31B NMSA 1978), or similar act of another state or of the United States, or pursuant to the Impaired Health Care Provider Act (Chapter 61, Article 7 NMSA 1978), or the Impaired Pharmacists Act (Chapter 61, Article 11 NMSA 1978), regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule. Proceedings shall occur in conformance with the Uniform Licensing Act (Chapter 61, Article 1 NMSA 1978).

(d)

Notwithstanding Subparagraph (c) of this section, in connection with an application for licensure or registration, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:

- (i) an arrest not followed by a valid conviction;
- (ii) a conviction that has been sealed, dismissed, expunged or pardoned;
- (iii) a juvenile adjudication; or
- (iv) a conviction for any crime other than the disqualifying criminal convictions listed in this section.

B. “Dishonorable conduct by a facility (business)”

shall mean but not to be limited to:

- (1) violation of any provision of the Pharmacy Act as determined by the board;
- (2) violation of the board of pharmacy regulations as determined by the board;
- (3) violation of the Drug and Cosmetic Act as determined by the board;
- (4) violation of the Controlled Substances Act as determined by the board;

(5) failure of the licensee to conduct himself professionally in conformity with all applicable federal, state and municipal laws and regulations to his relationship with the public and other health professionals;

(6) acquiring prescription stock from unlicensed sources;

(7) failure to hold on the strictest confidence all knowledge concerning patrons, their prescriptions and other confidence entrusted or acquired of by him; divulging in the interest of the patron only by proper forms, or where required for proper compliance with legal authorities;

(8) participation in a plan or agreement which compromises the quality or extent of professional services, or facilities at the expense of public health or welfare;

(9) the solicitation of prescription business by providing prescribers with prescription blanks with the name of any licensed pharmacy or pharmacist printed thereon;

(10) the solicitation of prescription business by providing a prescriber with pre-selected medication on a prescription blank. This does not apply to:

(a) the inpatient, or institutional setting (i.e. long term care or correctional facility) by an in-house or contracted pharmacy; or

(b) a request for therapeutic interchange of a medication prescribed for the patient;

(11) the solicitation of a prescription whereby the initial prescription request was not initiated by the patient or practitioner. This does not apply to a request for therapeutic interchange of a medication prescribed for the patient;

(12) failure to report an impaired licensee in compliance with Subparagraph (a) of Paragraph (1) of Subsection C of 16.9.4.12 NMAC;

(13) conviction, plea of nolo contendere, or entering into any other legal agreements for any violation of the Pharmacy Act, Controlled Substance Act, Drug Device and Cosmetic Act or any similar act of another state or territory of the United States;

(14) suspension, revocation, denial or forfeiture of license to practice or similar disciplinary action by a licensing agency of another state or territory of the United States;

(15) failure to correct written deficiencies, documented by drug inspectors during routine inspections;

(16) failure of the business owner or authorized representative to sign the annual self-assessment conducted by the pharmacist-in-charge (see 16.19.6.9.8 NMAC);

(17) when an error occurs and a patient is harmed, failure of the business owner or authorized representative to provide an appropriate environment (staffing and physical environment) that can provide pharmaceutical care in a way that does not endanger the public;

(18) failure to provide a work environment that allows a pharmacist and pharmacist intern to adequately perform duties requiring professional judgment, and for a pharmacist to fulfill duties as enumerated in 16.19.4.16 NMAC and all other duties and responsibilities of a pharmacist as listed in the rules of the board. In determining whether a work environment is appropriate, the board may consider factors including workload (e.g. sufficiency of staffing to prevent fatigue, distraction, or other conditions that interfere with a pharmacist’s ability to complete required duties);

(19) introducing or enforcing external factors, such as productivity or production quotas or other programs against pharmacists, pharmacist interns or pharmacy technicians, to the extent that they interfere with the ability of those individuals to provide appropriate professional services to the public.

