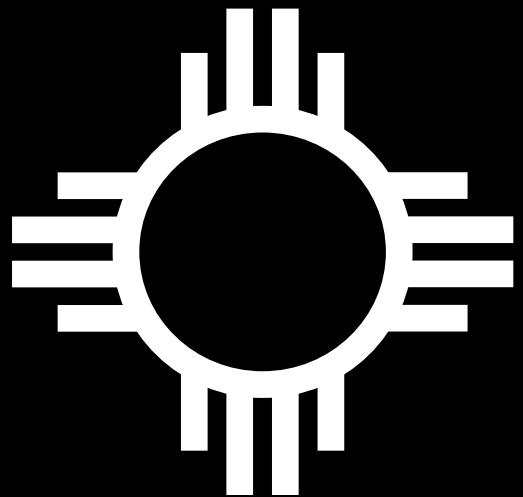


**NEW  
MEXICO  
REGISTER**

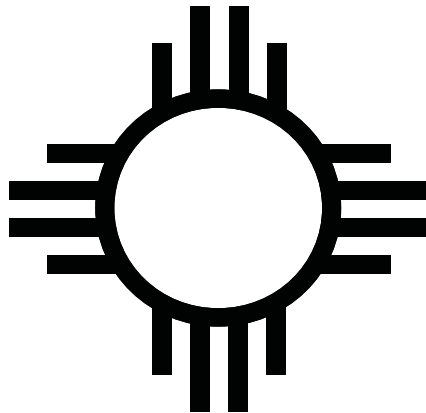


Volume XX  
Issue Number 23  
December 15, 2009



# **New Mexico Register**

**Volume XX, Issue Number 23**  
**December 15, 2009**



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

The Commission of Public Records  
Administrative Law Division  
Santa Fe, New Mexico  
2009

COPYRIGHT © 2009  
BY  
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

# New Mexico Register

Volume XX, Number 23

December 15, 2009

## Table of Contents

### Notices of Rulemaking and Proposed Rules

|   |      |
|---|------|
| <b>Barbers and Cosmetologists, Board of</b>                               |      |
| Rule Hearing & Board Meeting Notice . . . . .                             | 1479 |
| <b>Human Services Department</b>  |      |
| Income Support Division   |      |
| Notice of Public Hearing . . . . .  | 1479 |
| <b>Public Education Department</b>  |      |
| Notice of Public Hearing . . . . .  | 1479 |
| <b>Public Regulation Commission</b>                                       |      |
| Revised Notice of Proposed Rulemaking (regarding 17.9.572 NMAC) . . . . . | 1480 |

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

*A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

|  |   |   |      |
|--|---|---|------|
| <b>Cultural Affairs, Department of</b>         |   |   |      |
| Museum of New Mexico Division                  |   |   |      |
| 4.51.5 NMAC                                    | R | Archaeological Records Repository and Cultural Resource Information System . . . . .    | 1483 |
| 4.51.5 NMAC                                    | N | Archaeological Records Repository and Cultural Resource Information System . . . . .    | 1483 |
| <b>Health, Department of</b>                   |   |   |      |
| Division of Health Improvement                 |   |   |      |
| 7 NMAC 1.2                                     | R | Adjudicatory Hearings . . . . .   | 1486 |
| 7.1.2 NMAC                                     | N | Adjudicatory Hearings for Licensed Facilities . . . . .                                 | 1486 |
| <b>Medical Board</b>                           |   |   |      |
| 16.10.20 NMAC                                  | N | Polysomnographic Technologists: Licensure and Practice Requirements . . . . .           | 1491 |
| 16.10.9 NMAC                                   | A | Fees . . . . .  | 1496 |
| <b>Public Employees Retirement Association</b> |   |   |      |
| 2.80.100 NMAC                                  | A | Public Employees Retirement: General Provisions . . . . .                               | 1496 |
| 2.80.500 NMAC                                  | A | Public Employees Retirement: Remittance of Contributions . . . . .                      | 1497 |
| 2.80.600 NMAC                                  | A | Public Employees Retirement: Service Credit and<br>Purchase of Service Credit . . . . . | 1498 |
| 2.80.700 NMAC                                  | A | Public Employees Retirement: Normal Retirement . . . . .                                | 1500 |
| 2.80.900 NMAC                                  | A | Public Employees Retirement: Pre-Retirement Survivor Pensions . . . . .                 | 1501 |
| 2.80.1000 NMAC                                 | A | Public Employees Retirement: Disability Retirement Benefits . . . . .                   | 1502 |
| 2.80.1100 NMAC                                 | A | Public Employees Retirement: Retired Members . . . . .                                  | 1502 |
| 2.80.2100 NMAC                                 | A | Public Employees Retirement: Member Contributions . . . . .                             | 1502 |
| 2.83.500 NMAC                                  | A | Judicial Retirement: Member Contributions . . . . .                                     | 1504 |
| 2.83.800 NMAC                                  | A | Judicial Retirement: Survivor Pension . . . . .   | 1505 |
| 2.83.1100 NMAC                                 | A | Judicial Retirement: Retired Members . . . . .  | 1505 |
| 2.83.1200 NMAC                                 | A | Judicial Retirement: Remittance of Contributions . . . . .                              | 1506 |
| 2.84.500 NMAC                                  | A | Magistrate Retirement: Member Contributions . . . . .                                   | 1506 |
| 2.84.800 NMAC                                  | A | Magistrate Retirement: Survivor Pension . . . . .                                       | 1507 |
| 2.84.1100 NMAC                                 | A | Magistrate Retirement: Retired Members . . . . .  | 1508 |
| 2.84.1200 NMAC                                 | A | Magistrate Retirement: Remittance of Contributions . . . . .                            | 1508 |
| 2.87.100 NMAC                                  | A | Volunteer Firefighters: General Provisions . . . . .                                    | 1509 |
| <b>Public Regulation Commission</b>            |   |   |      |
| 12.3.2 NMAC                                    | R | Profit Corporations . . . . .   | 1509 |

|  |     |  |      |
|--|-----|--|------|
| 12.3.3 NMAC                                | R   | NonProfit Corporations . . . . .   | 1509 |
| 12.3.2 NMAC                                | N   | Profit Corporations . . . . .  | 1509 |
| 12.3.3 NMAC                                | N   | NonProfit Corporations . . . . .   | 1512 |
| 12.3.1 NMAC                                | A   | Business Associations: General Provisions . . . . .                                      | 1515 |
| <b>Racing Commission</b>                   |     |  |      |
| 15.2.6 NMAC                                | A   | Veterinary Practices, Equine Health, Medication, and<br>Trainer Responsibility . . . . . | 1515 |
| <b>Regulation and Licensing Department</b> |     |  |      |
| Construction Industries Division           |     |  |      |
| 14.5.2 NMAC                                | A   | Permits . . . . .  | 1517 |
| 14.6.3 NMAC                                | A   | Contractor's License Requirements . . . . .  | 1519 |
| 14.6.6 NMAC                                | A   | Classifications and Scopes . . . . .   | 1520 |
| <b>Secretary of State, Office of the</b>   |     |  |      |
| 1.10.9 NMAC                                | N/E | Declaration of Candidacy; Supreme Court or<br>Court of Appeals. . . . .                  | 1521 |
| 1.10.10 NMAC                               | N/E | Ballot Position; Supreme Court or Court of Appeals. . . . .                              | 1522 |

*The New Mexico Register*  
 Published by  
 The Commission of Public Records  
 Administrative Law Division  
 1205 Camino Carlos Rey  
 Santa Fe, NM 87507

The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [staterules@state.nm.us](mailto:staterules@state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

#### RULE HEARING & BOARD MEETING NOTICE:

Notice is hereby given that the New Mexico Board of Barbers and Cosmetologists will convene a Rule Hearing on **Friday, January 29, 2010** to amend, replace and repeal:

Title 16, Chapter 34, 16.34.4.11 Special Licenses-Identification Licenses; 16.34.4.13 Special Licenses-Qualified Instructors; 16.34.4.14 Special Licenses-Student Permits; 16.34.6.8 Licensing By Reciprocity: Credit for Out-of-State Training; 16.34.14.8 Fees; 16.34.15.8 Administrative Fees and Penalties and Fines;  
Title 16, Chapter 36, 16.36.2.11 Licensure Requirements-Application for Body Art Establishment License; 16.36.2.14 Licensure Requirements-Tattoo or Body Piercing-Scarification Apprenticeship Training and Examination Requirements; 16.36.2.15 Licensure Requirements-Apprentice Sponsor; 16.36.2.16 Licensure Requirements-Permanent Cosmetic Training and Examination Requirements; 16.36.4.8 Enforcement, Complaints and Disciplinary Action;

The hearing will be held at the **Regulation & Licensing Department Real Estate Conference room 5200 Oakland NE, Albuquerque N.M. 87113**. Immediately following the Rule Hearing, the New Mexico Board of Barbers and Cosmetologists will convene a regular meeting.

Copies of the proposed rules are available on the Board of Barbers and Cosmetologists Website:

[www.RLD.state.nm.us/barberscosmetologists](http://www.RLD.state.nm.us/barberscosmetologists) or by sending a request to the Board Office, P.O. Box 25101 Santa Fe, NM 87504-5101, or by phone (505) 476-4690. Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by January 9, 2010 to allow time for distribution to the Board and Commissions members. Individuals planning on testifying at the hearing must provide 5 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the Board meeting may be closed to the public while the Board is in Executive

Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board Office.

Disabled members of the public who wish to attend the meeting or hearing are in need of reasonable accommodations for their disabilities should contact the Board office at least one week prior to the meeting.

### NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### NOTICE OF PUBLIC HEARING

The Human Service Department will hold a public hearing to consider proposed rules to the Food Stamp Program. The hearing will be held on Friday, January 15, 2010 at 10:30 am to 11:30 am at the Income Support Division conference room, 2009 S. Pacheco Street., Santa Fe, NM. The conference room is located on in Room 120 on the lower level of Pollon Plaza.

The Department proposes amending Section 12 of 8.139.410 NMAC, to reflect changes to the Employment and Training (E&T) Program, which will make work activities, with the exception of registration, voluntary. This is an option allowed by the Food and Nutrition Act of 2008. Additionally, The American Recovery and Reinvestment Act of 2009, allows states to waive the 20 hour work requirement and subsequently disqualifications for ABAWDs across the entire state. These changes will also be reflected in Section 12 of 8.139.410 NMAC.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to

Kathryn Falls, Acting Secretary  
Human Services Department  
P.O. Box 2348 Pollon Plaza  
Santa Fe, NM 87504-2348

You may send comments electronically to: [sandra.bivens@state.nm.us](mailto:sandra.bivens@state.nm.us) or via fax to (505) 827.7259.

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

#### NOTICE OF PUBLIC HEARING

The Public Education Department has under consideration the following item of rule revision related to parental waiver of algebra 2 requirement for high school graduation: 6.29.1.9.J.(2) (k) and (l) NMAC Standards for Excellence, Graduation Requirements, Next Step Plan. The rule revision is currently disseminated for public comment. Copies of the proposed rules may be obtained from Dr. Anya Dozier Enos at the address below, or at (505) 827-8058, or may be accessed on the Public Education Department's (PED) website (<http://ped.state.nm.us/>) or after December 4, 2009. A public hearing on the rules will be held on Tuesday, January 19, 2010, from 9:00 AM to 11:00 AM at Mabry Hall in the Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. 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 Dr. Dozier Enos as soon as possible. The PED requests at least ten (10) days advance notice to provide requested special accommodations. Written comments concerning the rules identified should be submitted to Anya Dozier Enos, High School Redesign Coordinator at Public Education Department, 300 Don Gaspar, Santa Fe, New Mexico 87501, or faxed to Dr. Dozier Enos at (505) 827-6520, or e-mailed to [anya.dozierenos@state.nm.us](mailto:anya.dozierenos@state.nm.us). No comments will be accepted after 5 p.m. on Tuesday January 19, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF AN INQUIRY INTO )
A STANDARDIZED METHODOLOGY FOR )
DETERMINING RENEWABLE ) Case No. 08-00198-UT
ENERGY COSTS FOR THE PURPOSE OF )
17.9.572.11 NMAC )

REVISED NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") proposes to initiate a rulemaking docket to consider amending Section 11 of the Commission's Rule 572, "Renewable Energy for Electric Utilities", 17.9.572.11 NMAC. This matter comes before the Commission upon the Petition to Issue a Notice of Proposed Rulemaking to Implement a Standardized Methodology for Determining Renewable Energy Costs for the Purpose of 17.9.572.11 NMAC ("Petition") that was filed in this case on June 12, 2009 by the American Association of Retired Persons, the Coalition for Clean Affordable Energy, El Paso Electric Company, Natural Resources Defense Council, New Mexico Energy Minerals and Natural Resources Department, Public Service Company of New Mexico, Southwestern Public Service Company, Sun Edison, LLC, Western Resource Advocates and the Commission's Utility Division Staff ("Staff") (collectively "Petitioners"); whereupon, having reviewed the record and being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

- 1. As described in the Staff's Status Reports in this docket, dated August 1, 2008 and September 22, 2008, stakeholders participated in Commission-sponsored workshops between July 25, 2008 and September 8, 2008, to develop a methodology for determining the incremental cost of renewable energy resources.
2. The stakeholders have drafted consensus language for Section 11 of Rule 572.
3. A new rule should be promulgated to establish a detailed, standardized methodology for determining incremental renewable energy costs for the purpose of applying the Reasonable Cost Threshold to a utility's renewable energy portfolio.
4. A Notice of Proposed Rulemaking (NOPR) was issued on November 10, 2009. Subsequently, and prior to its publication, a Joint Motion of the Coalition for Clean Affordable Energy and Western Resources Advocates to Change Hearing Date was filed, requesting that the Commission push back the date of the hearing a week or two so that an attorney who had been very involved in drafting the rule could attend the hearing.

5. The original NOPR was not published, in order to avoid confusion to the public resulting from publishing it and also publishing a separate notice altering the dates of the hearing, submittal of comments and closure of the record.

- 6. This NOPR alters the dates on the original NOPR by extending them approximately two weeks.
7. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

8. All interested persons should be afforded the opportunity to receive notice of and to comment upon the attached Proposed Rule.

9. A copy of the proposed rule to be considered for promulgation is attached hereto as "Exhibit A". Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya
Records Management Bureau
PERA Building
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Telephone: (505) 827-6970.

10. Commission Rule 1.2.3.7(B), "Ex Parte Communications", draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications". In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be the earlier of the date a final Order is issued in the case, or February 24, 2010. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

IT IS THEREFORE ORDERED:

A. The Notice of Proposed Rulemaking previously issued on November 10, 2009, is hereby vacated and replaced with this Revised Notice of Proposed Rulemaking.

B. A rulemaking proceeding is hereby instituted in this proceeding.

C. The Commission seeks comment from all interested persons concerning whether the proposed rule, attached as an Exhibit A to this Order, should be adopted.

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

E. Any person wishing to comment on the proposed rule may do so by submitting written comments no later than December 31, 2009. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be provided in a format consistent with that of the New Mexico Administrative Code ("NMAC").



F. The record in this case shall close on the earlier of the date of a Final Order in this case or February 24, 2010.

G. All pleadings, including comments, shall bear the caption and case number set out on the first page of this Notice. Comments on the Proposed Rule shall be filed with the Commission's Records Division, at the address set out herein at ¶ 12.

H. A public hearing before the Commission on the proposed rule, shall be held beginning at 1:00 P.M. on January 25, 2010 at the offices of the Commission, at:

4<sup>th</sup> Floor Hearing Room  
PERA Building  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501

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

J. Pursuant to NMSA 1978, § 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit A, shall be published at least once at least thirty days prior to the hearing date in the New Mexico Register and two newspapers of general circulation in the State of New Mexico and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice and to all motor carrier companies subject to the jurisdiction of the Commission. Copies of this *Notice of Proposed Rulemaking* shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

K. This Notice shall be posted on the Commission's official Web site.

L. Copies of any forthcoming final order adopting a new rule shall be mailed, along with a copy of the new rule, to all parties listed on the attached Certificate of Service in this case, and all individuals requesting such copies.

