

TITLE 19 NATURAL RESOURCES AND WILDLIFE
CHAPTER 17 WEATHER MODIFICATION
PART 2 WEATHER CONTROL AND PRECIPITATION ENHANCEMENT

19.17.2.1 ISSUING AGENCY: New Mexico Interstate Stream Commission.
[19.17.2.1 NMAC - N, 01-15-2005]

19.17.2.2 SCOPE: This rule governs the licensing and application process for weather control operations, research, and development pursuant to the New Mexico Weather Control Act.
[19.17.2.2 NMAC - N, 01-15-2005]

19.17.2.3 STATUTORY AUTHORITY: Section 75-3-1 et seq., NMSA 1978, as amended by House Bill 78, 2003 Legislative Session.
[19.17.2.3 NMAC - N, 01-15-2005]

19.17.2.4 DURATION: Permanent.
[19.17.2.4 NMAC - N, 01-15-2005]

19.17.2.5 EFFECTIVE DATE: January 15, 2005, unless a later date is cited at the end of a section.
[19.17.2.5 NMAC - N, 01-15-2005]

19.17.2.6 OBJECTIVE: The objective of this rule is to provide a consistent licensing and application process for weather control activities, establish additional rules and procedures that govern proceedings before the commission, and to insure the expeditious and orderly handling of all administrative matters consistent with all requirements of state, tribal and federal law.
[19.17.2.6 NMAC - N, 01-15-2005]

19.17.2.7 DEFINITIONS: Unless defined below or in a specific section, all other words used in these regulations shall be given their customary and accepted meanings.

A. “Applicant” means any individual, firm, partnership, association, company, corporation, business or public trust, federal agency, state agency, the state or any political subdivision thereof, municipalities and any other duly constituted legal entity that applies for a license.

B. “Application” means an application for a license submitted by an applicant to the commission.

C. “Apparatus” means any device used with the intention of producing artificial changes in the composition, motions and resulting behavior of the atmosphere.

D. “Commission” means the New Mexico interstate stream commission.

E. “Hearing participant” means an applicant, any person or entity filing a protest of an application or the commission’s staff.

F. “License” means a specific written authorization issued by the commission to an operator that has met specified qualifications authorizing such operator to engage in operations pursuant to a specified project scope in the state of New Mexico.

G. “Operation” means the performance of any weather control activity undertaken for the purpose of producing or attempting to produce any form or modifying effect upon the weather in the state. An operation does not include:

(1) research, development and experimental weather control activities by state or federal agencies or institutions of higher learning, expected to last no longer than six (6) months;

(2) laboratory research and experiments;

(3) activities engaged in for purposes other than producing or attempting to produce any form of modifying effect upon the weather;

(4) emergency activities conducted by public entities for the purposes of fire control; and

(5) religious or cultural ceremonies, rites or acts that do not utilize artificial methods to alter weather phenomena.

H. “Operations area” means the area in which an operation is conducted to produce or attempt to produce the desired effects within the target area.

I. “Operations director” means the person, identified in a valid license, who has the knowledge, experience and qualifications necessary to design, manage, evaluate and take overall responsibility for an operation.

J. “Operator” means any individual, firm, partnership, association, company, corporation, business or public trust, federal agency, state agency, the state or any political subdivision thereof, municipalities and any other duly constituted legal entity, as identified in a license.

K. “Research and development” means the exploration, field experimentation and extension of investigative findings and theories of a scientific or technical nature for purposes that may lead to practical application for experimental or demonstration purpose, including the experimental production and testing of models, agents, apparatus and processes.

L. “Sponsor” means any person who enters into an agreement with an operator to support weather control activities.

M. “Suspension criteria” means criteria developed for a specific operation to avoid weather control during undesirable periods. Examples include excess snow pack accumulation, excess rainfall forecasts and national weather service forecasts of severe weather.

N. “Target area” means the surface area within which the effects of an operation are expected.

O. “Weather control” means changing or attempting to change by artificial methods, the composition, motions and resulting behavior of the atmosphere.

