

## NOTICE OF PROPOSED RULEMAKING

The Youth Conservation Corps Commission (Commission) hereby gives notice that the Commission will conduct public hearings in the theater at the Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, NM, 88011 on November 19, 2019 from 12:00 p.m. to 2:00 p.m. and in the Education Building at the Rio Grande Nature Center State Park, 2901 Candelaria Road NW, Albuquerque, NM 87107 on November 21 from 12:00 p.m. to 2:00 p.m. The purpose of the public hearing will be to obtain input on the proposed rule repeal and replacement of 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program. Oral and written comments will be accepted at the public hearing; and the hearings will be recorded.

The purpose of this proposed rule replacement is to incorporate changes to the New Mexico Youth Conservation Corps Act, 9-5-B-1 to 9-5-B-11 regarding the creation of the outdoor equity grant program; incorporate and clarify standards and requirements of the Youth Conservation Corps program; and update the language and formatting to meet current NMAC requirements.

**Public comment period:** The Commission is currently accepting comments through 5:00pm, Monday, November 18, 2019. Interested individuals may submit written comments to Sarah Wood, via email at ; fax (505) 988-7313; by postal mail to Youth Conservation Corps, 811 St. Michaels Drive, Santa Fe, New Mexico 87505; or by telephone at 505 988-9599. Individuals may also submit written or oral comments at one or both of the public hearings.

All comments will be posted to the Commission's website at <http://www.emnrd.state.nm.us/YCC/yccactrules.html> within three business days.

**Statutory Authority:** The Youth Conservation Corps Act, Sections 9-5B-1 to 9-5B-11 NMSA 1978 (1992, as amended through 2019), specifically authorizes the Commission to "adopt rules that are necessary for the proper administration of the New Mexico Youth Conservation Corps Act, including the outdoor equity grant program."

The proposed rule is printed below. Copies of the proposed rule may also be accessed on the Commission's website (<http://www.emnrd.state.nm.us/YCC/yccactrules.html>) or obtained from Sarah Wood, [sarah.wood@state.nm.us](mailto:sarah.wood@state.nm.us) (505) 988.9599.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Sarah Wood at (505) 988-9599 as soon as possible. The Department requires at least ten (10) days' advance notice to provide requested special accommodations.

### PROPOSED RULE

**TITLE 11      LABOR AND WORKERS COMPENSATION**  
**CHAPTER 2    JOB TRAINING**  
**PART 171     THE YOUTH CONSERVATION CORPS (YCC) AND OUTDOOR EQUITY GRANT**  
**(OEG) PROGRAMS**

**11.2.171.1      ISSUING AGENCY:** The New Mexico Youth Conservation Corps Commission.  
[11.2.171.1 NMAC – Rp, 11.2.171.1 NMAC, 12/17/2019]

**11.2.171.2      SCOPE:** General Public.  
[11.2.171.2 NMAC – Rp, 11.2.171.2 NMAC, 12/17/2019]

**11.2.171.3      STATUTORY AUTHORITY:** Section 9-5B-1 et-seq. NMSA 1978.  
[11.2.171.3 NMAC – Rp, 11.2.171.3 NMAC, 12/17/2019]

**11.2.171.4      DURATION:** Permanent.  
[11.2.171.4 NMAC – Rp, 11.2.171.4 NMAC, 12/17/2019]

**11.2.171.5 EFFECTIVE DATE:** December 17, 2019, unless a later date is cited at the end of a section.  
[11.2.171.5 NMAC – Rp, 11.2.171.5 NMAC, 12/17/2019]

**11.2.171.6 OBJECTIVE:** The objective of this rule is to establish procedures and standards for the administration of the Youth Conservation Corps (YCC) program and the Outdoor Equity grant (OEG) program.  
[11.2.171.6 NMAC – Rp, 11.2.171.6 NMAC, 12/17/2019]

**11.2.171.7 DEFINITIONS:**

**A. "Low-income youth"** means New Mexico residents up to the age of 18 who qualify for a state or federal assistance program, such as free or reduced lunch.

**B. "Native American"** means a person having origins in any of the original peoples of North and South America (including Central America) and who maintain tribal affiliation or community attachment.

**C. "Residential program"** means a program where corps members and their supervisors are housed on-site in a residential facility.

**D. "Rural"** means an area not within a metropolitan statistical area as defined by the United States office of management and budget.