(20) retaliation against a pharmacy employee for reporting or filing a complaint regarding violation of board requirements that the business has the authority to correct. Violation of board requirements includes unreasonable workload, such that pharmacy employee(s) are not able to adequately fulfill duties and responsibilities as outlined in board administered rules and statutes

~~(18)~~ (21)

having a policy or procedure which hinders the apprehension and/or prosecution of individuals who the pharmacist or pharmacist intern after reasonable inquiry suspect of prescription forgery, alteration, fraud, misrepresentation or a prescription transaction which is not otherwise in accordance with the law;

~~(19)~~ (22)

failure to adhere to the written policy and procedures established by the pharmacist-in-charge.

C. “Pharmaceutical care” means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient’s quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems. (Subsection V of Section 61-11-2 NMSA 1978)

D. “Dispensing error” means a prescription that was dispensed from the pharmacy differently from what was prescribed.

E. “Harm” means temporary or permanent impairment of the physical, emotional or psychological function or structure of the body and/or pain resulting there from requiring intervention.

F. “Patient counseling” means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or a device. (Subsection T of Section 61-11-2 NMSA 1978).

G. “Physical environment” means the facility layout design, fixtures, and

surroundings that affect lighting levels, sound levels, temperature, interruptions, and distractions. [16.19.27.7 NMAC - N, 12/1/2003; A, 4/1/2004; A, 9/30/2005; A, 12/15/2008; A, 11/13/2018; A, 11/30/2021; A, 02/28/2023]

REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF

This is an amendment to 16.19.29 NMAC, Sections 2, 3, 6, 7, 8, 9 & 10, effective 2/28/2023

16.19.29.2 SCOPE: All persons that dispense controlled substances and drugs of concern pursuant to prescriptions from practitioners and practitioners who dispense controlled substances and drug(s) of concern directly to a patient under their care. All persons authorized to receive disclosure of prescription monitoring program prescription information. [16.19.29.2 NMAC - N, 07/15/2004; A, 03/22/2015; A, 11/27/2016; A, 02/28/2023]

16.19.29.3 STATUTORY AUTHORITY: Sections 30-31-1 through 30-31-41 of the Controlled Substance Act NMSA 1978, authorizes the board of pharmacy to promulgate rules and charge reasonable fees regarding controlled substances. Section 30-31-16 of the Controlled Substance Act NMSA 1978 authorizes the board to collect information regarding controlled substances. Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to promulgate rules to carry out the provisions of the Pharmacy Act, Paragraph (18) of Subsection A of Section 61-11-6 NMSA 1978 authorizes the board to promulgate rules that prescribe the activities and duties of pharmacy owners and pharmacists in each practice setting. Section 61-11-8 NMSA requires drug records to be kept for all dangerous drugs pursuant to the Pharmacy Act.

[16.19.29.3 NMAC - N, 07/15/2004, A, 03/22/2015; A, 02/28/2023]

16.19.29.6 OBJECTIVE: The objective of Part 29 of Chapter 19 is to promote the public health and welfare by detecting and preventing substance abuse and misuse, and encouraging appropriate treatment of pain and other conditions for which controlled substances are prescribed. The purpose of the program is to improve access to controlled substances prescription information for legitimate medical needs by allowing a practitioner or a pharmacist to obtain a patient’s pharmaceutical history related to controlled substances and drug(s) of concern. The program’s objectives will include education of the public and health care professionals regarding the nature and extent of the problem of drug abuse, and appropriate prescribing and use of controlled substances and drug(s) of concern.

[16.19.29.6 NMAC - N, 07/15/2004; A, 03/22/2015; A, 03/22/2015; A, 02/28/2023]

16.19.29.7 DEFINITIONS:
A. “Audit trail information” means any query based information resulting from an authorized prescription monitoring program user’s request for a prescription monitoring program report, which could include the user’s name, date and time of the query or other related information.

B. “Board” means the New Mexico board of pharmacy, herein referred to as the board.

C. “Controlled substance” has the meaning given such term in Section 30-31-2 NMSA 1978.

D. “Delegate” means an individual authorized as an agent of a practitioner or pharmacist for the purpose of obtaining data from the PMP for review by the practitioner or pharmacist. The delegate must report directly to said practitioner or pharmacist and the practitioner or pharmacist shall be accountable for the delegate’s actions:

(1) a pharmacist's delegate must be a certified pharmacy technician or a registered intern;

(2) a pharmacy technician or pharmacist intern may access information to the extent the information relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing any controlled substance or drug(s) of concern, or for the purposes of a pharmacist providing pharmaceutical care as defined in law.