P. “Weather control committee” means a three-member panel comprised of commission members or commission staff as designated by the commission.

Q. “Weather control hypothesis” means a statement of expectations, which systematically describes certain assumptions and predicts an outcome in terms of operation effects, given specifics such as seeding mode and a project location and duration.

[19.17.2.7 NMAC - N, 01-15-2005]

19.17.2.8 VIOLATIONS AND PENALTIES: As provided by Sections 75-3-15, NMSA 1978, any person violating any of the provisions of the Weather Control Act or this rule shall be guilty of a misdemeanor and a continuing violation shall be punishable as a separate offense for each day during which a violation occurs.

[19.17.2.8 NMAC - N, 01-15-2005]

19.17.2.9 CERTAIN LIABILITIES NOT IMPOSED OR RIGHTS AFFECTED: Nothing in the Weather Control Act or this rule shall be construed to impose or accept any liability or responsibility on the part of New Mexico or any state officials, agents or employees for any weather control activities of any private person or group, or to affect in any way any contractual, tortuous or other legal or equitable rights, duties or liabilities between any private persons or groups.

[19.17.2.9 NMAC - N, 01-15-2005]

19.17.2.10 COMMISSION AS OPERATOR: The commission may administer or carry on operations, subject to this rule, by its own officials, agents or employees.

[19.17.2.10 NMAC - N, 01-15-2005]

19.17.2.11 WEATHER CONTROL COMMITTEE: In the performance of the functions authorized in the Weather Control Act, the commission may establish a weather control committee to advise and make recommendations to the commission concerning licenses and other matters as provided in this rule. Members of the commission or its staff may serve on this committee. The commission shall appoint one member of the committee chairman or chairwoman (chair). In the event that the commission does not establish a weather control committee, all duties of the weather control committee specified in this rule shall be borne by the commission.

[19.17.2.11 NMAC - N, 01-15-2005]

19.17.2.12 OTHER JURISDICTIONS: Operations conducted in the state which are intended to affect the weather in a target area in another state are prohibited except upon full compliance with the laws of that state as well as the provisions of the Weather Control Act and this rule.

[19.17.2.12 NMAC - N, 01-15-2005]

19.17.2.13 LICENSE REQUIRED: Any person desiring to engage in operations in the state of New Mexico shall be required to make application for and receive a license prior to commencing operations.

[19.17.2.13 NMAC - N, 01-15-2005]

19.17.2.14 LICENSE APPLICATION PROCEDURES AND REQUIREMENTS: In order to apply for a license an applicant must complete the part A application demonstrating professional qualifications for conducting operations and must complete part B of the application presenting a detailed project scope of the operation to be conducted.

