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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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September 24, 2024

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Notices of Rulemaking and Proposed Rules

CHILDREN, YOUTH AND FAMILIES DEPARTMENT

CYFD NOTICE OF PUBLIC RULEMAKING HEARING

The Children, Youth and Families Department will hold a public hearing on Thursday, October 24 from 9 a.m. to 12 p.m. in room N 505 on the fifth floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico 87501, to receive public comments regarding proposed updates to 8.8.3 NMAC, Governing Background Checks and Employment.

This rule applies to employees, contractors, volunteers, and student interns of CYFD-contracted providers. This rule applies to all operators, employees, and volunteers and prospective operators, employees, and volunteers of all programs and facilities that have primary custody of children for 20 hours or more per week; and juvenile detention, correction, and/or treatment facilities.

The updates to this proposed rule remove Early Childhood Education and Care Department's requirements and services from CYFD's rules and responsibilities. This change is necessary as in 2019, the Division of Early Childhood Services within the Children, Youth and Families Department was separated from CYFD and established as a new Cabinet-level department named the Early Childhood Education and Care Department per Laws 2019, ch. 48, § 34 by way of the Executive Reorganization Act. Additionally, the new rule provides for greater flexibility for applicants with lived experiences to serve as mentors for young people.

The Children's Code, Chapter 32A Article 2 NMSA 1978, charges CYFD with the responsibility to promulgate updated NMAC.

The draft of the rule may be accessed

at <https://cyfd.nm.gov> or by emailing cyfd.policy@cyfd.nm.gov. Interested persons may testify at the hearing or submit written comments no later than 5 p.m. Thursday, October 24. Written comments will be given the same consideration as verbal comments given at the hearing. Written comments should be addressed to: CYFD (Policy & Procedures), Children, Youth and Families Department, PO Drawer 5160, Santa Fe, NM 87501; Email cyfd.policy@cyfd.nm.gov.

If you require this information in an alternative format or require special accommodations to participate in the public hearing, please email cyfd.policy@cyfd.nm.gov. CYFD requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

FINANCE AND ADMINISTRATION, DEPARTMENT OF FINANCE, BOARD OF

NOTICE OF RULEMAKING

The State Board of Finance (the Board) has extended the comment period and rescheduled the public hearing for the proposed repeal and replacement of New Mexico Administrative Code (NMAC) rule 1.5.23 NMAC, *Real Property Acquisitions, Sales, Trades, or Leases*. The proposed replacement seeks to: update and add definitions, clarify the meaning of definitions, update requirements for title in acquisition of property, add clarification and requirements to materials needed for review and approval by the Board, and clarify and simplify the existing language with grammatical and syntax edits.

Section 13-6-2.1 NMSA 1978 provides generally, with certain exceptions, that any state agency, local public body, or school district that sells, trades or leases real property belonging to that public

entity requires state board of finance approval prior to the effective date of such sale, trade or lease. Section 16-6-15, NMSA 1978, makes Section 13-6-2.1, NMSA 1978 expressly applicable to the state fair.

Sections 15-3B-8 NMSA 1978 provide that the property control division is authorized to acquire land by purchase, gift or donation subject to prior approval by the state board of finance.

Subsection B of Section 15-3B-7, NMSA 1978, provides that the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of personal tangible property, is authorized to enter into long-term leases not exceeding ten years of vacant lands when the lessor contracts with the state to construct and complete buildings, subject to approval of the state architect, as a condition precedent to the start of the rental term.

Section 17-1-22.1 NMSA 1978 provides that the state game commission, upon approval from the state board of finance, may transfer money from the game and fish bond retirement fund to the game and fish capital outlay fund. Money in the game and fish capital outlay fund may be expended for fish hatcheries and rearing facilities, habitat acquisition, development and improvements and other similar capital projects. All projects funded by the game and fish capital outlay fund shall be approved by the state board of finance.

Subsection B of Section 3-46-34 NMSA 1978 provides that a municipality may dispose of real property in an urban renewal or land development area to private persons only under reasonably competitive bidding procedures as it shall prescribe or as provided in this subsection. The municipality may accept any proposal it deems to be in

the best interest and in furtherance of the purposes of the urban renewal law; provided, that a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to any acceptance. Thereafter, the municipality may execute a contract in accordance with the provisions of the urban renewal law, and deliver deeds, leases and other instruments and take all steps necessary to effectuate the contract; provided that if the municipality accepts other than the highest bid, the acceptance must be approved by the state board of finance before the municipality may proceed.

Subsection J of Section 16-2-11, NMSA 1978, provides that any acquisition of lands adjacent or contiguous to existing state parks or recreational areas or necessary for successful park or recreational area protection and development and will become part of the park or recreational area may be acquired by the state following consultation with local government entities on the acquisition and approval of the acquisition by the state board of finance, and funds for acquisition is available to state parks division or land is being donated to the division.

Notice Date: September 24, 2024
 Hearing Date: November 1, 2024
 Adoption Date: Proposed as November 19, 2024
 Technical Citations: 13.14.5.10 NMAC and 13-6-5 NMSA 1978

The Department is proposing to amend the rule as follows:

Throughout the rule:

1. Language is updated to reflect the addition of the definitional term “Appraisal Report” to mean a report of an opinion of value conducted by a general certified appraiser and that meets all requirements under the Uniform Standards of Professional Appraisal Practice (USPAP).
2. Language is updated to reflect the addition of the definitional

term “School District” to mean those political subdivisions of the state established for the administration of public schools.

3. Language is updated to change the term “Public Body” and replace with “Public Entity”
4. Language is updated to reflect requirements when real property disposition falls within the boundaries of a community land grant.
5. Language is updated to provide greater guidance and clarity on the requirements for submission to the Board for consideration.
6. Several sections have been renumbered due to new sections being added into the NMAC.

Section 7

This section is updated to add new definitions.
 This section is renumbered due to new definitions and subsections added to the NMAC.

- Subsection B** - is added to define the term “Appraisal Report”.
- Subsequent Subsections** - are adjusted by one letter, such that B becomes C, C becomes D, etc., until Subsection M addition, because of the addition of Subsection B.
- Subsection D - part 1** - is updated by adding to define the term “Appraisal Report” to the language.
- Subsection E** - removes language and citation to specific requirements.
- Subsection H** - is updated to change the term “Public Body” and replace with “Public Entity”.
- Subsection K** - removes language and citation to donations by one governmental entity to another governmental entity.
- Subsection M** - is added to define the term “School District”.
- Subsequent Subsections** - are adjusted by one letter, such that L becomes N, M becomes O, N becomes P, O becomes Q, because of the addition of Subsection M.

Section 8

This section is updated to clarify the requirements and rules regarding title binder requirements.
Subsection B - is added to define the

term “Appraisal Report”.
Subsection B - part 6a - is updated by adding to subparts a and b to explain and simplify the language need for title binders. The language added requires the inclusion of exceptions listed in 13.14.5.10 NMAC.

Subsection B - part 6b - is updated by adding to subparts a and b to explain and simplify the language need for title binders. The language added requires explanation of any special exceptions listed in Schedule B.

Subsection B - part 7 - is updated by adding requirements that purchase agreements include language that the agreement and any amendments be subject to Board approval.

Section 9

This section is updated to clarify and simplify the requirements for Board submissions for the approval of sale or trade of real property.

This section is renumbered due to new definitions and subsections added to the NMAC.

- Subsection B - part 1** - is changed to require summary information, forms, checklists as required by Board staff.
- Subsection B - part 2** - is added to require a cover letter providing details of the request.
- Subsection B - part 3** - is added with the original language of part 1.
- Subsequent Subsection B parts** - are adjusted by number, such that 2 becomes 4, 3 becomes 5, 4 becomes 6, 5 becomes 7, 6 becomes 8, 7 becomes 9, 8 becomes 10, 9 becomes 11, because of the addition of Subsection B part 2 and 3.
- Subsection B - part 4** - is updated by adding the term “Appraisal Report” to the language.
- Subsection B - part 7** - is updated by removing the citation.
- Subsection B - part 8** - is updated by adding requirements that sale or trade agreements include language that the agreement and any amendments be subject to Board approval.
- Subsection B - part 10** - is updated by removing the word “and” at the end.
- Subsection B - part 11** - is updated

by adding the word “and” at the end.
Subsection B - part 12 - is added and requires that when a state agency is requesting approval of the disposition of real property where the boundaries are within the community land grant, that the submission shall require a resolution or meeting minutes showing that the board of trustees of the community land grant intent is not to purchase the real property in accordance with NMSA 13-6-5. If there is no action, the state agency shall document the lack of action to the Board.

Section 10

This section is updated to clarify and simplify the requirements for Board submissions for the approval of lease of real property.
 This section is renumbered due to new definitions and subsections added to the NMAC.

Subsection C - part 1 - is added to require summary information, forms, checklists as required by Board staff.

Subsection B - part 2 - is added to require a cover letter providing details of the request.

Subsection B - part 3 - part 3 is renumbered from part 1 and is updated by adding the term “Appraisal Report” to the language and other grammatical changes.

Subsequent Subsection B parts - are adjusted by number, such that 1 becomes 3, 2 becomes 4, 3 becomes 5, 4 becomes 6, 5 becomes 7, 6 becomes 8, 7 becomes 9, because of the addition of Subsection C part 1 and 2.

Subsection B - part 4 - is updated by adding requirements that lease agreements include language that the agreement and any amendments be subject to Board approval.

Subsection B - part 8 - is updated by removing the word “and” at the end.

Subsection B - part 9 - is updated by adding the word “and” at the end.

Subsection D - is updated by removing the citation.

Section 11

This section is updated to clarify the requirements and rules regarding title binder requirements.

Subsection A - is simplified by changing the language of policy to rule and requiring electronic submissions in the form of PDF packets instead of hard copies.

Subsection B - strikes language in reference to the hard copy submissions.

Subsection C - is updated with clarification language, syntax, and clarification language.

These proposed rule changes will be contained in 1.5.23 NMAC. The register and the proposed rule are available on the SBOF website at: <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting SBOF at bof.administrator@dfa.nm.gov and (505) 827-3985.

The SBOF plans to adopt this rule November 19, 2024.

A public hearing to receive testimony on this proposed rule will be held on November 1, at 9:30 a.m. The hearing will be held at the New Mexico Public Education Department, Marbry Hall Auditorium, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501, and via Microsoft Teams.

Join Microsoft Teams Meeting

Click Here to Join the Meeting

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWM4NDkyYzgtN2MwNC00MzIxLWEzNzEtOTYyYTNjZDE3YjVl%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22230fd174-04fd-4b77-8270-e716cf95dec%22%7d

Meeting ID: 262 962 513 048
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 +1 505-312-4308, 935204927#
 Phone conference ID: 935 204 927#

If you are a person with a disability

and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact our staff to discuss your accessibility needs at least one week prior, or as soon as possible, by emailing the State Board of Finance administrator at: bof.administrator@dfa.nm.gov or calling 505-827-3985.

Copies of all comments will be made available by SBOF upon request by providing copies directly to a requestor or by making them available on the SBOF website or at a location within the county of the requestor.

Interested persons may address written comments to:

State Board of Finance
 ATTN: SBOF 1.5.23 NMAC Public Comments
 407 Galisteo St.
 Bataan Memorial Building, Room 181
 Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: bof.administrator@dfa.nm.gov. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on October 28, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the SBOF website at <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

**FINANCE AND ADMINISTRATION,
 DEPARTMENT OF FINANCE, BOARD OF**

NOTICE OF RULEMAKING

The State Board of Finance (the

Board) has extended the comment period and rescheduled the public hearing for the proposed repeal and replacement of New Mexico Administrative Code (NMAC) rule 2.70.4 NMAC, *Policy on Capital Expenditures by State Educational Institutions*. The proposed replacement seeks to: align capital expenditure thresholds to be more in line with modern costs of projects; add more detailed definitions to clarify project approvals required; and align Board requirements with construction requirements set out in 14.7.9 NMAC.

Section 21-1-21, NMSA 1978, as amended, requires State Board of Finance approval by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or construction of buildings or other major structures or major remodeling projects.

Notice Date: September 24, 2024
 Hearing Date: November 1, 2024
 Adoption Date: Proposed as November 19, 2024
 Technical Citations: 14.7.9 NMAC

The Department is proposing to amend the rule as follows:

Throughout the rule:

1. Language is updated to change the dollar amounts for projects.
2. Language is added to define the term “Remodel”.
3. Language is added to define the term “Renovation”.
4. Language is added to define the term “Repair”.
5. Language has been simplified or updated to allow the rules to be more coherent.
6. Language is added to reflect required certification by the Higher Education Department and the Energy, Minerals, and Natural Resources Department that buildings meet current energy compliance standards as outlined in 14.7.9 NMAC.
7. Several sections have been

renumbered due to new sections being added into the NMAC.

Section 7

This section is renumbered due to new definitions and subsections added to the NMAC.

This section is updated to add new definitions.

Subsection A - is added to define the term “Appraisal Report”

Subsection B - is added to define the term “Board”

Subsection C - is added to define the term “Current”

Subsection D - is added to define the term “Equipment Costs”

Subsection E - parts 1, 2, 3, and 4, have been updated with new dollar amounts.

Subsection G - is updated to add the new definition for the term “Remodel”.

Subsection H - is updated to add the new definition for the term “Renovation”.

Subsection I - is updated to add the new definition for the term “Repair”.

Section 8

Subsection A - part 4 - is updated to remove to non emergency repair

Section 9

Subsection A - part 2 is updated to clarify the language about property appraisals and the documents required for review.

Subsection A - part 6 is updated to clarify the language title binders the documents required for review.

Subsection A - part 7 is updated to clarify the language about distinguishing that when an education institution procures real property, a general warranty deed shall be required. However, when a seller is another governmental entity, a quitclaim deed shall be delivered to procurer.

Subsection A - part 9 is updated to replace the language acquisition with purchase and other grammatical corrections.

Subsection A - part 10 is updated to replace the language acquisition with purchase and clarify the language about educational institution’s

governing body.

Subsection B - is updated to correct language and separate out bond approvals language to Subsection C.

Subsection C - is added and language from subsection B about requirements of bond approvals.

Section 10

Title - is updated to remove the term REPAIRS

Subsection A - is updated to clarify language and correct grammatical errors.

Subsection A - part 1 is updated to replace the term repaired for remodeled.

Subsection A - part 3 is updated to replace the term repair for remodel.

Subsection A - part 4 is updated to add the term equipment costs.

Subsection A - part 8 is updated to add the approval of the Energy, Minerals, and Natural Resources Department.

Subsection A - part 8a is updated to add the certification and demonstration of compliance with 14.7.9 NMAC commercial conservation requirements.

Subsection A - part 8b is added and adjusted with the addition of part 8a as Subsection A part 8b, formerly part 8a.

Subsection A - part 8c is added and adjusted with the addition of part 8a as Subsection A part 8c, formerly part 8b.

Subsection A - part 8d is added and adjusted with the addition of part 8a as Subsection A part 8d, formerly part 8c.

Subsection B - is updated to correct language and separate out bond approvals language to Subsection C.

Subsection C - is added and language from subsection B about requirements of bond approvals.

These proposed rule changes will be contained in 2.70.4 NMAC. The register and the proposed rule are available on the SBOF website at: <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting SBOF at bof.

administrator@dfa.nm.gov and (505) 827-3985.

The SBOF plans to adopt this rule November 19, 2024.

A public hearing to receive testimony on this proposed rule will be held on November 1, 2024, at 9:30 a.m. The hearing will be held at the New Mexico Public Education Department, Marbry Hall Auditorium, 300 Don Gaspar Avenue, Santa Fe, New Mexico, 87501, and via Microsoft Teams.

Join Microsoft Teams Meeting

Click Here to Join the Meeting
https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWM4NDkyYzgtN2MwNC00MzIxLWEzNzEtOTYyYTNjZDE3YjVl%40thread.v2/0?context=%7b%22Tid%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22Oid%22%3a%22230fd174-04fd-4b77-8270-e716cf95decd%22%7d

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Phone conference ID: 935 204 927#

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Copies of all comments will be made available by SBOF upon request by providing copies directly to a requestor or by making them available on the SBOF website or at a location within the county of the requestor.

Interested persons may address written comments to:

State Board of Finance
ATTN: SBOF 2.70.4 NMAC Public Comments
407 Galisteo St.
Bataan Memorial Building, Room 181
Santa Fe, NM 87501

Recorded comments may be left at (505) 827-3985. Interested persons may also address comments via electronic mail to: bof.administrator@dfa.nm.gov. Written mail, electronic mail and recorded comments must be received no later than 5:00 p.m. MT on October 28, 2024. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the SBOF website at <https://www.nmdfa.state.nm.us/board-of-finance/rules-and-policies/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

**HEALTH CARE
AUTHORITY
INCOME SUPPORT DIVISION**

**NOTICE OF EMERGENCY
RULEMAKING**

The Health Care Authority (HCA) Income Support Division (ISD) will implement a temporary emergency rule starting October 1, 2024. This rule, which is issued annually, updates the income and resource eligibility standards, as well as the deduction amounts for eligible households. These adjustments are based on the guidelines set forth by the United States Department of Agriculture (USDA) and the Food and Nutrition Services (FNS). The federal notice regarding Cost-of-Living Adjustments (COLA) was received less than sixty days before the changes must take effect on October 1. Due to this short timeframe, there is insufficient time to complete the standard rulemaking process. Therefore, this emergency rule is necessary to ensure compliance

with federal regulations. Failing to implement these changes by October 1 would result in the HCA being out of compliance with federal law. The emergency rule changes to the New Mexico Administration Code (NMAC) will be to 8.102.500 NMAC, 8.106.500 NMAC.

Administration of HCA, including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

The emergency rule will remain in effect until a permanent rule is established through the standard rulemaking process. The Health Care Authority Register Vol. 47 No. 25 outlining the temporary emergency regulations is available on the HCA’s website at: <https://www.hca.nm.gov/lookingforinformation/income-support-division-registers-2/>.

**PUBLIC SAFETY,
DEPARTMENT OF**

**NOTICE OF PUBLIC HEARING
ON PROPOSED NEW
PERMANENT RULE**

Public Notice. The New Mexico Department of Public Safety [“DPS”] gives notice that it will hold a public hearing at DPS’s Law Enforcement Academy, Room 6A, at 4491 Cerrillos Rd, Santa Fe, NM 87507, and via Microsoft Teams, on Tuesday, October 24, 2024, at 9:00 a.m. on the proposed, permanent amendment to 10.2.4 NMAC LAW ENFORCEMENT RETENTION FUND REPORTING, MONITORING AND ADMINISTRATION. The members of the public may attend at DPS or via Microsoft Teams on a computer, mobile device, or telephone. The videoconference’s Meeting ID and Password, videoconference link, and telephone number are:

Join Microsoft Teams Meeting on your computer or mobile app:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MWNIYTnkZjItZTA0Ny00NDU3LWE2ZmYtOGJmZjBhNDI0NDhl%40thread.v2/0?context=%7b%22id%22%3a%2204aa6bf4-d436-426f-bfa4-04b7a70e60ff%22%2c%22oid%22%3a%2217a6903d-6f2d-46e4-9eca-7ae69c4b998b%22%7d

Or call in (audio only)

+1 (505) 312-4308

Phone Conference ID: 441 511 56#

Purpose of the proposed permanent rule.