E. "Dispenser" means the person who delivers a schedule II - V controlled substance [as defined in Subsection F of this section] or drug(s) of concern to the ultimate user, but does not include the following:

(1) a licensed hospital pharmacy that distributes such substances for the purpose of inpatient hospital care;

(2) a practitioner, or other authorized person who administers such a substance; or

(3) a practitioner who dispenses to the patient no more than 12 dosage units or 72 hours' worth (whichever is less) of such a substance or;

(4) a wholesale distributor of a schedule II - V controlled substance or drug(s) of concern;

(5) clinics, urgent care or emergency departments dispensing to the patient no more than 12 dosage units or 72 hours' worth (whichever is less) of such a substance or;

(6) a veterinarians or veterinary clinics dispensing to non-human patients.

F. "Drug of concern" means a non-controlled dangerous drug that the board has by rule determined to require dispenser PMP reporting of in the same manner as controlled substance prescription dispensing, when required reporting is expected to protect patients due to interaction of the drug of concern with controlled substances or other

compelling issue. Gabapentin is a drug of concern.

[F:] **G. "Patient"** means the ultimate user of a drug for whom a prescription is issued and for whom a drug is dispensed.

[G:] **H. "Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any legal or commercial entity.

[H:] **I. "PMP director"** means the individual authorized by the board to administer the prescription monitoring program (PMP).

[I:] **J. "PMP report"** means a compilation of data generated from the PMP concerning a patient, a dispenser, a practitioner, or a [schedules] schedule II - V controlled substance or drug(s) of concern.

[J:] **K. "Practitioner"** means a person maintaining licensure pursuant to state law that allows him or her to prescribe controlled substance medications in accordance with that licensure.

[K:] **L. "Prescription monitoring program"** (PMP) means a program as described in 16.19.29.6 NMAC which includes a centralized system to collect, monitor, and analyze electronically, for schedules II - V controlled substances and drug(s) of concern, prescribing and dispensing data submitted by dispensers of which the data is to be used to support efforts in education, research, enforcement and abuse prevention.

[L:] **M. "Schedule II - V controlled substance"** means a substance listed in schedules II, III, IV, and V as set forth in the Controlled Substance Act, Sections 30-31-5 through 30-31-10 NMSA 1978 or the federal Controlled Substances Regulation (21 U.S.C. 812).

[M:] **N. "State"** means the state of New Mexico. [16.19.29.7 NMAC - N, 07/15/2004; A, 06/11/2011; A, 08/31/2012; A, 10/24/2014; A, 03/22/2015; A, 11/27/2016; A, 09/25/2018; A, 02/28/2023]

16.19.29.8 MANDATORY REPORTING OF PRESCRIPTION INFORMATION TO THE PMP:

A. The board shall monitor the dispensing of all schedule II - V controlled substances and drug(s) of concern by all dispensers licensed to dispense such substances to patients in this state.

B. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this section. Information to be submitted for each prescription as well as the standards for how this information shall be formatted, not contrary to law, is defined in the PMP data reporting manual available on the state PMP website at <http://nmpmp.org> shall include at a minimum:

- (1) dispenser NPI number;
- (2) dispenser NCPDP number;
- (3) dispenser DEA number (unless no controlled substances are dispensed and dispenser has no DEA number);
- (4) patient name;
- (5) patient address;
- (6) patient date of birth;
- (7) patient gender;
- (8) reporting status (new, revised, void);
- (9) prescription number;
- (10) date prescription written;
- (11) refills authorized;
- (12) date prescription filled;
- (13) refill number;
- (14) product ID (NDC) + product ID qualifier;
- (15) quantity dispensed;
- (16) days' supply;
- (17) drug dosage units;

(18) transmission form of Rx origin;
 (19) payment type;
 (20) prescriber NPI number; (except veterinarians)
 (21) prescriber DEA number (unless prescriber is prescribing a drug of concern and has no DEA number).

