

**NEW
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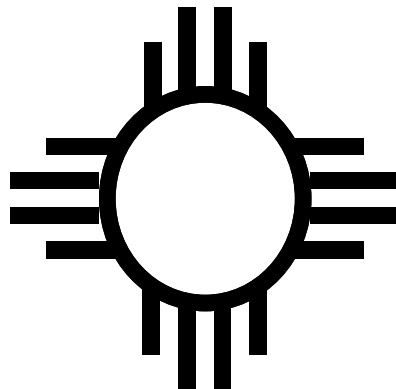


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The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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New Mexico Register

Volume XVIII, Number 11

June 14, 2007

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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 by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Family Services, Child Care Services Bureau will hold a formal public hearing on Thursday, July 19, 2007, from 1:00 p.m. to 3:00 p.m. in Apodaca Hall on the 2nd floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding proposed changes to regulations 8.16.3 NMAC Requirements Governing the Child Care Facility Loan Act.

The proposed regulation changes may be obtained at www.newmexicokids.org or by contacting Adrian Martinez at 505-827-7499. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on May 30, 2007. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Adrian Martinez, Child Care Services Bureau, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-7361.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact the Child Care Services Bureau at 505-827-7499. CCSB requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AMENDMENTS TO)	
THE RENEWABLE PORTFOLIO STANDARD)	Case No. 07-00157-UT
RULES OF THE NEW MEXICO)	
PUBLIC REGULATION COMMISSION)	

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission (“NMPRC” or “Commission”) proposes to amend its existing Rule 572, *Renewable Energy for Electric Utilities*, which is contained in the New Mexico Administrative Code (“NMAC”) at 17.9.572 NMAC. This matter comes before the Commission upon its own Motion; whereupon,

THE COMMISSION FINDS AND CONCLUDES:

The Commission is required to adopt renewable energy rules in order to implement the Renewable Energy Act as currently codified at NMSA 1978, Section 62-16-1, *et seq.*, and, further, is considering amendments to its existing Rule 572 in order to implement New Mexico Senate Bill 418 (“S.B. 418”), which was passed by both houses of the New Mexico Legislature during the 49th Legislature (First Session, 2007) and was signed into law by the Governor of New Mexico on March 5, 2007.

S.B. 418 amended the Rural Electric Cooperative Act (Chapter 16, Article 15, NMSA 1978), the Renewable Energy Act (Chapter 16, Article 16, NMSA 1978), and the Efficient Use of Energy Act (Chapter 16, Article 17, NMSA 1978).

The effective date of the provisions of S.B. 418 is July 1, 2007.

The Commission has jurisdiction over public utilities in the State of New Mexico. N.M. Const., Art. XI, Section 2, NMSA 1978 Section 62-1-1, *et seq.* The proposed rule amendments would be adopted under the authority granted the Commission by the New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978,

Sections 8-8-4 and 8-8-15), and applicable portions of Chapter 62, NMSA 1978, as amended by S.B. 418.

We note in particular that S.B. 418, among other things, amended the Rural Electric Cooperative Act to include a new requirement (*see* S.B. 418, Section 1(A)(1) through (4)) that each distribution cooperative organized under that Act include renewable energy in its electric energy supply portfolio, and meet certain renewable portfolio standards, as follows [emphasis supplied]:

- (1) no later than January 1, 2015, renewable energy shall comprise no less than five percent of each distribution cooperative’s total retail sales to New Mexico customers;
- (2) the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent of the distribution cooperative’s total retail sales to New Mexico customers;
- (3) the renewable portfolio standard of each distribution cooperative shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and the cost of the various renewable energy resources made available to the distribution cooperative by its suppliers of electric power; and
- (4) renewable energy resources that are in a distribution cooperative’s energy supply portfolio on January 1, 2008 shall be counted in determining compliance with [Section 1 of the Rural Electric Cooperative Act].

We also note that S.B. 418, at Section 62-16-4, among other things, amended the Renewable Energy Act to require renewable portfolio standards for public utilities other than rural electric cooperatives and municipalities, as follows [emphasis supplied]:

- (a) no later than January 1, 2006, renewable energy shall comprise no less than five percent of each public utility’s total retail sales to New Mexico customers;
- (b) no later than January 1, 2011, renewable energy shall comprise no less than ten percent of each public utility’s total retail sales to New Mexico customers;
- (c) 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; and
- (d) no later than January 1, 2020, renewable energy shall comprise no less than twenty percent of each public utility’s total retail sales to New Mexico customers[.]