- A.** Part A of the application includes the following requirements:
- (1) an application fee of one hundred dollars (\$100.00) with the completed application form;
 - (2) designation of an operations director having the minimum professional and education requirements of two (2) years of supervisory experience with weather control projects and one of the following four (4) additional requirements:
 - (a) a masters of science degree in meteorology or related field; or
 - (b) a bachelor's degree in meteorology, plus two (2) additional years of recent experience in weather control field operations within the last five (5) years; or
 - (c) a bachelor's degree in engineering, mathematics or applicable physical or natural sciences including at least twenty-five (25) semester hours of meteorological course work plus two (2) additional years of experience in weather control field operations within the last five (5) years; or
 - (d) a bachelor's degree in meteorology and a manager certification by the weather modification association;
 - (3) a resume of the operations director and a resume from each individual who will significantly participate in the operation; each resume shall demonstrate sufficient knowledge and competence in the field of meteorology and cloud physics; if the operator is an organization, any individual and individuals who significantly participate in the operation shall meet the requirements of this subparagraph;
 - (4) proof of financial responsibility (see 19.17.2.15 NMAC).
- B.** Part B of the application shall include identification of the following:
- (1) the name and address of the applicant;
 - (2) name and address of the operations director;
 - (3) the sponsor(s) on whose behalf(s) the operation is to be conducted;
 - (4) the operations area and the target area;
 - (5) the weather control hypothesis, and a detailed operational plan for implementing the hypothesis;
 - (6) the intended effect of the operation;
 - (7) the materials and apparatus to be used in conducting the operation;
 - (8) suspension criteria;
 - (9) the period of operation, including starting and ending date (the operation need not be continuous);
 - (10) a plan, acceptable to the commission, for quantitatively and critically assessing the effects of the proposed operation;
 - (11) a completed notice of intention for license; a completed notice of intention shall accompany each application and shall be filed on a form furnished by the commission; and
 - (12) any additional information as the commission or the weather control committee may deem appropriate.
- C.** Part A and Part B of the application shall be submitted at least one hundred twenty (120) days prior to the proposed commencement date of the operation for which the license is being sought, to allow time to publish the notice of intention, hold a hearing in the event the application is protested or if the applicant requests a hearing after the commission's staff recommends license denial, review the operation information presented, and allow action by the commission prior to the proposed commencement date of the operation. The commission may waive the one hundred twenty (120) day period in part or whole for good cause and at the sole discretion of the commission.
- D.** A license is neither assignable nor transferable.
- E.** Any operation for which a license is granted shall be conducted under the personal direction of the operations director listed on the license.
- F.** The applicant shall notify the commission's staff in writing within fifteen (15) days of any substantive changes to any of the information submitted in the application.
- [19.17.2.14 NMAC - N, 01-15-2005]

19.17.2.15 FINANCIAL RESPONSIBILITY REQUIREMENT UNDER LICENSE: All applicants shall have on file, prior to license issuance, proof of ability to respond to damages for liability that might reasonably be attached to or result from any operations. This proof shall be in the form of a surety bond in the amount of one

million dollars (\$1,000,000) minimum for each license to be issued or such other proof of financial responsibility as the commission or the weather control committee may require.
[19.17.2.15 NMAC - N, 01-15-2005]

19.17.2.16 PRELIMINARY RECOMMENDATION BY COMMISSION STAFF: Within thirty (30) days of receipt of a completed application, commission staff shall evaluate the application for the purpose of making a recommendation to the weather control committee. The applicant shall be notified in writing of the commission staff's recommendation.

A. Recommendation of approval:

(1) Commission staff may recommend approval of the application only if the operation meets all requirements of this rule, is in conformity with all applicable provisions of New Mexico law and promotes the public welfare.

(2) If the commission staff recommends approval, it shall publish a notice of intention pursuant to 19.17.2.17 NMAC.

B. Recommendation of denial:

(1) The commission's staff shall recommend a denial of the application if the application does not meet the criteria for approval set forth in the Weather Control Act and this rule.

(2) If the commission's staff determines that it will recommend denial of the application to the commission, the staff shall notify the applicant within ten (10) days of such determination by mail. The applicant has fifteen (15) days from the date of mailing to request further consideration by the weather control committee pursuant to 19.17.2.18 NMAC. An applicant's failure to request further consideration under this paragraph shall be deemed as intention to abandon the application.

[19.17.2.16 NMAC - N, 01-15-2005]

19.17.2.17 PUBLICATION OF NOTICE OF INTENTION FOR LICENSE: The commission staff shall publish the notice of intention once a week for two (2) consecutive weeks in a newspaper or newspapers having general circulation in each county or counties of the proposed operations area and target area. The applicant may either pay publication costs directly to the publisher or may pay such costs to the commission in advance of publication.

[19.17.2.17 NMAC - N, 01-15-2005]

19.17.2.18 FURTHER CONSIDERATION BY THE WEATHER CONTROL COMMITTEE:

A. The weather control committee shall consider the merits of an application and otherwise determine if the requirements of the Weather Control Act and this rule have been met and may hold a hearing on such application at its discretion or in the event of either:

(1) written protest of the application by at least five (5) interested parties received in the offices of the commission (address in Paragraph (2) of Subsection A of 19.17.2.18 NMAC herein) within ten (10) days after last publication of the notice of intention; or

(2) written request by the applicant in accordance with Paragraph (2) of Subsection B of 19.17.2.16 NMAC; commission address for mailing of written protests of any application: Attn: Weather Control Committee, New Mexico Interstate Stream Commission, Post Office Box 25102 Santa Fe, New Mexico 87504-5102.