M. This *Notice of Proposed Rulemaking* is effective immediately.

**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico this 1st day of December, 2009.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**SANDY JONES, CHAIRMAN**

**DAVID W. KING, VICE CHAIRMAN**

**JASON MARKS, COMMISSIONER**

**JEROME D. BLOCK, COMMISSIONER**

**CAROL K. SLOAN, COMMISSIONER**

Exhibit A

Note: Changes in *italics* are proposed modifications to the final workshop version presented to the Commission on October 6, 2009.

**17.9.572.7 Definitions**

*J. levelized costs of a generating unit are the total costs of building and operating the unit over its economic life, including capital costs, all operation and maintenance costs, and fuel costs, discounted to present value and converted to equal annual payments. Cost levelizing is performed in identifying the incremental rate impact of renewable energy resources or RECs by comparing the levelized cost of a renewable energy resource with that of a non-renewable energy source of similar operating characteristics, such as baseload, intermediate and peaking units.*

*K. the discount rate for levelized costs shall be the utility's cost of long-term debt in its last rate case.*

\* \* \*

**17.9.572.11**

D. In determining if the cost to procure renewable energy resources for purposes of compliance with the renewable portfolio standard is greater than the reasonable cost threshold (RCT) set forth in 17.9.572.11(B) NMAC and compliant with the statutory limits of Section 62-16-4A(2), a public utility shall determine the incremental rate impact to all of its retail jurisdiction customers. The incremental rate impact shall not exceed the sum of 1) the RCT percentage multiplied by the retail jurisdictional revenues that the utility collected during the prior calendar year, less the revenues from Section 62-16-4A(2) NMSA customers, and 2) the retail jurisdictional revenues from Section 62-16-4A(2) NMSA customers multiplied by the applicable statutory percentages found in that Section, adjusted for the dollar caps in that Section. The incremental rate impact shall be determined as follows:

(1) For unbundled renewable energy certificates (RECs) purchased by the utility for compliance, the incremental cost shall be the reasonable amount *to be* paid for those RECs.

(2) In determining the incremental cost for renewable resources for which the utility is requesting approval, the levelized cost of the renewable resource shall consider and quantify to the extent possible: transmission and interconnection costs and benefits; identifiable distribution costs and benefits; identifiable and anticipated environmental benefits; and any other costs or benefits

specific to each renewable energy project over the term of the renewable contract or resource.

(3) For bundled renewable resources that include capacity, energy and/or renewable attribute components, the incremental cost shall be the levelized cost of the renewable resource less the sum of the following:

(a) levelized capacity cost using the most recent costs from a generally acceptable source, such as EPRI Technical Assessment Guide (TAG), for the most comparable combined cycle or combustion turbine technologies which produce capacity similar to that of the renewable resource, adjusted for specific locational characteristics associated with New Mexico generation and including non-fuel fixed and variable costs associated with the comparable generator, and other incremental costs such as transmission and interconnection costs;

(b) levelized energy cost derived from one or more publicly available, generally accepted gas price forecasts that the utility relies upon for planning purposes;

(c) reasonable expected levelized cost of CO2 regulation compliance that shall be no less than \$20 per metric ton in 2010, escalating at 2.5% per year thereafter.

(4) *Once the incremental cost for a specific approved renewable resource has been calculated in an approved renewable energy procurement plan, that incremental cost shall be fixed for the life of the resource for the purpose of determining the resource's effect on compliance with the reasonable cost threshold.*

(5) *In a utility's first renewable energy portfolio procurement plan following approval of this rule, the utility shall present the incremental cost for their existing portfolios.*

**This page intentionally left blank**

## Adopted Rules

**NEW MEXICO  
DEPARTMENT OF  
CULTURAL AFFAIRS  
MUSEUM OF NEW MEXICO  
DIVISION**

4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System (filed 11/15/2002) repealed 1-1-2010 and replaced by 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System, effective 1-1-2010.

**NEW MEXICO  
DEPARTMENT OF  
CULTURAL AFFAIRS  
MUSEUM OF NEW MEXICO  
DIVISION**

**TITLE 4            C U L T U R A L  
RESOURCES  
CHAPTER 51       MUSEUM OF NEW  
MEXICO  
PART 5            A R C H A E O L O G I C A L  
RECORDS                 R E P O S I T O R Y  
AND                 C U L T U R A L         R E S O U R C E  
INFORMATION SYSTEM**

**4.51.5.1            ISSUING AGENCY:**  
Cultural Affairs Department, Museum of New Mexico Board of Regents, and the Museum of New Mexico Division.  
[4.51.5.1 NMAC - Rp, 4.51.5.1 NMAC, 1-1-2010]

**4.51.5.2            SCOPE:** Provisions of this rule apply to qualified users and qualified institutions, as defined herein, wishing to access the state archaeological records repository of the museum of New Mexico. Qualified users and institutions submitting cultural resource records for integration into the New Mexico cultural resource information system (NMCRIS) are also subject to the provisions of this rule.  
[4.51.5.2 NMAC - Rp, 4.51.5.2 NMAC, 1-1-2010]

**4.51.5.3            S T A T U T O R Y  
AUTHORITY:** This rule is adopted pursuant to Section 9-4 A-6, NMSA 1978, of the Cultural Affairs Department Act; Section 18-3-3, NMSA 1978, which sets forth the duties and powers of the Museum of New Mexico Board of Regents; Section 18-6-11.1, NMSA 1978, of the Cultural Properties Act; and the National Historic Preservation Act of 1966, as amended, 16 U. S. C. 470 et seq.  
[4.51.5.3 NMAC - Rp, 4.51.5.3 NMAC, 1-1-2010]

**4.51.5.4            D U R A T I O N :**  
Permanent.  
[4.51.5.4 NMAC - Rp, 4.51.5.4 NMAC, 1-1-2010]

**4.51.5.5            E F F E C T I V E   D A T E:**  
January 1, 2010, unless a later date is cited at the end of the section.  
[4.51.5.5 NMAC - Rp, 4.51.5.5 NMAC, 1-1-2010]

**4.51.5.6            O B J E C T I V E:** It is the objective of 4.51.5 NMAC to ensure that data contained in the state archaeological records repository and the New Mexico cultural resource information system (NMCRIS), collectively known as ARMS, is available to all qualified entities, as herein defined, and that the dissemination of such data does not create a risk of loss of cultural resources in the state of New Mexico. It is the further purpose of this rule to ensure that criteria and procedures for the dissemination or confidentiality of such data are consistent with the purposes of ARMS, such purposes being the ready retrieval and rapid analysis of cultural resource data by and for managers and scholars; the inclusion in the records repository and the NMCRIS of all recorded cultural resources in New Mexico regardless of ownership; and the maintenance and expansion of the records repository and the NMCRIS as a basis for compliance with state and federal historic preservation statutes.  
[4.51.5.6 NMAC - Rp, 4.51.5.6 NMAC, 1-1-2010]

**4.51.5.7            D E F I N I T I O N S:**  
**A.** "Agency" refers to the entity, usually a federal or state agency, that has administrative responsibility for consulting with the SHPO under section 106 of the National Historic Preservation Act concerning the potential effects of federally funded or licensed undertakings on archaeological or other historic cultural properties.

**B.** "Archaeological records" refers to the paper files and other materials including, but not limited to, forms, journals, maps, databases, photographs, manuscripts, and reports dealing with archaeological investigations conducted in the state of New Mexico.

**C.** "Archaeological site" means a location exhibiting evidence of past human activity.

**D.** "ARMS" means the archaeological records management section, a program of the cultural affairs department, museum of New Mexico, administered by the historic preservation division through a memorandum of agreement between the

museum of New Mexico and the historic preservation division. ARMS manages the data in the New Mexico cultural resource information system (NMCRIS) and the records in the state archaeological records repository of the museum of New Mexico.

**E.** "ARMS computer system user account application" means a document requesting an individual computer account that, when signed by the state, the qualified user, and, if appropriate, by a representative of his/her qualified institution, constitutes a contract between these parties and specifies the rules and conditions of use of the NMCRIS.

**F.** "ARMS user agreement" refers to a document, signed annually by the state and a qualified user or qualified institution that specifies the conditions and requirements for using and disseminating information obtained from the records repository and the NMCRIS.

**G.** "Assisted access user" means an individual or institution that does not meet the qualification as described in Subsection M or Subsection N of 4.51.5.7 NMAC. Assisted access users are approved by the ARMS registrar on a case-by-case basis and receive only staff-provided, limited access to ARMS resources.

**H.** "Cooperative agreements" means intergovernmental or joint powers agreements, as appropriate, between the ARMS and other state, federal, tribal, or local government agencies implemented to ensure the maintenance, expansion, and currency of the ARMS, and to achieve and maintain the comparability and accessibility of such information throughout the state in the interests of efficiency and of interagency cooperation.

**I.** "Cultural property" or cultural resource means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

**J.** "Cultural resource investigation" means field research of a specific area to identify, examine record, evaluate, and interpret cultural properties.

**K.** "NMCRIS" means the New Mexico cultural resource information system, an automated information system that serves as an inventory and database of all cultural properties in the state of New Mexico, and as an index to their geographic locations and related archival and object collections.

**L.** "Performing entity" means a public or private entity that documents cultural resources and generates records.

**M.** "Qualified user" means any individual or representative of

a public or private entity including, but not limited to, corporations, partnerships, trusts, associations, educational institutions, foundations, and museums; any Indian tribe, band, or nation; or any agency of the state or federal government, who meets one or more of the following minimum standards:

(1) has a degree in archaeology, anthropology, architecture, architectural history, historic architecture, history, historic preservation or a closely related field, or city planning or equivalent training, from an accredited educational institution;

(2) is a bona fide representative of an agency or institution or private entity which holds a federal or state permit for performing cultural resource investigation within the state;

(3) is a bona fide representative of an agency or institution or private entity involved with the protection and preservation of cultural resources;

(4) is an academic researcher affiliated with an accredited educational or research institution.

**N. "Qualified institution"** refers to any public or private entity including, but not limited to, corporations, partnerships, trusts, associations, educational institutions, foundations, and museums; any Indian tribe, band, or nation; or any agency of the state or federal government, that meets one or more of the following minimum standards:

(1) holds a federal or state permit for performing cultural resource investigation within the state;

(2) is involved with the protection and preservation of cultural resources;

(3) is involved in academic research.

**O. "Registrar"** means the manager of ARMS charged with the responsibility of maintaining, expanding, and disseminating the information contained in the records repository and the NMCRIS.

**P. "Report recipient"** means the entity that pays for cultural resource investigations.

**Q. "Records repository"** means the official state archaeological archives, located at the museum of New Mexico, museum of Indian arts and culture/laboratory of anthropology.

**R. "SHPO"** or state historic preservation officer means the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act and who serves as the director of the historic preservation division.

[4.51.5.7 NMAC - Rp, 4.51.5.7 NMAC, 1-1-2010]

**4.51.5.8 DOCUMENTS CITED IN THIS PART:** Documents cited in this part may be viewed at the museum of New Mexico, laboratory of anthropology.

[4.51.5.8 NMAC - Rp, 4.51.5.8 NMAC, 1-1-2010]

#### **4.51.5.9 RESTRICTIONS:**

##### **A. Access Restrictions:**

Information from the records repository, including NMCRIS, will be made available only to qualified users who can be expected to use it in a professionally responsible manner. Data are released by the registrar to qualified users on the basis of a determination that such information will further the purposes of the Cultural Properties Act, NMSA 1978, Section 18-6-2 (purpose), Section 18-6-11.1 (confidentiality of site locations), and will not create a risk of loss of cultural resources. It is the responsibility of the registrar to determine the extent of the information to be released from the records repository and the NMCRIS, and the type of access to be granted to the records repository and the NMCRIS. When the registrar cannot make a determination as to whether the applicant meets the definition of "qualified user," the question shall be referred to the SHPO for determination. Direct access to the records repository shall be permitted only under the supervision of authorized personnel of the records repository. Users shall be required to adhere to established rules as a condition of use of the materials in the records repository. Such rules will be made available to the user in the ARMS user agreement at, or prior to, the time of his/her initial visit. Direct access to the NMCRIS shall be permitted only through an ARMS computer system user account application issued by the ARMS registrar to each individual qualified user. Users shall be required to adhere to established rules as a condition of use of the NMCRIS. Such rules are specified in the ARMS user agreement, which must be signed by the qualified user and, if appropriate, by a representative of his/her qualified institution.

##### **B. Petitions and Appeals:**

Any entity denied access to the records repository and the NMCRIS by the registrar may appeal such denial. Appeals from a decision of the registrar shall be made in writing to the SHPO. All appeals shall include a statement of reasons for such appeal. The SHPO shall consult with the division director of the museum of New Mexico and respond in writing within ten days of receipt of such appeal. Such response shall constitute a decision, a request for further information, or a request for an appearance by the appellant. The decision of the SHPO shall be final.

[4.51.5.9 NMAC - Rp, 4.51.5.9 NMAC, 1-1-2010]

#### **4.51.5.10 PROCEDURES:**

##### **A. Access Procedures:**

Qualified users and qualified institutions must complete, sign, and submit a new ARMS user agreement to the ARMS each

calendar year.

##### **B. Registration:**

(1) Registration is required before cultural resource records can be added to the records repository and integrated into the NMCRIS, and is mandatory for all cultural resource investigations conducted in the state of New Mexico.

(2) Registration is the responsibility of the performing entity (a qualified user or qualified institution), and shall be made prior to submission of the report and associated records to the agency. Unassisted registration may be accomplished directly by the performing entity through the ARMS web site.

(3) In response to each registration request, the NMCRIS will provide an activity number for each cultural resource investigation and a laboratory of anthropology (LA) site number for each newly recorded archaeological site or a unique historic structure number for each newly recorded historic structure, building, or acequia. These identification numbers must be clearly indicated on all records that are to be submitted to the agency.

[4.51.5.10 NMAC - Rp, 4.51.5.10 NMAC, 1-1-2010]

#### **4.51.5.11 FEES:**

**A. General:** All use of the records repository and the NMCRIS is subject to the payment of reasonable, nondiscriminatory fees in order to insure that accurate, comprehensive, and current information is available to qualified users and qualified institutions. All fees received will be placed in a separate account and expended solely for the maintenance and operation of the records repository and the NMCRIS.

##### **B. Access Fees:**

(1) With the exception of agencies that have entered into cooperative agreements with the ARMS, all qualified users and qualified institutions are subject to an annual access fee on the following basis: \$200 per year for individuals and qualified institutions with 3 or fewer supervisory staff; \$300 per year for qualified institutions with 4-10 supervisory staff; \$500 per year for qualified institutions with 11-20 supervisory staff; and \$800 per year for qualified institutions with 21 or more supervisory staff.

(2) To further the museum of New Mexico's educational mission, no access fees shall be collected from academic researchers and educational institutions involved in academic research, provided the results are submitted to the ARMS. All academic researchers and educational institutions must have a current ARMS user agreement.

(3) Payment of annual access fees entitles qualified users and qualified institutions to unlimited on-site use of the cultural resource records and the NMCRIS,

provided that each individual user maintains an ARMS computer system user account as described in Subsection F of 4.51.5.7 NMAC.

(4) Qualified users and qualified institutions will be charged on a per hour basis for staff assistance for basic records and map checks provided no single request requires more than one-half hour of staff time per day. Requests that require more than one-half hour of staff time will be subject to additional charges billed at \$75 per hour in no less than one hour increments.