On April 26, 2007, the Commission issued

its *Notice of Inquiry* in this proceeding, commencing an inquiry concerning whether and how the Commission's Rule 572, *Renewable Energy for Electric Utilities* (17.9.572 NMAC), should be amended.

In its *Notice of Inquiry*, the Commission invited comments and participation in the workshop (see Para. 8, *infra*) "from all New Mexico utilities, including rural electric cooperatives, from the New Mexico Attorney General, from environmental organizations, from consumer organizations, from the Commission's Utility Division Staff, and from any other interested persons, with respect to the issues set forth herein, and with respect to any related issues that are relevant to the question of whether and how Rule 572 should be amended." Attached to the *Notice of Inquiry* was a "strawman" document consisting of potential rule amendments set out for informal discussion purposes.

On May 11, 2007, the Commission held in this proceeding a day-long public workshop concerning the "strawman" rule amendments that were attached to its April 26, 2007 *Notice of Inquiry*, and concerning issues relating thereto as set forth in that Notice. [(1) *See id.* at Para. 5]. At the conclusion of that Workshop, the Commission directed all workshop participants to submit any preliminary, informal items of information (based on the matters there discussed) not later than May 18, 2007.

Remarks made during the Workshop, and any items of information that have been submitted heretofore, are not evidence and are not part of the record of the rulemaking. Any person having submitted such information who desires it to be considered hence as part of the rulemaking process should file it as a formal comment.

In a communication addressed to the workshop participants and other individuals who had requested that their names be placed on an electronic circulation list for this proceeding, Commissioner Jason A. Marks wrote the following:

[(2) Electronic transmission (e-mail) dated May 16, 2007 *re* "RPS workshop and Rulemaking."]

The appropriate development of renewable energy resources supplying retail New Mexico loads is crucial investment in our state's energy future, and crafting the right regulatory framework helps us reach that goal.

We ratify that statement and adopt it as a statement of the entire Commission.

We conclude as a preliminary matter, based

on our analysis and consideration to date, that Rule 572 should be amended in order to effectuate fully the Renewable Energy Act, NMSA 1978, Section 62-16-1, *et seq.*, as amended by S.B. 418. What remains to be determined is how - *i.e.*, precisely in what manner - Rule 572 should be amended. Accordingly, we conclude that a rulemaking proceeding should be instituted, and that this Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties. For the sake of administrative economy (a workshop having already been held on preliminary matters as set forth in the April 26, 2007 *Notice of Inquiry*), the rulemaking proceeding should take place in this docket. We identified previously, in our *Notice of Inquiry*, the following issues as being of particular interest to the Commission in this proceeding:

Should current methods for ensuring portfolio diversification be changed?

Does the current method based on a weighting system for various classes of renewable energy supplies discourage the addition of large solar resources?

Is the current method ineffective in other ways?

We now request formal comment on the foregoing issues, as well as the following:

If the weighting system (see Para. 12, above) is eliminated from Rule 572, what should be the regulatory treatment of projects that were initiated while the weighting system was in force?

Technical considerations, if any, relating to recording and tracking past and future weighted and nonweighted RECs.

Should Rule 572 further define "low or zero emissions generation technology"? Should Rule 572 provide additional clarity, direction, or certainty as to the eligibility of resources that produce emissions? If so, how? Taking into consideration the proposed definition of emissions to include criteria pollutants, mercury, and carbon dioxide, are there external standards for "low emissions" from other New Mexico agencies, the federal government, or others that should be incorporated by reference into the Rule?

What should be the regulatory treatment of technologies such as waste heat recovery that share some of the characteristics and benefits of renewable energy but might not qualify as generation *per se*?

What should be the regulatory treatment of renewable energy generation technologies other than those currently defined as being within the scope of Rule 572? Should Rule 572 encourage the development of such technologies? If so, how? Should such technologies be addressed on an *ad hoc*

basis, *e.g.*, through one or more declaratory orders? Should such technologies be included within the scope of Rule 572 only if they are demonstrated to be commercially available?

As we noted previously, in our *Notice of Inquiry*, [(3) *See id.*, p. 3., Para. 7] with regard to performance-based incentives, S.B. 418's addition of Section 62-16-4(H) to the Act requires the Commission to undertake a preliminary analysis of that issue:

The commission shall determine if it is in the public interest for the commission to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies in amounts that exceed the requirements of the renewable portfolio standard.