**E. "Summer program"** means a program taking place between May and September.

**F. "Seasonal program"** means a program that takes place any time of year and is six months or less in duration.

**G. "Under-resourced"** means lacking sufficient resources, including, but not limited to funds, opportunity, work force, knowledge base, support systems, physical aids, communication devices, and other physical assets that limit access to job training and outdoor recreation.

**H. "Urban"** means an area within a metropolitan statistical area as defined by the United States office of management and budget.

[11.2.171.7 NMAC – Rp, 11.2.171.7 NMAC, 12/17/2019]

**11.2.171.8 PROPOSALS:**

**A.** At least annually, the commission will request proposals for YCC and OEG projects. The commission's announcement will include where to obtain proposal information and the date by which proposals must be submitted.

**B.** Annually, the commission shall establish a minimum and maximum number of grants for the OEG program; and a range of grant awards for the YCC and OEG, based on available funding and the quality and quantity of proposals.

[11.2.171.8 NMAC – Rp, 11.2.171.15 NMAC, 12/17/2019]

**11.2.171.9 YCC PROJECT ELIGIBILITY:**

**A.** Project sponsors: The YCC Commission will accept applications from:

(1) A federally recognized sovereign tribal government within the state.

(2) A state agency.

(3) A local government agency.

(4) A federal agency operating within the state.

(5) A non-profit organization with a 501(c) internal revenue service designation operating within the state.

(6) Any organization or agency with a 501(c) fiscal sponsor.

**B.** Projects must be consistent with the purposes of the NMYCC program and may include, but need not be limited to, projects that:

(1) protect, conserve, rehabilitate or increase resiliency of terrestrial and aquatic species, forests, refuges, rangelands and waters of the state;

(2) improve public parks, greenways, historic sites, libraries, museums, zoos, recreational areas and associated facilities;

(3) reinforce the "keep New Mexico true" campaign;

(4) provide emergency assistance, disaster relief or recovery; or

(5) improve disaster preparedness; increase energy efficiency.

**C.** Prohibited activities: The following activities are prohibited in the conduct of any NMYCC project:

- (1) the displacement or substitution of an existing employee by a corps member or the replacement of a seasonal employee normally hired by the project sponsor;
  - (2) the participation by corps members in the removal or cleaning up of any toxic or hazardous waste or toxic or hazardous waste site; and
  - (3) the assignment of corps members to general work activities such as, but not limited to, routine lawn mowing, routine litter control, janitorial duties and clerical tasks.
- [11.2.171.9 NMAC – Rp, 11.2.171.12 and 11.2.171.13 NMAC, 12/17/2019]

**11.2.171.10 YCC PROJECT REQUIREMENTS:**

- A.** Project sponsors shall ensure that all project sites and practices conform to appropriate state and federal health and safety standards and requirements.
  - B.** Project sponsors shall classify their programs as a summer, seasonal, or residential project; and also specify whether their project primarily engages Native American, rural, urban or other under-resourced populations.
  - C.** Wages for corps members and corps leaders shall account for a minimum of seventy percent of the total funds requested.
  - D.** Projects shall hire a minimum of four corps members and one corps leader.
  - E.** Project sponsors must provide an education and training program to corps members for the duration of the project. The number of hours of training provided for each corps member shall be no less than twelve percent of the total hours budgeted per corps member for the entirety of the project.
  - F.** Project sponsors shall match a minimum of twenty percent of total funds requested with in-kind contributions.
  - G.** Project sponsors shall provide proof they have obtained permission from all land owners or managers where the project shall take place.
  - H.** Project sites: Projects may be undertaken on:
    - (1) public lands, waters or structures located within the state that are under the jurisdiction of the project sponsor or in accordance with a written agreement between the project sponsor and the agency that has jurisdiction over the public lands, waters or structures;
    - (2) lands, waters or structures owned or administered by a non-profit entity or federally recognized sovereign tribal government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state; or
    - (3) lands, waters or structures owned or administered by a nonprofit organization or federally recognized sovereign tribal government in accordance with a written agreement between the project sponsor and the nonprofit entity or federally recognized sovereign tribal government, provided that these facilities are open to the public on a reasonable basis, there is a public value or benefit to the project, and the facilities are located within the state.
  - I.** Project sponsors shall provide proof that worker's compensation and unemployment insurance are in place for the duration of the project.
- [11.2.171.10 NMAC – Rp, 11.2.171.11 NMAC, 12/17/2019]