(5) Qualified users and qualified institutions will be charged on a per hour basis for staff assistance for custom database queries and creation of electronic data files. Requests are billed at \$150 per hour of staff time in not less than one hour increments with a one hour minimum.

(6) Assisted access users will be charged on a case-by-case basis determined by the registrar. Assisted access users will be charged at \$250 per hour for each request in not less than one hour increments with a one hour minimum.

**C. Registration Fees:** Qualified users and institutions are subject to all registration fees to cover the costs of maintenance and operation of the records repository and the NMCRIS. Cultural resource investigations performed pursuant to a cooperative agreement with the historic preservation division or the ARMS, or on a volunteer basis by non-profit societies or foundations are exempt from registration fees.

(1) **Cultural resource investigation:** Each cultural resource investigation will be assessed a fee by ARMS based on the total area surveyed, measured in acres, using the schedule below:

| Class number | Survey size (acres +/-)   | Survey Registration Fee   |
|--------------|---------------------------|---|
| 1            | <2                        | \$25  |
| 2            | 2 to 4.99                 | \$50  |
| 3            | 5 to 9.99                 | \$75  |
| 4            | 10 to 19.99               | \$100   |
| 5            | 20 to 39.99               | \$125   |
| 6            | 40 to 79.99               | \$200   |
| 7            | 80 to 119.99              | \$300   |
| 8            | 120 to 199.99             | \$400   |
| 9            | 200 to 399.99             | \$500   |
| 10           | 400 to 599.99             | \$800   |
| 11           | 600 to 999.99             | \$1000  |
| 12           | 1,000 to 1,499.99         | \$2000  |
| 13           | 1,500 to 1,999.99         | \$2500  |
| 14           | 2,000 to 2,499.99         | \$3000  |
| 15           | 2,500 to 3,000            | \$3500  |
| 16           | For more than 3,000 acres | add \$500 for each additional 500 acres or fraction thereof over the 3,000 acre amount. |

(2) **Non-survey registrations:** Clearances based on previous survey, simple monitoring projects with 0-5 sites, literature searches, damage assessments, and research designs will be charged a \$20 flat fee. Site evaluations, mitigation, complex monitoring projects with more than 5 sites, testing, and excavation projects will be charged a \$75 flat fee with an additional fee of \$15 per site.

**D. Cooperative Agreements:** Cooperative agreements may be negotiated between the historic preservation division or the ARMS and other entities to advance the sharing of cultural resource data in New Mexico and further the preservation goals of the cultural affairs department. Agreements must refer to this rule for purposes of repository access and computer security. Except in cases where the SHPO determines the historic preservation benefits are significant, all cooperative agreements between HPD or the ARMS and an entity must provide for annual financial support for ARMS to cover the costs of operating and maintaining NMCRIS.

**E. Billing and Payment:**

(1) **Access Fees:** The ARMS access fee is due by December 31 of each calendar year and must be accompanied by a signed ARMS user agreement.

(2) **Registration Fees:** Payment of registration fees is the responsibility of the qualified user or qualified institution performing the cultural resource investigation. Investigations initiated before the effective date of this rule (January 1, 2010) shall not be subject to the new registration fee. Each qualified user and institution shall be invoiced on a monthly basis. Invoices shall contain an itemized statement, the registration fee, and the total invoice amount. Payment shall be made by check and must be accompanied by one copy of the invoice.

**F. Penalties:** Payment of fees is required within 45 days of the invoice date. Accounts with balances that remain unpaid for more than 45 days will be considered delinquent. Overdue accounts shall result in termination of the ARMS access privileges and non-renewal of the ARMS user agreement.

[4.51.5.11 NMAC - Rp, 4.51.5.11 NMAC, 1-1-2010]

**HISTORY OF 4.51.5 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:**

4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System (filed 11/15/2002) repealed 1-1-2010.

**Other History:** 4 NMAC 51.3.2, named Fees, Subpart 2 - Archaeological Records Repository And Cultural Resource Information System, filed 8/16/96 was **renumbered, reformatted and amended to** 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System, effective 1/1/03.

4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System (filed 11/15/2002) was replaced by 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System, effective 1-1-2010.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
DIVISION OF HEALTH  
IMPROVEMENT**

7 NMAC 1.2, Adjudicatory Hearings (filed 12/21/1995) repealed and replaced by 7.1.2 NMAC, Adjudicatory Hearings for Licensed Facilities, effective 12/15/2009.

**NEW MEXICO  
DEPARTMENT OF HEALTH  
DIVISION OF HEALTH  
IMPROVEMENT**

**TITLE 7 HEALTH  
CHAPTER 1 HEALTH GENERAL  
PROVISIONS  
PART 2 ADJUDICATORY  
HEARINGS FOR LICENSED  
FACILITIES**

**7.1.2.1 ISSUING AGENCY:** This rule is promulgated and issued by the New Mexico Department of Health. [7.1.2.1 - Rp, 7 NMAC 1.2.1, 12/15/09]

**7.1.2.2 SCOPE:** Except as otherwise specifically provided by statute or rule, the scope of the sections in this part apply to adjudicatory proceedings conducted by the department of health. [7.1.2.2 NMAC - Rp, 7 NMAC 1.2.2, 12/15/09]

**7.1.2.3 STATUTORY AUTHORITY:** This rule is promulgated by the secretary of the New Mexico department of health, pursuant to the general authority granted under NMSA 1978, Section 9-7-6(E) of the Department of Health Act; the authority granted under NMSA 1978, Sections 24- 1-3 and 24-1-5 of the Public Health Act; the authority granted pursuant to 42 U.S.C. Section 1396a(i); the authority granted under 42 C.F.R. Sections 431.151 through 431.154; 442.118, and Section 8.353.2.9 NMAC, based on sanctions imposed by the department on licensed facilities in which medicaid recipients receive services. This rule does not provide adjudicatory procedures for appeals from actions related to the home and community based waiver. [7.1.2.3 NMAC - Rp, 7 NMAC 1.2.3, 12/15/09]

**7.1.2.4 DURATION:** Permanent. [7.1.2.4 NMAC - Rp, 7 NMAC 1.2.4, 12/15/09]

**7.1.2.5 EFFECTIVE DATE:** This rule becomes effective on 12/15/09, unless a later date is cited at the end of a section. [7.1.2.5 NMAC - Rp, 7 NMAC 1.2.5, 12/15/09]

**7.1.2.6 OBJECTIVE:** This rule provides adjudicatory procedures for licensed health facilities: administrative appeals of the initial denial of an annual license; of an emergency prehearing suspension of license and of emergency intermediate sanctions; of department action denying renewal, suspending, or revoking a license, or of the department's imposition of an intermediate sanction or civil monetary penalty; and of a cease and desist order. [7.1.2.6 NMAC - Rp, 7 NMAC 1.2.6, 12/15/09]

**7.1.2.7 DEFINITIONS:** For purposes of this rule, the following shall apply.

A. "Adjudicate" means to decide, settle or determine a disputed action. The term applies to a determination of facts and the application of law and reason to the facts by an impartial decision maker.

B. "Administrator" means the person or manager in charge of the day-to-day operation of the facility or medicaid provider. The administrator may be the licensee or an authorized representative of the licensee.

C. "Annual license" is the legally required department-issued license authorizing a facility to operate for the one year period of time noted on the face of the document and issued on an initial and renewal basis.

D. "Appellant" means the party seeking review in a court of competent jurisdiction of a final decision of the licensing authority.

E. "Applicant" means the individual responsible for the day-to-day operations of the facility, and who signs the license application. The applicant must be the individual. The applicant may be the same individual as the prospective licensee or may be an authorized representative of the prospective licensee.

F. "Application" means the forms, attachments and other writings and drawings required by the licensing authority, to be completed and submitted by the applicant for the licensing authority's review for granting or denying a license.

G. "Burden of proof" refers to the requirement of a party to produce an amount of evidence tending to prove a

proposition.

H. "Cease and desist order" means a formal, enforceable order of the licensing authority issued to a facility, usually in instances where the facility is operating without a license.

I. "Certification" means the determination made by the licensing authority as to whether a health facility or agency complies with applicable federal regulations and the conditions of participation in the medicare and/or medicaid program. Certification of noncompliance may be the basis for denial or termination of provider participation in the medicare and/or medicaid programs, or the basis for the imposition of other sanctions including license revocation.

J. "Denial of an application" and "denial of an annual license" mean action by the licensing authority declining to grant an annual license on the basis of noncompliance with applicable laws and regulations.

K. "Department" means the New Mexico department of health.

L. "Director" means the director of the division of health improvement of the New Mexico department of health.

M. "Emergency suspension of license" means the licensing authority's prohibition of operation of a facility for a stated period of time by temporary withdrawal of the license, prior to a hearing on the matter, when immediate action is required to protect human health and safety. The emergency suspension is carried out by personal service of an emergency suspension order and notice of a hearing. A hearing must be held within five (5) working days of the effective date of suspension ("five-day hearing"), as noticed in the emergency suspension order and notice of hearing, unless the right to a hearing is waived by the licensee or the right to a five-day hearing is waived and a hearing is requested at a later date by the licensee.

N. "Facility" means any health facility or health agency required to be licensed by the licensing authority pursuant to the authority of the Public Health Act, Sections 24-1-1 to 24-1-21 NMSA 1978, as amended, or required to be certified by the licensing authority in order to be eligible to receive and medicaid reimbursement for services provided to eligible recipients. This does not refer to community providers.

O. "Final decision" means the dispositive written document entered following a request for hearing under this rule, stating the final determination of the secretary made after review of the hearing officer's report and recommendation.

P. "Five-day hearing" means the hearing noticed in the emergency suspension order and notice of hearing. See the definition of "emergency suspension of

license” in Subsection E of this section.

Q. “Hearing” means a proceeding in which legal rights, duties or privileges of a party are at issue and which shall include an opportunity for the parties to present such testimony and evidence as the hearing officer deems relevant and material to the issues to be adjudicated.

R. “Hearing officer” means an individual designated to conduct prehearing conferences and hearings and to make reports and recommendations, based on the evidence taken, to the secretary.

S. “Initial applicant” means the individual who signs the initial license application.

T. “License” means the document issued by the licensing authority which authorizes the lawful operation of a facility. The term “license” includes an annual license and a temporary license.

U. “Licensee” means the person in whose name a license for a facility has been issued and who is legally responsible for the facility’s compliance with applicable laws and regulations.

V. “Licensing authority” means the division of health improvement of the New Mexico department of health. The licensing authority is also the state survey agency authorized to perform survey and certification functions for the medicaid and medicare programs.

W. “Official notice” means administrative notice, the act by which the hearing officer, in conducting the hearing or framing his decision, recognizes the existence and truth of certain facts without the production of evidence by the parties.

X. “Party” and “parties” means the original persons, entities, or agencies to a hearing under this rule and such intervenors permitted to intervene by written order of the hearing officer.

Y. “Person” means an individual, partnership, proprietorship, agency, corporation, company, association, tribal government or tribal organization, state or local government entity, or similar legal entity and the legal successor thereof.

Z. “Prospective licensee” means the person in whose name a license for operation of a facility is to be issued.

AA. “Recipient” means the individual who receives service of notice and, specifically includes the person who receives a cease and desist order issued by the licensing authority.

BB. “Renewal applicant” means the individual who signs the renewal license application.

CC. “Revocation of license” means the licensing authority’s cancellation and withdrawal of a license on a permanent basis.

DD. “Secretary” means the secretary of the New Mexico department

of health and includes his authorized representative.

EE. “Subpoena” means a written command issued by the hearing officer, at the request of a party, directing the appearance by a person, at a designated time and place, to give testimony upon a certain matter. The subpoena may include a command to produce books, papers, documents and other things, in which case it is issued as a subpoena duces tecum.

FF. “Suspension of license” means the licensing authority’s temporary cancellation and withdrawal of a license for a stated period of time.

GG. “Taking of appearances” means recording for the record the names of persons appearing at the hearing and their representatives, if any.

HH. “Temporary license” means, with respect to a health facility, an operating license issued for a stated period of time not to exceed one-hundred twenty (120) days. Not more than two (2) consecutive temporary licenses may be granted by the licensing authority.

II. “Working days” means, when determining compliance with various deadlines in this rule, Monday through Friday of each calendar week, excluding state observed holidays.

[7.1.2.7 NMAC - Rp, 7 NMAC 1.2.7, 12/15/09]

**7.1.2.8 STANDARD OF COMPLIANCE:** The degree of compliance required by this rule is designated by the use of the words “shall” or “must” and “may”. “Shall” and “must” designate mandatory requirements; “may” is permissive.

[7.1.2.8 NMAC - Rp, 7 NMAC 1.2.107, 12/15/09]

**7.1.2.9 USAGE:** The masculine pronoun includes the feminine and neuter; and the singular number includes the plural, and the plural includes the singular.

[7.1.2.9 NMAC - Rp, 7 NMAC 1.2.108, 12/15/09]

**7.1.2.10 SEVERABILITY:** If any portion of this rule or the application of this rule, is held to be invalid, the validity of the remainder of the regulations, or the application of the regulations to different situations or persons, shall not be affected.

[7.1.2.10 NMAC - Rp, 7 NMAC 1.2.109, 12/15/09]

**7.1.2.11 HEARING PROCESS AND PROCEDURES: GROUNDS FOR REQUESTING HEARING:** The actions or proposed actions of the department which may be contested are:

- A. denial of an application for initial annual license;
- B. denial of an application

for renewal of an annual license;

- C. a cease and desist order;
- D. emergency suspension of license (pre-hearing);
- E. suspension of license (non-emergency, post-hearing);
- F. revocation of license;
- G. intermediate sanctions or civil monetary penalties.

[7.1.2.11 NMAC - Rp, 7 NMAC 1.2.200, 12/15/09]

**7.1.2.12 INITIATION OF HEARING PROCESS:** The hearing process is begun upon receipt by the licensing authority of a timely request for hearing, or, in the case of a pre-hearing emergency suspension of license, by service upon the licensee of an emergency suspension order and notice of hearing.

[7.1.2.12 NMAC - Rp, 7 NMAC 1.2.201, 12/15/09]

**7.1.2.13 REQUEST FOR HEARING:**

A. Written and signed: the request for hearing shall be made in writing and shall be signed by the person or an authorized representative of the person against whom the action of the department is taken.

B. Delivery: the request for hearing shall be addressed to the director of the division of health improvement or to any other department employee indicated in the department’s notice, and it shall be hand delivered or mailed, return receipt requested, to such person.

[7.1.2.13 NMAC - Rp, 7 NMAC 1.2.202, 12/15/09]

**7.1.2.14 TIME FOR REQUESTING HEARING:** The request for hearing must be received by the department:

A. within ten (10) working days after receipt by the initial applicant, renewal applicant or prospective licensee of notice of the decision denying the application for license;

B. within five (5) working days after receipt of a cease and desist order;

C. within ten (10) working days after receipt by the licensee of a notice of suspension or notice of revocation;

D. within four (4) working days after receipt by the licensee of an emergency suspension order or emergency intermediate sanction and notice of hearing (pre-hearing emergency suspension of license).

[7.1.2.14 NMAC - Rp, 7 NMAC 1.2.203, 12/15/09]

**7.1.2.15 EFFECT OF REQUEST FOR HEARING; STAY:**

- A. Denial of an initial

annual license: receipt by the licensing authority of a timely request for hearing upon the denial of an initial annual license does not allow the facility to begin operation. If the facility begins operation without a license, it is operating illegally and is subject to appropriate administrative and judicial sanctions and criminal charges.

B. Denial of renewal of annual license: receipt by the licensing authority of a timely request for hearing upon the denial of renewal of an annual license stays the expiration of the current license until a final decision.

C. Cease and desist order: receipt by the licensing authority of a timely request for hearing following issuance of a cease and desist order does not allow a facility to operate.