We have already ruled that, in view of the foregoing language establishing a requirement for the Commission to conduct a preliminary analysis, any rulemaking to address possible performance-based incentives is deferred to a separate docket. [(4) *Ibid.*]

The Commission takes administrative notice of the requirement (set forth at 17.9.572.16 NMAC) that, on or before September 1 of each year, all Commission-regulated, investor-owned electric utilities must file their annual portfolio procurement plans. In order to effectuate the legislative aims of S.B. 418 in the most expeditious manner possible, the Commission finds that the effective date of a newly amended Rule 572 should be September 1, 2007.

Accordingly, the Commission should adopt and establish a procedural schedule that will allow for the promulgation of a final amended Rule 572 in time for such rule to take effect on September 1, 2007. Due to the need for timely resolution of all substantive issues consistent with due process requirements and statutory deadlines, recommendations for modifications to this procedural schedule are not encouraged; however, if there be any such recommendations, they should be filed in the form of a motion to the Commission.

The Commission also takes administrative notice of the requirement, consistent with our adoption of the Recommended Decision of the Hearing Examiner in Case No. 04-00253-UT, that, on or before September 1, 2007, all Commission-regulated, investor-owned electric utilities file reports describing their respective positions on the Reasonable Cost Threshold (RCT) levels set out in that Recommended Decision, at pp. 10-11, and their respective recommendations as to whether these levels should be

changed. *Id.*

The Commission recognizes that, until a final rule is adopted in this proceeding, and until the implement of such a rule is actually underway, it may not be feasible accurately to assess whether the RCT levels established in Case No. 04-00253-UT should continue to apply. As a result, additional time may be needed for compliance with the reporting requirements described in the preceding Paragraph. Accordingly, an extension of time of six (6) months should be awarded in order that compliance may be achieved in a way that provides meaningful and complete analysis based on the impacts of any new rule on RCT levels.

A copy of the proposed amendments to be considered for promulgation as amendments to Rule 572 is attached hereto as "Exhibit 1." The proposed amended rule has been formatted for inclusion in the New Mexico Administrative Code ("NMAC") pursuant to NMSA 1978, Section 14-4-3 and, if adopted as proposed, would be cited as 17.9.572 NMAC. Additional copies of the proposed amendments to Rule 572

can be obtained from:
Mr. Ron X. Montoya
Records Management Bureau
Marian Hall
224 East Palace Avenue
Santa Fe, New Mexico 87501
Telephone: (505) 827-6940.

IT IS THEREFORE ORDERED:

A rulemaking proceeding should be, and hereby is, instituted concerning the manner in which Commission Rule 572, *Renewable Energy for Electric Utilities*, as it is currently set forth in the New Mexico Administrative Code ("NMAC") at 17.9.572 NMAC, should be amended.

Said rulemaking proceeding shall take place in this docket.

This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested parties.

Any person wishing to comment on the proposed amendments to Rule 572, 17.9.572 NMAC, may do so by submitting written comments no later than June 28, 2007. Any person wishing to respond to comments may do so by submitting written response comments no later than July 12, 2007. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate

the changes being suggested. Specific proposed language changes to the draft rule amendments shall be provided in a format consistent with that of the existing rule.

In their filed comments, the Commission's Utility Division Staff ("Staff") and all regulated utilities (including rural electric cooperatives) shall, and other commenters may, specifically address the issues set forth herein, at p. 5, Para. 12-13.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Comments on the proposed rule shall be filed with the Commission's Records Division, at the address set out at page 8 hereof.

A public hearing on the proposed rule amendments, to be presided over by Commission Chairman Ben R. Lujan or his designee, shall be held beginning at 10:00 A.M. on July 16, 2007 at the offices of the Commission, at the following location:

4th Floor Hearing Room
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. (505) 827-6940.

All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at 827-6947 at least 48 hours prior to the commencement of the Hearing.

Pursuant to NMSA 1978, Section 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice and to all electric utilities subject to the jurisdiction of the Commission, including rural electric cooperatives. Copies of this *Notice of Proposed Rulemaking* shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

This *Notice of Proposed Rulemaking*, without Exhibit 1, shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

In addition, this Notice shall be posted on

the Commission's official Web site.

Copies of any forthcoming final order adopting proposed rule amendments shall be mailed, along with copies of the particular rules amended, to all affected utilities, all commenters in this case, and all individuals requesting such copies.