The purpose of this public hearing is to receive public comment and input on a proposal to make permanent the emergency rule amendments made to 10.2.4 NMAC *Law Enforcement Retention Fund Reporting, Monitoring and Administration*. This rule sets forth procedures : 1) for law enforcement agencies to follow in reporting (or requesting a waiver of the requirement to report) law enforcement officer retention information to DPS in order to obtain monies from the Law Enforcement Retention Fund [“LERF”] to provide retention differential disbursements to eligible officers; 2) that DPS will follow in calculating, disbursing and, in the event of a shortfall in monies in the LERF, reducing the amount of money disbursed to law enforcement agencies for retention differential disbursements for eligible law enforcement officers; and 3) for law enforcement agencies to follow in returning unused monies to the DPS or in appealing DPS’s calculation of the retention differential disbursement DPS intends to distribute to the requesting law enforcement agencies.

Legal authority authorizing the proposed permanent rule.

The proposed permanent rule is promulgated pursuant to Subsection G of Section 29-11A-5, NMSA 1978 and Paragraph (3) of Subsection H of Section 9-19-4, NMSA 1978.

Summary of the full text of the proposed permanent rule. The proposed permanent rule defines the

officers eligible to receive retention differential disbursements from the LERF as those officers who remain employed with the same law enforcement agency “one year and one day after reaching four, nine, 14, 19, or 20 or more years of service” with that agency. Additionally, the rule defined “certified” as “an individual certified as a peace officer pursuant to the Law Enforcement Training Act, Section 29-7-1 to 29-7-16 NMSA 1978.” “Eligible law enforcement agency” means an agency eligible to receive monies from the LERF because the agency: (1) has, prior to June 1 of the reporting fiscal year, made a request for monies from the DPS and included in that request the information on which the agency is required to report under Section 9-19-14 H and this rule; (2) is, at the time of submitting the request for monies to DPS in compliance with that portion of the Law Enforcement Training Act that requires every law enforcement agency to submit a quarterly report to the director of the law enforcement academy and the New Mexico law enforcement standards and training council; and (3) has, at the time of submitting the request for monies to DPS, submitted the agency’s most current roster of full-time certified law enforcement officers, including commission dates, to the New Mexico law enforcement academy. The proposed permanent rule also adds to the “Law Enforcement Academy” definition to include “standards and training council, its predecessors, or successors.” The proposed permanent rule also adds to the “Salary” and “Years of Service” definitions the requirement that the eligible person be a “full-time, certified” law enforcement officer. In the Reporting Requirements section of the rule, the proposed permanent rule adds the following: “In order to receive funding for retention differential disbursements, the law enforcement agency must, at the time of the request, be in compliance with the in-service officer training and reporting requirements of the New Mexico Law Enforcement Training Act set forth

in Section 29-7-7.1 and Subsection E of Section 29-7-7.2 NMSA 1978. In order to receive funding for retention differential disbursements, the law enforcement agency must have submitted the agency’s most current roster of full-time certified law enforcement officers, including commission dates, to the New Mexico law enforcement academy no later than April 1 of the reporting fiscal year. The rule sets forth the information the law enforcement agency must report to DPS in order to receive monies from the LERF for retention differential disbursements and requires the agency to submit the required information no later than May 31. Assuming sufficient funds are available in the LERF to satisfy all requests, the DPS will calculate and disburse to the requesting law enforcement agency an amount equal to five per cent of the officer’s salary on the date the officer completed four, nine, 14, 19, or 20 or more years of service with the requesting law enforcement agency, together with an amount equal to the employer’s tax liability for the disbursement. DPS will disburse the LERF monies to the law enforcement agencies on December 15 of the fiscal year in which the officers are projected to be eligible for the same. The law enforcement agency in receipt of disbursed funds will place them in an interest bearing account and disburse the monies no sooner than the date the officer attains eligibility and no later than 30 days following the date of eligibility or the date the law enforcement agency receives the disbursement from DPS, whichever occurs last. The law enforcement agency disbursing funds is required to report the date of disbursement and the date of payment of the employer taxes on the DPS portal. Within 60 days after the end of the fiscal year in which monies from the LERF are disbursed by DPS to a law enforcement agency for retention differential disbursements and no later than August 31, any law enforcement agency which has not disbursed all monies provided, shall return the same to the DPS,

together with any interest earned on the funds, in the form of a check. The law enforcement agency shall also report to the DPS the names of those officers who received a retention differential disbursement, the names of those officer who were projected to, but who did not receive a retention differential disbursement, the amounts returned, broken down by retention differential disbursement, employer tax and interest earned, and the reason any retention differential disbursement was not made. In the event that there are insufficient monies in the LERF to fully fund all the retention differential disbursement requests, the DPS will reduce the amount to be disbursed to each law enforcement agency on a pro rata basis to an amount permitted by the monies available in the LERF. The rule also sets forth a process by which a law enforcement agency may seek reconsideration and review of the DPS calculation of each retention differential disbursement and the employer taxes thereon.

Copies of the Rule. Copies of the rule may be obtained at all DPS district, field, ports of entry, and regional offices, at the DPS website at <https://www.dps.nm.gov/public-information/rule-making/> on the sunshine portal at [Login | Salesforce](#) or <https://statenm.my.salesforce.com/?ec=302&startURL=%2Fhome%2Fhome.jsp>, or by contacting Matthew Chavez, Chief Legal Counsel, at 505.467.9629 or matthew.chavez@dps.nm.gov.

Comment on the rule. Interested persons may comment on the proposed permanent rule, at the hearing or by submitting written statements to DPS Jennifer Morfin, Office of Legal Affairs Law Clerk at 4491 Cerrillos Rd., P.O. Box 1628, 87504-1628, or by e-mail at jennifer.morfin@dps.nm.gov. All mailed or emailed statements must be received by October 24, 2024. Early submission of written statements is encouraged. Interested persons may also comment in writing at the public hearing.

Permanent rule. The proposed rule amendments will be a permanent.

Reasonable Accommodation. Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing, including a reader, amplifier, qualified sign language interpreter or any form of auxiliary aid or service are asked to contact Jennifer Morfin by telephone at 505.548.0950 or by e-mail at jennifer.morfin@dps.nm.gov as soon as possible and no later than October 15, 2024. DPS requires at least ten calendar days advance notice to provide special accommodations.

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Office of Superintendent of Insurance (OSI or Superintendent) will hold a public hearing in person, via video conference and telephone conference regarding proposed amendments to 13.10.17 NMAC, Grievance Procedures. **This hearing will commence on Tuesday, October 29, 2024, at 10:00 a.m., MDT.**

PURPOSE OF THE PROPOSED RULE: The purpose of this rulemaking is to: **1)** conduct a general cleanup of the text of the rule where necessary; and, **2)** add Section 13.2.2.23 NMAC, TRANSACTIONS SUBJECT TO PRIOR NOTICE – NOTICE FILING, to comply with the National Association of Insurance Commissioners reporting and contents of the statements required to be filed with the Superintendent pursuant to the Insurance Company Holding Law, Chapter 59A, Article 47 NMSA 1978.

STATUTORY AUTHORITY: Sections 14-4-1 *et seq.*, NMSA 1978, State Rules Act and Sections 59A-2-9 NMSA 1978, and the Insurance Company Holding Law, Chapter 59A, Article 37 NMSA 1978.

TO ATTEND THE HEARING IN PERSON: Office of Superintendent of Insurance - 1120 Paseo de Peralta, (PERA Building), 4th Floor Hearing Room, Santa Fe, NM 87501
PLEASE NOTE: The entrance to the PERA Building is on the ground floor. All guests must sign in with the ground floor receptionist and then will be escorted to the 4th Floor Hearing Room. Please give yourself extra time to check in before 10:00 a.m.

TO ATTEND THE HEARING BY ELECTRONIC VIDEO CONFERENCE VIA MS TEAMS MEETING:

Please copy the link below into your browser to get to the video conference meeting:

https://teams.microsoft.com/dl/launcher/launcher.html?url=%2F_%23%2F1%2Fmeetup-join%2F19%3Ameeting_ZDljZmYwZGtYzlmYi00NTU4LWlzMzEtMDI3OWMxODBkMDA5%40thread.v%2F0%3Fcontext%3D%257b%2522Ti d%2522%253a%252204aa6bf4-d436-426f-bfa4-04b7a70e60ff%2522%252c%2522Oid%2522%253a%252292f8d9f0-87c0-44c3-9357-ba0eb6121f10%2522%257d%26anon%3Dtrue&type=meetup-join&deeplinkId=75dff20-9a0d-4305-94dc-438d7dbceee4&directDl=true&msLaunch=true&enableMobilePage=true&suppressPrompt=true

Meeting ID: 253 192 327 529
 Passcode: N2PePT

TO ATTEND VIA TELEPHONE:
 +1 505-312-4308 Phone Conference ID: 142201489#

PUBLIC COMMENT: The Superintendent designates Alma Tapia as the hearing officer for this hearing. Oral comments will be accepted at the public hearing from members of the public and other interested parties in-person or via electronic video conference. Copies of the Notice of Proposed Rulemaking and proposed rules are available by electronic download from the OSI eDocket (<https://edocket.osi.state.nm.us/case->

view/5981) or by requesting a copy by calling Breanna Aguilar at: 505-500-9943. Any copies of the Notice of Proposed Rulemaking, proposed rules, and any updates concerning the hearing date, time, or location will be available by visiting the OSI website at: <https://www.osi.state.nm.us/pages/bureaus/legal/resources/laws-rules> or on the Sunshine Portal at: https://statenm.my.salesforce-sites.com/public/SSP_RuleHearingSearchPublic (from the “Agency” drop down menu, select “Office of Superintendent of Insurance”)

Written comments will be accepted through 4:00 p.m. on Thursday, October 24, 2024. Responses to written comments or to oral comments delivered at the hearing will be accepted through 4:00 p.m. on Wednesday, October 30, 2024. All comments shall be filed electronically through the OSI eDocket. Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/case-view/5981>

Written comments may be sent via U. S. mail to:
**OSI Records and Docketing
NM Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM
87504-1689**

Written comments must be received by OSI and stamped as accepted between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday except on state holidays. The Superintendent will consider all oral comments and will review and consider all timely submitted written comments and written responses. For help submitting a filing, please contact osi-docketfiling@state.nm.us. **The below docket number and title must be indicated on all written comments submitted to the OSI:**

Docket No. 2024-0069 – Please copy the following link into your browser to get to the eDocket: <https://edocket.osi.state.nm.us/case-view/5981>

**IN THE MATTER OF
AMENDMENT TO 13.2.2
NMAC, INSURANCE HOLDING
COMPANIES**

SPECIAL NEEDS: Any person with a disability requiring special assistance to participate in the hearing should contact Andrea Padilla, at 505-531-7171 no later than ten (10) business days prior to the hearing.

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF
NOTICE OF RULEMAKING**

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing to receive public comments regarding proposed amendments to NMAC 11.3.300 (Employment Security – Claims Administration) in the Leo Griego Auditorium located in the State Personnel Office (Willie Ortiz Building) at 2600 Cerrillos Road in Santa Fe, New Mexico, 87505 on October 30, 2024 from 1:00 pm to 3:00 pm.

The purpose of the public hearing will be to obtain input and public comment on the amendments proposed to the NMAC 11.3.300.325 to amend the process for requesting a waiver of overpayments, amending the processes for overpayments of the Trade Adjustment Assistance, Trade Readjustment Assistance, Federal Extended Benefits, or any other enacted federal extension program and adding a section to allow for a process to request a waiver of benefit overpayments under the Coronavirus Aid, Relief and Economic Securities (CARES) Act.

Under NMSA 1978, §9-26-4, the NMDWS is responsible for the administration of the workforce technology division and the workforce transition services division. The

Department is therefore responsible for the administration of the Unemployment Compensation Law pursuant to NMSA 1978 §51-1-1 et seq.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M., 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on October 29, 2024. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/>, obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

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

Adopted Rules

Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided in the State Rules Act. Unless a later date is otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico Register. Section 14-4-5 NMSA 1978.

**ENERGY, MINERALS
AND NATURAL
RESOURCES
DEPARTMENT
ENERGY CONSERVATION
AND MANAGEMENT
DIVISION**

**TITLE 3 TAXATION
CHAPTER 3 PERSONAL
INCOME TAXES
PART 36 CLEAN CAR
PERSONAL INCOME TAX
CREDIT**

**3.3.36.1 ISSUING
AGENCY:** Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.
[3.3.36.1 NMAC - N, 09/24/2024]

3.3.36.2 SCOPE: 3.3.36 NMAC applies to the application and certification procedures for administration of the clean car personal income tax credit.
[3.3.36.2 NMAC - N, 09/24/2024]

**3.3.36.3 STATUTORY
AUTHORITY:** 3.3.36 NMAC is established under the authority of Section 7-2-18.36 NMSA 1978.
[3.3.36.3 NMAC - N, 09/24/2024]

3.3.36.4 DURATION:
Permanent.
[3.3.36.4 NMAC - N, 09/24/2024]

**3.3.36.5 EFFECTIVE
DATE:** September 24, 2024, unless a later date is cited at the end of a section.
[3.3.36.5 NMAC - N, 09/24/2024]

3.3.36.6 OBJECTIVE:
3.3.36 NMAC objective is to establish procedures for administering the certification program for the clean car

personal income tax credit.
[3.3.36.6 NMAC - N, 09/24/2024]

3.3.36.7 DEFINITIONS:
For additional definitions refer to Section 7-2-18.36 NMSA 1978.
A. “Applicant” means a New Mexico taxpayer that has purchased an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles.

B. “Application package” means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. “Certified” or “certification” means department approval of an applicant’s eligible purchase of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or an applicant’s new lease of at least three years for one of these vehicles, either of which makes the applicant owning or leasing the vehicle eligible for a state tax credit.

D. “Department” means the energy, minerals, and natural resources department.

E. “Division” means the department’s energy conservation and management division.

F. “Extended warranty” means a dealership-provided one-year extended warranty against defects and repairs on a previously owned vehicle.

G. “Licensed dealer” means a dealer licensed by the motor vehicle division of the taxation revenue department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico.

H. “New lease” means when a taxpayer enters into a new lease agreement of at least three years for a clean car vehicle.

I. “State tax credit” or “tax credit” means the clean car personal income tax credit.
[3.3.36.7 NMAC - N, 09/24/2024]

**3.3.36.8 GENERAL
PROVISIONS:**

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car personal income tax credit.

C. One tax credit may be certified per taxpayer, per taxable year; only one tax credit shall be certified per new motor vehicle, and only one tax credit shall be certified per previously owned motor vehicle.

D. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle, fuel cell vehicle or enters a new lease of at least three years for one of these vehicles is eligible to apply for certification for the tax credit against the taxpayer’s tax liability imposed pursuant to the Income Tax Act.

E. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has met all the requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer’s ownership interest.

F. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

G. The state tax credit is available for the tax year in which the vehicle was purchased or leased. The tax year of vehicle purchase date determines tax year eligibility.

H. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

I. A vehicle purchase or lease must be through a motor vehicle dealer licensed by the New Mexico motor vehicle division. A vehicle purchased through an unlicensed dealer is not eligible for the clean car personal income tax credit.

J. A lessee of a vehicle must have entered into a new lease for at least three years.

K. A previously owned motor vehicle must have a minimum one-year extended warranty against defects and repairs.

L. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit.

M. In the event of a discrepancy between a requirement of 3.3.36 NMAC and an existing New Mexico taxation and revenue department rule promulgated prior to the adoption of 3.3.36 NMAC, the existing rule shall govern. [3.3.36.8 NMAC - N, 09/24/2024]

3.3.36.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for certification for a clean car personal income tax credit from the energy, minerals, and natural resources department on electronic forms and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a new clean car or previously owned clean car shall include a completed state tax credit electronic application and all required

attachments. Partial applications will not be accepted. After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that vehicle. If there are multiple owners on a clean car vehicle registration, a joint application must be submitted.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the clean car tax credit requirements, the department shall issue a certificate of eligibility to the taxpayer providing the amount of tax credit and the taxable year in which the credit may be claimed.

[3.3.36.9 NMAC – N, 09/24/2024]

3.3.36.10 APPLICATION REQUIREMENTS:

A. The state tax credit is available for purchases of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or new leases of at least three years for one of these vehicles.

B. Applications for certification of the state tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

C. The application package shall meet the requirements of 3.3.36 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.

[3.3.36.10 NMAC - N, 09/24/2024]

3.3.36.11 APPLICATION:

A. To apply for a state tax credit, an applicant shall submit an application for a certificate of eligibility to the division using a department-developed application or an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and all required attachments.

C. If there are multiple owners of the clean car, a joint application must be submitted.

D. A completed application shall consist of the following information:

(1) The applicant’s name, mailing address, e-mail address, telephone number, vehicle identification number (VIN) and the last four digits of the applicant’s social security number or employer identification number (EIN) provided by a business applicant.

(2) A detailed description of the clean car, including year, make and model.

(3) A statement the applicant signed and dated, which signature may be a form of electronic signature if approved by the department, agreeing that all information provided in the application package is true and correct to the best of the applicant’s knowledge.

(4) The vehicle’s weight, battery capacity, and VIN as listed on the vehicle’s window sticker.

E. A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(1) applicant has read the certification requirements contained in 3.3.36 NMAC;

(2) applicant understands that the department must certify the clean car documents in the application package before becoming eligible for a state tax credit.

[3.3.36.11 NMAC – N, 09/24/2024]

3.3.36.12 APPLICATION ATTACHMENTS:

A. An application for new vehicle shall contain the following information as attachments:

(1) Purchase agreement, vehicle proof of purchase from or proof of new lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle’s registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) any additional information the energy, minerals, and natural resources department may require determining eligibility for the credit.

B. An application for previously owned motor vehicle certification of eligibility shall include:

(1) proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle's registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) proof that the dealer provided at least a one-year extended warranty against defects and repairs for the previously owned vehicle;

(5) any additional information the energy, minerals and natural resources department may require in determining eligibility for the credit. [3.3.36.12 NMAC - N, 09/24/2024]

3.3.36.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to calculate the state tax credit; check the accuracy of the applicant's documentation and determine whether the department shall certify the clean car personal income tax credit. The department shall disapprove an application that is not complete, correct, or does not meet the approval criteria.

C. If the department finds the application package meets the requirements of 3.3.36 NMAC, and a state tax credit is available, the department shall certify the applicant's clean car personal income tax credit.

D. If applicable, the department's disapproval

notification shall state the reasons why the department disapproved the application. The applicant may resubmit the electronic application package for a disapproved project, but it shall be placed back at the beginning of the queue and reviewed as if it were a new application. [3.3.36.13 NMAC - N, 09/24/2024]

3.3.36.14 WARRANTIES AND LEASES:

A. Clean car tax credit warranties that the department may accept for previously owned motor vehicles shall be provided by the dealer and shall cover a minimum of one-year extended warranty against defects and repairs.