D. Emergency suspension of license: if the licensee intends to appear for the five-day hearing noticed in the emergency suspension order and notice of hearing, a request for hearing need not be made. If the licensee timely waives the five-day hearing and requests a hearing to be held at a later date, the effect of such waiver is to allow time for additional prehearing discovery. Such waiver and request for later hearing does not stay the emergency suspension. The facility operates without legal authority if it continues operation after the effective date of the emergency suspension and becomes subject to appropriate administrative and judicial sanctions and criminal charges.

E. Suspension, revocation, intermediate sanctions and civil monetary penalties: receipt by the licensing authority of a timely request for hearing following notice of the suspension or revocation of a current license stays suspension or revocation of the license until a final decision is reached following the hearing.

[7.1.2.15 NMAC - Rp, 7 NMAC 1.2.204, 12/15/09]

**7.1.2.16 SCHEDULING HEARING:**

A. Scheduling: promptly upon receipt of a timely request for hearing, the department shall schedule a hearing to be held in Santa Fe, unless the hearing is required to be held elsewhere by applicable regulation.

B. Change of location: upon timely motion, and with a showing of undue hardship and burden, the hearing officer may order the hearing location changed.

[7.1.2.16 NMAC - Rp, 7 NMAC 1.2.205, 12/15/09]

**7.1.2.17 HEARING OFFICER:**

A. Designation of hearing officer: promptly upon receipt of a timely request for hearing, the secretary or

authorized representative of the department shall designate a hearing officer.

B. Qualifications: the hearing officer shall be impartial and shall have no personal bias or interest in the matter to be heard. He may be an officer or employee of the New Mexico department of health as long as he was not involved in making the challenged administrative decision. The hearing officer need not be a licensed attorney, however, he should have relevant experience with evidentiary, adjudicatory proceedings.

C. Disqualification: a hearing officer designated to preside at the hearing may disqualify himself on his own motion, or upon written request to, and approval of, the secretary of the New Mexico department of health.

D. Party's request for disqualification: whenever any party deems the hearing officer to be disqualified to preside, such party may file a written request to disqualify with the secretary of the New Mexico department of health. The request shall be supported by affidavits setting forth the grounds for disqualification. The secretary shall promptly determine the validity of the grounds alleged and take appropriate action.

[7.1.2.17 NMAC - Rp, 7 NMAC 1.2.206, 12/15/09]

**7.1.2.18 DUTIES OF HEARING OFFICER:**

A. Official file: upon appointment, the hearing officer shall establish an official file which will contain all the filed notices, pleadings, briefs, recommendations, correspondence and decisions. It shall also contain the department's notice of action as well as the request for hearing. Upon conclusion of the proceeding and following issuance of the final decision, the hearing officer shall turn over to the department this official file for future custody.

B. Preside at hearing: the hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and any motions or other matters that arise prior to or during the hearing.

C. Evidence file: the hearing officer shall maintain an evidence file with each document or item admitted into evidence. Proffered items not admitted into evidence, at the request of the offering party, shall be so identified and separately maintained by the hearing officer.

D. Subpoenas: the hearing officer, upon request by a party, may issue subpoenas and subpoenas duces tecum.

[7.1.2.18 NMAC - Rp, 7 NMAC 1.2.207, 12/15/09]

**7.1.2.19 PARTIES:**

The principal and original parties to a hearing conducted under this rule shall be the appropriate agency of the department, and the applicant or prospective licensee, the licensee, licensed medicaid provider applicant, or the recipient of a cease and desist order, depending upon the nature of the hearing. Generally, intervenors are not allowed to participate as a party.

[7.1.2.19 NMAC - Rp, 7 NMAC 1.2.208, 12/15/09]

**7.1.2.20 LEGAL REPRESENTATION:**

A. Natural persons: natural persons may appear on their own behalf or by an attorney licensed to practice in New Mexico.

B. Entities: the department, corporations and other organizations and entities may appear by a bona fide officer, employee or representative or may be represented by an attorney licensed to practice in New Mexico.

C. Filing: any party filing documents in the appeal shall sign the original and hand deliver or mail it to the hearing officer and shall hand deliver or mail copies to all other parties.

[7.1.2.20 NMAC - Rp, 7 NMAC 1.2.209, 12/15/09]

**7.1.2.21 DISCOVERY:**

A. Minimum discovery: inspection and copying of documents: each party shall have access to the relevant documents in the possession of the other party, except confidential or privileged documents. Access to the department's relevant documents may be had during normal business hours at the department's appropriate business offices. A reasonable copying fee may be charged.

B. Minimum discovery; witnesses: the parties shall each disclose to each other orally or in writing and to the hearing officer, the names of witnesses to be called, together with a brief summary of the testimony of each witness. In situations where statements will be presented to the hearing officer, rather than witnesses examined, the names of the persons making the statements and the summary of the statements, shall be disclosed.

C. Additional discovery: at the hearing officer's discretion, upon a written request by a party which sets out reasons that additional discovery is needed, further discovery in the form of production and review of documents and other tangible things, examinations and premise inspections, interviews or written interrogatories may be ordered. In exercising his authority to determine whether further discovery is necessary or desirable, the hearing officer should consider whether the complexity of fact or law reasonably requires



further discovery to ensure a fair opportunity to prepare for the hearing and whether such request will result in unnecessary hardship, cost, or delay in holding the hearing.

D. Costs: cost of document copying, mail or delivery service, interviews or written interrogatories, including mileage and per diem, paid in accordance with the New Mexico Per Diem and Mileage Act (Section 10-8-1, NMSA 1978) shall be paid by the requesting party.

E. Depositions prohibited: oral or written depositions are not permitted. [7.1.2.21 NMAC - Rp, 7 NMAC 1.2.210, 12/15/09]

#### **7.1.2.22 P R E H E A R I N G C O N F E R E N C E:**

A. Purpose: at the discretion of the hearing officer, upon request of a party or upon the hearing officer's own motion, a prehearing conference shall be scheduled by the hearing officer at a time and place reasonably convenient to all parties, in order to: limit and define issues; discuss possible prehearing disposition; consider possible stipulations of factual or legal issues, or stipulations concerning the admissibility of evidence; limit the testimony or the number of witnesses, the issues or the evidence; and, discuss such other matters as may aid in the simplification of evidence and disposition of the proceedings.

B. Informal: such a conference shall be informal. No offer of settlement made at the conference shall be admissible in evidence at any later hearing. Stipulations and admissions shall be binding and may be used as evidence at the hearing. At the hearing officer's discretion, stipulations and admissions may be made in writing and filed with the hearing officer as part of the official record of the proceedings.

C. Notice: the hearing officer will give notice of the time and place of the pre-hearing conference to the parties by telephone, in person or by mail.

D. Costs: each party shall bear its own costs, including transportation costs.

E. Record: a record of the prehearing conference shall not be kept. A prehearing order or other pleadings may be filed as a result of the prehearing conference. [7.1.2.22 NMAC - Rp, 7 NMAC 1.2.211, 12/15/09]

#### **7.1.2.23 P R E H E A R I N G D I S P O S I T I O N:**

The subject matter of any hearing may be disposed of by stipulation, settlement or consent order, unless otherwise precluded by law. Any stipulation, settlement or consent order reached between the parties shall be written, signed by the hearing officer and the parties or their attorneys, and submitted to the secretary of the New Mexico department of health. Such

prehearing disposition shall be effective only if approved by the secretary.

[7.1.2.23 NMAC - Rp, 7 NMAC 1.2.212, 12/15/09]

#### **7.1.2.24 P O S T P O N E M E N T O R C O N T I N U A N C E:**

The hearing officer in his or her discretion, may postpone or continue a hearing upon his or her own motion or upon motion of a party, for good cause shown. Notice of any postponement or continuance shall be given in person, by telephone, or by mail to all parties within a reasonable time in advance of the previously scheduled hearing date.

[7.1.2.24 NMAC - Rp, 7 NMAC 1.2.213, 12/15/09]

#### **7.1.2.25 A D D I T I O N A L P L E A D I N G S:**

Solely at the discretion of the hearing officer, pleadings, motions and briefs allowed in the state district courts of New Mexico may be filed.

[7.1.2.25 NMAC - Rp, 7 NMAC 1.2.214, 12/15/09]

#### **7.1.2.26 C O N D U C T O F T H E H E A R I N G:**

A. Public: all hearings shall be open to the public, unless a closed hearing is asked for by the person requesting the hearing and the hearing officer finds good cause exists for closing the hearing. The department shall not request a closed hearing.

B. Powers of hearing officer: the hearing officer shall have all the powers necessary to conduct a hearing and to take all necessary action to avoid delay, maintain order, and assure development of a clear and complete record, including but not limited to the power to: administer oaths or affirmations on the request of any party; schedule continuances; examine witnesses and direct witnesses to testify; limit repetitious and cumulative testimony; and set reasonable limits on the amount of time a witness may testify; decide objections to the admissibility of evidence or receive the evidence subject to later ruling; receive offers of proof for the record; direct parties to appear and confer for the settlement or simplification of issues, and to otherwise conduct prehearing conferences; dispose of procedural requests or similar matters; and, enter findings of fact, conclusions of law, orders, and reports and recommendations.

[7.1.2.26 NMAC - Rp, 7 NMAC 1.2.215, 12/15/09]

#### **7.1.2.27 O R D E R O F P R E S E N T A T I O N; G E N E R A L R U L E:**

Except as specifically provided in the following section, the order of presentation for hearings in all cases, including but not limited to those arising from suspension, revocation, denial of renewal of license,

intermediate sanctions, civil monetary penalties, emergency suspension, emergency intermediate sanctions shall be:

A. appearances: opening of proceeding and taking of appearances by the hearing officer;

B. pending matters: disposition by the hearing officer of preliminary and pending matters;

C. opening statements: the opening statement of the department; and then the opening statement of the licensee or the party challenging the department's action;

D. cases: the department's case-in-chief; and then the case-in-chief of the licensee or the party challenging the department's action;

E. rebuttal: the department's case-in-rebuttal;

F. closing argument: the department's closing statement, which may include legal argument; and then the closing statement, which may include legal argument of the licensee or the party challenging the department's action; and

G. close: closing of proceedings by the hearing officer.

[7.1.2.27 NMAC - Rp, 7 NMAC 1.2.216, 12/15/09]

#### **7.1.2.28 O R D E R O F P R E S E N T A T I O N; S P E C I A L C A S E S R U L E:**

The order of presentation in denial of an initial annual license and cease and desist order cases is:

A. appearances: opening of proceeding and taking of appearances by the hearing officer;

B. pending matters: disposition by the hearing officer of preliminary and pending matters;

C. opening statements: applicant's or recipient's opening statement; and then the opening statement of the licensing authority;

D. cases: the applicant's or recipient's case-in-chief; and then the licensing authority's case-in-chief;

E. rebuttal: the applicant's/prospective licensee's or recipient's case-in-rebuttal;

F. closing argument: the applicant's/prospective licensee's or recipient's closing statement, which may include legal argument; and then the licensing authority's closing statement, which may include legal argument; and

G. close: closing of proceedings by the hearing officer.

[7.1.2.28 NMAC - Rp, 7 NMAC 1.2.217, 12/15/09]

#### **7.1.2.29 B U R D E N O F P R O O F:**

A. General rule: except as specifically provided for in the following paragraph, in all cases, including but not

limited to those arising from suspension, revocation, denial of renewal of license, Intermediate sanctions, civil monetary penalties, emergency suspension, emergency intermediate sanctions, or medicaid provider appeals, the department shall present evidence supporting its decision. The party challenging the department's decision shall then present evidence to show that the department's decision is incorrect. The burden of proving by a preponderance of the evidence the basis for the decision at issue rests with the department.

B. Special cases: in cases arising from the denial of initial license and cease and desist orders, the applicant for initial license or the recipient of the cease and desist order shall present evidence supporting the license application, or evidence supporting the legality of operating without a license. The licensing authority shall then present evidence supporting the denial of the application, or evidence of the propriety and of cease and desist order. The burden of proving by a preponderance of the evidence:

(1) that the application was improperly denied by the licensing authority and should be approved, or

(2) that operation is proper and in accordance with law, rests with the license applicant or recipient of the cease and desist order.

[7.1.2.29 NMAC - Rp, 7 NMAC 1.2.218, 12/15/09]

#### **7.1.2.30 EVIDENCE:**

A. Technical rules not applicable: in general, the technical rules of evidence, such as the New Mexico rules of evidence, shall not apply but may be used as a guide to the principles of evidence and may be considered in determining the weight to be given any item of evidence. Nonprivileged, material and relevant evidence of the type which is relied upon by reasonably prudent persons in the conduct of serious affairs is admissible. The hearing officer may exclude, either with or without formal objection, unreliable, immaterial, irrelevant and unduly repetitious testimony and evidence.

B. Objections: a party may timely object to evidentiary offers by stating the objection together with a succinct statement of the grounds. The hearing officer may rule on the admissibility of evidence at the time an objection is made or may receive the evidence subject to later ruling.

C. Official notice: official notice may be taken of all facts of which judicial notice may be taken. Any party shall, on timely request, be afforded an opportunity to contest the noticed fact.

[7.1.2.30 NMAC - Rp, 7 NMAC 1.2.219, 12/15/09]

#### **7.1.2.31 EVIDENCE FROM WITNESSES:**

A. Statement or examination of witnesses: the hearing officer, at his discretion, may receive evidence in the form of statements where a party is not represented by counsel; otherwise, the normal manner of witness testimony shall be by direct examination, cross examination and redirect examination, and through questioning by the hearing officer.

B. Written form: any part of the evidence may be received by the hearing officer in writing when a hearing will be expedited and the interests of the parties will not be substantially prejudiced.

[7.1.2.31 NMAC - Rp, 7 NMAC 1.2.220, 12/15/09]

#### **7.1.2.32 RECORD:**

A. Content: the record of a proceeding under this rule shall include all documents contained in the official files maintained by hearing officer, including findings of fact and conclusions of law, the recommendations of the hearing officer; and the final decision of the secretary.

B. Recording the hearing: proceedings at which evidence is presented orally shall be recorded by means of a mechanical or electronic sound recording device provided by the department. Such recording need not be transcribed, unless requested by a party who shall arrange and pay for the transcription. Any party who seeks judicial review, in conformity with applicable appellate rules, must request leave to file the audio tapes of the administrative proceeding as the transcript of the proceedings together with the necessary copies made and certified as true and correct by an authorized employee of the department.

[7.1.2.32 NMAC - Rp, 7 NMAC 1.2.221, 12/15/09]

#### **7.1.2.33 REPORT AND RECOMMENDATION OF HEARING OFFICER:**

A. Hearing officer's report shall contain: a statement of the issues raised at the hearing; findings of fact and conclusions of law, applying law and regulations to the facts. Findings of fact shall be based on the evidence presented at the hearing or known to all parties, including matters officially noticed; and recommended determination.

B. Submission for final decision: the hearing officer's report together with the full hearing record shall be submitted to the secretary of the New Mexico department of health for a final determination. The report and recommendation shall be submitted within thirty (30) working days after expiration of

the time set for submittal of the last post hearing submission of requested findings and conclusions, arguments or briefs.

C. Optional announcement of decision: at the close of the hearing, the hearing officer may announce his decision and request that the parties prepare appropriate post hearing submissions, including a decision for approval by the hearing officer. The hearing officer's oral and written decision is a recommendation to the secretary of the New Mexico department of health and is not a final order.

[7.1.2.33 NMAC - Rp, 7 NMAC 1.2.222, 12/15/09]

#### **7.1.2.34 FINAL DECISION:**

The secretary of the department shall render a final administrative determination within ten working (10) days of the submission of the hearing officer's report. Parties may be notified personally, by telephone or by mail of the final order. A copy of the final decision shall be mailed to each party or attorney of record.

