

LFC Requester:

Austin Davidson

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/13/2025

Check all that apply:

Bill Number: HB 409

Original x Correction
Amendment Substitute

Sponsor: Rep. Kristina Ortez

Agency Name and Code Number: 305 – New Mexico Department of Justice

Short Title: EFFICIENCY & MERCURY STANDARDS FOR PRODUCTS

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Section 1 establishes the “Efficiency and Mercury Standards for Products and Lighting Fixtures Act.”

Section 2 requires EMNRD to adopt rules by July 1, 2026 prohibiting the sale or lease of products listed in the Act unless they meet energy or water efficiency standards adopted by ENMRD. It also requires that the standards be adopted with an effort to be in alignment with similar standards in other states and provides that the rulemaking be in accordance with the State Rules Act.

Section 3 sets forth 18 categories of products covered by the Act and provides exceptions for products manufactured in New Mexico for sale outside the state, products installed in mobile homes at the time of construction, and products designed for RVs.

Section 4 establishes effective dates of January 1, 2027, for the sale of covered products, and January 1, 2028, for the installation for compensation of covered products.

Section 5 authorizes EMRD to adopt rules to establish increased efficiency standards for the products covered by the Act as well as products not specifically listed in the Act. Such standards are to be established upon a determination that increased efficiency standards would serve to promote energy or water conservation in New Mexico and would be cost effective for consumers who purchase and use such new products. Finally Section 5 provides for a one year implementation period between adoption of a standard and its effective date.

Section 6 requires EMNRD to adopt provisions for testing, certification, and labeling of products subject to the Act, which should endeavor to align with similar requirements in other states.

Section 7 requires EMNRD to adopt by July 1, 2026 rules to prohibit the sale in New Mexico of general-purpose compact fluorescent lamps and general-purpose linear fluorescent lamps. It also requires that the rules be adopted to be in alignment with similar rules in other states and provides that the rulemaking be in accordance with the State Rules Act. Section 7 states that as of January 1, 2027 “it shall be a violation of the [Act] to offer for final sale, sell at final sale or distribute in New Mexico as a new manufactured product a general-purpose

compact fluorescent lamp or general-purpose linear fluorescent lamp.”

Section 8 authorizes utilities to offer rebates and incentives to accelerate a market transition away from products prohibited by the Act, for a period of up to one year after the effective date of any applicable standard.

Section 9 provides for enforcement of the Act penalties issued by EMNRD, after a warning for the first violation, of \$100 for the first post-warning violation and \$250 for each subsequent violation. It further provides that each covered product sold in violation of the Act is a separate violation, and that each violation may constitute a separate offense and each day that such violation occurs may constitute a separate offense.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

Possible Federal Preemption

Some of the standards contemplated by the bill may be preempted by federal law, though further analysis would be needed to determine which, if any, standards are preempted. As summarized on the U.S. DOE’s website, “Congress has mandated through various statutes that the Department of Energy (DOE) is to implement energy conservation standards and test procedures for residential products and commercial and industrial equipment. DOE has published regulations in the Code of Federal Regulations for more than 70 categories of appliance and equipment types.” <https://www.energy.gov/eere/buildings/statutory-rules-and-authorities>.

Under 42 U.S.C. § 6292, DOE’s energy efficiency standards cover the following consumer products:

- (1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—
 - (A) any type designed to be used without doors; and
 - (B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.
- (2) Room air conditioners.
- (3) Central air conditioners and central air conditioning heat pumps.
- (4) Water heaters.
- (5) Furnaces.
- (6) Dishwashers.
- (7) Clothes washers.
- (8) Clothes dryers.
- (9) Direct heating equipment.
- (10) Kitchen ranges and ovens.

- (11) Pool heaters.
- (12) Television sets.
- (13) Fluorescent lamp ballasts.
- (14) General service fluorescent lamps, general service incandescent lamps, and incandescent reflector lamps.
- (15) Showerheads, except safety shower showerheads.
- (16) Faucets.
- (17) Water closets.
- (18) Urinals.
- (19) Metal halide lamp fixtures

In addition, under 42 U.S.C. § 6311, DOE efficiency standards cover the following categories of “industrial” equipment:

- (A) Electric motors and pumps
- (B) Small commercial package air conditioning and heating equipment.
- (C) Large commercial package air conditioning and heating equipment.
- (D) Very large commercial package air conditioning and heating equipment.
- (E) Commercial refrigerators, freezers, and refrigerator-freezers.
- (F) Automatic commercial ice makers.
- (G) Walk-in coolers and walk-in freezers.
- (H) Commercial clothes washers.
- (I) Packaged terminal air-conditioners and packaged terminal heat pumps.
- (J) Warm air furnaces and packaged boilers.
- (K) Storage water heaters, instantaneous water heaters, and unfired hot water storage tanks.

DOE is also authorized to classify any other type of consumer products or industrial equipment as covered. 42 U.S.C. § 292 (a)(20); 42 U.S.C. § 6311 (1)(L).

Generally speaking, state laws, including testing and labeling requirements, concerning the energy efficiency, energy use, or water use of products covered by federal standards are preempted and therefore not effective, subject to certain exceptions. *See* 42 U.S.C. § 6297(a)-(c). One exception is a rule for which a waiver has been granted to the state. 42 U.S.C. § 6297(c)(2). The process and criteria for obtaining a waiver are set out in 42 U.S.C. § 6297(d).

In general, the categories of products that would be subject to standards under SB 409 do not appear to overlap with categories for which DOE is mandated to adopt standards, and therefore may not be preempted. However, there is some overlap, for example showerheads, water closets, and urinals. Standards for these categories would appear to be federally preempted, unless a waiver is obtained. The categories of “commercial” products do not appear to overlap and be preempted by any standards that DOE is statutorily mandated to issue standards for under 42 U.S.C. § 6311. However, more research would be needed to ensure that any equipment classified as “commercial” under HB 409 has not been addressed by DOE standards for “industrial” equipment. In addition, if EMNRD establishes standards for products not listed in the Act, as authorized by Section 4, those standards would be preempted if they cover products

subject to DOE standards.

Possible Constitutional Issues under the Interstate Commerce Clause

The “dormant Commerce Clause is the negative implication of the Commerce Clause: states may not enact laws that discriminate against or unduly burden interstate commerce.” *HW Premium CBD, LLC v. Reynolds*, 742 F. Supp. 3d 885, 904 (S.D. Iowa 2024). Section 3(B)(1) & (2) of the bill provide exemptions for products manufactured in New Mexico but sold outside of the state. While this is different from a typical protectionist act that seeks to keep products manufactured outside of the state from being imported, it may raise dormant commerce clause concerns. An argument could be made that these provisions are discriminatory because they allow New Mexico manufacturers to export products that New Mexico deems unsuitable for sale within the state to another state, while denying a manufacturer in that state the reciprocal right to import such products into New Mexico. Moreover, because the regulations contemplated by the Act regulate sales, not manufacturing, it is not clear that such exemptions are necessary.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found

TECHNICAL ISSUES

None noted

OTHER SUBSTANTIVE ISSUES

None noted

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A