C. Dispenser reporting:
 (1) each dispenser shall submit the information required under Subsection B of this section in accordance with transmission methods and frequency established by the board; but shall report within one business day of the prescription being filled.
 (2) if a dispenser pharmacy did not dispense any schedule II – V controlled substances or drug(s) of concern during an operating business day, the dispenser shall submit a “zero report” within one business day. Information to be submitted with each zero report as well as the standards for how this information shall be formatted, not contrary to law, is defined in the PMP data reporting manual available on the state PMP website at <http://nmpmp.org> shall include at a minimum:
 (a) dispenser DEA number;
 (b) reporting start date; and
 (c) reporting end date.
 (3) the PMP director shall have the authority to approve submission schedules that exceed one business day.

D. Corrections to information submitted to the PMP must be addressed including:
 (1) file upload or “outstanding uncorrected errors” as defined in the PMP data reporting manual;
 (2) prescriptions that were not dispensed to the patient must be voided from the PMP;
 (3) incorrect information in prescriptions records submitted to the PMP must be submitted to the PMP database within

five business days once the dispenser has been notified or becomes aware of the incorrect information.
 [16.19.29.8 NMAC - N, 07/15/2004; A, 06/11/2011; A, 08/31/2012; A, 03/22/2015; A, 03/23/2016; A, 09/25/2018; A, 02/28/2023]

16.19.29.9 DISCLOSURE OF PRESCRIPTION INFORMATION:

A. Prescription information submitted to the board shall not be subject to the Inspection of the Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978 and shall be confidential except as provided in Subsections C through G of 16.19.29.9 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained in the PMP is not disclosed to persons except as provided in Subsection C through G of 16.19.29.9 NMAC.

C. Board inspectors may review prescription information after receiving complaints, and in the course of their enforcement of board administered statutes and regulations.

D. The board shall be authorized to provide PMP information to the following persons:

(1) persons authorized to prescribe or dispense controlled substances, for the purpose of providing medical or pharmaceutical care for their patients;

(2) a consultant pharmacist for the purpose of providing pharmaceutical care for a facility’s patients; and in ensuring that facility records appropriately account for controlled substance receipt, administration and disposition;

(3) a delegate designated by a practitioner; or pharmacist; who must also maintain an active account, can designate one or more (up to four) delegates for the purpose of requesting and receiving PMP reports for the practitioner or pharmacist; the practitioner or pharmacist shall be responsible for terminating the delegate’s access to

the PMP within five business days of a delegate’s authorization ending;

(4) state practitioner licensing boards whose licensees have prescriptive authority for controlled substances, including the medical board, board of nursing, board of veterinarian medicine, board of dental health care, board of examiners in optometry, board of osteopathic medicine, board of acupuncture and oriental medicine, and board of podiatry, as the PMP information relates to their licensees;

(5) practitioner licensing authorities of other states if their licensees practice in this state or prescriptions provided by their licensees are dispensed in this state;

(6) local, state and federal law enforcement or prosecutorial officials engaged in an ongoing investigation of an individual in the enforcement of the laws governing licit drugs;

(7) the state human services department regarding medicaid program recipients;

(8) a state metropolitan, magistrate and district, or federal court as required by a grand jury subpoena or criminal court order;

(9) state drug court personnel as authorized by the PMP director;

(10) personnel of the board for purposes of administration and enforcement of this rule or of 16.19.20 NMAC;

(11) the prescription monitoring program of another state or group of states with whom the state has established an interoperability agreement;

(12) a living individual who request’s his or her own PMP report in accordance with procedures established under the Pharmacy Act, Subsection D of Section 61-11-2 NMSA 1978 and Subsection H of 16.19.6.23 NMAC, or an agent authorized by the living individual along with a valid HIPAA release form or court issued subpoena, or;

(13) a parent to have access to the prescription records about his or her minor child,

as his or her minor child’s personal representative when such access is not inconsistent with state or other laws;

(14) licensed healthcare professionals (nurses, pharmacists and practitioners) from Medicare, health insurers, workers compensation program/insurers and pharmacy benefit managers for persons enrolled in or covered by their programs, as part of patient care for those persons.