[7.1.2.34 NMAC - Rp, 7 NMAC 1.2.223, 12/15/09]

#### **7.1.2.35 FAILURE TO APPEAR:**

A. Default: failure of the party requesting the hearing to appear on the date and at the time set for hearing, without good cause shown, shall constitute a default and the hearing officer shall so notify all parties in writing.

B. Entry of decision: the hearing officer shall enter such findings, conclusions, decisions, recommendations, rulings and orders as are appropriate.

[7.1.2.35 NMAC - Rp, 7 NMAC 1.2.224, 12/15/09]

#### **7.1.2.36 PERSONAL SERVICE:**

Whenever this rule requires or allow delivery of notice of administration action or proposed action by way of personal service, such service shall be made by a licensing authority employee or other department representative, or by any individual over the age of eighteen (18).

[7.1.2.36 NMAC - Rp, 7 NMAC 1.2.225, 12/15/09]

#### **7.1.2.37 MANNER OF SERVICE:**

A. Service on the person or at the place where found: personal delivery of any notice shall be given when the applicant licensee or recipient of a cease and desist order is present, by personal delivery to the individual, applicant, licensee or recipient at the facility or where the person is found; if delivery is refused, service is effected by leaving the notice at the place where such person was found. If the person to be served refuses to accept the notice or to

permit the notice to be left, valid service is achieved by the attempts described above to personally deliver or leave the notice.

**B. Service on a representative:** service shall be complete when the individual, applicant, licensee or recipient is absent, by personal delivery at the facility to an administrative or other employee who reasonably appears to be capable of delivering the notice to the applicant licensee, recipient; or if no such person is available or willing to accept delivery, service may be made by posting notice on the most public part of the facility and by mailing, by U.S. postal service return receipt requested mail, a copy of the notice to the individual, applicant licensee, or recipient at the facility address or to the known address of the individual.

**C. Mail:** when notice is given by U.S. postal service certified return receipt requested mail, service shall be deemed to have been made on the date delivered, or if delivery is refused, service shall be deemed to have been made on the date on which delivery is attempted for the purpose of calculating all time requirements in this rule. When notice or service is given by regular first class mail, then receipt shall be deemed to have occurred on the third day following deposit in the U.S. mail, except when the third day falls on a Saturday, Sunday or legal holiday in which case receipt shall be deemed to have occurred on the next working day.

[7.1.2.37 NMAC - Rp, 7 NMAC 1.2.226, 12/15/09]

**7.1.2.38 PROOF OF SERVICE:** The licensing authority employee, department representative, or other individual making such service shall prepare and sign a statement indicating upon whom, where and when such personal service was made. If possible, the licensee's or applicant's or other recipient's signed acknowledgment of notice may be obtained. Failure to make proof of service shall not affect the validity of service. Personal service shall be deemed to be made at the time that notice is handed to the recipient of service, left or posted, in accordance with this section.

[7.1.2.38 NMAC - Rp, 7 NMAC 1.2.227, 12/15/09]

**7.1.2.39 JUDICIAL REVIEW:** District court: to the extent provided by law, a final decision may be reviewed by the district court for the county of Santa Fe.

[7.1.2.39 NMAC - Rp, 7 NMAC 1.2.300, 12/15/09]

**7.1.2.40 RULES GOVERNING JUDICIAL REVIEW:** The procedural rules for review of a final order are contained in the New Mexico statutes governing

procedure for civil cases in the court of appeals and the district courts.

[7.1.2.40 NMAC - Rp, 7 NMAC 1.2.301, 12/15/09]

**7.1.2.41 RECORD:**

**A.** The appellant shall make satisfactory arrangements with the department for the preparation of the record of the proceeding for which judicial review is sought.

**B.** The record shall consist of the official file maintained by the hearing officer together with exhibits admitted into evidence, and the tapes or other transcript of the hearing.

**C.** The expense of copying tape recorded testimony and any other expense of preparing the record, including copying costs, shall be borne by the appellant.

**D.** The appellant shall certify in applicable pleadings filed with the court that arrangements have been made for preparation of a sufficient number of transcripts of the hearing and other items making up the record of the proceedings.

**E.** Within thirty (30) days after service of notice of judicial appeal, the department shall file in the appropriate court a certified copy of the original and duplicate copies of the tapes of the hearing under review together with the original and copies of the official file maintained and certified by the hearing officer.

[7.1.2.41 NMAC - Rp, 7 NMAC 1.2.302, 12/15/09]

**7.1.2.42 COURT ORDERED STAY:**

Filing for judicial review does not itself stay enforcement of the final decision. Any party may petition the court whose jurisdiction has been properly invoked for an order staying enforcement.

[7.1.2.42 NMAC - Rp, 7 NMAC 1.2.303, 12/15/09]

**7.1.2.43 STANDARD OF REVIEW:**

The reviewing court shall set aside the final order only if it is found to be:

**A.** arbitrary, capricious, or an abuse of discretion;

**B.** not supported by substantial evidence in the record;

**C.** beyond the authority of the department; or

**D.** otherwise not in accordance with law.

[7.1.2.43 NMAC - Rp, 7 NMAC 1.2.304, 12/15/09]

**History of 7.1.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously files with the commission of public records, state records center:

HED 86-1 (HSD), Regulations Governing

Health Facilities Licensing And Certification Adjudicatory Hearing Proceedings, filed 5/20/86.

HED 86-9 (HSD), Regulations Governing Health Facilities Licensing And Certification Adjudicatory Hearing Proceedings, filed 8/1/86.

**History of Repealed Material:**

7 NMAC 1.2, Adjudicatory Hearings (filed 12/21/1995) repealed 12/15/09.

**Other History:**

HED 86-9 (HSD), Regulations Governing Health Facilities Licensing And Certification Adjudicatory Hearing Proceedings (filed 8/1/1986) was renumbered, reformatted, amended and replaced by 7 NMAC 1.2, Adjudicatory Hearings, effective 2/1/1996.

7 NMAC 1.2, Adjudicatory Hearings (filed 12/21/1995) was renumbered, reformatted and replaced by 7.1.2 NMAC, Adjudicatory Hearings for Licensed Facilities, effective 12/15/09.

---

## NEW MEXICO MEDICAL BOARD

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS PART 20 POLYSOMNOGRAPHIC TECHNOLOGISTS: LICENSURE AND PRACTICE REQUIREMENTS

**16.10.20.1 ISSUING AGENCY:**

New Mexico Medical Board, hereafter called the board.

[16.10.20.1 NMAC - N, 1/1/10]

**16.10.20.2 SCOPE:**

This part applies to polysomnographic technologists, polysomnographic technicians, polysomnographic trainees, polysomnographic students and other persons who may provide sleep-related services.

[16.10.20.2 NMAC - N, 1/1/10]

**16.10.20.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to and in accordance with the Polysomnography Practice Act, Sections 61-6B-1 through 61-6B-10 and the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.20.3 NMAC - N, 1/1/10]

**16.10.20.4 DURATION:**

Permanent.

[16.10.20.4 NMAC - N, 1/1/10]

**16.10.20.5 EFFECTIVE DATE:**

January 1, 2010, unless a different date is cited at the end of a section.

[16.10.20.5 NMAC - N, 1/1/10]

**16.10.20.6 OBJECTIVE:** This part regulates the licensing and practice of polysomnographic technologists.

[16.10.20.6 NMAC - N, 1/1/10]

**16.10.20.7 DEFINITIONS:**

**A. "AASM"** means the American academy of sleep medicine, a national organization that establishes accreditation standards for sleep centers and sleep labs.

**B. "AASST"** means the American association of sleep technologists, a national organization that provides continued development of educational, technical and clinical assistance related to the sleep technology profession.

**C. "ABSM"** means the American board of sleep medicine, a national organization developed for the purpose of establishing and maintaining standards of board certification for physicians practicing sleep disorders medicine.

**D. "Act"** means the Polysomnography Practice Act.

**E. "Board"** means the New Mexico medical board.

**F. "BRPT"** means the board of registered polysomnographic technologists, a national agency for credentialing polysomnographic technologists.

**G. "CAAHEP"** means the commission on accreditation of allied health education programs, a national agency for accrediting polysomnographic educational programs.

**H. "Committee"** means the polysomnography practice advisory committee.

**I. "Contact hour"** means sixty (60) minutes of actual instructional time. Breaks, meals, evaluations, wrap-up or registration are not included when calculating hours.

**J. "Direct supervision"** means that the polysomnographic technologist providing supervision shall be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure.

**K. "Expired"** means a license was not renewed by the biennial renewal date of March 1 or at the end of the grace period of May 1, and the licensee is not eligible to practice within the state of New Mexico.

**L. "General supervision"** means that the polysomnographic procedure is provided under a physician's direction and control, but the physician's presence is not required during the performance of the procedure.

**M. "Grace period"** means the sixty (60) day period following the renewal date when a polysomnographic technologist may renew a license that was not renewed by the renewal date, by paying the required renewal fee, the late fee and meeting the renewal requirements. A licensee may continue to practice during the grace period.

**N. "Grace period status"** means the license has not been renewed by the renewal date and has not expired.

**O. "License"** means an authorization issued by the board that permits a person to engage in the practice of polysomnography in the state.

**P. "Licensed provider"** means a licensed physician, licensed physician assistant, licensed certified nurse practitioner or licensed psychologist.

**Q. "Licensee"** means a person licensed by the board to engage in the practice of polysomnography.

**R. "NBRC"** means the national board for respiratory care, a national organization that credentials respiratory therapists, and provides an examination to further certify respiratory therapists as sleep disorders specialists.

**S. "Physician"** means an individual licensed by the New Mexico medical board and an individual licensed by the New Mexico board of osteopathic medical examiners.

**T. "Polysomnographic student"** means a person who is enrolled in an educational program that is accredited by the commission on accreditation of allied health education programs, as provided in Section 5 [61-6B-5 NMSA 1978] of the Polysomnography Practice Act and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program.

**U. "Polysomnographic technician"** means a person who has graduated from an accredited educational program described in Section 5 of the Polysomnography Practice Act but has not yet passed the national certifying examination given by the board of registered polysomnographic technologists, who has obtained a temporary permit from the board and who may provide sleep-related services under the general supervision of a licensed physician.

**V. "Polysomnographic technologist"** means a person who is credentialed by the board of registered polysomnographic technologists and is licensed by the board to engage in the practice of polysomnography under the general supervision of a licensed physician.

**W. "Polysomnographic trainee"** means a person who is enrolled in an accredited sleep technologist educational

program that is accredited by the American academy of sleep medicine and who may provide sleep-related services under the direct supervision of a polysomnographic technologist or licensed physician as a part of the person's educational program.

**X. "Practice of polysomnography"** means the performance of diagnostic and therapeutic tasks, under the general supervision of a licensed physician, including:

(1) monitoring and recording physiologic activity and data during the evaluation or treatment of sleep-related disorders, including sleep-related respiratory disturbances, by applying appropriate techniques, equipment and procedures, including:

(a) continuous or bi-level positive airway pressure titration on patients using a nasal or oral or a nasal and oral mask or appliance that does not extend into the trachea or attach to an artificial airway, including the fitting and selection of a mask or appliance and the selection and implementation of treatment settings;

(b) supplemental low-flow oxygen therapy that is less than ten liters per minute using nasal cannula or continuous or bi-level positive airway pressure during a polysomnogram;

(c) capnography during a polysomnogram;

(d) cardiopulmonary resuscitation;

(e) pulse oximetry;

(f) gastroesophageal pH monitoring;

(g) esophageal pressure monitoring;

(h) sleep staging, including surface electroencephalography, surface electrooculography and surface submental electromyography;

(i) surface electromyography;

(j) electrocardiography;

(k) respiratory effort monitoring, including thoracic and abdominal movement;

(l) respiratory plethysmography;

(m) arterial tonometry and additional measures of autonomic nervous system tone;

(n) snore monitoring;

(o) audio or video monitoring;

(p) body movement monitoring;

(q) nocturnal penile tumescence monitoring;

(r) nasal and oral airflow monitoring;

(s) body temperature monitoring;

and (t) use of additional sleep-related diagnostic technologies;

(2) observing and monitoring physical signs and symptoms, general behavior and general physical response to polysomnographic evaluation or treatment and determining whether initiation,

modification or discontinuation of a treatment regimen is warranted;

(3) analyzing and scoring data collected during the monitoring described in Paragraphs (1) and (2) of this subsection for the purpose of assisting a licensed provider in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease or actual or anticipated somatic dysfunction;

(4) implementing a written or verbal order from a licensed provider that requires the practice of polysomnography;

(5) educating a patient regarding the treatment regimen that assists that patient in improving the patient's sleep; and

(6) initiating and monitoring treatment, under the orders of a licensed provider, for sleep-related breathing disorders by providing continuous positive airway pressure and bi-level positive airway pressure devices and accessories, including masks that do not extend into the trachea or attach to an artificial airway, to a patient for home use, together with educating the patient about the treatment and managing the treatment.

**Y.** "Renew" means to begin again after an interval of time; to make valid again for a further period.

**Z.** "Renewal date" means the deadline date upon which the license shall be made valid again for another period of time without a penalty fee.

**AA.** "SDS" means sleep disorders specialist.

**BB.** "Sleep-related services" means acts performed by polysomnographic technicians, polysomnographic trainees, polysomnographic students and other persons permitted to perform these services under the Polysomnography Practice Act, in a setting described in 16.10.20.17 NMAC, that would be considered the practice of polysomnography if performed by a polysomnographic technologist. [16.10.20.7 NMAC - N, 1/1/10]

**16.10.20.8 LICENSURE REQUIREMENTS:** The board may issue a license to an applicant who fulfills the following requirements.

**A.** Completes an application for which the applicant has supplied all information and correspondence requested by the board on forms and in a manner acceptable to the board. Applications are valid for one (1) year from the date of receipt. While an application is pending, the applicant is responsible for providing the board with any changes to the submitted information or to the applicant's oath. Applications shall require the following documentation:

(1) demographic information of

the applicant;

(2) educational history;

(3) employment history;

(4) professional references;

(5) examination information;

(6) certification information;

(7) other state licensure information;

(8) professional practice questions;

(9) applicant's oath;

(10) passport-quality color photograph taken within six months prior to filing the application; approximate size 2 x 2 inches, head and shoulders only, full face, front view, plain white or off-white background, standard photo stock paper; and, scanned or computer-generated photographs should have no visible pixels or dots; and

(11) applicant's signature.

**B.** Each applicant for licensure as a polysomnographic technologist shall submit the required fees as established in 16.10.9 NMAC.

**C.** Verification of licensure in all states or territories where the applicant holds or has held a license to engage in the practice of polysomnography, or other health care profession, shall be sent directly to the board by the other state board(s) by United States postal service, facsimile, or in an electronic format acceptable by the board, and shall attest to the current status, issue date, license number, and other information requested and contained on the form.

**D.** Passage of the national certifying examination given by the BRPT or an examination equivalent to the BRPT examination, or the NBRC-SDS examination, as approved by the board. Proof of passage shall be sent directly to the board by the certifying entity or in an electronic format acceptable by the board. The board may accept hard copy by United States postal service, facsimile or electronic mail.

**E.** Proof that the applicant has been credentialed by the BRPT or by another national entity equivalent to the BRPT, as approved by the board.

**F.** Proof of high school graduation, evidenced by a copy of diploma or general educational development (GED) certificate, or other format acceptable by the board. Proof of a degree from a level of higher education is also acceptable.

**G.** Proof that the applicant holds current certification of successful completion of formal training in basic cardio pulmonary resuscitation and in the application and management of an automated external defibrillator.

**H.** Verification of all work experience in the last five (5) years since graduation, if applicable, provided directly to the board from the employer, by letter, or in an electronic format acceptable by the board, or on forms provided by the board.