B. All hearings may be held before the weather control committee, at the commission's sole discretion.

C. Notice of hearing. At least twenty (20) days prior to a hearing by the weather control committee or the commission on an application, the commission's staff shall notify in writing all hearing participants of the hearing date and location. If an applicant requests a hearing after a recommendation of denial by commission staff, the applicant shall first publish the notice of intention in accordance with 19.17.2.17 NMAC of this rule.

D. Hearing is optional. At the discretion of the weather control committee, it may elect to provide a weather control committee recommendation in accordance with Subsection H of 19.17.2.19 NMAC of this rule without a hearing.

[19.17.2.18 NMAC - N, 01-15-2005]

19.17.2.19 HEARING PROCEDURES:

A. Weather control committee chair. The chair of the weather control committee shall preside over hearings on any contested application. The chair, with advice and consent from the other weather control committee members, shall have the power to regulate the hearing; to perform all acts and take all measures necessary to

conduct such hearing, including the authority to administer oaths and affirmations; to explain the events and requirements of the hearing process to all hearing participants; to hear all relevant issues during the hearing; to request and receive a proper administrative record and to otherwise regulate the conduct and course of the hearing. The chair may limit testimony to those matters reasonably noticed by the application or by any letter of protest filed pursuant to Paragraph (1) of Subsection A of 19.17.2.18 NMAC of this rule.

B. Pre-hearing discovery. No pre-hearing discovery shall be required by or from any hearing participant. At least ten (10) days prior to the hearing, the weather control committee shall make available to any hearing participant any application to be considered at the hearing, and any protest thereof, previously filed with the commission.

C. Location of hearings. The weather control committee shall hold all hearings in Santa Fe, unless the weather control committee decides in its sole discretion that a hearing should be held elsewhere to facilitate participation.

D. Testimony and evidence. During a hearing, evidence shall be presented only by (1) the applicant, (2) any person filing a letter of protest filed pursuant to Paragraph (1) of Subsection A of 19.17.2.18 NMAC of this rule, and (3) the commission's staff. No other person or entity may give evidence or argument. Any person or entity giving evidence or argument must provide the commission and all other hearing participants with a copy of any document or exhibit submitted as evidence. The New Mexico rules of evidence are not binding on presentation of evidence. The hearing shall be taped or transcribed.

E. Administrative notice. The weather control committee may take administrative notice of all judicially cognizable facts (i.e., all facts that may be noticed by a judge), and of generally recognized technical or scientific facts, published reports of governmental and state agencies and studies and conclusions within the commission's specialized knowledge.

F. Continuance/postponement. At the discretion of the chair, a scheduled hearing may be continued with notice, prior the hearing or may be recessed during the hearing and reconvened at a later date. Any statement of continuance or recess shall be made a part of the record. A hearing participant may request postponement or continuance of a hearing for good cause shown subject to approval by the chair. Grounds for postponement or continuance may include, but are not limited to, the unavailability of witnesses, unfair hardship by a hearing participant or economic use of commission resources.

G. Weather control committee recommendations. Within thirty (30) days after the weather control committee either completes its hearing deliberations or elects not to hold a hearing pursuant to Subsection D of 19.17.2.18 NMAC, it shall deliver to the commission a recommended decision including findings of fact and conclusions of law. The commission's staff shall serve a copy on each hearing participant by U.S. first-class mail, postage prepaid within ten (10) days of issuance thereof.

H. Final decision. At the next regularly scheduled commission meeting occurring at least fifteen (15) days after the weather control committee serves its recommended decision on the hearing participants, the commission shall consider the recommended decision on the hearing participants, the commission shall consider the recommended decision and issue a final decision or remand to the weather control committee for further administrative proceedings.