**11.2.171.11 YCC CORPS MEMBERS:**

- A.** Project sponsors shall, at their own expense, comply with all applicable laws, regulations, rules ordinances, and requirements of local, state, and federal authorities, including but not limited to those pertaining to equal opportunity employment, workers compensation benefits, and fair labor standards.
- B.** Recruitment, selection, supervision, development and dismissal of corps members will be the responsibility of the project sponsors.
- C.** Sponsors shall verify corps members meet the following eligibility requirements and keep records of such:
  - (1) are unemployed;
  - (2) are New Mexico residents;
  - (3) are in-school or out-of-school youth;
  - (4) are between the ages of 14 and 25 years of age for the duration of the project
  - (5) have a work permit if under the age of 16.
- D.** Sponsors shall enforce all labor laws and shall be familiar with child labor laws as they apply to employees under the age of 18.
- E.** Compensation:

- (1) Corps members shall be compensated as provided by law following the state or municipality established minimum wage.
  - (2) Corps members shall be individuals who meet the eligibility requirements and are at least 14 years of age at the beginning of the project.
  - (3) Corps crew leaders shall be individuals who meet the eligibility requirements, are at least 18 years of age at the beginning of the project, serve in a leadership position, and shall be paid no more than \$2.00 per hour more than the highest paid corps member.
  - (4) Corps crew trainers shall be individuals who meet the eligibility requirements, are at least 21 years of age at the beginning of the project, provide training to corps crews and mentoring to corps leaders, and shall be paid no more than \$4.00 per hour more than the highest paid corps member.
  - (5) Project sponsors may request wage increases of no more than ten percent of starting wage for corps members based on promotion, performance or additional responsibilities; and if there are sufficient funds in the budget to complete the project as planned.
  - (6) The YCC will support the project sponsor's existing policy for holiday pay.
  - (7) Project sponsors may not budget overtime pay into the cost proposal, and under no circumstances will the Commission reimburse project sponsors for overtime.
  - (8) The YCC will not reimburse the project sponsor for hazard pay.
  - (9) Project sponsors shall follow their established personnel policies for dismissal of corps members. Sponsors are encouraged to provide opportunities for improvement prior to dismissal.
- F.** The length of a corps member's employment shall be determined by the duration of the work project in which the corps member is participating.
- G.** The maximum accumulated length of service for which a corps member may be employed on a YCC crew, including all projects in which the corps member participated, shall not exceed 24 months.  
[11.2.171.11 NMAC – Rp, 11.2.171.13 and 11.2.171.14 NMAC, 12/17/2019]

#### **11.2.171.12 YCC EDUCATIONAL TUITION VOUCHERS AND ADDITIONAL CASH COMPENSATION:**

- A.** On completion of employment with the YCC, a corps member who has twelve full months of employment as a corps member during a period not to exceed 48 months, and who has received satisfactory evaluations throughout their employment, may apply for a \$500.00 additional cash compensation or a \$1500.00 educational tuition voucher.
- B.** The project sponsor shall certify that the corps member was employed for the duration of the project and the YCC staff shall verify same.
- (1) The educational voucher is good for reimbursement of expenses at a New Mexico institution of higher education, including accredited universities, colleges, community colleges, vocational schools and on-line education associated with an accredited New Mexico institution of higher education.
  - (2) The educational tuition voucher is valid for two years and will be reimbursed upon presentation of receipts and proof of payment.
    - (a) Examples of reimbursable expenses include educational expenses such as tuition, textbooks, and classroom and lab supplies.
    - (b) Examples of non-reimbursable expenses include personal expenses, transportation, computers, residential rent, and food.
  - (3) A corps member who receives satisfactory employment evaluations and has completed a minimum of six months employment but less than 12 months in a four-year period due to circumstances beyond the corps member's control, may receive a partial cash compensation or a partial educational tuition voucher.
    - (a) Circumstances beyond a corps member's control may include but are not limited to: illness; death in the family; a return to school; family relocation.
    - (b) Circumstances beyond the corps member's control do not include the unavailability of projects or that the project sponsor did not select them for employment with the project.
- [11.2.171.12 NMAC – Rp, 11.2.171.18 NMAC, 12/17/2019]

#### **11.2.171.13 OEG PROGRAM ELIGIBILITY**

- A.** The YCC Commission will accept applications from:
- (1) A federally recognized sovereign tribal government within the state.
  - (2) A state agency.
  - (3) A local government agency.

(4) A federal agency operating within the state.  
(5) A non-profit organization with a 501(c) (3) internal revenue service designation operating within the state.

- (6) Any organization or agency with a 501(c) (3) fiscal sponsor.  
(7) A privately-owned New Mexico resident business.