**I.** Proof of graduation means official transcripts from an educational program or a certificate acceptable to the board. The applicant shall make arrangements for official transcripts to be sent directly to the board by the educational institution. If official transcripts are not available due to school closure, destroyed records, etc., the applicant shall provide satisfactory evidence to the board that the required polysomnographic educational program has been met for consideration on a case-by-case basis. Proof of completion of a polysomnographic education program, evidenced by:

(1) graduation from a polysomnographic educational program that is accredited by the CAAHEP; or

(2) graduation from a respiratory care educational program that is accredited by the CAAHEP and completion of the curriculum for a polysomnography or sleep diagnostic specialist certificate established and accredited by the committee on accreditation for respiratory care of the CAAHEP; or

(3) graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the CAAHEP; or

(4) successful completion of a sleep technologist educational program that is accredited by the AASM. This option shall expire two years after the date upon which at least three (3) polysomnographic technologist educational programs in New Mexico have been accredited by the CAAHEP.

**J. Waiver of the educational requirement.** The board may waive the educational requirements set forth in Subsections F and I of this section for an individual continuously engaged in the practice of polysomnography on or before July 1, 2008, pursuant to Subsection B of Section 61-6B-5 of the Polysomnography Practice Act. To be eligible for this waiver, applicants shall meet all other requirements set forth in this section.

**K. Personal interview.** Upon receipt of a completed application, including all required documentation and fees, the applicant may be scheduled for a personal interview before the board, a board member designated by the board, or a member of the polysomnographic practice advisory committee designated by the board to evaluate that person's qualifications for a license.

**L. Initial license period.** The applicant who has met all the requirements for licensure shall be issued an initial license for a period of not more than twenty-four months or less than thirteen months, depending on when in the renewal cycle the initial license is issued, in order to

schedule the license to renew on March 1.

**M. Initial license expiration.** Polysomnographic technologist licenses shall be renewed biennially on March 1 as established in 16.10.20.12 NMAC.

**N. State and national criminal history screening.** All applicants for initial licensure as a polysomnographic technologist are subject to a state and national criminal history screening at their expense. All applicants shall submit two (2) full sets of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and background screening fee at the time of application.

(1) Applications for licensure shall not be processed without submission of fingerprints, completed fingerprint certificate form, signed authorization for criminal background screening and fee.

(2) Applications shall be processed pending the completion of the nationwide criminal background screening and may be granted while the screening is still pending.

(3) If the criminal background screening reveals a felony or a violation of the Medical Practice Act or the Polysomnography Practice Act, the applicant/licensee shall be notified to submit copies of legal documents and other related information to the board, which shall make the determination if the applicant is eligible for licensure or if disciplinary action will be taken. Questions of felony or misdemeanor convictions involving moral turpitude directly related to employment in the profession need to be resolved satisfactorily. If the prior conviction does not relate to employment in the profession, the board may require proof that the person has been sufficiently rehabilitated to warrant the public trust. Proof of sufficient rehabilitation may include, but not be limited to: certified proof of completion of probation or parole, payment of fees, community service or any other court ordered sanction.

[16.10.20.8 NMAC - N, 1/1/10]

**16.10.20.9 POLYSOMNOGRAPHIC TECHNICIAN TEMPORARY PERMIT:**

**A.** The board may issue a temporary permit to a polysomnographic technician who has met all licensure requirements established in 16.10.20.8 NMAC, except passage of the national certifying examination.

**B.** The temporary permit is valid for no more than two years from the date of the technician's graduation from an accredited program as described in 16.10.20.8 NMAC.

**C.** A temporary permit may be renewed for a period of one year beyond the original two-year expiration date and upon payment of the temporary

permit renewal fee as established in 16.10.9 NMAC. This permit may only be renewed one time.

**D.** The holder of a temporary permit may not provide sleep-related services until the temporary permit is received and is on file at the principal place of practice.

**E.** The holder of a temporary permit shall work under the general supervision of a New Mexico licensed physician. The polysomnographic technician is responsible to provide the board the following documentation, at the time of application, on forms provided by the board:

(1) name of the supervising physician;

(2) specific program or protocol of work planned;

(3) address of the sponsoring institution or organization where the work will be performed; and

(4) an affidavit from the supervising physician attesting to the qualifications of the polysomnographic technician and the purpose of the functions the technician will perform while on a temporary permit.

[16.10.20.9 NMAC - N, 1/1/10]

**16.10.20.10 NON-LICENSED PERSONS PROVIDING SLEEP-RELATED SERVICES:** Non-licensed persons shall meet the following requirements before providing any sleep-related services.

**A.** A polysomnographic technician shall obtain a temporary permit as established in 16.10.20.9 NMAC.

**B.** A polysomnographic trainee shall provide proof to the board that the trainee is enrolled in an accredited sleep technologist educational program accredited by the AASM. Acceptable proof consists of a letter or other acceptable affirmation, as approved by the board, that the trainee is enrolled in the program.

**C.** A polysomnographic student may provide uncompensated sleep-related services under the direct supervision of a polysomnographic technologist, or a licensed physician, as a part of the student's educational program while actively enrolled in a polysomnographic educational program that is accredited by the CAAHEP.

**D.** A person credentialed in one of the health-related fields accepted by the BRPT, who may provide sleep-related services while obtaining the clinical experience necessary to be eligible to take the national certification examination, shall work under the direct supervision of a licensed polysomnographic technologist, or a licensed physician, for a period of up to one year.

**E.** Polysomnographic trainees, polysomnographic students, and

persons credentialed in one of the health-related fields accepted by BRPT shall give notice to the board that the person is working under the direct supervision of a licensed polysomnographic technologist or licensed physician and are responsible to provide the board the following documentation on forms provided by the board

(1) name of the supervising polysomnographic technologist or physician;

(2) specific program or protocol of work planned;

(3) address of the sponsoring institution or organization where the work will be performed; and

(4) an affidavit from the supervising polysomnographic technologist or physician attesting to the qualifications of the trainee and the purpose of the functions the trainee will perform.

**F.** Respiratory care practitioners licensed under the Respiratory Care Act are exempt from this requirement.

[16.10.20.10 NMAC - N, 1/1/10]

**16.10.20.11 ENDORSEMENT:** An applicant for licensure as a polysomnographic technologist who is licensed under the laws of another U.S. jurisdiction where the requirements were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other U.S. jurisdiction, shall file an application as established in 16.10.20.8 NMAC.

[16.10.20.11 NMAC - N, 1/1/10]

**16.10.20.12 LICENSE EXPIRATION AND RENEWAL:**

**A.** Polysomnographic technologist licenses shall be renewed biennially on March 1st. An initial license may be issued for a period of up to two years, depending on when in the renewal cycle the initial license is issued, in order to schedule the license to renew on March 1st.

**B.** Failure to receive the renewal notice shall not relieve the licensee from the responsibility of renewing the license by the renewal date. The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to inform the board of accurate address information and to make a timely request for the renewal application if one has not been received prior to March 1st.

**C.** Renewal applications postmarked, hand-delivered or completed on-line, on or prior to March 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board; the renewal form shall include the following data:

(a) demographic information of the licensee;

(b) license number;  
(c) questions regarding practice information since the last renewal; and

(d) signature of the licensee if renewing on a hard-copy form; if renewing electronically on-line, no signature is required;

(2) receipt of the renewal fee as established in 16.10.9 NMAC; and

(3) proof of twenty (20) BRPT or AAST approved continuing education contact hours during each biennial renewal cycle; continuing education contact hours acceptable to BRPT for recertification are acceptable for license renewal.

**D.** Renewal applications postmarked or hand-delivered after March 1 and prior to May 1 shall require the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in subparagraphs (a)-(d) of paragraph (1) of Subsection C of Section 12 above;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the late fee as established in 16.10.9 NMAC; and

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours during each biennial renewal cycle; continuing education contact hours acceptable to BRPT for recertification are acceptable for license renewal.

**E.** March 1 through April 30 is considered the grace period following the renewal date during which a licensee may continue to provide services and renew with a late fee.

**F.** When renewal applications are received on or after May 1, the license shall have expired, and the licensee shall not be eligible to provide polysomnography services in New Mexico.

**G.** When a retiree reenters the practice of polysomnography, the retiree shall submit the following documentation:

(1) completion of a renewal application either electronically on-line or on the form provided by the board, including the data as described in subparagraphs (a)-(d) of paragraph (1) of Subsection C of Section 12 above;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) proof of ten (10) BRPT or AAST approved continuing education contact hours for each year since the license was placed in retired status, with a maximum of fifty (50) hours required regardless of the number of years retired;

(4) any other proof of competency as may be requested by the board or the board's designee; and

(5) proof of current BRPT certification.

#### **H. Verification of continuing education.**

Each polysomnographic technologist renewing a license shall attest that the required hours of continuing education have been obtained. The board shall randomly select renewal applications for audit to verify compliance. The board may audit continuing education records at any time. The licensee shall maintain continuing education records for one year following the renewal cycle in which they were earned. Any polysomnographic technologist who fails to respond to a continuing education audit shall be considered in violation of Paragraph (23) of Subsection D of Section 61-6-15 of the Medical Practice Act, failure to provide the board with information requested by the board. Potential sanctions include fines, letters of reprimand, license suspension or revocation.

[16.10.20.12 NMAC - N, 1/1/10]

#### **16.10.20.13 REINSTATEMENT:**

A licensee with an expired license may apply for reinstatement.

**A.** Requirements for reinstatement of an expired license *within* one (1) year of the renewal date are as follows:

(1) completion of a reinstatement application;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the reinstatement fee as established in 16.10.9 NMAC; and

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours completed within the previous two years; continuing education contact hours acceptable to BRPT for recertification are acceptable for license reinstatement.

**B.** Requirements for reinstatement of an expired license *after* one (1) year of the renewal date are as follows:

(1) completion of a reinstatement application;

(2) receipt of the renewal fee as established in 16.10.9 NMAC;

(3) receipt of the reinstatement fee as established in 16.10.9 NMAC;

(4) proof of twenty (20) BRPT or AAST approved continuing education contact hours as required for license renewal;

(5) proof of ten (10) BRPT or AAST approved continuing education contact hours for each year the license has been expired, with a maximum of fifty (50) hours required regardless of the number of years expired;

(6) proof of current BRPT certification; and

(7) any other proof of competency as may be requested by the board or the board's designee; additionally, the board may require the former licensee to reapply as a new applicant.

[16.10.20.13 NMAC - N, 1/1/10]

#### **16.10.20.14 RETIRED STATUS:**

A licensee who wishes to retire from the practice of polysomnography shall notify the board, in writing, of the retirement effective date. To reenter the practice of polysomnography, the retiree shall meet the requirements as established in Subsection G of 16.10.20.12 NMAC of this part and any other proof of competency as may be requested by the board or the board's designee.

[16.10.20.14 NMAC - N, 1/1/10]

#### **16.10.20.15 DISCIPLINARY AND COMPLAINT PROCESS:**

Disciplinary actions and complaints shall be processed as established in 16.10.5 and 16.10.6 NMAC.

[16.10.20.15 NMAC - N, 1/1/10]

#### **16.10.20.16 USE OF ORAL APPLIANCES:**

A licensed dentist shall make or direct the making and use of any oral appliance used in the practice of polysomnography. A licensed dentist shall evaluate the structures of a patient's oral and maxillofacial region for purposes of fitting the appliance.

[16.10.20.16 NMAC - N, 1/1/10]

#### **16.10.20.17 LOCATIONS FOR THE PRACTICE OF POLYSOMNOGRAPHY:**

**A.** The practice of polysomnography shall only take place in the following locations:

(1) a hospital;

(2) a stand-alone sleep laboratory;

(3) a sleep center; or

(4) a patient's home.

**B.** Scoring of data and the education of patients may take place in settings other than in a hospital, sleep laboratory, sleep center or patient's home.

[16.10.20.17 NMAC - N, 1/1/10]

#### **16.10.20.18 GENERAL PROVISIONS:**

**A. Address changes.** Any licensee whose address changes shall notify the board of the address change within thirty (30) calendar days of the change. Address changes shall be provided in writing, by facsimile, letter, or electronic mail. Telephone notification shall be followed with written notification.

**B. Display of license.** Licensees shall display the license in the office or place in which the licensee practices. The license shall be displayed in a location clearly visible to patients. At secondary places of employment, documentation of the license shall be verified by photocopy with a note attached indicating where the original license is posted.

**C. Identification badge**

required.

(1) Polysomnographic technicians shall wear a badge that appropriately identifies the person as a polysomnographic technician.

(2) Polysomnographic trainees shall wear a badge that appropriately identifies the person as a polysomnographic trainee.

(3) Polysomnographic students shall wear a badge that appropriately identifies the person as a polysomnographic student.

(4) Other clinicians shall wear a badge that appropriately identifies the person and their clinical capacity.

**D. Inspection of a business premise.** Random inspection of a business premise may be conducted in order to verify compliance with the Polysomnography Practice Act.

[16.10.20.18 NMAC - N, 1/1/10]

**HISTORY of 16.10.20 NMAC:**  
[RESERVED]

**NEW MEXICO MEDICAL BOARD**

This is an amendment to 16.10.9 NMAC, Sections 3 and 12, effective January 1, 2010.

**16.10.9.3 STATUTORY**

**AUTHORITY:** [~~These rules are~~] This part is promulgated pursuant to and in accordance with the Medical Practice Act, sections 61-6-1 through 61-6-35 NMSA 1978.

[16.10.9.3 NMAC - Rp 16 NMAC 10.9.3, 7/15/01; A, 1/1/10]

**16.10.9.12 POLYSOMNOGRAPHY [TECHNICIAN] TECHNOLOGIST FEES:**

A. Application fee of \$150; includes temporary permit while certification is pending.

B. Biennial renewal fee of \$150.

C. Reinstatement fee of \$100.

D. Temporary permit renewal fee of \$50.

E. Late fee of \$50 for failure to renew license or provide required documentation by March 1 of the renewal year.

[16.10.9.12 NMAC - Rn, 16.10.9.11 NMAC, 1/10/07; A, 9/27/07; A, 1/2/08; 16.10.9.12 NMAC - N, 1/1/09; A, 1/1/10]

**NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

This is an amendment to 2.80.100 NMAC, Section 7, effective December 15, 2009.

2.80.100.7 DEFINITIONS: As used in the Public Employees Retirement Act:

A. "Accumulated member contributions" means amounts deducted from the salary of a member and credited to the member's individual account, together with interest if any, credited to that account; it also includes repaid withdrawn contributions not including interest paid thereon, or amounts paid to purchase service credit as allowed under the PERA Act.

B. "Active duty" for purposes of acquiring service credit under NMSA 1978, Section 10-11-7, as amended, for periods of active duty with uniformed service of the United States, means full-time duty in the active uniformed service of the United States, including full-time training duty, annual training duty, and attendance while in the active military service, at a school designated as a service school by law or by the secretary of the military department concerned. "Active duty" does not include full-time national guard duty, which is training or other duty performed by a member of the air or army national guard of a state or territory, for which the member is entitled to pay from the United States or for which the member has waived pay from the United States. "Active duty" includes duty in the full-time military service reserve components activated pursuant to a federal call to duty, deployment for a peacekeeping mission or other declared national emergency.

C. "Adult correctional officer member" means a person who is an adult correctional officer or an adult correctional officer specialist employed by the corrections department or its successor agency.

D. "Another retirement program" means retirement plans established by the Judicial Retirement Act, Magistrate Retirement Act, and the Educational Retirement Act.

E. "Elected official" means a person elected to a public office by registered voters, who is paid a salary; "elected official" includes a person who is appointed to fill an unexpired term of an elected public office, who is paid a salary.

F. "Filed" means that PERA has received the complete document as evidenced by a writing on the document indicating the date of receipt by PERA.

G. "Fire member" means any member who is employed as a firefighter

by an affiliated public employer, is paid a salary and has taken the oath prescribed for firefighters. The term shall not include volunteer firefighters or any civilian employees of a fire department.