I. Administrative record. The administrative record shall include or otherwise reflect, at a minimum, all filings with the commission, all staff recommendations, all evidence received or considered, offers of proof and objections and rulings thereon, any recommended decision including findings of fact and conclusions of law submitted by the weather control committee, the transcript or tape of the oral proceedings as well as any decision, opinion or report by the commission.

[19.17.2.19 NMAC - N, 01-15-2005]

19.17.2.20 EXPIRATION AND RENEWAL OF LICENSE: Each license shall expire twelve (12) months after the issuance date thereof. Such license may, upon application, be renewed if the operator fulfills all the necessary qualifications and requirements stated in this rule. The application for renewal shall be accompanied by the application fee and by any appropriate modifications to the application. A license shall not be renewed if the applicant no longer qualifies for such license, if the license is no longer in compliance with applicable state, tribal or federal law, if renewal of the license does not promote the public welfare or if the applicant has violated any provisions of the Weather Control Act or this rule. Thirty (30) days after the applicant requests a renewal and submits any changes to the application, the weather control committee shall recommend to the commission whether to renew a license. If there are any significant changes to the application, the weather control committee shall first give notice and opportunity for hearing as provided in Paragraph (2) of Subsection A of 19.17.2.16 NMAC of this rule before renewing any license.

19.17.2.21 LICENSE SUSPENSION, MODIFICATION OR REVOCATION:

A. The commission may suspend or revoke or refuse to renew a license for any one or any combination of the following causes:

- (1) incompetence;
- (2) dishonest practice;
- (3) false or fraudulent representation in obtaining a license under this rule;
- (4) failure to comply with any of the provisions of the Weather Control Act, this rule or applicable state, tribal or federal law; or
- (5) aiding other persons who fail to comply with any of the provisions of the Weather Control Act, this rule or applicable state, tribal or federal law.

B. When it appears to the weather control committee that a threat to life or property exists or is imminent, or the commission or its staff has been notified of a probable impending emergency or the operation fails to maintain compliance with this rule, the weather control committee may summarily order the operator to immediately suspend, terminate or modify all operations within the area affected by such operations.

(1) Notification of suspension, modification or termination of an operation shall be given in the most expeditious manner under the circumstances.

(2) Regardless of the manner of initial notification, it is to be followed within two (2) business days by facsimile or a certified letter of particulars addressed to the licensed holder stating the time and place for holding a hearing on the question of taking permanent action to modify or cancel the license.

(3) In the event that the weather control committee summarily suspends or modifies a license, it shall issue a report to the commission for its consideration at its next regularly scheduled meeting. The commission may hold an informal hearing on the matter to allow any person who would qualify as a hearing participant a reasonable opportunity to be heard on this issue.

(4) Whether or not the commission reinstates operations, and when such reinstatement may take place, will depend, among other things, upon the conditions that develop within the operations area and target area and if the requirements of the Weather Control Act, this rule, applicable state, tribal and federal law and the commission are met.

(5) The commission or the weather control committee may initiate any necessary actions in a court of competent jurisdiction in the event that the operator fails to adhere to any order under this section.

C. Each license issued will include suspension criteria regarding operations that shall be applied to protect life and property.

D. Failure of the operator to notify the commission's staff of an existing or impending or reasonably foreseeable emergency threat to life or property is grounds for cancellation of the license and immediate termination of the operation.

19.17.2.22 OPERATION RECORDS: The operator shall maintain the following records during an operation and provide them to the commission pursuant to 19.17.2.23 NMAC of this rule:

A. Daily log: Each operator must maintain a daily log of weather control activities for each unit of equipment and apparatus used during an operation. The log shall include at a minimum:

- (1) date of weather control activity;
- (2) each aircraft flight track and location of each item or apparatus used during each mission; use of maps is required;
- (3) local time when weather control activity began and ended; for non-continuous activities, the start and end of a total sequence of activity is acceptable;
- (4) amount of time each apparatus is in operational use;
- (5) type of weather control agent/material used in each apparatus;
- (6) rate of dispersal and dispersal location of each seeding agent/material during actual use of each apparatus; the information is to be provided both in the form of maps and in computer-readable form for possible subsequent analysis;
- (7) total amount of seeding agent/material used; if more than one agent/material is used, list totals for each type of agent separately;
- (8) local time when any type of monitoring (e.g., radar) was operational and computer readable archives of monitoring date;

(9) type(s), estimated moisture content and size of cloud(s) modified (i.e., stratiform, isolated cumuliform, organized cumuliform, etc.);

(10) narrative indicating such operational problems as equipment failure, personnel problems, weather conditions, etc.; and

(11) monthly totals from the daily logs listing the following:

- (a) days during the month in which operation(s) were conducted;
- (b) time of operation(s);
- (c) amount of each kind of seeding agent/material used;
- (d) average rate of dispersal of each kind of seeding agent/material used;
- (e) time of operation of any monitoring equipment; and
- (f) days of each type of cloud treated.

B. Weather records. Each operator must obtain and retain copies of all daily precipitation total records available from the national weather service stations in the operations area and target area and from any other reliable sources.

C. Participants. Each operator must keep a current listing of names and addresses of all participants in any operation for which the commission issues the operator a license.
[19.17.2.22 NMAC - N, 01-15-2005]

19.17.2.23 OPERATOR REPORTS: At a minimum, the operator shall maintain and provide the following reports to the commission's staff:

A. Tri-monthly report. Every ninety (90) days after the commencement of an operation, the operator shall submit a report to the commission that shall consist of:

- (1) a summary of the records prepared under 19.2.7.22 NMAC of this rule;
- (2) a copy of the roster of all participants associated with the operation which was prepared according to Section 22 of this rule; and
- (3) a narrative account of the manner and extent in which the operation did or did not conform to the intended effect as described in Subsection B of 19.17.2.14 NMAC of this rule.

B. Summary report. A summary report on observed results of each operation must be submitted ninety (90) days after conclusion of the operation. These summary reports shall consist of all information required in Subsection A of 19.17.2.23 NMAC, plus a narrative evaluation and quantitative analysis of the operation and its effects on the operations area in form and content acceptable to the commission staff.

C. Reports to sponsors. The operator shall file with the commission a copy of all reports made by the operator to sponsors.

D. Federal reporting. The operator is responsible for complying with all applicable federal reporting requirements as set forth in Public Law 92-205, 15 U.S.C. 330b, as amended, including reporting to the national oceanic and atmospheric administration. The commission's staff maintains a copy of the reporting form required by federal law.

[19.17.2.23 NMAC - N, 01-15-2005]

19.17.2.24 RELEASE OF INFORMATION TO PUBLIC: All operational information for an operation shall be filed with the commission before such information is released to the public. Scientific and other information concerning an operation shall also be filed with the commission as it becomes available and before being released to the public.

[19.17.2.24 NMAC - N, 01-15-2005]

19.17.2.25 MONITORING: When an operator conducts an operation in an area where the United States government or its agent is conducting weather control research, then said operator shall submit to monitoring by the United States government or its agent.

[19.17.2.25 NMAC - N, 01-15-2005]

19.17.2.26 LIABILITY: Except as provided in 19.17.2.8 NMAC and 19.17.2.9 NMAC of this rule, nothing in this rule shall present any person adversely affected by an operation or any research and development activity from recovery damages otherwise available under applicable law.

[19.17.2.26 NMAC - N, 01-15-2005]

19.17.2.27 SUITS TO RECOVER FEES: The commission shall have power to commence suit for the recovery of any fees due under the provisions of this rule. All fees collected under the provisions of this rule shall inure to the commission.

[19.17.2.27 NMAC - N, 01-15-2005]

19.17.2.28 LIBERAL CONSTRUCTION: This rule shall be liberally construed to carry out its purpose.

[19.17.2.28 NMAC - N, 01-15-2005]

HISTORY OF 19.17.2 NMAC: [RESERVED]