**B.** Programs must be consistent with the purposes of the outdoor equity grant program as described in the act; and may include, but are not limited to, programs that provide recreational opportunities and enhance outdoor skills and knowledge of activities such as bicycling, birdwatching, boating, camping, climbing, farming, fishing, flora and fauna identification, hang-gliding, hiking, horse-back riding, hot-air ballooning, hunting, jet skiing, mountain biking, mushrooming, nature study, off-highway vehicles, orienteering, paddling, rafting, ranching, rock-climbing, sandboarding, skiing, sledding, snowboarding, snowshoeing, and swimming.  
[11.2.171.13 NMAC – N, 12/17/2019]

#### **11.2.171.14 OEG PROGRAM REQUIREMENTS:**

**A.** Program sponsors shall ensure that all program components and practices conform to appropriate state and federal health and safety standards and requirements.

**B.** The majority of the program must take place outdoors, and the program shall be designed so that participants are actively engaging in outdoor recreational or educational activities the majority of the time.

**C.** Program applicants will specify whether their proposal primarily engages Native American, rural, urban or other under-resourced populations.

**D.** Programs that shall not be funded include, but are not limited to, those that take place primarily indoors, such as classrooms or gymnasiums; museums, aquariums, zoos, festivals or events; organized youth sports, such as baseball or soccer ; and service projects.

**E.** Program sites: Programs may occur in whole or partially on:

(1) public lands, waters or structures located within the state that are under jurisdiction of the program applicant or in accordance with a written agreement between the program sponsor and the agency that has jurisdiction over the public lands; waters or structures;

(2) privately-owned lands located within the state owned or leased by the program applicant or in accordance with a written agreement between the program applicant and the property owner;

(3) any lands, waters or structures located within the state that are owned or administered by a non-profit entity or federally recognized sovereign tribal government or in accordance with a written agreement between the program sponsor and the nonprofit entity or federally recognized sovereign tribal government.

**F.** Program applicants shall provide proof of adequate insurance coverage for any liability arising out of program activities for the duration of the program.

**G.** Service projects or publicly funded enhancements on private land that would increase the value of that land are prohibited.

[11.2.171.14 NMAC – N, 12/17/2019]

#### **11.2.171.15 EVALUATION OF PROPOSALS:**

**A.** The commission shall adopt a competitive evaluation process to guide the allocation of funds.

**B.** The commission shall review and evaluate all proposals to determine the proposal's conformance with the goals of the programs as described in the act and 11.2.171 NMAC, Sections 9, 10, 11, 13 and 14.

**C.** The commission shall take appropriate measures to ensure the evaluation process is not influenced by donors to the youth conservation corps or outdoor equity fund. This may include, but is not limited to, appointing an external review committee; and concealing the identity of applicants during the review process.

**D.** The commission will distribute funds equitably among qualified projects that variously engage Native American, rural, urban or other under-resourced populations.

[11.2.171.15 NMAC – Rp, 11.2.171.16 NMAC, 12/17/2019]

**11.2.171.16 AWARD AGREEMENTS:** Successful applicants shall enter into a formal agreement with the commission for the expenditure of awarded funds in accordance with their submitted proposal.

[11.2.171.16 NMAC – Rp, 11.2.171.17 NMAC, 12/17/2019]

#### **11.2.171.17 FUNDS:**

**A.** The commission may establish limitations on the availability and use of program funds. Any limitations shall be defined in the current application package

**B.** The commission may limit the amount of funding available for any element(s) of a program.

**C.** If money is not awarded in a given fiscal year due to the lack of applications meeting minimum requirements, the commission may reassign the funds to a non-funded or under-funded program that meets all the minimum requirements or may carry them over into the total program allocation for the next fiscal year.  
[11.2.171.17 NMAC – Rp, 11.2.171.9 NMAC, 12/17/2019]

**HISTORY of 11.2.171 NMAC:**

**Pre-NMAC History:**

The material in this Part was derived from that previously filed with the state records center & archives under; NMYCC Rule No. 92-1, Rules and Regulations Governing the New Mexico Youth Conservation Corps, filed November 20, 1992.

**History of Repealed Material:** 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program, filed 4/30/2001, was repealed and replaced by 11.2.171 NMAC, The Youth Conservation Corps (YCC) Program and Outdoor Equity Grant (OEG) Program, effective 12/17/2019.

**Other History:** 11 NMAC 2.YCC, The Youth Conservation Corps (YCC) Program, filed 5/14/1997, was reformatted, renumbered, and amended to 11.2.171 NMAC effective 4/30/2001.