H. "Hazardous duty member" means a juvenile [~~or adult~~] correctional officer employed by the children, youth and families department or its successor agency, but does not include any member who is a "police member" or a "fire member". A hazardous duty member shall, however, be considered a state policeman for federal Social Security Act purposes.

I. "Leave office" means an elected official's successor has been duly elected or appointed and qualified for office, or upon the date of death of an elected official.

J. "Legal representative" means "personal representative" as defined in the Probate Code of New Mexico which includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same functions under the law governing their status, or an attorney or a person acting pursuant to a power of attorney for a member, retired member or beneficiary.

K. "Municipal detention officer" means a member who is employed by an affiliated public employer other than the state who has inmate custodial responsibilities at a facility used for the confinement of persons charged or convicted of a violation of a law or ordinance. "Municipal detention officer" includes both juvenile and adult municipal detention officers.

L. "Permissive service credit" means service credit recognized by the retirement system for purposes of calculating a member's retirement benefit, which is available only by making a voluntary additional contribution which does not exceed the amount necessary to fund the benefit attributable to such service credit. [~~A vested member may purchase a total of five (5) years of permissive service credit as permitted by the Internal Revenue Code Section 415(n)(3)(B) limitations on nonqualified service credit. "Permissive service credit" includes service eligible for purchase under NMSA 1978, Sections 10-11-7, as amended.]~~

M. "Police member" means any member who is employed as a police officer by an affiliated public employer, who is paid a salary, and who has taken the oath prescribed for police officers. The term shall not include volunteers, hazardous duty members, or employees who do not perform primarily police functions including, but not limited to jailers, cooks, matrons, radio operators, meter checkers, pound employees, crossing guards, police



judges, park conservation officers, and game wardens. A member who is employed by an affiliated public employer as a police officer and as a non-police officer employee shall be regarded as a police member if more than fifty percent of the member's total salary is paid as a police officer.

N. "Private retirement program" for the purpose of exclusion from membership under NMSA 1978, Section 10-11-3(B)(5) means a retirement program of the affiliated public employer which meets the internal revenue service minimum standards regarding benefits as outlined in 26 C.F.R. Section 31.3121(b) (7)F of the Employment Tax Regulations and IRS Rev. Proc. 91-40.

O. "Reenlistment" as used in NMSA 1978, Section 10-11-6(A)(3), means enlistment or voluntary entry into one of the armed services as either enlisted personnel or as a commissioned officer.

P. "Retired member" means a person who is being paid a normal, deferred or disability pension on account of that person's membership in the association. "Retired member" shall not include any persons receiving a pre-retirement survivor pension, post-retirement survivor pension, or reciprocity retirement pension where the payer system is not PERA, or any other person unless specifically included by definition as a "retired member".

Q. "Salary" means the base salary or wages paid a member, including longevity pay, for personal services rendered to an affiliated public employer. "Salary" includes a member's fixed, periodical compensation from full or part time employment; shift differentials; and wages paid while absent from work on account of vacation, holiday, injury or illness, which means payment made by continuing the member on the regular payroll. "Salary" includes incentive pay that is not temporary and becomes part of member's base salary. "Salary" also includes temporary promotions, temporary salary increases, but no other temporary differentials. "Salary" shall not include overtime pay, allowances for housing, clothing, equipment or travel, payments for unused sick leave, unless the unused sick leave payment is made through continuation of the member on the regular payroll for the period represented by that payment. "Salary" also does not include lump sum payments which are not part of the member's fixed periodical compensation, such as lump sum annual and sick leave or occasional payments to elected officials for attending meetings, allowances for any purpose, employer contributions to a private retirement program, or other fringe benefits, even if they are paid to or for a member on a regular basis, and any other form of remuneration not specifically designated by law as included in salary for Public

Employees Retirement Act purposes.

R. "State legislator member" means a person who is currently serving or who has served as a state legislator or lieutenant governor and who has elected to participate in a state legislator member coverage plan. A former legislator or former lieutenant governor may be a "state legislator member" whether or not currently receiving a pension under a state legislator member coverage plan.

S. "State system" means a retirement program provided for in the Public Employees Retirement Act, Magistrate Retirement Act, or Judicial Retirement Act.

T. "Termiate employment" means that a member has a complete break in service and an absolute cessation of employment with all affiliated public employers, including employment as an elected official, as evidenced by a personnel action form or other equivalent document, and the member is not reemployed by an affiliated public employer for 30 days; or upon the date of death of a member.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.100.7 NMAC - Rn & A, 2 NMAC 80.100.7, 12-28-00; A, 12-28-01; A, 9-30-03; A, 6-30-05; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.500 NMAC, Sections 8 and 9, effective December 15, 2009.

### 2.80.500.8 REMITTANCE OF CONTRIBUTIONS

A. In accordance with the Public Employees Retirement Act each state agency or affiliated public employer shall be responsible for deducting the applicable contribution from the salary or wages paid to each member for each payroll period.

B. The employer shall transmit to PERA the member and employer contributions for every member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall clearly set forth the amount of employer and member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in subsection H below, interest will be assessed on any remittance of employee and employer contributions not made by the due date of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st. Any interest paid on unremitted contributions shall not be

posted to the member's account or refunded to the member or the employer.

D. Except as provided in subsection H below, a penalty of fifty dollars (\$50) per day shall be assessed for any employee and employer contribution transmittal report that is untimely. For purposes of this subsection, "untimely" is defined as fifteen (15) days after the end of the month in which the transmittal report was due.

E. In the event the employer fails to make the necessary deductions, the employer shall be responsible to remit to PERA the total amount due for both the member and employer contributions plus interest as provided in subsection C above.

F. Pick-up of member contributions

(1) If an employer has adopted a resolution pursuant to NMSA 1978, Section 10-11-5 which obligates the employer to pay up to 75% of the members' contributions, the resolution shall become effective on the first day of the first full pay period of the month following filing of the resolution with the retirement board. PERA may refuse for filing a resolution containing conditions or contingencies, or not prepared in compliance with requirements for such resolutions approved by the PERA board. "First full pay period" for purposes of adopting a new coverage plan shall mean the first pay period that ends within the month in which the new coverage plan becomes applicable to a member.

(2) Under the Internal Revenue Code Section 414(h), an employer can pick up 100% of member contributions, but only 75% of the contributions are additional salary.

(3) Member contributions picked-up by the employer under NMSA 1978, Section 10-11-125 are not considered compensation for purposes of Internal Revenue Code Section 415(c).

G. Current employer contributions may not be made by members except as authorized by law.

H. If an employer, for good cause, is unable to timely transmit employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four (24) hours prior to the due date, and may request waiver of the interest [and/or] or penalty that would otherwise be assessed. The executive director may waive interest [and/or] or penalty for up to thirty-one (31) calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

I. Beginning January 1, 2009, to the extent required by Internal Revenue Code Sections 3401(h) and 414(u) (2), an individual receiving differential wage payments, while the individual is performing qualified military service as defined in

Chapter 43 of Title 38, United States Code, from an affiliated public employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. However, contributions attributable to such differential wage payments shall not be made unless and until the member returns to active employment and makes up the missed contributions. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

[10-15-97; 11-15-97; 12-15-99; 2.80.500.8 NMAC - Rn & A, 2 NMAC 80.500.8, 12-28-01; A, 12-15-09]

#### 2.80.500.9 REMITTANCE OF CONTRIBUTIONS FOR RE-EMPLOYED RETIRED MEMBERS

A. Each affiliated public employer shall be responsible for deducting applicable contributions from the salary or wages paid to each re-employed retired member for each payroll period. The affiliated public employer shall make employer contributions in the amount specified in the Public Employees Retirement Act, or in an amount adjusted for the full actuarial cost as determined annually by the association, until the subsequent employment is terminated. Retired member contributions shall be separately tracked, but shall not be posted to the retired member's account or refunded to the retired member or the employer upon termination of employment.

B. The employer shall transmit to PERA applicable employee and employer contributions for every retired member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall clearly set forth the amount of employer and retired member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in subsection F below, interest will be assessed on any remittance of retired member and employer contributions not made by the due day of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1<sup>st</sup>. Any interest paid on unremitted contributions shall not be posted to the member's account or refunded to the member or the employer.

D. Except as provided in subsection F below, a penalty of fifty dollars (\$50) per day shall be assessed for any employee and employer contribution transmittal report that is untimely. For purposes of this subsection, "untimely" is defined as fifteen (15) days after the end of the month in which the transmittal report was due.

E. In the event the employer fails to make the necessary deductions, the employer shall be responsible to remit to PERA the total amount due for both the retired member and employer contributions plus interest as provided in subsection C above.

F. If an employer, for good cause, is unable to timely transmit retired member employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four (24) hours prior to the due date, and may request waiver of the interest [and/or] or penalty that would otherwise be assessed. The executive director may waive interest [and/or] or penalty for up to thirty-one (31) calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

G. Notwithstanding the provisions of this section, no retired member employee or employer contributions shall be remitted in the case of the following re-employed retired members:

(1) a retired member who is appointed a chief of police of an affiliated public employer, other than the employer from which the member retired, or is appointed undersheriff, and who files an irrevocable exemption from membership within thirty days of appointment;

(2) a retired member employed by the legislature for legislative session work who files an irrevocable exemption from membership within thirty days of employment;

(3) a retired member elected to serve a term as an elected official on or after July 1, 2009 who files an irrevocable exemption from membership with the association within thirty days of taking office.

[2.80.500.9 NMAC - N, 9-30-03; A, 8-31-04; A, 12-15-09]

### NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.600 NMAC, Sections 20 and 30, effective December 15, 2009.

#### 2.80.600.20 SERVICE CREDIT

A. In order to claim service credit for service rendered prior to August 1, 1947 or for a period prior to the employer becoming an affiliated public employer, a member shall:

(1) file a claim for the period of employment showing specific beginning and ending dates of employment;

(2) provide certification of employment to the association for the period

or periods claimed as prior service;

(3) file an affidavit, to be certified and signed by two other persons who know of the employment, together with any additional documentary evidence available which may be required by the board if no records are available for the period of prior service claimed;

(4) provide payroll records, personnel action forms showing hire date(s), term of employment, full-time or part-time, job classification, salary amounts and dates of personnel actions, job description, if any;

(5) contribution history from the federal social security administration for the claimed period of employment, if applicable.

B. Forfeited service credit may be reinstated by repayment of withdrawn member contributions, together with interest from the date of withdrawal to the date of repayment at the rate or rates set by the board, under the following conditions:

(1) Service credit may be reinstated in one-year increments, beginning with the most recently forfeited service credit. A one-year increment is 12 consecutive but not necessarily continuous months of service credit. For the purpose of eligibility to retire only, less than one year of service credit may be purchased. After reinstatement of all 12-month "years" as defined herein, any remaining service credit that totals less than 12 months may be reinstated by payment in one lump sum as provided herein.

(2) All forfeited service credit may also be reinstated by repayment of the total amount of all member contributions withdrawn from each period of service together with interest from the date of withdrawal to the date of repayment at the rate set by the board.

(3) A former member who is employed by an employer covered under the Educational Retirement Act must provide evidence of current contributing membership in the educational retirement association; such evidence shall be either certification by the employer, in the form prescribed by the association, or certification by the educational retirement association (ERA).

(4) Payment for reinstated service credit must be received by the association prior to the member's effective date of retirement.

(5) Interest received to reinstate forfeited service credit under this subsection shall not be refunded to the member. The purchase cost received to reinstate forfeited service credit which is determined to be unnecessary to provide the maximum pension applicable to the member and which is purchased in reliance on information provided by PERA shall be refunded to the member.

C. "Actual credited service" for purposes of NMSA 1978,

Section 10-11-27 and Section 10-11-115.2 means only that service credit earned during periods of employment with the New Mexico state police in the positions of patrolman, sergeant, lieutenant, captain or aircraft division pilot, with the corrections department or its successor agency after July 1, 2004 in the positions of adult correctional officer or adult correctional officer specialist, or as a municipal detention officer member. No permissive service credit which is purchased by state police members, adult correctional officer members, or municipal detention officer members shall be increased by 20% as provided in NMSA 1978, Section 10-11-27 or Section 10-11-115.2. With respect to service credit acquired for periods of military service, only that service credit which is acquired for intervening military service during a period of employment as a state police member, an adult correctional officer member after July 1, 2004 or as a municipal detention officer member shall be increased by 20%.

D. Military service credit is free in some cases and may be purchased in other cases as provided by statute.

(1) Where a member wishes to claim service credit pursuant to NMSA 1978, Section 10-11-6 the association shall, upon the member's request, furnish that member a form of affidavit for completion and certification of such service. The affidavit shall be accompanied by documentary evidence of the member's entry and discharge from service in a uniformed service of the United States.

(2) The affiliated public employer by whom the member was employed immediately prior to entering a uniformed service of the United States shall certify in writing the date the member stopped rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation to support the date the member stopped rendering personal service.

(3) The affiliated public employer by whom the member was employed immediately after discharge from a uniformed service of the United States shall certify in writing to the association the date the member started rendering personal service to the employer. This requirement may be waived if PERA records contain sufficient documentation of the date of return to employment. Members who are not reemployed by an affiliated public employer within ninety days following termination of the period of intervening service but who nevertheless claim reemployment rights under federal law shall provide to the association written certification from the affiliated public employer that the member is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act of 1994, as

amended.

(4) The affidavit, employer certifications, and documentary evidence of uniformed service shall be presented to the association for approval.

(5) Service credit for periods of intervening service in the uniformed services following voluntary enlistment, reenlistment or appointment shall be awarded only upon compliance by the member and the affiliated public employer with the provisions of NMSA 1978, Section 10-11-6, as amended, and the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, including but not limited to the payment to the association of contributions required from the member and the employer.

(6) PERA members who are also members of the military service reserve components who are activated pursuant to a federal call to duty, deployment or peacekeeping mission or other declared national emergency may receive free service credit subject to the conditions of this section. The member must provide a form DD 214 or other documentation as required by PERA to support an award of free service credit.

E. A member who claims service credit for one or more periods of employment for which an employer failed to remit the required contributions to the association may receive service credit only after receipt by the association of payment by the employer of the delinquent contributions plus applicable interest and penalties, if any, along with the following documentation:

(1) payroll records for the claimed periods of employment, indicating the salary for the claimed employment dates;

(2) personnel action forms showing hire date(s), term of employment, job classification, salary amounts and dates of personnel actions;

(3) job description;

(4) contribution history from the federal social security administration for the claimed period of employment, if applicable;

(5) explanation from the employer as to why contributions were not withheld or paid to the association;

(6) any other information requested by the association; if original records have been lost or destroyed, affidavits in a form acceptable to the association may be submitted for the purpose of substantiating the employment; the association may accept such affidavits in lieu of original records if it deems them sufficient to establish the required employment information.

F. At any time prior to retirement, a member may purchase [permissive] service credit at its full actuarial present value as determined by the association, under the following conditions:

(1) Service credit may be purchased in one-month increments.

(2) The amount of service credit purchased under this Subsection F shall not exceed one year.

(3) Service credit purchased cannot be used for the purpose of calculating final average salary or eligibility for pension factor of a coverage plan for pension calculation and retirement purposes.

(4) For members employed in part-time positions, for purposes of calculating the full actuarial present value purchase cost of service credit under this Subsection F, the member's hourly salary shall be annualized as if the member was employed full-time.

(5) For members who are not currently contributing employees of an affiliated public employer, the full actuarial present value purchase cost of service credit under this Subsection F shall be calculated using the member's last reported hourly salary under the member's last applicable coverage plan.

[5] (6) Payment for service credit under this subsection must be received within sixty (60) days of the date the member is informed in writing of the purchase price of the service credit.