(1) Auto warranties accepted by the department must cover both the failed part and the labor to replace or repair it. The warranty types that the department may accept include the following:

(a) an auto warranty that covers repairs for parts that fail due to defects or errors in how a vehicle was built;

(b) a bumper-to-bumper warranty, which may also be called a comprehensive or limited warranty, that covers nearly all a vehicle's systems;

(c) a certified pre-owned warranty that carries the balance of the original bumper-to-bumper and powertrain warranties;

(d) an extended warranty that covers a vehicle's problems after the original new vehicle warranty expires and which covers mechanical breakdowns and electrical failures;

(e) extended length warranty;

(f) factory warranty;

(g) new vehicle warranty;

(h) manufacturer warranty;

(i) any other warranty deemed eligible by the department.

(2) The warranty types that the department

will not accept include the following:

(a) aftermarket accessories warranty;

(b) a basic used warranty for a car "as is," or for a period less than a year;

(c) corrosion and perforation warranties;

(d) emissions system warranty;

(e) hybrid and electric car battery warranties. The department will not accept a warranty covering *only* the high-voltage batteries installed in hybrids, plug-in hybrids and battery-electric vehicles;

(f) implied warranty;

(g) powertrain warranty. The department will not accept a warranty covering *only* the engine, transmission, and drivetrain components, even if it includes coverage of components in drive systems for electric vehicles and gas-electric hybrids;

(h) replacement parts warranty;

(i) restraint system warranty. The department will not accept a warranty covering *only* a vehicle's seat belts or restraint stem;

(j) roadside assistance warranty;

(k) tire warranty;

(l) any other warranty deemed ineligible by the department.

B. The following new lease agreement types that the department will accept include the following:

(1) closed-end lease where the applicant agrees to lease the car from a licensed dealer for a set term and certain mileage limits, and then return it at the end of the leasing period.

(2) open-end lease where the terms are flexible, and the applicant takes the depreciation risk of the vehicle.

(3) single payment lease where the applicant pays the entire amount for the lease upfront.

(4) long-term lease.

(5) used vehicle lease if it is longer than three years.

(6) any other type of lease deemed eligible by the department.

C. The lease agreement types that the department will not accept include the following:

(1) sub-vented or subsidized lease. The department will not accept a lease type that is offered with special incentives to make it more enticing to consumers. These incentives can include lower base interest rates, higher residual values, and manufacturer discounts

(2) A lease shorter than three years.

[3.3.36.14 NMAC - N, 09/24/2024]

3.3.36.15 CALCULATING THE STATE TAX CREDIT:

A. The amount of the tax credit shall be:

(1) for taxable years beginning January 1, 2024, and prior to January 1, 2027:

- (a) \$3,000 for a new electric vehicle.
- (b) \$2,500 for a new plug-in hybrid electric vehicle or fuel cell vehicle.
- (c) \$2,500 for a previously owned electric vehicle.
- (d) \$2,000 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(2) for a taxable year beginning January 1, 2027, and prior to January 1, 2028:

- (a) \$2,220 for a new electric vehicle.
- (b) \$1,850 for a new plug-in hybrid electric vehicle or fuel cell vehicle.
- (c) \$1,850 for a previously owned electric vehicle.
- (d) \$1,480 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(3) for a taxable year beginning on January 1, 2028, and prior to January 1, 2029:

- (a) \$1,470 for a new electric vehicle.
- (b) \$1,225 for a new plug-in hybrid electric vehicle or fuel cell vehicle.
- (c) \$1,225 for a previously owned electric vehicle.
- (d) \$980 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(4) for the taxable year beginning January 1, 2029:

- (a) \$960 for a new electric vehicle.
- (b) \$800 for a new plug-in hybrid electric vehicle or fuel cell vehicle.
- (c) \$800 for a previously owned electric vehicle.
- (d) \$640 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

B. A state tax credit to an applicant for a clean car the department has certified shall not exceed:

- (1) \$3000 for a new clean car.
- (2) \$2500 for a previously owned clean car

[3.3.36.15 NMAC - N, 09/24/2024]

3.3.36.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificates of eligibility in an electronic format.

B. The department shall provide certification through electronic notification to the applicant. The notification shall include the applicant's contact information, the last four digits of the social security number, or EIN, the clean car tax credit certification number and the tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to

be insufficient, the department may rescind the certification.

[3.3.36.16 NMAC - N, 09/24/2024]

3.3.36.17 CLAIMING THE STATE TAX CREDIT:

A. A taxpayer who has received a certificate of eligibility from the energy minerals and natural resources department shall claim the credit with the taxation and revenue department as required in statute and outlined in the income tax form instructions.

B. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the taxation and revenue department of the sale, exchange or transfer within 10 days of the sale, exchange or transfer in an electronic format prescribed by the taxation and revenue department.

[3.3.36.17 NMAC - N, 09/24/2024]

HISTORY OF 3.3.36 NMAC:
Pre-NMAC History: None.

History of Repealed Material:
[RESERVED]

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

**TITLE 3 TAXATION
CHAPTER 4 CORPORATE INCOME TAXES
PART 23 CLEAN CAR CORPORATE INCOME TAX CREDIT**

3.4.23.1 ISSUING
AGENCY: Energy, Minerals and Natural Resources Department, Energy, Conservation and Management Division.

[3.4.23.1 NMAC - N, 09/24/2024]

3.4.23.2 SCOPE: 3.4.23 NMAC applies to the application and certification procedures for administration of the clean car corporate income tax credit. [3.4.23.2 NMAC - N, 09/24/2024]

3.4.23.3 STATUTORY AUTHORITY: 3.4.23 NMAC is established under the authority of Section 7-2A-19.01 NMSA 1978. [3.4.23.3 NMAC - N, 09/24/2024]

3.4.23.4 DURATION: Permanent. [3.4.23.4 NMAC - N, 09/24/2024]

3.4.23.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a section. [3.4.23.5 NMAC - N, 09/24/2024]

3.4.23.6 OBJECTIVE: 3.4.23 NMAC’s objective is to establish procedures for administering the certification program for the clean car corporate income tax credit. [3.4.23.6 NMAC - N, 09/24/2024]

3.4.23.7 DEFINITIONS: For additional definitions refer to Section 7-2A-19.01 NMSA 1978.

A. “Applicant” means a New Mexico taxpayer that has purchased an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle or enters into a new lease of at least three years for one of these vehicles.

B. “Application package” means the application documents an applicant submits to the department for certification to receive a state tax credit.

C. “Certified” or “**certification**” means department approval of an applicant’s eligible purchase of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or an applicant’s new lease of at least three years for one of these vehicles, either of which makes the applicant owning or leasing the vehicle eligible for a state tax credit.

D. “Department” means the energy, minerals, and natural resources department.

E. “Division” means the department’s energy conservation and management division.

F. “Extended warranty” means a dealership-provided one-year extended warranty against defects and repairs on a previously owned vehicle.

G. “Licensed dealer” means a dealer licensed by the motor vehicle division of the taxation revenue department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico.

H. “New lease” means when a taxpayer enters into a new lease agreement of at least three years for a clean car vehicle.

I. “State tax credit” or “**tax credit**” means the clean car corporate income tax credit. [3.4.23.7 NMAC - N, 09/24/2024]

3.4.23.8 GENERAL PROVISIONS:

A. The state tax credit may be claimed for taxable years after January 1, 2024, and prior to January 1, 2030.

B. The tax credit provided by this section may be referred to as the clean car corporate income tax credit.

C. One tax credit may be certified per taxpayer, per taxable year; only one tax credit shall be certified per new motor vehicle, and only one tax credit shall be certified per previously owned motor vehicle.

D. A taxpayer who is not a dependent of another individual and who, beginning on May 15, 2024, and prior to January 1, 2030, purchases an electric vehicle, plug-in hybrid electric vehicle, fuel cell vehicle or enters a new lease of at least three years for one of these vehicles is eligible to apply for certification for the tax credit against the taxpayer’s tax liability imposed pursuant to the Income Tax Act.

E. If a New Mexico taxpayer owns an interest in a business entity that is taxed for federal income tax purposes as a partnership or limited liability company and that business entity has

met all the requirements to be eligible for the credit, that taxpayer may be allocated the right to claim the tax credit in proportion to the taxpayer’s ownership interest.

F. The total credit claimed by all members of the partnership or limited liability company shall not exceed the allowable credit the department has certified.

G. The state tax credit is available for the tax year in which the vehicle was purchased or leased. The tax year of vehicle purchase date determines tax year eligibility.

H. Married individuals filing separate returns for a taxable year for which they could have filed a joint return may each claim only one-half of the tax credit that would have been claimed on a joint return.

I. A vehicle purchase or lease must be through a motor vehicle dealer licensed by the New Mexico motor vehicle division. A vehicle purchased through an unlicensed dealer is not eligible for the clean car corporate income tax credit.

J. A lessee of a vehicle must have entered into a new lease for at least three years.

K. A previously owned motor vehicle must have a minimum one-year extended warranty against defects and repairs.

L. The department shall report to the taxation and revenue department the information required to verify, process, and distribute each state tax credit.

M. In the event of a discrepancy between a requirement of 3.4.23 NMAC and an existing New Mexico taxation and revenue department rule promulgated prior to the adoption of 3.4.23 NMAC’s, the existing rule shall govern. [3.4.23.8 NMAC - N, 09/24/2024]

3.4.23.9 TAX CREDIT ADMINISTRATION:

A. A taxpayer may apply for certification for a clean car corporate income tax credit from the energy, minerals, and natural resources department on electronic

forms and in the manner prescribed by that department. The department will not accept paper applications or applications submitted by e-mail unless specifically authorized by the division.

B. An application package for a new clean car or previously owned clean car shall include a completed state tax credit electronic application and all required attachments. Partial applications will not be accepted. After the department has certified an application, applicants may not amend the certified application package to seek additional credits for that vehicle. If there are multiple owners on a clean car vehicle registration, a joint application must be submitted.

C. If the energy, minerals, and natural resources department determines that the taxpayer meets the clean car tax credit requirements, the department shall issue a certificate of eligibility to the taxpayer providing the amount of tax credit and the taxable year in which the credit may be claimed.
[3.4.23.9 NMAC – N, 09/24/2024]

3.4.23.10 APPLICATION REQUIREMENTS:

A. The state tax credit is available for purchases of an electric vehicle, plug-in hybrid electric vehicle or fuel cell vehicle, or new leases of at least three years for one of these vehicles.

B. Applications for certification of the state tax credit shall be made no later than one year from the date on which the vehicle is purchased or the lease is entered into.

C. The application package shall meet the requirements of 3.4.23 NMAC. If an application package fails to meet a requirement, the department shall disapprove the application.
[3.4.23.10 NMAC - N, 09/24/2024]

3.4.23.11 APPLICATION:

A. To apply for a state tax credit, an applicant shall submit an application for a certificate of eligibility to the division using a department-developed application or

an approved electronic application system.

B. To be considered complete, an application must include the state tax credit application and all required attachments.

C. If there are multiple owners of the clean car, a joint application must be submitted.

D. A completed application shall consist of the following information:

(1) The applicant’s name, mailing address, e-mail address, telephone number, vehicle identification number (VIN) and the last four digits of the applicant’s social security number or employer identification number (EIN) provided by a business applicant.

(2) A detailed description of the clean car, including year, make and model.

(3) A statement the applicant signed and dated, which signature may be a form of electronic signature if approved by the department, agreeing that all information provided in the application package is true and correct to the best of the applicant’s knowledge

(4) The vehicle’s weight, battery capacity, and VIN as listed on the vehicle’s window sticker.

E. A statement the applicant signed and dated, which may be a form of electronic signature if approved by the department, agreeing:

(1) applicant has read the certification requirements contained in 3.4.23 NMAC;

(2) applicant understands that the department must certify the clean car documents in the application package before becoming eligible for a state tax credit.
[3.4.23.11 NMAC – N, 09/24/2024]

3.4.23.12 APPLICATION ATTACHMENTS:

A. An application for new vehicle shall contain the following information as attachments:

(1) Purchase agreement, vehicle proof of purchase

from or proof of new lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle’s registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) any additional information the energy, minerals, and natural resources department may require determining eligibility for the credit.

B. An application for previously owned motor vehicle certification of eligibility shall include:

(1) proof of vehicle purchase from or lease through a dealer licensed by the motor vehicle division of the department pursuant to Section 66-4-2 NMSA 1978 or a dealer located on tribal land within New Mexico;

(2) the vehicle’s registration in New Mexico;

(3) vehicle purchase sticker or vehicle specification sheet;

(4) proof that the dealer provided at least a one-year extended warranty against defects and repairs for the previously owned vehicle;

(5) any additional information the energy, minerals and natural resources department may require in determining eligibility for the credit.
[3.4.23.12 NMAC-N, 09/24/2024]

3.4.23.13 APPLICATION REVIEW PROCESS:

A. The department shall consider complete applications in the order received.

B. The department shall review the application package to calculate the state tax credit; check the accuracy of the applicant’s documentation and determine whether the department shall certify the clean car corporate income tax credit. The department shall disapprove an application that is not complete,

correct, or does not meet the approval criteria.

C. If the department finds the application package meets the requirements of 3.4.22 NMAC, and a state tax credit is available, the department shall certify the applicant’s clean car corporate income tax credit.

D. If applicable, the department’s disapproval notification shall state the reasons why the department disapproved the application. The applicant may resubmit the electronic application package for a disapproved project, but it shall be placed back at the beginning of the queue and reviewed as if it were a new application. [3.4.23.13 NMAC - N, 09/24/2024]

3.4.23.14 WARRANTIES AND LEASES:

A. Clean car tax credit warranties that the department may accept for previously owned motor vehicles shall be provided by the dealer and shall cover a minimum of one-year extended warranty against defects and repairs.

(1) Auto warranties accepted by the department must cover both the failed part and the labor to replace or repair it. The warranty types that the department may accept include the following:

(a) an auto warranty that covers repairs for parts that fail due to defects or errors in how a vehicle was built;

(b) a bumper-to-bumper warranty, which may also be called a comprehensive or limited warranty, that covers nearly all a vehicle’s systems;

(c) a certified pre-owned warranty that carries the balance of the original bumper-to-bumper and powertrain warranties;

(d) an extended warranty that covers a vehicle’s problems after the original new vehicle warranty expires and which covers mechanical breakdowns and electrical failures;

(e) extended length warranty;

(f) factory warranty;

(g) new vehicle warranty;

(h) manufacturer warranty;

(i) any other warranty deemed eligible by the department.

(2) The warranty types that the department will not accept include the following:

(a) aftermarket accessories warranty;

(b) a basic used warranty for a car “as is,” or for a period less than a year;

(c) corrosion and perforation warranties;

(d) emissions system warranty;

(e) hybrid and electric car battery warranties. The department will not accept a warranty covering *only* the high-voltage batteries installed in hybrids, plug-in hybrids and battery-electric vehicles;

(f) implied warranty;

(g) powertrain warranty. The department will not accept a warranty covering *only* the engine, transmission, and drivetrain components, even if it includes coverage of components in drive systems for electric vehicles and gas-electric hybrids;

(h) replacement parts warranty;

(i) restraint system warranty. The department will not accept a warranty covering *only* a vehicle’s seat belts or restraint stem;

(j) roadside assistance warranty;

(k) tire warranty;

(l) any other warranty deemed ineligible by the department.

B. The following new lease agreement types that the department will accept include the following:

(1) closed-end lease where the applicant agrees to

lease the car from a licensed dealer for a set term and certain mileage limits, and then return it at the end of the leasing period;

(2) open-end lease where the terms are flexible, and the applicant takes the depreciation risk of the vehicle;

(3) single payment lease where the applicant pays the entire amount for the lease upfront;

(4) long-term lease;

(5) used vehicle lease if it is longer than three years;

(6) any other type of lease deemed eligible by the department;

C. The lease agreement types that the department will not accept include the following:

(1) sub-vented or subsidized lease. The department will not accept a lease type that is offered with special incentives to make it more enticing to consumers. These incentives can include lower base interest rates, higher residual values, and manufacturer discounts.

(2) A lease shorter than three years. [3.4.23.14 NMAC - N, 09/24/2024]

3.4.23.15 CALCULATING THE STATE TAX CREDIT:

A. The amount of the tax credit shall be:

(1) for taxable years beginning January 1, 2024, and prior to January 1, 2027:

(a) \$3,000 for a new electric vehicle.

(b) \$2,500 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) \$2,500 for a previously owned electric vehicle.

(d) \$2,000 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(2) for a taxable year beginning January 1, 2027, and prior to January 1, 2028:

(a) \$2,220 for a new electric vehicle.

(b) \$1,850 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) \$1,850 for a previously owned electric vehicle.

(d) \$1,480 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(3) for a taxable year beginning on January 1, 2028, and prior to January 1, 2029:

(a) \$1,470 for a new electric vehicle.

(b) \$1,225 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) \$1,225 for a previously owned electric vehicle.

(d) \$980 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

(4) for the taxable year beginning January 1, 2029:

(a) \$960 for a new electric vehicle.

(b) \$800 for a new plug-in hybrid electric vehicle or fuel cell vehicle.

(c) \$800 for a previously owned electric vehicle.

(d) \$640 for a previously owned plug-in hybrid electric vehicle or fuel cell vehicle.

B. A state tax credit to an applicant for a clean car the department has certified shall not exceed:

(1) \$3000 for a new clean car.

(2) \$2500 for a previously owned clean car. [3.4.23.15 NMAC - N, 09/24/2024]

3.4.23.16 CERTIFICATION:

A. The energy, minerals and natural resources department shall provide the applicant with the certificates of eligibility in an electronic format.

B. The department shall provide certification through electronic notification to the applicant. The notification shall include the applicant's contact information, the last four digits of the social security number, or EIN, the clean car tax credit certification number and the tax credit amount.

C. If, after the department has issued a certification, any of the requirements are found to be insufficient, the department may rescind the certification. [3.4.23.16 NMAC - N, 09/24/2024]

3.4.23.17 CLAIMING THE STATE TAX CREDIT:

A. A taxpayer who has received a certificate of eligibility from the energy minerals and natural resources department shall claim the credit with the taxation and revenue department as required in statute and outlined the income tax form instructions.

B. A certificate of eligibility for the tax credit may be sold, exchanged or otherwise transferred to another taxpayer for the full value of the credit. The parties to such a transaction shall notify the taxation and revenue department of the sale, exchange or transfer within 10 days of the sale, exchange or transfer in an electronic format prescribed by the taxation and revenue department. [3.4.23.17 NMAC - N, 09/24/2024]

HISTORY OF 3.4.23 NMAC:
Pre-NMAC History: None.

History of Repealed Material:
[RESERVED]

**HEALTH CARE
 AUTHORITY
 INCOME SUPPORT DIVISION**

This is an emergency amendment to 8.102.500 NMAC, Section 8 effective 10/1/2024.