This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 29th day of May, 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEN R. LUJAN, CHAIRMAN

JASON MARKS, VICE CHAIRMAN

DAVID W. KING, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

SANDY JONES, COMMISSIONER

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the High Desert Club, SunRay Park, 39 Road 5568, Farmington, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Wednesday, June 20, 2007. The public session will begin at 9:30 o'clock a.m. on Wednesday, June 20, 2007. The Commission will consider adoption of the proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 15.2.2.8 NMAC (regarding associations); 15.2.5.13 NMAC (regarding equipment); 16.47.1.10 NMAC (regarding trainer responsibility); and 15.2.1.7 NMAC (definitions A-J)

Copies of the proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit

their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

Julian Luna
Agency Director

Dated: June 1, 2007

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION**

**of the
Regulation and Licensing Department**

NOTICE OF PUBLIC HEARING

Public Hearings will be held to receive comments on proposed repeal and replacement of the following rules:

- * 14.7.2 NMAC - 2003
New Mexico Commercial Building Code
- * 14.7.3 NMAC - 2003
New Mexico Residential Building Code
- * 14.7.6 NMAC - 2003
New Mexico Energy Conservation Code
- * 14.7.7 NMAC - 2003
New Mexico Existing Building Code
- * 14.7.4 NMAC - 2003
New Mexico Earthen Building Materials Code
- * 14.7.5 NMAC - 2003
New Mexico Non-Load Bearing Baled Straw Construction Building Standards
- * 14.8.2 NMAC - 2003
New Mexico Plumbing Code
- * 14.9.2 NMAC - 2003
New Mexico Mechanical Code
- * 14.7.8 NMAC - 2003
New Mexico Historic Earthen Buildings

In general, these rules will facilitate the adoption of the new 2006 construction, plumbing and mechanical codes, and the 2003 ANSI standards, and may also make technical corrections respecting grammar, formatting and internal consistency.

Public Hearings will take place on **Monday**

July 16, 2007, from 9:00 a.m. through 12:00 noon, at the following locations:

- * **Santa Fe, NM** - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe
- * **Albuquerque, NM** - Regulation and Licensing Conference Room, 5200 Oakland Avenue, NE, Albuquerque
- * **Las Cruces, NM** - CID Conference Room, 505 S. Main, Suite 150, Las Cruces
- * **Farmington, NM** - Civic Center, 200 W. Arrington, Farmington
- * **Roswell, NM** - City Council Chambers, 425 North Richardson, Roswell

You are invited to attend and express your opinion on the adoption of the above-referenced proposed rules. If you cannot attend the meeting, you may send your written comments to the General Construction Bureau, Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 476-4700. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., July 16, 2007.

Copies of the draft rules will be available at the Construction Industries Division Offices beginning July 2, 2007.

If you require special accommodations, please notify the Division of such needs no later than July 2, 2007.

**End of Notices and
Proposed Rules Section**

Adopted Rules

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 20, effective May 21, 2007.

**19.31.4.20 E M E R G E N C Y
ORDER FOR FISH SALVAGE:** Under authority of [~~19.31.10.14~~] 19.31.10.14 promulgated by the state game commission on [~~September 15, 1994~~] April 1, 2007, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within the Kid's Pond and Middle Pond at Tingley Beach in Bernalillo county. The extent to which, fish life may be destroyed by an infestation of Ichthyophthirius multifiliis, potentially causing death to catfish, trout, and other game fish. Also, the life cycle of the parasite will perpetuate unless the existence of potential hosts is greatly minimized. Given the short infectious period of this parasite, the potential exists that the life cycle could be greatly interrupted or completely broken if enough fish are removed. Bag limits on sport fish will be unlimited. Manner and method regulations relative the Kid's Pond will also be suspended (allowing adults to fish in the kid's pond). The operating hours for Tingley Beach will remain in effect for the duration of this salvage order. This relaxation will go into effect at 12:00 a.m., May 12, 2007, and will remain in effect through 11:59 p.m., May 20, 2007. Upon review, I extend the relaxation period for this order and it will end 11:59 p.m., May 27, 2007.
[19.31.4.20 NMAC - N/E, 5-12-07; A/E, 5-21-07]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 21, effective June 4, 2007

**19.31.4.21 E M E R G E N C Y
ORDER FOR FISH SALVAGE:** Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2007, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within the Santa Fe River in Santa Fe county. The extent to which, fish life will be destroyed by drying of the river. Bag limits on sport fish will be unlimited. Manner and method

regulations will also be suspended. This relaxation will go into effect at 12:01 a.m., June 4, 2007, and will remain in effect through 11:59 p.m., June 10, 2007.
[19.31.4.21 NMAC - N/E, 6-4-07]

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION

This is an amendment to 13.10.20 NMAC Section 8, necessitated by an amendment to the Section 10-7B-6.1 NMSA 1978, where a proviso was added to Subsection C - effective 06-15-07. This is also an amendment to 13.10.20 NMAC Section 10, necessitated by an amendment to the Section 10-7B-6.1 NMSA 1978, where a proviso was added to Subsection B - effective 06-15-07.