E. The board shall use de-identified data obtained from the PMP database to identify and report to state and local public health authorities the geographic areas of the state where anomalous prescribing dispensing or use of controlled substances is occurring.

F. The board shall share PMP database data with the department of health for the purpose of tracking inappropriate prescribing and misuse of controlled substances or drug(s) of concern, including drug overdose.

G. The board shall provide data to public or private entities for statistical, research, or educational purposes after removing information that could be used to identify individual patients and persons who have received prescriptions from dispensers.

H. PMP information gained from other states’ prescription monitoring programs shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding, nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. [16.19.29.9 NMAC - N, 07/15/2004; A, 06/11/2011; A, 08/31/2012; A, 03/22/2015; A, 11/27/2016; A, 09/25/2018; A, 02/28/2023]

16.19.29.10 DISCLOSURE OF AUDIT TRAIL INFORMATION:

A. Audit trail information maintained by the board shall not be subject to the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, and shall be confidential except as

provided in Subsection C and D of 16.19.29.10 NMAC.

B. The board shall maintain procedures to ensure that the privacy and confidentiality of patients and patient information collected, recorded, transmitted, and maintained in the PMP is not disclosed to persons except as provided in Subsection C and D of 16.19.29.10 NMAC.

C. Board inspectors may review audit trail information after receiving complaints, and in the course of their enforcement of board administered statutes and regulations.

D. The board shall be authorized to provide audit trail information to the following persons:

(1) state practitioner licensing boards whose licensees have prescriptive authority for controlled substances, including the medical board, board of nursing, board of veterinary medicine, board of dental health care, board of optometry, board of osteopathic medicine, board of acupuncture and oriental medicine, and board of podiatry, as the audit trail information relates to their licensees for the purposes of reviewing compliance with PMP utilization;

(2) practitioner licensing authorities of other states if their licensees practice in this state or prescriptions provided by their licensees are dispensed in this state as the audit trail information relates to their licensees for the purposes of reviewing compliance with PMP utilization requirements;

(3) personnel of the board for purposes of administration and enforcement of this rule or of 16.19.20 NMAC;

(4) the board shall share PMP database data with the department of health for the purpose of tracking inappropriate prescribing and misuse of controlled substances or drug(s) of concern, including drug overdose.

E. Audit trail information shall not be subject to civil subpoena, nor shall such information be disclosed, discoverable, or compelled to be produced in any civil proceeding,

nor shall such records be deemed admissible as evidence in any civil proceeding for any reason. [16.19.29.10 NMAC - N, 07/15/2004; A, 06/11/2011; Repealed, 03/22/2015; A, 09/25/2018; A, 02/28/2023]

SUPERINTENDENT OF INSURANCE, OFFICE OF

On February 15, 2023, after a notice and comment period and a public hearing, the New Mexico Office of the Superintendent of Insurance approved a replacement for, and therefore the repeal of, its rule 13.7.4 NMAC, Catastrophic Claims, filed 8/6/1993 and recompiled 11/30/2001. The new rule, 13.7.4 NMAC, Catastrophic Claims is effective 3/1/2023.

SUPERINTENDENT OF INSURANCE, OFFICE OF

**TITLE 13 INSURANCE
CHAPTER 7 INSURANCE
TRADE PRACTICES AND
FRAUDS
PART 4 CATASTROPHIC
CLAIMS**

13.7.4.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance (“OSI”). [13.7.4.1 NMAC – Rp, 13.7.4.1 NMAC, 3/1/2023]

13.7.4.2 SCOPE: This rule applies to catastrophic claims settlement practices of insurers and other persons subject to Section 59A-16-20 NMSA 1978. [13.7.4.2 NMAC – Rp, 13.7.4.2 NMAC, 3/1/2023]

13.7.4.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-16-20 and 59A-16-20.1 NMSA 1978. [13.7.4.3 NMAC – Rp, 13.7.4.3 NMAC, 3/1/2023]

13.7.4.4 DURATION: Permanent. [13.7.4.4 NMAC - Rp, 13.7.4.4 NMAC, 3/1/2023]

13.7.4.5 EFFECTIVE DATE: March 1, 2023, unless a later date is cited at the end of a section. [13.7.4.5 NMAC - Rp, 13.7.4.5 NMAC, 3/1/2023]