8.102.500.8 GENERAL REQUIREMENTS:

A. Need determination process: Eligibility for NMW, state funded qualified non-citizens, and EWP cash assistance based on need requires a finding that:

(1) the benefit group's countable gross monthly income does not exceed the gross income limit for the size of the benefit group;

(2) the benefit group's countable net income after all allowable deductions does not equal or exceed the standard of need for the size of the benefit group;

(3) the countable resources owned by and available to the benefit group do not exceed the \$1,500 liquid and \$2,000 non-liquid resource limits;

(4) the benefit group is eligible for a cash assistance payment after subtracting from the standard of need the benefit group's countable income, and any payment sanctions or recoupments.

B. Gross income limits: The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)	
one person	[\$1,033]	\$1,067
	(b)	
two persons	[\$1,397]	\$1,448
	(c)	
three persons	[\$1,761]	\$1,829
	(d)	
four persons	[\$2,125]	\$2,210
	(e)	
five persons	[\$2,490]	\$2,592
	(f)	
six persons	[\$2,853]	\$2,972
	(g)	
seven persons	[\$3,217]	\$3,353
	(h)	
eight persons	[\$3,582]	\$3,735
	(i)	
add	[\$365]	\$382 for each additional person.

C. Eligibility for support services only: Subject to the availability of state and federal funds, a benefit group that is not receiving cash assistance but has countable gross income that is less than one hundred percent of the federal poverty guidelines applicable to the size of the benefit group may be eligible to receive services. The gross income guidelines for the size of the benefit group are as follows:

- (1) one person
[~~\$1,215~~] \$1,255
- (2) two persons
[~~\$1,644~~] \$1,704
- (3) three persons
[~~\$2,072~~] \$2,152
- (4) four persons
[~~\$2,500~~] \$2,600
- (5) five persons
[~~\$2,929~~] \$3,049
- (6) six persons
[~~\$3,357~~] \$3,497
- (7) seven persons
[~~\$3,785~~] \$3,945
- (8) eight persons
[~~\$4,214~~] \$4,394
- (9) add [~~\$429~~] \$449 for each additional person.

D. Standard of need:
(1) The standard of need is based on the number of participants included in the benefit group and allows for a financial standard and basic needs.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and the participant's share of benefit group supplies.

(3) The financial standard includes approximately \$112 per month for each participant in the benefit group.

(4) The standard of need for the NMW, state funded qualified non-citizens, and EWP cash assistance benefit group is:

- (a) one person \$327
- (b) two persons \$439
- (c) three persons \$550
- (d) four persons \$663

- (e) five persons \$775
- (f) six persons \$887
- (g) seven persons \$999
- (h) eight persons \$1,134
- (i) add \$112 for each additional person.

E. Special needs:
(1) Special clothing allowance: A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(a) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age if the child is six years of age or older and less than age 19 by the end of August.

(b) The clothing allowance shall be allowed for each school-age child who is included in the NMW, TBP, state funded qualified non-citizens, or EWP cash assistance benefit group, subject to the availability of state or federal funds.

(c) The clothing allowance is not allowed in determining eligibility for NMW, TBP, state funded qualified non-citizens, EWP cash assistance, or wage subsidy.

(2) Layette: A one-time layette allowance of \$25 is allowed upon the birth of a child who is included in the benefit group. The allowance shall be authorized by no later than the end of the month following the month in which the child is born.

(3) Special circumstance: Dependent upon the availability of funds and in accordance with the federal act, the HCA secretary, may establish a separate, non-recurring, cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation. This cash assistance

program shall not exceed a four month time period, and is not intended to meet recurrent or ongoing needs.

F. Non-inclusion of legal guardian in benefit group: Based on the availability of state and federal funds, the HCA may limit the eligibility of a benefit group due to the fact that a legal guardian is not included in the benefit group. [8.102.500.8 NMAC - Rp 8.102.500.8 NMAC, 7/1/2024; A/E 10/1/2024]

HEALTH CARE AUTHORITY INCOME SUPPORT DIVISION

This is an emergency amendment to 8.106.500 NMAC, Section 8 effective 10/1/2024.

8.106.500.8 GA - GENERAL REQUIREMENTS:

A. Limited state funds may result in a suspension or reduction in general assistance benefits without eligibility and need considered.

B. Need **determination process:** Eligibility for the GA program based on need requires a finding that the:

(1) countable resources owned by and available to the benefit group do not exceed either the \$1,500 liquid or \$2,000 non-liquid resource limit;

(2) benefit group's countable gross earned and unearned income does not equal or exceed eighty-five percent of the federal poverty guideline for the size of the benefit group; and

(3) benefit group's countable net income does not equal or exceed the standard of need for the size of the benefit group.

C. **GA payment determination:** The benefit group's cash assistance payment is determined after subtracting from the standard of need the benefit group's countable income and any payment sanctions or recoupments.

D. **Gross income test:** The total countable gross earned and

unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

(1) Income eligibility limits are revised and adjusted each year in October.

(2) The gross income limit for the size of the benefit group is as follows:

	(a)	
one person	[\$1,033]	\$1,067
	(b)	
two persons	[\$1,397]	\$1,448
	(c)	
three persons	[\$1,761]	\$1,829
	(d)	
four persons	[\$2,125]	\$2,210
	(e)	
five persons	[\$2,490]	\$2,592
	(f)	
six persons	[\$2,853]	\$2,972
	(g)	
seven persons	[\$3,217]	\$3,353
	(h)	
eight persons	[\$3,582]	\$3,735
	(i)	

add [~~\$365~~] \$382 for each additional person.

E. Standard of need:

(1) As published monthly by the department, the standard of need is an amount provided to each GA cash assistance benefit group on a monthly basis and is based on availability of state funds, the number of individuals included in the benefit group, number of cases, number of applications processed and approved, application approval rate, number of case closures, IAR caseload number and expenditures, and number of pending applications.

(2) Basic needs include food, clothing, shelter, utilities, personal requirements and an individual benefit group member's share of supplies.

(3) **Notice:** The department shall issue prior public notice identifying any change(s) to the standard of need amounts for the next quarter, as discussed at 8.106.630.11 NMAC.

F. Net income test:

The total countable earned and unearned income of the benefit group after all allowable deductions cannot

equal or exceed the standard of need for the size of the GA benefit group. After the countable net income is determined it is rounded down prior to the comparison of the household's income to the standard of need to determine the households monthly benefit amount.

G. Special clothing allowance for school-age dependent children:

A special clothing allowance may be issued to assist in preparing a child for school, subject to the availability of state or federal funds and a specific allocation of the available funds for this allowance.

(1) For purposes of determining eligibility for the clothing allowance, a child is considered to be of school age as defined by PED.

(2) The clothing allowance shall be allowed for each school-age child who is included in the GA cash assistance benefit group, subject to the availability of state or federal funds.

(3) The clothing allowance is not counted in determining eligibility for GA cash assistance.

H. Supplemental

issuance: A one-time supplemental issuance may be distributed to recipients of GA for disabled adults based on the sole discretion of the secretary of the human services department and the availability of state funds.

(1) The one time supplemental issuance may be no more than the standard GA payment made during the month the GA payment was issued.

(2) To be eligible to receive the one time supplement, a GA application must be active and determined eligible no later than the last day of the month in the month the one time supplement is issued.

I. Minimum Benefit

Amount: Benefits less than ten dollars (\$10.00) will not be issued for the initial month or subsequent months. ISD shall certify household beginning the month of application. [8.106.500.8 NMAC - N, 07/01/2004;

A/E, 10/01/2004; A/E, 10/01/2005; A, 7/17/2006; A/E, 10/01/2006; A/E, 10/01/2007; A, 01/01/2008; A, 06/16/2008; A/E, 10/01/2008; A, 07/01/2009; A/E, 10/01/2009; A, 10/30/2009; A, 12/01/2009; A, 01/01/2011; A, 07/29/2011; A/E, 10/01/2011; A/E, 10/01/2012; A, 07/01/2013; A/E, 10/01/2013; A/E, 10/01/2014; A, 10/01/2015; A, 10/01/2016; A/E, 10/01/2017; A, 2/01/2018; A/E, 10/01/2018; A, 3/1/2019; A/E, 10/01/2019; A, 3/1/2020 A/E, 10/01/2020; A, 3/1/2021; A/E, 10/01/2021; A, 04/01/2022; A/E, 10/01/2022; A, 04/01/2023, A/E 10/1/2023; A, 03/1/2024 A/E 10/1/2024]

PUBLIC EDUCATION DEPARTMENT

At a public hearing held on 8/20/2024, the New Mexico Public Education Department agreed to repeal 6.65.4 NMAC, Teacher Leader Development Framework, filed 9/12/2024 and effective 9/24/2024.

The New Mexico Public Education Department repealed its rule 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation filed September 29, 2020, and replaced it with a new rule entitled Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation, 6.101.2 NMAC, adopted September 12, 2024 and effective September 24, 2024.

PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 101 VOCATIONAL REHABILITATION - PROCEDURAL SAFEGUARDS PART 2 FAIR HEARINGS AND ALTERNATIVE DISPUTE RESOLUTIONS RELATED TO VOCATIONAL REHABILITATION

6.101.2.1 ISSUING

AGENCY: Public Education Department.
[6.101.1 NMAC - Rp, 6.101.1 NMAC, 9/24/2024]

6.101.2.2 SCOPE: The provisions of this regulation pertain to applicants for or recipients of vocational rehabilitation services who may be aggrieved by any action or inaction of the New Mexico division of vocational rehabilitation (hereinafter, NMDVR) or of the director of the NMDVR that affects the provision of vocational rehabilitation services.
[6.101.2.2 NMAC - Rp, 6.101.2.2 NMAC, 9/24/2024]

6.101.2.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to the Rehabilitation Act of 1973, as amended, 34 CFR Part 361, Sections 9-24-8, 22-2-1, 22-2-2, 22-13-13, 22-14-8, and 22-14-12 NMSA 1978, and New Mexico Rules of Civil Procedure, District Court Rule 1-074.
[6.101.2.3 NMAC - Rp, 6.101.2.3 NMAC, 9/24/2024]

6.101.2.4 DURATION: Permanent.
[6.101.2.4 NMAC - Rp, 6.101.2.4 NMAC, 9/24/2024]

6.101.2.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a section.
[6.101.2.5 NMAC - Rp, 6.101.2.5 NMAC, 9/24/2024]

6.101.2.6 OBJECTIVE: To provide general policy for an applicant for or recipient of vocational rehabilitation services who is dissatisfied with any determination made by personnel of the NMDVR that affects the provision of vocational rehabilitation services to request a timely review of that determination through mediation or a fair hearing.
[6.101.2.6 NMAC - Rp, 6.101.2.6 NMAC, 9/24/2024]

6.101.2.7 DEFINITIONS:

- A. “Applicant”** means an individual applying for NMDVR services, and includes any representative of the applicant, such as a guardian, legal counsel, or other advocate.
- B. “Burden of proof”** means the responsibility of the party asserting a claim to prove that the claim is valid through the introduction of credible evidence.
- C. “Client assistance program” or “CAP”** means a nonprofit agency separate from the NMDVR that receives federal funds to provide information about and referral to services for individuals with a disability. The CAP also provides case advocacy for applicants and recipients to facilitate access to services funded under the Rehabilitation Act of 1973, as amended.
- D. “Collateral estoppel”** means a legal doctrine that prevents a party from relitigating an issue that was resolved in a previous lawsuit or administrative proceeding, even if the issue relates to a different claim.
- E. “Determination”** means any decision made by personnel of the NMDVR that affects the provision of vocational rehabilitation services to an applicant or recipient.
- F. “Fair hearing”** means a voluntary impartial due process hearing in which an impartial hearing officer conducts a hearing to review a disputed determination, hears testimony and reviews evidence from the parties, and issues a written decision setting forth the findings and grounds for the decision.
- G. “Fraud”** means a scheme that involves submitting false or misleading information to the NMDVR in order to obtain a service.
- H. “Good cause”** means a substantial reason or legal justification for failing to appear, to request a continuance of any due process proceedings, to act, or to respond to an action. Good cause events are unforeseen and beyond the

- control of the party and include, but are not limited to, the following:
 - (1) A personal emergency medical situation; or
 - (2) Sickness or death of a close family member.
- I. “Individualized plan for employment” or “IPE”** means a written agreement to help a recipient with a disability who qualifies for services to find, get, and keep a job. It is designed to achieve an employment outcome consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.
- J. “New Mexico state rehabilitation council”** means the entity that reviews, analyzes, and advises the NMDVR regarding all rehabilitation programs and policies administered by the NMDVR under the Rehabilitation Act Amendments of 1998.
- K. “Mediation”** means a voluntary process by which the parties meet with an independent and impartial qualified mediator to assist them in settling differences or disputes prior to pursuing formal administrative or other legal remedies.
- L. “Mediation agreement”** means a written legal contract developed during mediation. Once a mediation agreement has been signed by both parties, it is binding.
- M. “Misrepresentation”** means an intentionally or negligently false representation made verbally, by conduct, or by nondisclosure or concealment, by an applicant or recipient for the purpose of deceiving, defrauding, or causing the NMDVR to rely on the representation in order to obtain a service.
- N. “Preponderance of evidence”** means the standard by which the party with the burden of proof shall show evidence to prove that the claim is more likely than not to be true.
- O. “Recipient”** means the individual receiving NMDVR services, and includes any representative of the recipient, such as a guardian, legal counsel, or other advocate.

P. “Relevant evidence” means evidence that is relevant if reasonable inferences can be drawn that shed light on a contested matter.

Q. “Res judicata” means a legal doctrine that another party cannot relitigate a matter for the same cause of action if a final judgement based on merits has been made previously in a lawsuit or administrative proceeding.

R. “Vocational rehabilitation services” means those services identified in 29 USC Section 723, which are provided to individuals with disabilities. [6.101.2.7 NMAC - Rp, 6.101.2.7 NMAC, 9/24/2024]

6.101.2.8 REVIEW OF DETERMINATION:

A. Any applicant or recipient of vocational rehabilitation services who is dissatisfied with any determination made by personnel of the NMDVR that affects the provision of vocational rehabilitation services may request a timely review of that determination through mediation, a fair hearing, or both. An applicant or recipient may not request a fair hearing for a determination after mediation that results in a signed mediation agreement or after a hearing officer has rendered a final decision about that determination in a fair hearing.

B. Nothing in this rule shall be construed to create an entitlement to any vocational rehabilitation service. [6.101.2.8 NMAC - Rp, 6.101.2.8 NMAC, 9/24/2024]

6.101.2.9 MEDIATION:

A. Request: A request for mediation shall be made in writing online, via email, or by mailed letter to the director of the NMDVR. Incomplete requests that do not contain all of the following required information shall not be considered:

- (1) the name of the NMDVR counselor assigned to the case;
- (2) the determination being contested; and

(3) the date of the contested determination.

B. Time limitation for request: The request must be received by the director of the NMDVR within 45 calendar days of the date of the contested determination. Failure to submit the request within 45 calendar days may result in a denial of the request, as determined by the NMDVR, in its sole discretion.

C. Appointment of mediator: A qualified and impartial mediator shall be appointed on a random basis from a qualified pool of mediators established jointly by the New Mexico state rehabilitation council and the NMDVR or by agreement between the applicant or recipient and the director of the NMDVR. The mediator shall not be a current employee of the NMDVR.

D. Duties of mediator: A mediator facilitates discussions between the parties to help the parties come to a mutually agreed upon resolution of disputed issues by:

- (1) scheduling the mediation;
- (2) explaining how the mediation process works and the confidentiality of the process;
- (3) communicating with both parties to gather information about the contested issues and helping the parties work through the contestation;
- (4) assisting the parties in understanding the applicable laws, precedents, and other established guidelines;
- (5) helping the parties to find common ground and resolutions that both parties can accept; and
- (6) helping the parties complete the mediation paperwork at the conclusion of the mediation.

E. Mediation process: Mediations shall be scheduled and completed in a timely manner, but not later than 30 calendar days after receipt of the request if there is also a request for fair hearing pending. If no fair hearing request is pending, the

mediation shall be completed no later than 45 days of the request.

(1) The mediation shall be held in a location and manner that is convenient to the parties.

(2) Mediation is voluntary on the part of both parties, and either party or the mediator may terminate the mediation at any point in the process for any reason. If the mediation is terminated for any reason, the applicant or recipient may request resolution through a fair hearing.

(3) During the mediation process, the applicant or recipient may represent themselves or may be represented by a guardian, legal counsel, or another advocate of their choice.

(a) All expenses of such representation, including legal fees and travel costs, shall be the responsibility of the applicant or recipient.

(b) The applicant or recipient shall notify the NMDVR in writing of the name and contact information of the designated representative. Authorization for representation may be withdrawn at any time by giving written notice of the withdrawal to the NMDVR.

(4) Both parties shall have the opportunity to submit relevant evidence in the form of documentation or other information in support of their position.

(5) Discussions that occur during mediation shall be kept confidential and shall not be used as evidence in any subsequent fair hearing or civil proceeding. The parties will be required to sign a confidentiality agreement prior to the commencement of the process.

(6) If the parties reach agreement during the mediation, the terms of the agreement shall be described in a written mediation agreement developed by the parties with the assistance of the mediator.

(a) The mediation agreement shall be signed by both parties.

(b) A copy of the mediation agreement shall be mailed or emailed to both parties by the mediator.

(c) A signed mediation agreement is a binding and final resolution of the contested decision.

F. Cost of mediation: The NMDVR shall pay the costs of the mediation up to eight hours. However, the NMDVR shall not be required to pay any costs related to the representation of the applicant or recipient.

G. Impact on provision of services: Pending resolution through mediation, the NMDVR shall not suspend, reduce, or terminate services being provided under an IPE, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or recipient, as determined by the NMDVR, or the applicant or recipient requests a suspension, reduction or termination of services. [6.101.2.9 NMAC - Rp, 6.101.2.9 NMAC, 9/29/2020; A, 9/24/2024]

6.101.2.10 FAIR HEARING:

A. Request for a fair hearing: A request for a fair hearing shall be made in writing online, via email, or by mailed letter to the director of the NMDVR. Incomplete requests that do not contain all of the required information will not be considered. Requests shall include the following information:

- (1) the NMDVR counselor assigned to the case;
- (2) the determination being contested; and
- (3) the date of the contested determination.

B. Time limitation for request. The request for a fair hearing must be received by the director of the NMDVR within 45 calendar days of the contested determination. Failure to submit the request within 45 calendar days may result in a denial of the requests, as determined by the NMDVR, in its sole discretion.

C. Appointment of a hearing officer. A qualified and impartial hearing officer shall be appointed on a random basis from a qualified pool of hearing officers established jointly by the New Mexico state rehabilitation council and the NMDVR, or by agreement of the applicant or recipient and the director of the NMDVR. The hearing officer shall not be a current employee of the NMDVR.

D. Timing of hearing: The fair hearing shall be held within 60 calendar days of the NMDVR's receipt of the applicant's or recipient's request for review of the contested determination, unless informal resolution of a mediation agreement is achieved prior to the sixtieth calendar day or both parties agree to an extension of time. The time limit may be extended by the hearing officer upon the request of either party for good cause shown.

E. Pre-hearing conference: At least 10 calendar days prior to the date of the fair hearing, the hearing officer shall conduct at least one pre-hearing conference on a date and time agreed upon by both parties. The time limit may be extended by the hearing officer upon the request of either party for good cause shown.

(1) All parties shall attend and participate in a pre-hearing conference.