13.10.20.8 ADMINISTRATION: As to any of the following administration actions, GSD may delegate, by the terms of a valid joint powers agreement or other legal process, the duties of the administration of the program to another state agency determined by GSD to be capable of administering the program, or GSD may delegate those duties to a third-party administrator pursuant to the procedures required by the New Mexico procurement code.

A. Insurance coverage may be procured, as authorized by Section 15-7-3 (A) (2) NMSA 1978 and by utilizing existing procurement code procedures, by entering into an agreement with a small employer, as authorized by Section 10-7B-6.1 (A) NMSA 1978, to voluntarily purchase health care coverage offered pursuant to the group benefits act for persons and dependents eligible through the small employer. The director shall undertake such other activities as are necessary or proper to carry out the provisions and purposes of the program. The director may employ such persons, firms or corporations to perform such administrative or other functions as are necessary for the operations of the program.

B. As authorized by Section 10-7B-6.1 (B), the director may enter into agreements with an association, cooperative or mutual alliance representing small employers to provide outreach and assistance for small employers to voluntarily purchase health care coverage offered pursuant to the group benefits act for persons and dependents eligible through the small employer.

C. The director shall only permit voluntary purchase of health care coverage by small employers if the small

employer has not offered health care coverage to persons and dependents eligible through a small employer for a period of at least twelve months prior to enrollment in the coverage offered pursuant to the group benefits act, not inclusive of a government sponsored health benefit program provided, however, that the waiting period in this subsection shall not apply to a person having nonprofit status that employs an average of fifty or fewer persons over a twelve-month period.

D. The following administrative procedures shall be taken:

(1) program design standards shall be established to include the types, extent, nature and description of coverages; specific eligibility and enrollment rules (including, but not limited to, effective dates of coverage, coverage options, payroll deductions, change of status situations, coverage changes, reinstatements, termination of coverage and refunds) for participation by small employers, their employees and the dependents of the employees; the deductibles; the premium rates to be charged; the amount of reserves necessary to be retained to ensure an actuarially sound plan; and all other matters reasonably necessary to carry on or administer the program; and the director shall establish the program plan design, either by recommendation to the director or on the director's own determination, to incorporate elements deemed appropriate by the director, by regulation or by letter of administration prepared with the advice of the group benefits committee as provided by Section 10-7B-6 (B) NMSA 1978;

(2) the director shall procure contracts with health care providers for the program pursuant to the terms of Subsection A of 13.10.20.8 NMAC either by recommendation to or on the director's own determination;

(3) either upon recommendation to or on the director's own determination, agreements with small employers shall be entered to voluntarily purchase health care coverage offered pursuant to the group benefits act for persons and dependents eligible through the small employer, as authorized by Sections 15-7-3 (A) (1) and 10-7B-6.1 (A) NMSA 1978;

(4) information about the program shall be disseminated to interested and eligible small employers and their employees;

(5) orientation of new employees and continued communication with ongoing employees in the program shall be conducted; and

(6) accurate record keeping, including insurance files, claim files, and

files for eligible participants shall be kept and maintained.

[13.10.20.8 NMAC - N, 7/1/2006; A, 6/15/2007]

13.10.20.10 GENERAL ELIGIBILITY CRITERIA: To participate in the program, participants must be:

A. employed by a New Mexico based small employer; and

B. the small employer may not have offered health care coverage to persons and dependents for a period of at least twelve months prior to enrollment in the coverage offered under the program, not inclusive of a government sponsored health benefit program ~~[For]~~ provided, however, that the waiting period in this subsection shall not apply to a person having nonprofit status that employs an average of fifty or fewer persons over a twelve-month period; for the purpose of this paragraph, an employer will be deemed not to have offered health care insurance coverage if the employer's health care insurance was unilaterally cancelled, in part or in whole, by the carrier, through no action or inaction on the part of the employer, and the employer has not offered other private health care coverage since the unilateral cancellation of the employer's prior health care insurance coverage; only then may that employer not be subject to the time requirement of this section, in order to participate in the small employer health care coverage program governed by these rules.