13.7.4.6 OBJECTIVE: This rule establishes definitions and procedures for implementing Subsection F of Section 59A-16-20 NMSA 1978 requiring all catastrophic claims to be settled within a 90-day period after the assignment of a catastrophic claim number when a catastrophic loss has been declared and subjecting insurers who fail to settle catastrophic claims within this time period to the enforcement and penalty provisions of the Insurance Code, specifically those pertaining to the Unfair Claims Practices Act. [13.7.4.6 NMAC - Rp, 13.7.4.6 NMAC, 3/1/2023]

13.7.4.7 DEFINITIONS:
A. "Catastrophe" means a disaster, natural disaster or accident or series of disasters, natural disasters or accidents arising out of a single event that results in the submittal of claims against insurers by at least three percent of the population of the geographic area directly impacted by the event, results in:
 (1) the submittal of claims against insurers by at least three percent of the population of the geographic area directly impacted by the event, results in total insured losses in New Mexico of more than \$2,500,000 and takes place within a period of seven consecutive days; or

(2) the declaration of an emergency by the Governor of New Mexico under the governor's statutory powers including, but not necessarily limited to, those enumerated under the All Hazard Emergency Management Act or the Public Health Emergency Response Act, followed by the Superintendent's independent determination that a catastrophe has occurred.

B. "Catastrophic claim" means a property insurance claim or a vehicle physical damage

insurance claim directly resulting from a catastrophe. A catastrophic claim does not include a claim for injury or death to a human, liability for loss or damage to another, loss of use of property or a vehicle, loss of earnings or other loss or damage consequential to a catastrophe.

C. "Catastrophic claim number" means a unique numerical designation assigned to a given catastrophe for the purpose of referencing information relating to the catastrophe. A catastrophic claim number may be a combination of numerals and letters.

D. "Catastrophic claims bureau" means:

(1) a group of agency staff designated by the superintendent at the time of the catastrophe to gather information relating to catastrophic claims, to recommend the declaration of catastrophes, and to recommend assignment of catastrophic claim numbers;

(2) an independent organization appointed by the superintendent to gather information relating to catastrophic claims, to recommend the declaration of catastrophes, and to recommend assignment of catastrophic claim numbers; or

(3) a combination of the arrangements described in Paragraphs (1) and (2) of this subsection.

E. "Claims settlement" means an agreement between an insurer and claimant as to the amount of money owed to the claimant on a particular claim.

F. "Disaster" means a fire, flood, explosion, or technological accident that causes severe property damage or loss.

G. "Geographic area" means the area adversely affecting a significant portion of the population within the catastrophe region identified as a town, city, county or region or combination thereof as determined by the superintendent.

H. "Natural disaster" means a natural event, including a tornado, storm, high water, wind-

driven water, earthquake, volcanic eruption, landslide, mudslide, snowstorm, wildfire or drought, that causes severe damage or loss to property located in New Mexico.

I. "Payment" means loss payment, excluding adjustment expenses and net of actual salvage and subrogation recoveries. For an applicable line of business, payment shall include losses associated with loss of use, additional living expense, fair rental value, and other losses pertinent to that line of business.

J. "Post-declaration claim" means a catastrophic claim reported to an insurer after a catastrophe has been declared.

K. "Potentially qualifying event" means a disaster, natural disaster or accident or series of disasters, natural disasters or accidents that the superintendent, a catastrophic claims bureau or an insurer reasonably anticipates could result in a catastrophe declaration. [13.7.4.7 NMAC - Rp, 13.7.4.7 NMAC, 3/1/2023]

13.7.4.8 CATASTROPHIC CLAIMS BUREAU: The superintendent will designate a catastrophic claims bureau to make recommendations to the superintendent concerning the declaration of a catastrophe and assignment of a catastrophic claim number. The superintendent may choose to make such designation using any of the arrangements described in Subsection D of Section 7 of this rule. The superintendent may require an insurer to report information concerning each catastrophic claim to the catastrophic claims bureau. [13.7.4.8 NMAC - N, 3/1/2023]