(2) Failure to attend and participate in a pre-hearing conference may result in dismissal of the action.

(3) At the pre-hearing conference, the hearing officer may take action and make rulings on issues including, but not limited to:

- (a) identifying any accommodations needed by the parties, representatives, and witnesses in the hearing, which may include the necessity for hearing or interpreter assistance or the need for a party or witness to appear by phone or video rather than in person;

(b) identifying, simplifying, and clarifying issues and dates directly related to the contested NMDVR

determination identified in the fair hearing request;

(c) eliminating irrelevant or non-hearable issues as determined by the hearing officer;

(d) identifying potential witnesses and exhibits from each party and establishing deadlines and procedures for the parties to share witness and exhibit lists and exhibits;

(e) establishing procedural matters pertaining to the conduct of the fair hearing; and

(f) establishing deadlines for pre-hearing motions and responses.

F. Fair hearing process: Fair hearings shall be scheduled and conducted within 60 calendar days of the request for hearing, unless the parties mutually agree to an extension in writing, or the hearing officer extends the time for good cause shown. Fair hearings shall be held in a location and manner that is convenient to the parties.

(1) Fair hearings are not open to the public.

(2) During the fair hearing process, the applicant or recipient may represent themselves or may be represented by a guardian, legal counsel, or another advocate of their choice.

(a) All expenses of such representation, including legal fees and travel costs, shall be the responsibility of the applicant or recipient.

(b) The applicant or recipient shall notify the NMDVR in writing of the name and contact information of the designated representative. Authorization for representation may be withdrawn at any time by giving written notice of the withdrawal to the NMDVR.

(3) Each party has certain procedural due process rights during the hearing, and may:

- (a) make opening and closing statements;
- (b) call and examine witnesses and introduce exhibits;

(c) cross-examine witnesses;

(d) re-direct their witnesses following cross-examination;

(e) impeach any witness; and

(f) rebut any relevant witness.

(4) Oral evidence shall be taken only under oath or affirmation.

(5) The order of presentation for hearings is as follows:

(a) opening of proceedings and disposition of preliminary and pending matters of the hearing officer;

(b) if the hearing officer requires, the applicant or recipient shall submit oral opening statements; otherwise, parties may submit oral opening statements voluntarily;

(c) if the hearing officer requires, the NMDVR shall submit oral opening statements; otherwise, parties may submit oral opening statements voluntarily;

(d) applicant's or recipient's case-in-chief;

(e) the NMDVR's case-in-chief;

(f) applicant's or recipient's rebuttal;

(g) the NMDVR's rebuttal;

(h) if the hearing officer requires, the applicant or recipient shall submit oral or written closing statements; otherwise, parties may submit oral or written closing statements voluntarily;

(i) if the hearing officer requires, the NMDVR shall submit oral or written closing statements; otherwise, parties may submit oral or written closing statements voluntarily; and

(j) closing of the proceedings by the hearing officer.

G. Duties of hearing officer: The hearing officer shall:

(1) conduct a pre-hearing conference no later than 10 calendar days prior to the scheduled fair hearing date, unless extended by agreement of both parties, or for good cause shown.

(2) administer an oath or affirmation to all witnesses before testimony is given.

(3) regulate the course and conduct of the hearing.

(4) maintain decorum during the hearing.

(5) assure that all properly raised and relevant issues are considered.

(6) make rulings on the introduction of testimony and other evidence. The formal Rules of Evidence and Rules of Civil Procedure do not apply but may lend guidance to the hearing officer when making rulings.

(7) request post-hearing statements or documentation from both parties if needed.

(8) ensure that all pre-hearing and hearing proceedings are properly recorded.

(9) create the record on appeal of the case which shall include, but not be limited to;

(a) the recordings of the pre-hearing and hearing proceedings;

(b) all exhibits admitted into the record;

(c) all pleadings made by the parties;

(d) all correspondence related to the pre-hearing(s) and hearing(s) by the parties and the hearing officer; and,

(e) the final written decision.

(10) review the evidence and testimony and issue a decision and order based on the facts presented as the hearing, and the provisions of the approved vocational rehabilitation services portion of the Unified of Combined State Plan, the Rehabilitation Act of 1973, as amended, accompanying federal and state regulations, and NMDVR policies that are consistent with the federal requirements.

(11) prepare a written report that states the findings and grounds for the decision and order. The written report shall be mailed and emailed to both parties within 30 calendar days of the completion of the fair hearing.

H. Burden of proof:

The burden of proof at the fair hearing is on the applicant or recipient to prove by a preponderance of evidence that the contested NMDVR determination is in violation of the Unified or Combined State Plan, the Rehabilitation Act of 1973, as amended, accompanying federal and state regulations, or NMDVR policies that are consistent with the federal requirements.

I. Dismissal prior to fair hearing:

The hearing officer shall consider a motion for dismissal without a fair hearing. If the hearing officer finds that a motion for dismissal should be granted, they may enter a final order of dismissal which may be appealed in accordance with Section 11 of this rule. The reasons to consider a motion for dismissal are:

- (1) lack of jurisdiction;
- (2) unripe or moot questions;
- (3) failure to pursue the cause by the applicant or recipient;
- (4) failure to raise a justiciable issue in the request for hearing;
- (5) unnecessary duplication of proceedings, res judicata, or collateral estoppel;
- (6) withdrawal of the request for hearing by the applicant or recipient;
- (7) failure to appear or participate at the pre-hearing conference or the fair hearing by the applicant or recipient; or
- (8) the matter was successfully resolved through informal resolution or a mediation agreement prior to the hearing.

J. Cost of a fair hearing:

The NMDVR shall pay the costs of the fair hearing, including the pre-hearing conference.

However, the NMDVR shall not be required to pay for any costs related to the representation or travel of the applicant or recipient, or the applicant’s or recipient’s representative.

K. Impact on provision of service: Pending the decision and order of the hearing officer, the NMDVR shall not suspend, reduce, or terminate services being provided under an IPE, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the applicant or recipient or the applicant, as determined by the NMDVR, or recipient requests a suspension, reduction, or termination of services.

L. Implementation of final decision: The decision and order of the hearing officer is binding and shall be implemented pending review of any civil action filed with a court of competent jurisdiction. Either party has the right to contest the decision of the hearing officer by bringing a civil action in any state court of competent jurisdiction or in a district court of the United States with competent jurisdiction without regard to the amount in controversy. The civil action shall be brought within 30 calendar days of the hearing officer’s final decision and in accordance with New Mexico Rules of Civil Procedure, District Court Rule 1-074.

M. Cost of civil action litigation: Each party shall bear its own costs for the civil action including, but not limited to, filing costs and attorney fees. The NMDVR shall not be required to pay for any costs related to the representation or travel of the applicant or recipient or the applicant’s or recipient’s or recipient’s representative.
[6.101.2.10 NMAC - Rp, 9/24/2024]

HISTORY OF 6.101.2 NMAC:
6.101.2 NMAC, Fair Hearings Related to Vocational Rehabilitation, filed 12/31/1998, was repealed and replaced by 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation, effective 9/29/2020.

6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation, filed 9/12/2020, was repealed and replaced by 6.101.2 NMAC, Fair Hearings and Alternative Dispute Resolutions Related to Vocational Rehabilitation effective 9/24/2024.

PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 12 PUBLIC SCHOOL ADMINISTRATION - HEALTH AND SAFETY
PART 16 HEALTHY UNIVERSAL SCHOOL MEALS**

6.12.16.1 ISSUING AGENCY: Public Education Department, hereinafter the department.
[6.12.16.1 NMAC – N, 9/24/2024]

6.12.16.2 SCOPE: All school food authorities that operate the national school lunch program and the school breakfast program.
[6.12.16.2 NMAC – N, 9/24/2024]

6.12.16.3 STATUTORY AUTHORITY: Sections 9-24-8, 22-2-1, 22-2-2, 22-13-13, 22-13-13.2, and 22-13C-1 et seq. NMSA 1978.
[6.12.16.3 NMAC – N, 9/24/2024]

6.12.16.4 DURATION: Permanent.
[6.12.16.4 NMAC – N, 9/24/2024]

6.12.16.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited in the history note at the end of a section.
[6.12.16.5 NMAC – N, 9/24/2024]

6.12.16.6 OBJECTIVE: To establish the accountability measures and procedures for certification to implement the Healthy, Hunger-Free Students’ Bill of Rights Act, Section 22-13C-1 et seq. NMSA 1978.
[6.12.16.6 NMAC – N, 9/24/2024]

6.12.16.7 DEFINITIONS:
A. “Eligible meals” means meals served to full-price, paid students that qualify for reimbursement under the national school lunch program (NSLP) and the school breakfast program (SBP).

B. “Federal free meal reimbursement” means the free meal reimbursement paid by the United States Department of Agriculture (USDA) under 42 U.S.C. 1759a for meals that qualify for reimbursement pursuant to the national school lunch program and the school breakfast program.

C. “Federal paid meal reimbursement rate” means the paid reimbursement rate as set annually by the USDA under 42 U.S.C. 1759a for meals that qualify for reimbursement under the NSLP and the SBP.

D. “Freshly prepared” means meal pattern components that are prepared and cooked for same day consumption utilizing scratch cooking or speed scratch preparation methods.

E. “Healthy universal school meals program” means the universal school meals for children program created pursuant to the Healthy Hunger-Free Students’ Bill of Rights Act.

F. “Meal pattern components” means food groups established by the USDA in 7 C.F.R. § 226.20 to provide the basis for the NSLP and SBP meal patterns, each component of which is based on the nutrient content of the food items in each category, which shall include meats or meat alternates, grains, fruits, vegetables, and milk.

G. “Meal quality improvement requirements” means performance standards created to improve school meal quality pursuant to the Healthy Hunger-Free Students’ Bill of Rights Act.

H. “National school lunch program” or “NSLP” means the federally assisted meal program that provides nutritious, low-cost, or free lunches to children in public schools, private schools, and residential childcare institutions.

I. “Paid meal rate”
means the paid student rate reported by the department to the USDA based on the average paid meal rate charged by school food authorities in the prior school year.

J. “Reimbursable meal line” means the designated area in a school where students queue to receive meals that are eligible for reimbursement.

K. “School breakfast program” or “SBP” means the federally assisted meal program that provides reimbursement to states to operate nonprofit breakfast programs in public schools, private schools, and residential childcare institutions.

L. “School food authority” means public school districts, charter schools, Bureau of Indian Education schools, tribally controlled schools, and private schools that operate the NSLP and the SBP.

M. “Scratch cooking”
means the use of whole, fresh ingredients that may include, but are not limited to, raw proteins, whole grains, and fresh fruits and vegetables. This preparation method omits the utilization of premade commercial food products.

N. “Speed scratch”
means the blending of fresh ingredients together with pre-prepared and ready-made minimally processed ingredients that are processed in a way that does not fundamentally alter the product and does not substantially change the nutritional content, to prepare a meal for same day consumption.

O. “Unprocessed and minimally processed products”
means raw or frozen products, products that retain their inherent character, such as shredded carrots or ground beef, and dried products, such as beans, but does not include any products that are heated, cooked or canned.

P. “Value-added processed products” means products that are altered from their unprocessed or minimally processed state through preservation techniques, including cooking, baking, or canning.
[6.12.16.7 NMAC – N, 9/24/2024]

6.12.16.8 REQUIREMENTS:

A. All public schools that operate the NSLP and the SBP shall establish a healthy universal school meals program.

B. Bureau of Indian education schools, tribally controlled schools, and private schools that operate the NSLP and the SBP may establish a healthy universal school meals program to offer high-quality meals at no charge to students provided that state and federal funding is available, and the school complies with applicable state and federal laws.

C. Each school food authority that establishes a healthy universal school meals program shall seek to achieve certification for meal quality improvement requirements by July 1, 2025.

D. Meal quality improvement requirements shall include the following:

(1) Fifty percent of all weekly required meal pattern components, with the exception of milk, shall be freshly prepared; and

(a) to determine the quantity of meal pattern components necessary to meet requirements, school food authorities must calculate the weekly total of each required component, per grade grouping, for breakfast and lunch;

(b) Fifty percent of the total number of weekly components per meal pattern component category shall be freshly prepared;

(c) if any site in a school food authority operates more than one reimbursable meal line, the fifty percent requirement of freshly prepared meal pattern components must be met for each reimbursable meal line.

(2) Achievement of the lowest level of food waste, by:

(a) permitting students in grades kindergarten through five to have up to twenty minutes of seated lunch time each school day to provide lunch periods that are sufficiently long to give all students adequate time to eat; and

(b) requiring share tables be provided where food service staff, students, and parents may return allowable food; allowable food placed on the share tables that is not taken by a student during the course of a regular school meal period shall be donated to students, food banks, or other nonprofit charitable organizations.

(3) Utilization of New Mexico-grown foods, pursuant to the following:

(a) school food authorities are eligible to receive an incentive grant pursuant to this section to purchase New Mexico-grown, -raised, or -processed products;

(b) participating school food authorities may use the amount received pursuant to this paragraph to support implementation of meal quality improvement requirements;

(c) school food authorities shall use the money received pursuant to this section to purchase New Mexico-grown, -raised, or -processed products, with a minimum of seventy-five percent of funds used to purchase unprocessed and minimally processed products, and with up to twenty-five percent of funds that may be used to purchase value-added processed products;

(d) by August 1 of each year, subject to available appropriations, the department shall distribute to each participating school food authority the greater of one thousand dollars or an amount equal to ten cents multiplied by the number of lunches that qualified for federal free meal reimbursement that the participating school food authority served to students in the preceding school year; and

(e) when calculating the amount of program funding that is due to a school food authority, the department shall assume that student participation will remain at the same level as the previous year.

[6.12.16.8 NMAC – N, 9/24/2024]

6.12.16.9 ANNUAL CERTIFICATION PROCEDURES:

A. Each school food authority that operates the healthy universal school meals program shall submit to the department for approval annual certification documentation.

B. Beginning in 2025, the annual certification documentation for the healthy universal school meals program shall be submitted by a date to be determined by the department, and shall include the following components:

(1) breakfast and lunch menus, productions records, recipes, and food labels for the selected review period, as determined by the department;

(2) subject to available appropriations, documentation that New Mexico-grown foods were purchased and utilized to improve meal quality;

(3) documentation that student and family feedback was considered in menu development and recipe improvements; and

(4) documentation of efforts to minimize food waste.

C. The department may contact a school food authority to schedule an on-site visit for monitoring purposes. [6.12.16.9 NMAC – N, 9/24/2024]

6.12.16.10 FUNDING DISTRIBUTION:

A. The department shall distribute funding to each school food authority that establishes a healthy universal school meals program:

(1) In school year 2024-2025, the department shall distribute to each such school food authority an amount that is equal to the federal free meal reimbursement rate multiplied by the total number of eligible meals served during the applicable budget year, minus an amount equal to the federal paid meal reimbursement for eligible meal served during the applicable budget year.

(2) Beginning in school year 2025-2026, to school food authorities that meet meal quality improvement requirements by July 1 each year, the department shall distribute an amount that is equal to the federal free meal reimbursement rate multiplied by the total number of eligible meals served during the applicable budget year, minus an amount equal to the federal paid meal reimbursement for eligible meals served during the applicable budget year.

(3) Beginning in school year 2025-2026, to school food authorities that do not meet meal quality improvement requirements by July 1 each year, the department shall distribute an amount that is equal to the paid meal rate multiplied by the total number of eligible meals served during the applicable budget year.

B. School food authorities shall use funding to purchase commodities necessary to improve meal quality, including food and other consumables, equipment, staffing, labor needs, or training and technical assistance. [6.12.16.10 NMAC – N, 9/24/2024]

HISTORY OF 6.12.16 NMAC: [RESERVED]

PUBLIC REGULATION COMMISSION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 589 RELIABILITY METRICS REPORTING**

17.9.589.1 ISSUING AGENCY: New Mexico Public Regulation Commission. [17.9.589.1 NMAC - N, 9/24/2024]

17.9.589.2 SCOPE: This rule applies to all investor-owned electric public utilities subject to the jurisdiction of the commission. [17.9.589.2 NMAC - N, 9/24/2024]

17.9.589.3 STATUTORY AUTHORITY: Section 62-6-25 NMSA 1978; Paragraph (1) of Subsection B of Section 62-8-13 NMSA 1978; Paragraph (3) of Subsection D of Section 62-9-1 NMSA 1978; Subsection E of Section 62-9-3 NMSA 1978; Paragraph (2) of Subsection B of Section 62-16-4 NMSA 1978; and Subsection B of Section 62-16-6 NMSA 1978. [17.9.589.3 NMAC - N, 9/24/2024]

17.9.589.4 DURATION: Permanent. [17.9.589.4 NMAC - N, 9/24/2024]

17.9.589.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a section. [17.9.589.5 NMAC - N, 9/24/2024]

17.9.589.6 OBJECTIVE: This rule is intended to promote electric service reliability by requiring investor-owned electric utilities to report a variety of reliability metrics to the commission on an annual basis with the goal of identifying, prioritizing, and meeting reliability needs. [17.9.589.6 NMAC - N, 9/24/2024]

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

A. Definitions beginning with “A”: “average service availability index” (ASAI) means the fraction of time (commonly converted to a percentage) that a customer has received power during the defined reporting period, as given in the following equation: customer hours service availability divided by customer hours service demand. This definition incorporates the definition from IEEE-1366-2022.

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

C. Definitions beginning with “C”:
(1) “commission” means the New Mexico public regulation commission;
(2) “customer average interruption duration

index” (CAIDI) means the average time required to restore service, as given in the following equation: total customer minutes of interruption divided by total number of customers interrupted. This definition incorporates the definition from IEEE-1366-2022; and

(3)

“customers experiencing long interruption durations” (CELID) means the ratio of individual customers that experience interruptions with durations longer than or equal to a given time. That time is either the duration of a single interruption, or the total amount of time that a customer has been interrupted during the reporting period. This definition incorporates the definition from IEEE-1366-2022.

D. Definitions

beginning with “D”: [RESERVED]

E. Definitions

beginning with “E”: [RESERVED]

F. Definitions

beginning with “F”: “feeder SAIFI” means the average number of times that a customer on a specific circuit is interrupted during the year, as given in the following equation: total number of customers interrupted on the circuit during the year divided by average number of customers served on the circuit during the year.

G. Definitions

beginning with “G”: [RESERVED]

H. Definitions

beginning with “H”: [RESERVED]

I. Definitions

beginning with “I”:

(1) “IEEE”

means the institute of electrical and electronics engineers; and

(2)

“interruption” means the total loss of electric power on one or more normally energized conductors to one or more customers connected to the distribution portion of the system. Interruption does not include any power quality issues such as sags, swells, impulses, or harmonics. This definition incorporates the definition from IEEE-1366-2022; and

(3)

“interruption cause code categories” incorporates the

categories and sub-categories defined in IEEE-1782-2022 and additionally means the following categories used in reliability reports to be filed by utilities in accordance with this Rule:

(a)

equipment,

(b)

lightning,

(c)

planned,

(d)

power supply (transmission),

(e)

public,

(f)

vegetation,

(g)

weather (other than lightning),

(h)

wildlife,

(i)

unknown, and

(j)

other (please specify).