[13.10.20.10 NMAC - N, 7/1/2006; A, 1/31/2007; A, 6/15/2007]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to 13.2.4 NMAC, Sections 1, 2, 3, 5, 6, 16, 17 and 18, effective June 14, 2007. In accordance with the current NMAC requirements, this rule was also renumbered and reformatted from 13 NMAC 2.4 (filed 5/27/1997), Use of Commercial Depositories for Statutory Deposits (filed 5/27/97) to 13.2.4 NMAC, "Use of Commercial Depositories for Statutory Deposits, effective June 14, 2007.

13.2.4.1 ISSUING AGENCY:
[~~New Mexico State Corporation Commission~~] New Mexico Public Regulation Commission, [Department of Insurance Division, [Post Office Box 1269, Santa Fe, NM 87504 1269].

[7/1/97; 13.2.4.1 NMAC - Rn & A, 13 NMAC 2.4.1, 6/14/07]

13.2.4.2 SCOPE: This rule

applies to all statutory deposits required in order to be qualified to transact the business of insurance and security deposits required to be registered as a service contract provider in the state of New Mexico.

[7/1/97; 13.2.4.2 NMAC - Rn & A, 13 NMAC 2.4.2, 6/14/07]

13.2.4.3 STATUTORY AUTHORITY: Sections 59A-2-9, 59A-5-18, 59A-5-19, 59A-10-4, 59A-10-5, 59A-14-4 and 59A-58-6 NMSA 1978.

[7/1/97; 13.2.4.3 NMAC - Rn & A, 13 NMAC 2.4.3, 6/14/07]

13.2.4.5 EFFECTIVE DATE: August 24, 1987, unless a later date is cited at the end of a section ~~[or paragraph. Repromulgated in NMAC format effective July 1, 1997].~~

[8/24/87, 12/4/87, 7/1/97; 13.2.4.5 NMAC - Rn & A, 13 NMAC 2.4.5, 6/14/07]

13.2.4.6 OBJECTIVE: The purpose of this rule is to assist insurance companies and service contract providers making statutory deposits with detailed instructions to meet those statutory requirements and to provide rules governing a commercial depository receiving these statutory deposits.

[8/24/87, 12/4/87, 7/1/97; 13.2.4.6 NMAC - Rn & A, 13 NMAC 2.4.6, 6/14/07]

13.2.4.16 FEES CHARGED BY DEPOSITORY: Total compensation and reimbursement to be received by depository for its services as described in this rule shall be an annual fee ~~[equal to]~~ not greater than two-tenths of one percent (0.2%) of the face amount of securities held by depository, plus New Mexico gross receipts tax as agreed upon by the superintendent and the state treasurer, or such lesser amount as may be agreed between depository and an individual insurer.

[8/24/87; 13.2.4.16 NMAC - Rn & A, 13 NMAC 2.4.16, 6/14/07]

13.2.4.17 RELATIONSHIP BETWEEN DEPOSITORY AND INSURER OR SERVICE CONTRACT PROVIDER:

A. Depository may, by agreement between itself and an insurer or service contract provider, accept such other or further additional duties to an insurer or service contract provider as may be agreed between them, provided that no provision of any such agreement shall be effective to impair, diminish or otherwise affect any right or power of the superintendent or the state of New Mexico under this rule or applicable law.

B. All compensation or reimbursement due to depository shall be the sole liability and responsibility of insur-

er or service contract provider, and no claim shall be made upon the superintendent or the state of New Mexico, either by depository or by insurer or service contract provider, for collection or payment of any such amounts.

[8/24/87; 13.2.4.17 NMAC - Rn & A, 13 NMAC 2.4.17, 6/14/07]

13.2.4.18 SURETY BONDS IN LIEU OF SPECIAL DEPOSITS: Surety bonds submitted in lieu of special deposits shall be issued by a surety company qualified to transact surety business within the state of New Mexico, provided that such surety company shall not control, be controlled by, or be under common control with the insurer or service contract provider for which the bond is submitted.

[8/24/87; 13.2.4.18 NMAC - Rn & A, 13 NMAC 2.4.18, 6/14/07]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
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Issue Number 4	February 15	February 28
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