13.7.4.9 PRE-DECLARATION INSURER REPORTING REQUIREMENTS: Upon the existence of a potentially qualifying event, the superintendent will issue a bulletin describing data required to be submitted by insurers. An insurer shall report the information described in the bulletin to the catastrophic

claims bureau within seven days of the issuance of the bulletin. If an insurer reasonably believes additional information will aid the superintendent in deciding whether to declare a catastrophe, the insurer shall also submit that information. Nothing in this rule diminishes the superintendent's authority to require additional reporting.
[13.7.4.9 NMAC - N, 3/1/2023]

13.7.4.10 DECLARATION OF CATASTROPHE: Upon the occurrence of an event that reasonably appears to be a catastrophe, and after receipt of the pre-declaration insurer reports required pursuant to Section 9 of this rule, the superintendent will consult with the catastrophic claims bureau as soon as practicable and will decide whether or not to declare a catastrophic loss. If the superintendent declares a catastrophic loss, then the superintendent will immediately assign a catastrophic claim number to that loss.
[13.7.4.10 NMAC - N, 3/1/2023]

13.7.4.11 CATASTROPHIC CLAIMS SETTLEMENT PRACTICES:

A. An insurer shall settle each catastrophic claim within a 90-day period after the superintendent has declared a catastrophic loss and has assigned a catastrophic claim number.

B. If the governor has declared an emergency, then the event giving rise to the governor's emergency declaration may, at the superintendent's discretion, be treated as a catastrophe consistent with the provisions of Section 10 of this rule, without the need for the pre-declaration insurer reports. Under such circumstances, an insurer shall settle each catastrophic claim within a 90-day period after the superintendent has exercised this discretion and declared a catastrophe. However, nothing in this rule shall be construed to reduce any of the superintendent's powers or alter any of the superintendent's duties as provided by Section 59A- 2-7 NMSA

1978, the All Hazard Emergency Management Act, the Public Health Emergency Response Act or any rule implementing those laws.
[13.7.4.11 NMAC – Rp, 13.7.4.8 NMAC, 3/1/2023]

13.7.4.12 EXCEPTION FOR POST-DECLARATION CLAIMS: If a claim is a post-declaration claim, an insurer shall settle such post-declaration claim within a 90-day period after such claim is reported to the insurer.
[13.7.4.12 NMAC - N, 3/1/2023]

13.7.4.13 TOLLING: An insurer may toll the 90-day period described in Section 10, 11, or 12 of this Rule by one of the following mechanisms:

A. If, prior to the expiration of the 90-day period described in Section 10, 11, or 12 of this Rule, whichever is applicable, an insurer presents sufficient evidence to the superintendent to demonstrate a reasonable belief or probable cause that one or more claims subject to this Rule was fraudulent, the applicable 90 day period shall be tolled during the pendency of the investigation into such fraud. However, if the superintendent determines that the evidence is insufficient, the 90 day time period shall not be tolled, and, if this determination is made after the expiration of the 90-day period, the insurer will be deemed to be in violation of this Rule.

B. If, prior to the expiration of the 90-day period described in Section 10, 11, or 12 of this Rule, whichever is applicable, an insurer demonstrates to the superintendent that a claimant has not submitted all required documentation for the claim, the applicable 90-day period shall be tolled until the claimant produces sufficient documentation.
[13.7.4.13 NMAC - N, 3/1/2023]

HISTORY OF 13.7.4 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: SCC 93-2 IN,

Catastrophic Claims (Regulation 16, Rule 1), filed 8/6/1993.

History of Repealed Material:
13.7.4 NMAC – Catastrophic Claims, recompiled 11/30/2001 from the original (Regulation 16, Rule 1), filed 8/6/1993, was repealed and replaced by 13.7.4 NMAC – Catastrophic Claims, effective 3/1/2023.

End of Adopted Rules

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Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	May 4	May 16
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Issue 12	June 15	June 27
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Issue 20	October 12	October 24
Issue 21	October 26	November 7
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Issue 23	November 22	December 5
Issue 24	December 7	December 19

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