J. Definitions

beginning with “J”: [RESERVED]

K. Definitions

beginning with “K”: [RESERVED]

L. Definitions

beginning with “L”: [RESERVED]

M. Definitions

beginning with “M”:

[RESERVED]

(1) “major

events” means an event that exceeds reasonable design or operational limits of the electric power system. A major event includes at least one major event day. This definition incorporates the definition from IEEE-1366-2022;

(2) “major

event day” (MED) means a day in which the daily system average interruption duration index (SAIDI) exceeds a MED threshold value. For the purposes of calculating daily SAIDI, any interruption that spans multiple calendar days is accrued to the day on which the interruption began. Statistically, days having a daily system SAIDI greater than the MED threshold are days on which the energy delivery system experienced stresses beyond that normally expected (such as during severe weather). This definition incorporates

the definition from IEEE-1366-2022; and

(3)

“momentary average interruption frequency index” (MAIFI) means the average frequency of momentary interruptions. This definition incorporates the definition from IEEE-1366-2022.

N. Definitions

beginning with “N”: [RESERVED]

O. Definitions

beginning with “O”: [RESERVED]

P. Definitions

beginning with “P”: “planned interruption” means the loss of electric power to one or more customers as a result of a planned interruption. Planned interruptions derive from transmission and distribution applications and do not apply to generation interruptions. The key test to determine if an interruption should be classified as a planned or unplanned interruption is as follows: if it is possible to defer the interruption, then the interruption is a planned interruption; otherwise, the interruption is an unplanned interruption. This definition incorporates the definition from IEEE-1366-2022.

Q. Definitions

beginning with “Q”: [RESERVED]

R. Definitions

beginning with “R”: [RESERVED]

S. Definitions

beginning with “S”:

(1) “system

average interruption duration index” (SAIDI) means the total duration of interruption for the average customer during a specified period of time, measured in minutes of interruption, as given in the following equation: total customer minutes of interruption divided by total number of customers served. This definition incorporates the definition from IEEE-1366-2022;

(2) “system

average interruption frequency index” (SAIFI) means how often the average customer experiences a sustained interruption over a predefined period of time, as given in the following equation: total number of customers interrupted divided by

total number of customers served. This definition incorporates the definition from IEEE-1366-2022; and

(3) “sustained interruptions” means an interruption that lasts more than five minutes.

This definition incorporates the definition from IEEE-1366-2022.

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

U. Definitions beginning with “U”: “utility” means an investor-owned electric public utility subject to the requirements of this Rule.

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

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

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

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

Z. Definitions beginning with “Z”: [RESERVED] 17.9.589.7 NMAC - N, 9/24/2024]

17.9.589.8 General Reliability Metrics Reporting Requirements:

A. A utility shall file, no later than March 15 of each year, a report in the commission’s reliability reporting compliance docket pursuant to the report outline provided in Appendix A.

B. The report shall contain an affidavit with an attestation made by the employee of the utility who prepared the report.

C. The utility shall serve the report upon the commissioners, the commissioners’ advisors, utility division staff, and all persons and entities listed on the certificate of service for the utility’s last base rate case.

D. Utility division staff shall file, within 45 days of a report’s filing, staff’s assessment of the report. Staff’s assessment shall include a statement of compliance with this rule, detailing areas of non-compliance.

E. After the utility’s second annual filing, the report shall include an analysis of trends, a comparison of previous years,

and a recommendation for future distribution investments.

F. The utility shall present, no later than June 1 of each year, its report to the commission at an open meeting, which shall include all requirements contained in Appendix A plus a linkage between the reliability metrics and the utility’s distribution planning. [17.9.589.8 NMAC - N, 9/24/2024]

17.9.589.9 Specific Reliability Metrics Reporting Requirements:

A. MAIFI is not required to be reported unless the utility has installed the necessary technology and has usage data for at least six months across eighty percent of its electric system.

B. Activities that occur on MEDs should be separately analyzed and reported.

C. A utility that provides electric service in more than one state may:

(1) identify major events based on the reliability events experienced by the combined service territories; and

(2) illustrate the effect of identifying major events based on reliability events experienced only in the New Mexico service territory.

D. A utility may categorize interruptions into more detailed interruption cause categories that are subsets of the defined interruption cause code categories. The utility shall:

(1) list sub-causes when weather is the primary interruption cause code;

(2) list sub-equipment components when using the equipment interruption cause code;

(3) include planned interruptions; and

(4) include the utility’s methodology of how it classifies interruptions.

[17.9.589.9 NMAC - N, 9/24/2024]

NMAC History: [RESERVED]

PUBLIC REGULATION COMMISSION

APPENDIX A

Required Sections of Annual Reliability Metric Report Filed Pursuant to Sections 8 and 9 of 17.9.589 NMAC.

1. Executive Summary: Please provide a narrative to illustrate the current state of distribution reliability and major trends.

2. How the Utility Measures Reliability: Please provide a narrative that describes, in general terms, how the utility’s measures and documents reliability matters, including examples of metrics that are most useful.

3. The Utility’s Service Territory Map with Districts: Maps should show how the utility operations are divided into geographic regional/divisions. Color coding may be useful to identify districts with above or below average reliability outcomes.

4. Reliability Indices IEEE 1366 for the Last 10 years (Excluding Planned Interruptions): Tables are required. Charts to illustrate the data would be helpful. Distribution includes distribution lines; substation includes distribution substations; and transmission includes transmission substations and lines.

Continued Next Page

	CAIDI										
	MAIFI										
Excluding MEDs	SAIDI										
	SAIFI										
	CAIDI										
	MAIFI										

Repeat table above for subsequent districts

5. Worst Performing Feeders:

Threshold based on Feeder SAIDI or Feeder SAIFI \geq Distribution System SAIDI or SAIFI + 300%. Highlighted feeders over threshold for two consecutive years. Minimum 10 customers on feeder.

Table 5.1: YEAR Feeders Above SAIDI Threshold

YEAR Distribution system SAIDI: x Feeder SAIDI threshold: y Total Feeders: z

YEAR SAIDI Ranking	YR-1 SAIDI Ranking	Substation	Feeder ID	Location	Customers on Feeder	YEAR SAIDI Value	Reason Above Threshold

Table 5.2: YR-1 Feeders Above SAIDI Threshold

YR-1 Distribution system SAIDI: x Feeder SAIDI threshold: y Total Feeders: z

YR-1 SAIDI Ranking	YR-2 SAIDI Ranking	Substation	Feeder ID	Location	Customers on Feeder	YR-1 SAIDI Value	Reason Above Threshold

Table 5.3: YR-2 Feeders Above SAIDI Threshold

Please use Table 5.2 as a template for creating Table 5.3, which will focus on [YR-2] feeders above SAIDI threshold, while showing the SAIDI ranking of those same feeders the previous year.

Table 5.4: YR-3 Feeders Above SAIDI Threshold

Please use Table 5.2 as a template for creating Table 5.4, which will focus on [YR-3] feeders above SAIDI threshold, while showing the SAIDI ranking of those same feeders the previous year.

Table 5.5: YR-4 Feeders Above SAIDI Threshold

Please use Table 5.2 as a template for creating Table 5.5, which will focus on [YR-4] feeders above SAIDI threshold, while showing the SAIDI ranking of those same feeders the previous year.

Table 5.6: YEAR Feeders Above SAIFI Threshold

YEAR Distribution system SAIFI: x Feeder SAIFI threshold: y Total Feeders: z

YEAR SAIIFI Ranking	YR-1 SAIIFI Ranking	Substation	Feeder ID	Location	Customers on Feeder	YEAR SAIIFI Value	Reason Above Threshold

Table 5.7: YR-1 Feeders Above SAIIFI Threshold

YR-1 Distribution system SAIIFI: x Feeder SAIIFI threshold: y Total Feeders: z

YR-1 SAIIFI Ranking	YR-2 SAIIFI Ranking	Substation	Feeder ID	Location	Customers on Feeder	YR-1 SAIIFI Value	Reason Above Threshold

Table 5.8: YR-2 Feeders Above SAIIFI Threshold

Please use Table 5.7 as a template for creating Table 5.8, which will focus on YR-2 feeders above SAIIFI threshold, while showing the SAIIFI ranking of those same feeders the previous year.

Table 5.9: YR-3 Feeders Above SAIIFI Threshold

Please use Table 5.7 as a template for creating Table 5.9, which will focus on YR-3 feeders above SAIIFI threshold, while showing the SAIIFI ranking of those same feeders the previous year.

Table 5.10: YR-4 Feeders Above SAIIFI Threshold

Please use Table 5.7 as a template for creating Table 5.10, which will focus on YR-4 feeders above SAIIFI threshold, while showing the SAIIFI ranking of those same feeders the previous year.

6. Top Five Causes of Interruptions (Interruption Cause Code Categories):

Table 6.1: Five Year Trend of Top Causes by SAIDI Minutes (interruption codes)

Cause	YR-4 SAIDI
#1 cause	
#2 cause	
#3 cause	
#4 cause	
#5 cause	

Cause	YR-1 SAIDI
#1 cause	
#2 cause	
#3 cause	
#4 cause	
#5 cause	

Cause	YR-3 SAIDI
#1 cause	
#2 cause	
#3 cause	
#4 cause	
#5 cause	

Cause	YEAR SAIDI
#1 cause	
#2 cause	
#3 cause	
#4 cause	
#5 cause	

Cause	YR-2 SAIDI
#1 cause	
#2 cause	
#3 cause	
#4 cause	
#5 cause	

Figure 6.1: Five Year Trend of Top Causes by SAIDI Minutes (present the data from Table 6.1 in graphic form)
Please provide a narrative pertaining to top causes of interruptions.

7. Table of Major Events (MED) and Top 5 Non-MED Events:

Table 7.1: Major Events

Start Time	Customers Affected	% Customers Restored in 24 hours	Time All Customers Restored	Cause	Brief Event Narrative	Index Contribution		
						SAIDI	SAIFI	CAIDI

Table 7.2: Top 5 Non-MED Events

Start Time	Customers Affected	% Customers Restored in 24 hours	Time All Customers Restored	Cause	Brief Event Narrative	Index Contribution		
						SAIDI	SAIFI	CAIDI

Please provide a narrative pertaining to MED and non-MED events.

8. Customers Experiencing Extended Interruptions:

Table 8.1: CELID 12 and 24 Hours Including and Excluding MEDs
YEAR Customers Experiencing Long Interruption Duration (CELID)

	CELID-12 (>= 12 hrs)		CELID-24 (>= 24 hrs)	
	No. of Customers	% of all Customers	No. of Customers	% of all Customers
Including MEDs				
Excluding MEDs				

Please provide a narrative pertaining to customers experiencing extended interruptions.

9. Narrative on Customer Complaints to the Utility About Interruptions:

The narrative shall provide the total number of customer complaints received by the utility about interruptions, as well as an overview of the types of those complaints. Reporting regarding the complaints shall be disaggregated by customer class or voltage level (large customers, residential, etc.) to the extent possible while not identifying individual customer data or disclosing confidential customer information. The narrative is not required to discuss individual customer complaints and what was done to resolve them; however, the utility may choose to include this information for illustrative purposes.

10. Trends of Investment in Transmission and Distribution System (CapEx and O&M) Over 10 Years of Spending on Reliability Improvements:

Please clarify whether all of your transmission is considered part of the bulk electric system as defined by the Federal Energy Regulatory Commission. If a portion of your transmission system is not considered a part of the bulk electric system, expenditures for each portion of the transmission system should be reported separately.

Table 10.1: Total Transmission O&M and Capital Expenditures

Transmission Expenditures	YR-9	YR-8	YR-7	YR-6	YR-5	YR-4	YR-3	YR-2	YR-1	YEAR
Capex - (000) USD										
O&M - (000) USD										

Table 10.2: Total Distribution O&M and Capital Expenditures

Distribution	YR-9	YR-8	YR-7	YR-6	YR-5	YR-4	YR-3	YR-2	YR-1	YEAR
Capex spend - (000) USD										
O&M spend - (000) USD										
Dist. line miles at year end										
Dist. customers at year end										

Table 10.3 Major Event and Storm Restoration Expenditures in Prior Year for Events Listed in Section 7.

11. Inspections and Replacements

Table 11.1: Distribution Pole Inspections/Replacement

Year	Total Poles	Poles Inspected	Poles Replaced
YEAR			
YR-1			
YR-2			
YR-3			
YR-4			

Table 11.2: Underground Circuits

Year	Total Miles	Total Miles evaluated	Total Repaired/Replaced
YEAR			
YR-1			
YR-2			
YR-3			
YR-4			

Table 11.3: Vegetation Management (add activities as needed)

Year	Total Overhead Line Length (miles)	Length of Overhead Line Cleared (miles)	Total Cost to Clear (USD)	Other
YEAR				
YR-1				
YR-2				
YR-3				
YR-4				

12. Narrative on Other Work Planned to Improve Reliability:

Please provide a general narrative.

13. Summary of Planned and Unplanned Electric Interruptions Due to Wildfire Risk:

Please provide a narrative with selected charts/graphs to illustrate any planned interruptions or de-energization due to wildfire risk including the interruption area, number of customers impacted (identified by customer class or voltage level), duration of the interruption, and the utility’s efforts and plans to notify customers of the interruption.

TAXATION AND REVENUE, DEPARTMENT OF

The New Mexico Taxation and Revenue Department approved, at its 6/20/2024 hearing, to repeal its rules 3.2.116 NMAC - Exemption – Gross Receipts Tax - Occasional Sale of Property or Services filed 4/30/2001 and replace it with a new rule effective 9/24/2024.

The New Mexico Taxation and Revenue Department approved, at its 6/20/2024 hearing, to repeal its rules 3.2.211 NMAC - Deduction - Gross Receipts Tax - Sale or Lease of Real property and Lease of Manufactured Homes filed 5/17/2001 and replace it with a new rule effective 9/24/2024.

TAXATION AND REVENUE, DEPARTMENT OF

**TITLE 3 TAXATION
CHAPTER 2 GROSS RECEIPTS TAXES
PART 116 EXEMPTION
- GROSS RECEIPTS TAX
- OCCASIONAL SALE OF PROPERTY OR SERVICES**

3.2.116.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.2.116.1 NMAC - Rp, 3.2.116.1 NMAC 9/24/2024]

3.2.116.2 SCOPE: This part applies to each person occasionally selling or leasing property or performing service but who is not regularly engaged in business of selling or leasing that type of property or performing that type of service.
[3.2.116.2 NMAC - Rp, 3.2.116.2 NMAC 9/24/2024]

3.2.116.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.116.3 NMAC - Rp, 3.2.116.3 NMAC 9/24/2024]

3.2.116.4 DURATION: Permanent.
[3.2.116.4 NMAC - Rp, 3.2.116.4 NMAC 9/24/2024]

3.2.116.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a

section, in which case the later date is the effective date.
[3.2.116.5 NMAC - Rp, 3.2.116.5 NMAC 9/24/2024]

3.2.116.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.116.6 NMAC - Rp, 3.2.116.6 NMAC 9/24/2024]

3.2.116.7 DEFINITIONS:
[RESERVED]
[3.2.116.7 NMAC - Rp, 3.2.116.7 NMAC 9/24/2024]

3.2.116.8 CRITERIA USED IN DETERMINING ISOLATED OR OCCASIONAL SALES: The department will use the following criteria, but not exclusively, in determining whether or not a transaction involves only an “isolated or occasional” sale or lease:

- A. the nature of the service or property;
 - B. the nature of the market for the service or property sold or leased;
 - C. the frequency of the service or property sold or leased;
 - D. any promotional activity such as advertising for the type of sale, business listing on a website, or in any media, physical or otherwise;
 - E. any holding themselves out as or representing as being in business by the seller or lessor; and
 - F. if found to be engaging in business pursuant to Section 7-9-3.3 NMSA 1978, the type of sale in relation to the transaction in question.
- [3.2.116.8 NMAC - Rp, 3.2.116.8 NMAC 9/24/2024]

3.2.116.9 LICENSE TO DO BUSINESS OR HOLDING OUT TO DO BUSINESS:

A. Any person who holds a license to sell or lease property or to carry on services or who regularly advertises similar property or services for lease or

sale, is engaged in the business of selling or leasing the same or similar property or services and is not entitled to the exemption under Section 7-9-28 NMSA 1978 for the transaction in question.

B. The following general categories illustrate the correct application of Section 7-9-28 NMSA 1978 for a business that is selling property or services that is not related to their business. To determine the taxability of the examples below the criteria in 3.2.116.8 NMAC were used.

(1) Receipts from the sale of equipment and other tangible personal property that has been employed in private and personal use are exempt from gross receipts tax pursuant to Section 7-9-28 NMSA 1978, unless the seller is regularly engaged in the activity of selling private tangible personal property.

(2) Receipts from garage sales and yard sales and similar types of sales events are exempt from gross receipts tax under Section 7-9-28 NMSA 1978, unless the seller is regularly engaged in the activity of holding such sales, as determined by the frequency of such sales, advertising of such sales, and other criteria set out in 3.2.116.8 NMAC.

(3) Receipts from services performed by a person for someone other than in a capacity as an employee as defined pursuant to 3.2.105.7 NMAC are not exempt from the gross receipts tax if the services are of the same or similar nature as those performed for an employer.

(4) Receipts from the sale of a person’s principal residence, including receipts attributable to improvements to that residence as defined pursuant to Section 7-9-53 NMSA 1978, are exempt from gross receipts pursuant to Section 7-9-28 NMSA 1978. Receipts from the sale of real property and improvements that are not exempt from gross receipts tax pursuant to Section 7-9-28 NMSA 1978 may be deductible pursuant to Section 7-9-53 NMSA 1978 and Sections 3.2.211.9

and 3.2.211.10 NMAC.
[3.2.116.9 NMAC - Rp, 3.2.116.9 NMAC 9/24/2024]

3.2.116.10 PERSONS HAVING RENTAL UNITS:

A. Any person who rents or leases rental units of real property may qualify for the deduction under Section 7-9-53 NMSA 1978. Taxpayers should review that statute and its regulations under Chapter 2 Part 211 of NMAC to determine if they qualify for this deduction. If the deduction applies, the person must register with the department and report the associated gross receipts and any applicable deductions.

B. If a person is engaging in the business of short-term rentals, the individual is subject to gross receipts tax. This person may also owe lodger’s taxes to the specific county or municipality in which the rental unit of real property is located. Lodger’s tax is not a tax administered by the taxation and revenue department.

C. For purposes of this section, a “short term rental” is defined as a rental of real property for fewer than thirty days at a time.
[3.2.116.10 NMAC - Rp, 3.2.116.10 NMAC 9/24/2024]

3.2.116.11 SALE OR LEASING THE SAME OR SIMILAR PROPERTY:

A. Receipts from an isolated or occasional sale are exempt pursuant to Section 7-9-28 NMSA 1978 only when the seller of the property is not engaged in the business of selling or leasing the same or similar property.

B. If the taxpayer is engaged in the business of selling or leasing property and they decide to terminate their business and plan on selling the property, those receipts would not qualify for the exemption under Section 7-9-28 NMSA 1978 because the line of business is the same or similar.
[3.2.116.11 NMAC - Rp, 3.2.116.11 NMAC 9/24/2024]

3.2.116.12 EXECUTORS' AND ADMINISTRATORS' FEES:

A. The receipts of any person appointed as administrator or executor of an estate who advertises this service as part of their business and satisfies the requirements of 3.2.116.8 NMAC are subject to the gross receipts tax.

B. If the person appointed as an administrator or executor is not regularly engaged in this business and does not satisfy the requirements of 3.2.116.8 NMAC, any receipts the person receives for performing executor or administrator services are exempt under Section 7-9-28 NMSA 1978.

C. Where an administrator or executor effectively waives the right to receive statutory fees or commissions within a reasonable time after commencing to serve as the executor and all other actions by that person with respect to the estate are consistent with the intention to render a gratuitous service, the administrator or executor is not subject to the gross receipts tax on the value of the services rendered. [3.2.116.12 NMAC - Rp, 3.2.116.12 NMAC 9/24/2024]

3.2.116.13 TRUSTEE FEES:

The receipts of a person appointed as trustee, who is not an employee of the trust, court or other appointing authority, are not exempt from gross receipts tax under the provisions of Section 7-9-28 NMSA 1978. [3.2.116.13 NMAC - Rp, 3.2.116.13 NMAC 9/24/2024]

3.2.116.14 SAFE HARBOR LEASE - SELLER/LESSEE:

A seller/lessee who enters into a qualified "safe harbor lease" transaction as defined in Section 168 of the Internal Revenue Code and who is not in the business of selling or leasing the same type of property being sold under the "safe harbor lease" will not be subject to the gross receipts tax on the sale and subsequent receipts derived from such transaction since those receipts are exempt under Section 7-9-28 NMSA 1978. A seller/lessee may not issue a

nontaxable transaction certificate to purchase the property from a vendor. [3.2.116.14 NMAC - Rp, 3.2.116.14 NMAC 9/24/2024]

HISTORY OF 3.2.116 NMAC:

Pre-NMAC History:
 BOR 1967-2, NM Gross Receipts and Compensating Tax Regulations, September 11991967, filed 9/29/1967.
 BOR 1969-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12-5-1969, filed 12/5/1969.
 BOR 1972-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/1972, filed 3/9/1972.
 BOR 1974-2, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/73, filed 3/20/1974.
 BOR 1976-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/1976, filed 7/26/1976.
 R.D.1979-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/1979.
 R.D. Rule No. 1982, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/7/1982.
 R.D. Rule No. 1984, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 5/4/1984.
 TRD Rule No. 9-1986, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 4/2/1986.
 TRD Rule GR-1990, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-80.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material:

3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, filed 4/30/2001, Repealed effective 9/24/2024.
 3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of

Property or Services, filed 4/30/2001 Repealed effective 9/24/2024.

NMAC History:

3 NMAC 2.28, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, filed 11/4/1996.
 3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, filed 4/30/2001, Replaced by 3.2.116 NMAC, Exemption - Gross Receipts Tax - Occasional Sale of Property or Services, effective 9/24/2024.

TAXATION AND REVENUE, DEPARTMENT OF

**TITLE 3 TAXATION
 CHAPTER 2 GROSS RECEIPTS TAXES
 PART 211 DEDUCTION - GROSS RECEIPTS TAX - SALE OR LEASE OF REAL PROPERTY AND LEASE OF MANUFACTURED HOMES**

3.2.211.1 ISSUING

AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630. [3.2.211.1 NMAC - Rp, 3.2.211.1 NMAC 9/24/2024]

3.2.211.2 SCOPE:

This part applies to each person engaging in business in New Mexico. [3.2.211.2 NMAC - Rp, 3.2.211.2 NMAC 9/24/2024]

3.2.211.3 STATUTORY

AUTHORITY: Section 9-11-6.2 NMSA 1978. [3.2.211.3 NMAC - Rp, 3.2.211.3 NMAC 9/24/2024]

3.2.211.4 DURATION:

Permanent. [3.2.211.4 NMAC - Rp, 3.2.211.4 NMAC 9/24/2024]

3.2.211.5 EFFECTIVE

DATE: September 24, 2024, unless

a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.211.5 NMAC - Rp, 3.2.211.5 NMAC 9/24/2024]

3.2.211.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.211.6 NMAC - Rp, 3.2.211.6 NMAC 9/24/2024]

3.2.211.7 DEFINITIONS: As used in Section 7-9-53 NMSA 1978 and regulations under 3.2.211 NMAC the following terms are defined as such:

A. “Assisted living facility” means a facility that provides dwelling units for residents, and which includes common rooms and other facilities appropriate for the provision of supportive services to residents of the facility, and which makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy. Assisted living facilities are distinguished from other long-term care facility types, such as skilled nursing facilities, in that they do not provide round-the-clock supervision by nurses or other medically trained personnel.

B. “Fair rental value” means the amount a willing landlord in the marketplace rents the property for and what a reasonable tenant is willing to pay.

C. “Improvement” means a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the

property more useful or valuable.

D. “Lease or leasing” as defined in Section 7-9-3 NMSA 1978.

E. “Licensing or license” as defined in Section 7-9-3 NMSA 1978.

F. “Manufactured home” means a moveable or portable housing structure constructed to be towed on its own chassis and designed to be installed with or without a permanent foundation for human occupancy.

G. “Month” is a consecutive 30-day period.

H. “Recreational vehicle” means a vehicle defined as a recreational vehicle in Section 66-1-4.15 NMSA 1978 or as a travel trailer in Section 66-1-4.17 NMSA 1978.

I. “Real property” means an estate or interest in, over or under land and other things or interest, including minerals, water, structures and fixtures that by custom, usage or law pass with a transfer of land even if the estate or interest is not described or mentioned in the contract of sale or instrument of conveyance and, if appropriate to the context, the land in which the estate or interest is claimed pursuant to Section 12-2A-3 NMSA 1978;

J. “Rental” means a lease.

K. “Rooming house” means a dwelling with multiple rooms that are rented out individually with shared spaces such as a kitchen and living area. Examples include a hostel, dormitory, fraternity, or sorority house.

L. “Trailer park” means any facility where a manufactured home or recreational vehicle is or may be parked, which facility is operated by a person:

(1) who offers space for one or more manufactured homes or recreational vehicles, either with or without manufactured homes or recreational vehicles located thereon, for rent or hire; and

(2) who provides any of the customary services or facilities for those lodgers, guests, roomers or others who occupy

manufactured homes, such as: utilities, garbage service, telephone service, cleaning service, protection service or ground keeping.
[3.2.211.7 NMAC - Rp, 3.2.211.7 NMAC 9/24/2024]

3.2.211.8 RECEIPTS FROM PROVIDING ACCOMMODATIONS:

A. Change of name of facility: The nature of the property determines whether the deduction allowed by Section 7-9-53 NMSA 1978 applies. The operator of a hotel, motel, rooming house, campground, guest ranch, trailer park or other facility which operates in a manner similar to the listed facilities may not, by merely changing the name of the facility, qualify for the deduction granted by Section 7-9-53 NMSA 1978.

B. Receipts from leasing of a space for less than one month:

(1) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, a recreational vehicle for a period of under one month are subject to the gross receipts tax.

(2) Receipts of a person in the business of operating a trailer park from the rental of a space for a manufactured home or, a recreational vehicle for a period of over one month, qualify for the deduction granted by Section 7-9-53 NMSA 1978.

(3) Example 1: X owns and operates a trailer park located in the state of New Mexico. Y rents a trailer space for Y’s manufactured home from X on April 15 on a month-to-month basis. Y pays one-half month’s rent at that time and signs an agreement to pay rent in advance for each subsequent calendar month. Y pays May’s rent on April 29. X may deduct all the receipts from the rental of trailer space to Y because the receipts are from the rental of a space for a manufactured home for over one month.

(4) Example 2: X owns and operates a trailer

park located in New Mexico. X leases a trailer space to Y for Y's manufactured home for one year, taking a month's rent in advance. During the third week of the lease period and prior to 30 consecutive days of the lease term, Y breaks the lease and moves out. X may still deduct the rent received from Y covering the first month's occupancy if X is entitled to keep the rent attributable to the portion of the month in which there was no occupancy and if X does not rent that space to anyone else prior to the expiration of the first month.

(5) Example 3: X owns and operates a trailer park in New Mexico. Y does not enter into a lease with X but places a manufactured home in the trailer space as a tenant at will. After a period of three weeks X tells Y to move from the trailer park. X may not deduct the receipts derived from the rental of a trailer space to Y because the rental was for a period of less than one month, and X has no legal right to receive additional rent from Y.

C. Municipal lodgers and room tax: Receipts of a hotel, motel, rooming house, campground, guest ranch, trailer park or similar facilities subject to the gross receipts tax do not include amounts paid to a municipality which has enacted by local ordinance a municipal lodgers or room tax pursuant to Sections 3-38-13 through 3-38-24 NMSA 1978.

D. Utility sales by landlord: Receipts of lessors of real property from leasing real property when the leases include separately stated amounts for natural gas, electricity or water conveyed as a condition of the lease of the real property to the lessee are deductible under Section 7-9-53 NMSA 1978. Receipts of trailer parks from space rentals which include separately stated amounts for natural gas, electricity or water sold as a condition of the lease to occupants may be deducted under Section 7-9-53 NMSA 1978 only if the rental is for a period of at least one month.

E. Rooming houses: Receipts by operators of rooming houses from lodgers, guests, roomers or occupants are not receipts from leasing real property and, therefore, are subject to the gross receipts tax. A dormitory, fraternity or sorority house is a rooming house. [3.2.211.8 NMAC - Rp, 3.2.211.8 NMAC 9/24/2024]

3.2.211.9 AMOUNT ATTRIBUTABLE TO IMPROVEMENTS AND THE COST OF LAND:

A. The proportion of the receipts from the sale of real property which is attributable to improvements constructed on the real property is determined by:

(1) subtracting from the sales price the cost of the land to the seller; or

(2) if there is substantial evidence that the value of the land is not the cost of the land to the seller, by subtracting from the sales price the value of the land as determined by an independent appraisal acceptable to the department, but in no case may the appraised value of the land exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

B. The cost of the land to the seller is determined by the original cost of the land to the seller plus any amounts attributable to the land being sold which are paid by the seller for offsite improvements such as paving.

C. Example 1: X, a construction company, purchases a lot in 191969 for \$1,000. X builds a house on this lot in 1971. X then sells this real property to Y for \$20,000. On the basis of an F.H.A. appraisal the value of the land is \$5,000; however, the total cost of the improvements constructed on the lot is \$18,000. X would be liable for gross receipts tax on \$18,000. The F.H.A. appraisal, assuming acceptance by the department, is substantial evidence of an increase in the value of the land, but the appraisal

value of the land cannot exceed the difference between the sale price of the real property and the total cost of the improvements constructed on the real property.

D. Example 2: X, a construction company, purchases a lot. In order to prepare the lot as a building site, X levels and excavates a portion of the real property. The receipts of X from the sale of real property which are attributable to improvements such as leveling and excavating the lot in preparation of a building site may not be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.

E. Example 3: X, a construction company, purchases a lot, makes certain improvements, and then sells the lot in the ordinary course of business. The receipts of X from improvements on real property owned and sold by it in the ordinary course of business do not include amounts retained by financial institutions which loaned the purchase price directly to the purchaser as prepaid finance charges or discounts, if these amounts are not received by the real estate vendor. It is immaterial whether or not such amounts are included in the quoted real estate price. The receipts of X do include all amounts actually paid over to it which are attributable to improvements constructed on real property sold by X in the ordinary course of business. The receipts of such a business also include any amounts deducted by title insurance companies to cover title insurance, legal fees, escrow fees, real estate brokerage commissions, real estate taxes, principal and interest on construction loans, liens and the like. [3.2.211.9 NMAC - Rp, 3.2.211.9 NMAC 9/24/2024]

3.2.211.10 REMODELING OR OTHER IMPROVEMENTS:

A. A buyer who purchases and improves real property, other than the buyer's residence, by either remodeling or constructing additional improvements on the property and who subsequently sells the real property with the improvements is considered to be

regularly engaged in the construction business. The receipts attributable to the remodeling or other improvements constructed on the real property are subject to the gross receipts tax. The receipts subject to tax are the sales price less the value of the real property purchased. The value of real property (VRP) purchased is computed through the use of a formula. The formula is the ratio of the cost of the real property (CRP) purchased divided by the cost of the real property (CRP) plus the cost of the remodeling or other improvements (CRI) times the sales price (SP), or:

$$VRP = \left(\frac{CRP}{CRP + CRI} \right) \times SP$$

B. The value of real property (VRP) is then subtracted from the sales price (SP) and the difference is the amount attributable to the value of remodeling or other improvements (VRI), which amount is subject to the gross receipts tax, or: $SP - VRP = VRI$ (Taxable receipts)

C. Example: C, a Construction Company, purchases a lot and house for \$10,000. C then remodels the interior and exterior of the house at a cost of \$15,000 and adds a concrete driveway, patio and walkway at a cost of \$5,000. Upon completion of the remodeling and construction of the other improvements, C sells the real property with improvements for \$60,000. C should compute its taxable receipts as follows:

- (1) Cost of real property (CRP) = \$10,000
- (2) Cost of remodeling and improvements (CRI) = \$15,000 + \$5,000 or \$20,000
- (3) Sales price = \$60,000
- (4) $VRP = \left(\frac{CRP}{CRP + CRI} \right) \times SP = \left(\frac{\$10,000}{\$10,000 + \$20,000} \right) \times \$60,000 = \$20,000$

$CRP + CRI = \$10,000 + \$20,000$

(5) $SP - VRP = VRI$ (taxable receipts) = \$60,000 - \$20,000 = \$40,000 (taxable receipts)
[3.2.211.10 NMAC - Rp, 3.2.211.10 NMAC 9/24/2024]

3.2.211.11 UTILITIES

- SALE OF COMPANY

FACILITIES: Receipts of an electric utility company from the sale of company facilities such as transformer installations or pole lines in place are receipts from the sale of real property and may be deducted from gross receipts pursuant to Section 7-9-53 NMSA 1978.
[3.2.211.11 NMAC - Rp, 3.2.211.11 NMAC 9/24/2024]

3.2.211.12 LEASE OF

TANGIBLE PERSONAL PROPERTY:

A. Receipts from leasing tangible personal property are not receipts from leasing real property and may not be deducted from taxable gross receipts pursuant to Section 7-9-53 NMSA 1978.

B. Example 1: The receipts from leasing advertising signs which are placed or implanted in real property in the possession of and occupied by the lessee, where the lessor reserves the right to remove the signs, are not receipts from leasing real property and are not deductible from gross receipts pursuant to Section 7-9-53 NMSA 1978. Such advertising signs are tangible personal property and are not real property.

C. Example 2: KR is an automobile manufacturer with dealerships all over the country. Because KR wants its dealerships to be easily recognized it requires them all to display large electric outdoor signs identifying the business as KR dealership. KR leases the signs to the dealerships but reserves the right to remove the signs. KR's receipts from leasing the signs to a New Mexico dealership are subject to the gross receipts tax. KR may not deduct its receipts from leasing these signs from gross receipts pursuant to Section 7-9-53 NMSA 1978 because KR is not leasing real property.

D. Example 3: Receipts attributable to the use by a lessee of equipment, tools and furniture included with the lease of a gasoline service station are not deductible as receipts from leasing real property pursuant to Section 7-9-

53 NMSA 1978. Such receipts are from the leasing of tangible personal property.
[3.2.211.12 NMAC - Rp, 3.2.211.12 NMAC 9/24/2024]

3.2.211.13 [RESERVED]

[3.2.211.13 NMAC - Rp, 3.2.211.13 NMAC 9/24/2024]

3.2.211.14 GENERAL

EXAMPLES: The following examples illustrate the application of Section 7-9-53 NMSA 1978.

A. Example 1: V, a railroad company, rents motel rooms in X's motel on a permanent basis as lodging for its train crews while they wait for a return trip to their home station. The receipts X receives from V are not deductible under Section 7-9-53 NMSA 1978. If, however, V leases the entire motel from X, X's receipts are deductible under Section 7-9-53 NMSA 1978.

B. Example 2: X is engaged in constructing homes on land that X owns and has subdivided. X then sells them to interested individuals. X's sales are sales of real property, but X must pay gross receipts tax on that portion of the receipts that are attributable to the value of the houses and other improvements that X has constructed on the real property.

C. Example 3: X has lived in P, a motel, for fifteen years. X rents a room from the motel for \$1200 per year, payable in twelve monthly installments. P contends that the rental is a rental of real property and is deductible for the purposes of computing its tax liability under the gross receipts tax. The receipts which P receives from X are not deductible. Receipts from the rental of motel rooms are not deductible.
[3.2.211.14 NMAC - Rp, 3.2.211.14 NMAC 9/24/2024]

3.2.211.15 [RESERVED]

3.2.211.16 LOCKER ROOMS IN A WAREHOUSE/ SELF STORAGE WAREHOUSE UNITS:

A. Receipts from

providing individual locker rooms inside a warehouse facility where the tenant must rely on the warehouse owner to gain access to the inside of the building, are receipts from granting a license to use and are not deductible as the lease of real property.

B. Receipts from individual, self-contained storage warehouse units where the tenant has exclusive possession, use and access to the unit and pays a specified periodic rental for the unit are receipts from leasing real property and, therefore, are deductible under Section 7-9-53 NMSA 1978. [3.2.211.16 NMAC - Rp, 3.2.211.16 NMAC 9/24/2024]

3.2.211.17 RECEIPTS FROM LICENSE TO USE REAL PROPERTY:

A. Receipts derived from a license to use real property may not be deducted from gross receipts under Section 7-9-53 NMSA 1978, except that receipts derived from selling or leasing the entirety of the hunting rights with respect to a property for a period of one year or more will be considered the sale or lease of real property for the purposes of this deduction. Receipts from selling a hunting package are subject to gross receipts tax to the extent that the individual components of the package are not deductible or exempt from the gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act. A person that sells a hunting package that consists of taxable and nontaxable components must reasonably allocate the receipts based on the value of the individual components. For purposes of this section, a “hunting package” may include the following components:

- (1) lodging;
- (2) meals;
- (3) delivery and transportation services;
- (4) guide services;
- (5) license to use the property;
- (6) carcass of the hunted animal; or

(7) other services or tangible personal property included in the package.

B. Example 1: X owns a ranch in New Mexico and is engaged in the business of ranching. Incidental to X’s main business, X permits members of the public to go on X’s property to hunt and fish for specified periods. X collects a fee from each person who does so. X’s receipts from these fees are subject to the gross receipts tax because X merely granted a license to use. No property is leased or sold. If X sells or leases the entirety of the hunting rights on X’s property for one year or more to a single individual or entity, as distinct from permitting several different individuals to hunt for various periods during a year, that constitutes the sale or lease of real property and receipts therefrom may be deducted under Section 7-9-53 NMSA 1978.

C. Example 2: X owns an unlighted dirt parking lot in Albuquerque. Y enters into an agreement with X whereby Y agrees to pay a monthly fee and X agrees to permit Y to park Y’s car in an assigned space for a period of one month. Z brings an automobile to X’s parking lot and parks it there for a daily fee. Z does so only once. X’s receipts from providing the service of supplying parking spaces or selling a license to use parking spaces to Y and Z are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

D. Example 3:

(1) S owns a flying service and related facilities. S enters into several types of agreements with its customers:

- (a) an agreement with A on a month-to-month basis, permitting A to store an aircraft in an assigned “stall” in one of several hangars each containing eight to twelve such “stalls”, in return for a monthly fee. S specifically limits A’s use of the premises to storage of the aircraft in the conduct of A’s business in an adjacent airport;

(b) an agreement with B, on a month-to-month basis, permitting B to store an aircraft in an assigned “tie-down” space in a large open-span hangar containing spaces for eight such aircraft, in return for a monthly fee;

(c) an agreement with C, a transient customer, on an overnight or day-to-day basis, permitting C to store an aircraft in a specified “tie-down” space in the open-span hangar described above, in return for a daily fee.

(2) S’s receipts from providing the service of supplying hangar space and open storage space for aircraft, or of granting a license to use such space, to A, B and C are subject to the gross receipts tax. S’s receipts are not deductible from gross receipts as a lease of real property pursuant to Section 7-9-53 NMSA 1978.

E. Example 4: X owns a ranch in New Mexico and sells guided hunting packages. Included in the price for the hunt X guarantees that the hunter will retrieve an animal, lodging at the ranch, meals, experienced hunting guide, retrieval, caping, delivery to local meat processor and taxidermist. Not included in the price are expenses associated with alcohol consumption, meat processing, taxidermy services or gratuities for guides. X receipts from the sale of this type of hunting package includes receipts from providing services, the sale of tangible personal property (meals), the sale of the carcass (possibly livestock) and from granting a license to use the land within the ranch boundaries. X must determine a reasonable method of allocating their receipts between components that are subject to gross receipts tax and those that are exempt from gross receipts tax (sale of livestock).

[3.2.211.17 NMAC - Rp, 3.2.211.17 NMAC 9/24/2024]

3.2.211.18 ASSISTED LIVING FACILITIES:

A. Receipts of an

assisted living facility received from its residents are receipts from the leasing of real property, receipts for providing services, and receipts from selling tangible personal property.

(1) The portion of receipts attributable to the lease of real property, including a proportionate share of the square footage of the common areas, is deductible from taxable gross receipts of an assisted living facility pursuant to Section 7-9-53 NMSA 1978.

(2) The portion of receipts attributable to providing services and tangible personal property provided to residents of an assisted living facility are not deductible pursuant to Section 7-9-53 NMSA 1978.

B. For purposes of apportioning the receipts of an assisted living facility between deductible receipts from leasing real property and non-deductible receipts for providing services and tangible personal property to residents of the assisted living facility, a taxpayer may apportion its receipts using a reasonable accounting method.

(1) The use of fair rental value methodology for purposes of determining the portion of its receipts attributable to leasing real property is presumptively reasonable.

(2) While use of the fair rental value methodology is presumptively reasonable, the conclusions of any report or study or other supporting documentation or calculation of fair rental value may be challenged by the department. [3.2.211.1 NMAC - N, 9/24/2024]

HISTORY OF 3.2.211 NMAC:
Pre-NMAC History:
BOR 67-2, NM Gross Receipts and Compensating Tax Regulations, September 1967, filed 9/29/1967.
BOR 1969-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12-5-1969, filed 12/5/1969.
BOR 1972-4, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 3/9/1972, filed 3/9/1972.
BOR 1974-2, Regulations in Effect

and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 12/15/73, filed 3/20/1974.
BOR 1976-1, Regulations in Effect and Pertaining to the New Mexico Gross Receipts and Compensating Tax Act, 7/26/1976, filed 7/26/1976.
R.D.1979-1, Gross Receipts and Compensating Tax Act Regulations, filed 6/18/1979.
R.D. Rule No. 1982, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-1980.1 NMSA 1978, filed 4/7/1982.
R.D. Rule No. 1984, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-1980.1 NMSA 1978, filed 5/4/1984.
TRD Rule No. 9-1986, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-1980.1 NMSA 1978, filed 4/2/1986.
TRD Rule GR-1990, Regulations Pertaining to the Gross Receipts and Compensating Tax Act, Sections 7-9-1 to 7-9-1980.1 NMSA 1978, filed 11/26/1990.

History of Repealed Material:
3.2.211 NMAC, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Manufactured Homes, filed 5/17/2001 Repealed effective 9/24/2024.

NMAC History:
3 NMAC 2.53, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Mobile Homes, filed 7/2/1996.
3.2.211 NMAC, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Manufactured Homes, filed 5/17/2001, Replaced by 3.2.211 NMAC, Deduction - Gross Receipts Tax - Sale or Lease of Real Property and Lease of Manufactured Homes effective 9/24/2024.

**TAXATION
AND REVENUE,
DEPARTMENT OF**

**TITLE 3 TAXATION
CHAPTER 2 GROSS
RECEIPTS TAXES
PART 303 CREDIT - GROSS
RECEIPTS TAX - LEGAL
SERVICES FOR WILDFIRE
COMPENSATION RECOVERY**

3.2.303.1 ISSUING
AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.2.303.1 NMAC - N, 9/24/2024]

3.2.303.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[3.2.303.2 NMAC - N, 9/24/2024]

3.2.303.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.303.3 NMAC - N, 9/24/2024]

3.2.303.4 DURATION: Permanent.
[3.2.303.4 NMAC - N, 9/24/2024]

3.2.303.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.303.5 NMAC - N, 9/24/2024]

3.2.303.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.303.6 NMAC - N, 9/24/2024]

3.2.303.7 DEFINITIONS:
Taxable Period: A “taxable period” for the purposes of Section 7-9-121 NMSA 1978 is one month. The month starts on the first day of a calendar month and ends on the last day of that calendar month.
[3.2.303.7 NMAC - N, 9/24/2024]

7.3.303.8 CLAIMING:
A. The credit pursuant to Section 7-9-121 NMSA 1978, shall be claimed on the gross receipts tax return for the month that the

qualifying transaction occurred. Taxpayers who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978 shall claim the credit on their return for the next authorized reporting and payment date after the qualifying transaction occurred.

B. Any portion of the tax credit that exceeds the taxpayer's gross receipts tax liability can be carried forward for 36 consecutive months or three years from the month that the qualifying transaction occurred. The 36 consecutive month deadline applies to all taxpayers, including those who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978.

[3.2.303.8 NMAC - N, 09/24/2024]

History of 3.2.303 NMAC:
[RESERVED]

**TAXATION
AND REVENUE,
DEPARTMENT OF**

**TITLE 3 TAXATION
CHAPTER 2 GROSS
RECEIPTS TAXES
PART 304 CREDIT - GROSS
RECEIPTS TAX - SALE OF DYED
SPECIAL FUEL USED FOR
AGRICULTURAL PURPOSES**

3.2.304.1 ISSUING
AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.2.304.1 NMAC - N, 9/24/2024]

3.2. 304.2 SCOPE: This part applies to each person engaging in business in New Mexico.
[3.2.304.2 NMAC - N, 9/24/2024]

3.2. 304.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[3.2.304.3 NMAC - N, 9/24/2024]

3.2. 304.4 DURATION:
Permanent.
[3.2.304.4 NMAC - N, 9/24/2024]

3.2. 304.5 EFFECTIVE DATE: September 24, 2024, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.304.5 NMAC - N, 9/24/2024]

3.2. 304.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.304.6 NMAC - N, 9/24/2024]

3.2.304.7 DEFINITIONS:
Taxable Period: A "taxable period" for the purposes of Section 7-9-121 NMSA 1978 is one month. The month starts on the first day of a calendar month and ends on the last day of that calendar month.
[3.2.304.7 NMAC - N, 9/24/2024]

3.3.304.8 CLAIMING:
A. The credit pursuant to Section 7-9-58.1 NMSA 1978, shall be claimed on the gross receipts tax return for the month that the qualifying transaction occurred. Taxpayers who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978 shall claim the credit on their return for the next authorized reporting period and payment date after the qualifying transaction occurred.

B. Any portion of the tax credit that exceeds the taxpayer's gross receipts tax liability can be carried forward for 36 consecutive months or three years from the month that the qualifying transaction occurred. The 36 consecutive month deadline applies to all taxpayers, including those who have been authorized to report and pay gross receipts taxes at an interval other than monthly pursuant to Section 7-1-15 NMSA 1978.
[3.2.304.8 NMAC - N, 9/24/2024]

History of 3.2.304 NMAC:
[RESERVED]

**WORKFORCE
SOLUTIONS,
DEPARTMENT OF**

This is an amendment to 11.2.31 NMAC Sections 8, 9, 10 and 11 effective 09/24/2024.

**11.2.31.8
APPRENTICESHIP AND
TRAINING ADVISORY
[COMMITTEE] COMMITTEE:**

The apprenticeship and training advisory committee shall provide input to the director for apprenticeship of the department of workforce solutions regarding:

A. The administration of funds provided by the Apprenticeship Assistance Act to assist apprenticeship programs.

B. [Recommend] Recommended request for legislative appropriation of state funds for apprenticeship training.

C. Modifications to the application process and procedures manual.

D. Funding formulas for distributing available funds that shall be uniformly applied to all registered apprenticeship programs based on data contained in the apprenticeship-related instruction cost study required by Section 21-19A-10 NMSA 1978.

E. Development of a program and fiscal year calendar.
[11.2.31.8 NMAC - N, 3/31/2016; A, 09/24/2024]

11.2.31.9 THE DEPARTMENT OF WORKFORCE SOLUTIONS: The department of workforce solutions shall have sole control over the disbursement of funds appropriated under the Apprenticeship Assistance Act and shall:

A. Receive input from the apprenticeship and training advisory committee regarding the administration of funds provided by

the Apprenticeship Assistance Act to assist apprenticeship programs.

B. ~~[Annually develop]~~ Develop and publish a procedures manual, ~~[that] which may be updated,~~ and shall include:

(1) a current calendar with the dates for apprenticeship meetings, quarterly reports, regulatory deadlines and any other significant items;

(2) an application form for requesting Apprenticeship Assistance Act funds;

(3) the date for ~~[the] a~~ public meeting to be held no later than February 28th for approving the procedures and application process;

(4) the date for ~~[the] at least one~~ public meeting to be held no later than March 30th to conduct ~~[the] a~~ mandatory technical assistance workshop for prospective applicants and the details of any additional mandatory technical assistance workshops; and

(5) the date for the public meeting to be held no later than May 30th to approve applicants for receipt of Apprenticeship Assistance Act funds; provided, however, that nothing in this section prohibits the department from conducting additional public meetings to approve applicants at other times during the year.

C. Develop uniform formulas for the distribution of available funds to registered apprenticeship programs.

D. Evaluate allocated funds throughout the fiscal year for possible redistribution to all participating programs as provided in the Apprenticeship Assistance Act.

E. Review reimbursement claims for accuracy and to ensure that all funded programs have sufficient records to allow for audits in accordance with the Apprenticeship Assistance Act.

F. Finalize grant agreements with all funded programs. [11.2.31.9 NMAC - N, 3/31/2016; A, 09/24/2024]

11.2.31.10 APPLICATION:

The department of workforce solutions shall develop an application that shall:

A. Comply with criteria for apprenticeship programs as outlined in the Apprenticeship Assistance Act.

B. Require any program applicant to have a minimum of [a] one year's registration with the department of workforce solutions office of apprenticeship and at least one apprentice at the time the application is submitted.

C. Provide that requested funding shall be calculated based on the number of total related instruction contact hours multiplied by the approved hourly rate, not to exceed two hundred twenty hours per participant per year.

D. Require any program applicant to maintain a certificate of registration from the New Mexico taxation and revenue department and be licensed to do business in New Mexico.

E. Provide that requested funding shall be calculated using only those apprentices registered and in training at the time of application; the number of approved apprentices being applied for must be equal to or less than the total number of apprentices registered and in training at the time of application.

F. Provide that all programs have a structured component for related instruction with a minimum of four hours of direct in person contact with an instructor per month. Programs may request from the department an exception to this requirement. The request shall include the reason for the exception, a description of how the apprentice will demonstrate mastery of the content, and a description of the system that verifies the apprentice's participation in the instruction and mastery of the content.

G. Require a representative from any program applicant to appear ~~[in-person at the]~~ at a mandatory technical assistance workshop for prospective applicants

and at ~~[the] a~~ mandatory application approval meeting, except as provided in Subsection C of 11.2.31.11 NMAC.

H. Contain sections requesting information for funding requests, a funding survey and an acknowledgment of the department of workforce solutions' policies and procedures.

I. Provide that no funds shall be distributed to an apprenticeship program until the program has timely filed all reports required by the Apprenticeship Assistance Act and the department of workforce solutions.

J. Require any program applicant to respond to requests for additional information that the department of workforce solutions regards as necessary to clarify issues identified in the application or expenditure of Apprenticeship Assistance Act funds. [11.2.31.10 NMAC - N, 3/31/2016; A, 09/24/2024]

11.2.31.11 PROCESS FOR APPLICATION AND ~~[EXPENDETURE]~~ EXPENDITURE OF FUNDS:

A. To increase transparency and expedite the transmission of necessary information, the department of workforce solutions will publish and maintain on the ~~[department of workforce solutions']~~ department's website the current calendar, application form for Apprenticeship Assistance Act funds, and a procedures manual that contains all the required forms developed by the department of workforce solutions.

B. Program applicants to be eligible for consideration for Apprenticeship Assistance Act funds in the fiscal year shall submit their applications to the director by the deadline specified in the department of workforce solutions' procedures manual.

C. A program representative ~~[from the program applicant]~~ must appear ~~[in-person]~~ at ~~[the] a~~ mandatory technical assistance workshop for prospective applicants and at the mandatory application

approval meeting to be eligible for consideration for funding in the fiscal year; provided, however, that if any applicant notifies the department in advance of the mandatory workshop or meeting that attendance is impracticable due to extenuating circumstances, the department may excuse the applicant from the workshop or meeting conditioned upon the applicant's participation in an individual technical assistance meeting.

D. If the director of apprenticeship for the department of workforce solutions denies an application or approves the application with conditions, the director shall:

(1) state the reasons for the denial or imposition of conditions in writing within three [(3)] days of the meeting at which the application was denied or conditions imposed;

(2) a program applicant whose application was denied or approved with conditions that are unacceptable to the program applicant may appeal the decision to the secretary within three [(3)] days of the receipt of the notice of the denial or imposition of conditions;

(3) within three [(3)] days of receipt of the notice of appeal, the secretary shall meet with the program applicant and review the director of apprenticeship's decision that denied the application or approved it with conditions;

(4) the secretary may affirm the decision of the director of apprenticeship or reverse the decision with or without the imposition of conditions; and

(5) the secretary's decision shall be final and binding on the program applicant.

E. All approved program applicants shall comply with the following requirements by the dates specified in the department of workforce solutions' procedures manual:

(1) complete and sign a grant agreement;

(2) submit quarterly claims for reimbursement;

(3) submit a mid-year survey; and

(4) comply with all other requirements of the procedures manual.

F. Participation in any apprenticeship assistance act meeting of the department of workforce solutions [~~by means of a conference telephone or other communications equipment~~] using electronic communication technology [when it is otherwise difficult or impossible for the participant to attend the meeting in person] shall be allowed as applicable and available when otherwise it is difficult or impossible for the participant to attend the meeting in person, provided that each person participating [~~by conference telephone or other communications equipment~~] via electronic communication [can be] shall be identified, particularly when speaking, and all participants [are] shall be able to hear each other and [members of the public attending the meeting are able to hear any person speaking] other meeting attendees. [~~; except that a representative from any program applicant shall appear in person at the mandatory technical assistance workshop for prospective applicants and at the mandatory application approval meeting.~~]

[11.2.31.11 NMAC - N, 3/31/2016; A, 09/24/2024]

End of Adopted Rules

Other Material Related to Administrative Law

SUPERINTENDENT OF INSURANCE, OFFICE OF

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Office of the Superintendent of Insurance gives Notice of a Minor, Nonsubstantive Correction to 13.2.12 NMAC and to 13.21.3 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rules, as follows:

13.2.12 NMAC

Section 3: The statutory citation was corrected to include “NMSA” to correct legislative citation form. e.

13.21.3 NMAC

Section 7: In Subsection E, there was a correction of “... Paragraph A” to “Subsection A” to cite to correct unit.

A copy of this Notification will be filed with the official version of the above rule.

TAXATION AND REVENUE, DEPARTMENT OF

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Taxation and Revenue Department gives Notice of a Minor, Nonsubstantive Correction to 3.2.304 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D

of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

Section 8: The section number was corrected from “7.3.304.8” to “3.2.304.8”.

A copy of this Notification will be filed with the official version of the above rule.

WORKFORCE SOLUTIONS, DEPARTMENT OF

NOTICE OF MINOR, NONSUBSTANTIVE CORRECTION

The Department of Workforce Solutions gives Notice of a Minor, Nonsubstantive Correction to 11.2.31 NMAC.

Pursuant to the authority granted under State Rules Act, Subsection D of Section 14-4-3 NMSA 1978, please note that the following minor, non-substantive corrections to spelling, grammar and format have been made to all electronic copies of the above rule, as follows:

Section 8: The amended section name was corrected from “COMITTEE” TO “COMMITTEE”.

A copy of this Notification will be filed with the official version of the above rule.

End of Other Material Related to Administrative Law

2024 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXV, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 4	January 16
Issue 2	January 18	January 30
Issue 3	February 1	February 13
Issue 4	February 15	February 27
Issue 5	February 29	March 12
Issue 6	March 14	March 26
Issue 7	March 28	April 9
Issue 8	April 11	April 23
Issue 9	April 25	May 7
Issue 10	May 9	May 21
Issue 11	May 23	June 11
Issue 12	June 13	June 25
Issue 13	July 8	July 16
Issue 14	July 18	July 30
Issue 15	August 1	August 13
Issue 16	August 15	August 27
Issue 17	August 29	September 10
Issue 18	September 12	September 24
Issue 19	September 26	October 8
Issue 20	October 10	October 22
Issue 21	October 24	November 5
Issue 22	November 7	November 19
Issue 23	November 26	December 10
Issue 24	December 12	December 23

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2025 New Mexico Register

Submittal Deadlines and Publication Dates

Volume XXXVI, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 3	January 14
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Issue 3	January 30	February 11
Issue 4	February 13	February 25
Issue 5	February 27	March 11
Issue 6	March 13	March 25
Issue 7	March 27	April 8
Issue 8	April 10	April 22
Issue 9	April 24	May 6
Issue 10	May 8	May 20
Issue 11	May 22	June 10
Issue 12	June 12	June 24
Issue 13	July 26	July 15
Issue 14	July 17	July 29
Issue 15	July 31	August 12
Issue 16	August 14	August 26
Issue 17	August 28	September 9
Issue 18	September 11	September 23
Issue 19	September 25	October 7
Issue 20	October 9	October 21
Issue 21	October 23	November 4
Issue 22	November 6	November 18
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