[6] (7) The purchase cost received to purchase service credit under this subsection shall not be refunded to the member.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.600.20 NMAC - Rn & A, 2 NMAC 80.600.20, 8-15-01; A, 12-28-01; A, 9-30-03; A, 8-31-04; A, 6-30-05; A, 12-15-09]

#### 2.80.600.30 PAYMENT FOR PURCHASE OF SERVICE CREDIT

A. No installment payment contracts may be used for the purchase of any service credit.

B. The rate or rates of interest for the purchase or reinstatement of service credit shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st.

C. A vested member may purchase a total of five (5) years of permissive service credit as allowed under the Public Employees Retirement Act in one lump-sum or as provided by statute [~~in one-year increments~~].

D. A member may rollover funds from an Internal Revenue Code Section 457, 403(b), 401(k), IRA or another 401(a) qualified account to pay for forfeited or permissive service credit allowed by the Public Employees Retirement Act. The rollover of funds must be made by a trustee-to-trustee transfer and the account from which the funds come must be in the name of the member requesting the transfer.

[10-15-97; 2.80.600.30 NMAC - Rn, 2 NMAC 80.600.30, 8-15-01; A, 12-28-01; A, 9-30-03; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.700 NMAC, Section 10, effective December 15, 2009.

### 2.80.700.10 PROCEDURE FOR RETIREMENT

#### A.

(1) The member shall request an application for retirement from PERA. To insure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement. Any changes to an application for retirement that has already been submitted to PERA, including, but not limited to, retirement date, designation of survivor beneficiary or form of payment option, must be in writing and filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable under form of payment A within a reasonable time of receipt of the properly completed application and required documents. If the member also desires an estimate of retirement pension payable under forms of payment B, C and D, the member shall request such an estimate in writing.

(3) When the application is filed, PERA shall furnish the member's last affiliated public employer with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the affiliated public employer.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the form of payment and beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form. If a married member does not provide spousal consent, the member shall execute an affidavit that:

(a) states why the member has been unable to obtain spousal consent;

(b) provides the most recent contact information for the member's spouse; and

(c) acknowledges that the member understands that because he or she is married and has not provided spousal consent, the PERA Act provides that the member will be retired under form of payment C with his or her spouse named as survivor beneficiary.

(6) The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service and age; and c) the member's termination of non-exempt employment with all affiliated public employers.

(8) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries. Acceptable documents are a birth certificate, a baptismal certificate ~~[or]~~, a religious record of birth established before age 5 years, a current passport, a current New Mexico driver's license or a current New Mexico motor vehicle division issued identification card, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

(a) copy of a life or automobile insurance policy;

(b) ~~[certified copy of voter registration issued over ten years prior]~~ current voter registration or voter identification record;

(c) tribal census record;

(d) childhood immunization record made prior to age eighteen (18) years;

(e) military record, including a valid United States active-duty, retiree or reservist military identification card;

(f) birth certificate of child showing age of parent;

(g) physician's or midwife's record of birth;

~~[(h) passport;]~~

~~[(i) (h) immigration record;~~

~~[(j) (i) naturalization record;~~

~~[(k) (j) social security records.~~

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated beneficiary to be identified as a spouse.

(3) Complete endorsed copies of all court documents necessary to ascertain the current marital status of the member

and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits.

(4) Any member with an effective retirement date after December 31, 1998 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution, or a waiver in lieu thereof. Such authorization or waiver shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. If a member has three or more years of service credit under each of two or more coverage plans, the pension factor and pension maximum provided under the coverage plan which produces the highest pension shall apply. The coverage plan from which the member was last employed shall govern the age and service requirements for retirement. Permissive service credit purchased pursuant to NMSA 1978, Section 10-11-7(H) cannot be used to determine final average salary, pension factor or pension maximum for pension calculation purposes.

E. Upon meeting the membership requirements in 2.80.400 NMAC, a member shall combine concurrent salaries received from two affiliated public employers. In the case of concurrent full-time and part-time employment or full-time and elected official service, service credit shall be earned only for the full-time employment. In the case of two part-time employments, service credit shall be earned only for the employment which has the lowest pension factor and pension maximum. In the case of concurrent employment, termination from all affiliated public employers is required before retirement. No combining of concurrent salary may occur for employees who are on extended annual or sick leave until retirement.

F. A member is vested in his or her accrued benefits when the member reaches normal retirement age of the plan in which he or she is a member at the time

of retirement or was last a member. If there is a termination of the PERA retirement system, or if employer contributions to the PERA fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

G. A member who retires must remain unemployed by an employer covered by any state system for a period of at least 90 days before returning to public employment. If the retired member is re-employed by an employer covered by any state system within 90 days of retirement, the member shall be immediately removed from retirement and any pension amounts paid since the member's retirement shall be considered an overpayment that must be reimbursed to PERA by the member. A retired member who performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA is not subject to the provisions of this section. A retired member who works for an employer covered by the Judicial Retirement Act or the Magistrate Retirement Act and who is exempt or excluded from membership in that system under the applicable retirement act is not subject to the provisions of this section. A retired member who works for an employer affiliated with the educational retirement association is not subject to the provisions of this section.

[10-15-97; 11-15-97; 1-15-99; 12-15-99; 2.80.700.10 NMAC - Rn & A, 2 NMAC 80.700.10, 12-28-00; A, 8-15-01; A, 12-28-01; A, 9-30-03; A, 8-31-04; A, 6-30-05; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.900 NMAC, Section 8, effective December 15, 2009.

2.80.900.8 PRE-RETIREMENT SURVIVOR PENSIONS: The procedure for payment of a pre-retirement survivor pension is:

A. Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.

B. The completed application shall be returned to PERA with the following documents:

(1) A certified copy of the death certificate or other proof of death acceptable in a court of law.

(2) Copy of marriage license or other proof of marital status acceptable in a court of law if the application is for a surviving spouse.

(3) Affidavit of surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased member.

(4) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

(5) Documents required under the Probate Code for payments to a minor if the application is on behalf of eligible surviving children.

(6) Affidavit that the applicant is unmarried if the applicant is a child of the deceased member.

(7) Copies of social security cards for all prospective payees.

(8) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required.

C. When the application and accompanying documentation as required in Subsection B of 2.80.900.8 NMAC above are filed, PERA will determine whether a pension is payable. The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the member's death. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

D. Duty death.

(1) If the application is for a survivor pension resulting from duty death, the application shall be accompanied by documentation supporting the claim, in addition to the documentation required in Subsection B of 2.80.900.8 NMAC above.

Documentation may include but is not limited to the following:

(a) a certified copy of the death certificate or other proof of death acceptable in a court of law;

(b) employer's report of accident;

(c) determination of duty death by another agency such as workers compensation administration or social security administration although such a determination does not necessarily prove the death was a duty death for PERA purposes;

(d) autopsy report;

(e) attending physician's narrative report containing the conclusion of duty death and stating the basis therefor;

(f) any other information requested by the association.

(2) The burden of proof of duty death is on the applicant.

(a) "Solely and exclusively" means the member's work is so substantial a factor of the death that the death would not have occurred at the time without it.

(b) "Course of the member's performance of duty" means place or activity for which the employer's business required the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the "special errand" rule in which case such time will be considered in the course of employment.

(3) The board hereby authorizes the director of member services to determine whether the death was the natural and proximate result of causes arising solely and exclusively out of and in the course of the member's performance of duty with an affiliated public employer. Such determination shall be presented to the board for ratification at the next regular meeting of the board. The board may remove the matter from the consent calendar and substitute its own determination for that of the director of member services, or it may assign the matter to an administrative hearing officer for determination.

E. Military death.

Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

[10-15-97; 11-15-97; 2.80.900.8 NMAC - Rn, 2 NMAC 80.900.8, 12-28-01; A, 9-30-03; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1000 NMAC, Section 70, effective December 15, 2009.

### 2.80.1000.70 EARNINGS FROM EMPLOYMENT

A. Except for trial employment, a disability retired member who desires to return to employment by an employer covered by any state system shall comply with the applicable rule regarding post-retirement employment, Subsection G of 2.80.700.10 NMAC for PERA retirees, 2.84.1100.20 NMAC for magistrate retirees or 2.83.1100.20 NMAC for judicial retirees.

~~[A-] B.~~ If the amount earned from any employment, except for trial employment, is \$15,000 or more, disability benefits shall be suspended immediately and any amounts paid after that limit is reached must be reimbursed by the retiree to PERA.

~~[B-] C.~~ PERA shall require all disability retired members to provide a statement of earnings from any employment during the preceding calendar year. Such statement of earnings shall include the internal revenue service tax return or other proof of earnings, acceptable to PERA, if an IRS tax return does not exist.

[10-15-99; 1-15-99; 2.80.1000.70 NMAC - Rn & A, 2 NMAC 80.1000.70, 12-28-00; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.1100 NMAC, Section 20, effective December 15, 2009.

2.80.1100.20 POST-RETIREMENT EMPLOYMENT: When a retired member is subsequently employed by an affiliated public employer, the retired member shall notify PERA immediately on the form prescribed by the association of the hire date, position and salary of the subsequently employed retired member.

A. If a retired member returns to work within ninety (90) days of the retired member's effective date of retirement, the retired member will be suspended from retirement and will be required to repay PERA any pension amounts erroneously paid, plus interest at the rate set by the board for collecting overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated, or

the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

B. A retired member re-employed by an affiliated public employer shall not be eligible to accrue service credit or eligible to acquire or purchase service credit for the retired member's period of post-retirement public affiliated employment.

~~[C. Effective the first day of the month following the month in which a retired member's earnings total twenty-five thousand dollars (\$25,000) during a calendar year, retired member employee contributions shall be remitted as specified in the Public Employees Retirement Act, provided that calculations of a retired member's earnings for calendar year 2004 shall be based upon salary or wages received beginning with the first full pay period commencing after March 4, 2004. Once a retired member's earnings total twenty-five thousand dollars (\$25,000) during a calendar year, employee contributions shall continue until the retired member terminates employment with the affiliated public employer for which the retired member was employed at the time the earnings limit was exceeded. Effective January 1, 2007, no retired member employee contributions shall be remitted. Retired member employee contributions are nonrefundable.]~~

[10-15-97; 11-15-97; 2.80.1100.20 NMAC - Rn & A, 2 NMAC 80.1100.20, 12-28-00; A, 12-28-01; A, 9-30-03; A, 8-31-04; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.80.2100 NMAC, Sections 7 and 8, effective December 15, 2009.

### 2.80.2100.7 DEFINITIONS: [Reserved]

A. "Another qualified plan," for the purposes of the direct rollover provisions in Section 10-11-124 (C) NMSA 1978, means an eligible retirement plan, including:

(1) an individual retirement account described in Internal Revenue Code Section 408(a);

(2) an individual retirement annuity described in Internal Revenue Code Section 408(b);

(3) a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee's eligible rollover distribution,

(4) an annuity plan described in Internal Revenue Code Section 403(a);

(5) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);

(6) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan; or

(7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

B. "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

C. "Distributee" means:

(1) an employee or a former employee;

(2) an employee's or former employee's surviving spouse;

(3) an employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p);

(4) effective January 1, 2007, a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E); or

(5) effective January 1, 2002, a surviving spouse, as defined by federal law, or a spouse or former spouse who is an alternate payee under a domestic relations order dividing PERA benefits, as defined in Internal Revenue Code Section 414(p).

D. "Eligible rollover distribution" means:

(1) any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or the life expectancy, of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; or

(4) any other distribution that is reasonably expected to total less than \$200 during the year.

[2.80.2100.7 NMAC - Rn, 2 NMAC 80.2100.7, 12-28-00; A, 12-15-09]

### 2.80.2100.8 G E N E R A L PROVISIONS

A. No partial refund of a member's contributions is permitted.

B. A member shall not receive a refund of contributions if the member terminates employment with one affiliated public employer and is thereafter employed by the same or another affiliated public employer within thirty (30) days of termination. The application for a refund of member contributions, if desired, must be filed prior to any subsequent employment. If the application for refund is not filed within this period of time, no refund shall be permitted until termination of all affiliated public employment.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) If the member has been divorced, the member shall provide PERA with complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered under NMSA 1978, Section 10-11-136, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code, as specified under Subsection L of 2.80.2100.8 NMAC.

(4) The member's last affiliated public employer must certify to the termination of employment of the member before a refund may be made.

(5) No refund shall be permitted unless a membership application is on file with PERA.

(6) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

D. Interest on member contributions shall be posted annually effective June 30 of each year at the rate of 5.25%.

E. A refund of member contributions includes interest on those contributions as provided in this rule. Effective July 1, 2004, a refund of member contributions includes interest on those contributions calculated through the last working day of the month prior to the date of refund.

F. A refund of member contributions shall not include the purchase cost received to buy permissive service credit pursuant to Section 10-11-7(H) NMSA 1978.

G. If a court order issued pursuant to Section 10-11-136 NMSA 1978 or Section 10-11-136.1 NMSA 1978 restraining, withholding, or dividing a refund of member contributions is received by PERA after a request for refund of contributions has been received but has not been paid, PERA will comply with the order.

H. Pursuant to Section 10-11-135, NMSA 1978, PERA retirement accounts are not subject to legal process under other state laws, except for division of a community interest in such accounts as provided in Section 10-11-136 NMSA 1978 or in enforcement of child support obligations as provided in Section 10-11-136.1 NMSA 1978. In the following instances, however, federal laws pre-empt the provisions of the Public Employees Retirement Act and PERA will honor the federal action if the account is in pay status, i.e. if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the federal action is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions.

(1) IRS notices of levy for unpaid taxes ~~[will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of contributions, or if a pension is payable. If the levy is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions].~~

(2) Orders by a U.S. bankruptcy court ~~[will be honored if the account is in pay status, i.e., if the member has terminated employment and requested a refund of~~

~~contributions, or if a pension is payable. If the order is applied against a refund of member contributions, non-tax deferred contributions shall be paid before tax-deferred contributions].~~

(3) Orders of garnishment for fines or restitution by a federal court in a criminal case.

I. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by PERA. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

J. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any member would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

K. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

L. ~~[For purposes of the direct rollover provisions in NMSA 1978, Section 10-11-124(C), another qualified plan shall mean an IRA, an Internal Revenue Code Section 401(a) plan, an Internal Revenue Code Section 401(k) plan, an annuity contract under Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457 that is maintained by a state or political subdivision and which agrees to separately account for amounts transferred into such a plan from the PERA retirement plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under an order dividing PERA benefits. After tax-employee contributions shall be paid directly to the member.] For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.~~

(1) A non-spouse beneficiary may only rollover the distribution to an individual

retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[10-15-97; 11-15-97; 12-15-99; 2.80.2100.8 NMAC - Rn & A, 2 NMAC 80.2100.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 6-30-05; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.83.500 NMAC, Sections 7 and 8, effective December 15, 2009.

### 2.83.500.7 DEFINITIONS:

[Reserved]

A. "Another qualified plan," for the purposes of the direct rollover provisions in Section 10-11-124 (C) NMSA 1978, means an eligible retirement plan, including:

(1) an individual retirement account described in Internal Revenue Code Section 408(a);

(2) an individual retirement annuity described in Internal Revenue Code Section 408(b);

(3) a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee's eligible rollover distribution.

(4) an annuity plan described in Internal Revenue Code Section 403(a);

(5) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);

(6) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state or

any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan; or

(7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

B. "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

C. "Distributee" means:

(1) an employee or a former employee;

(2) an employee's or former employee's surviving spouse;

(3) an employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p);

(4) effective January 1, 2007, a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E); or

(5) effective January 1, 2002, a surviving spouse, as defined by federal law, or a spouse or former spouse who is an alternate payee under a domestic relations order dividing PERA benefits, as defined in Internal Revenue Code Section 414(p).

D. "Eligible rollover distribution" means:

(1) any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or the life expectancy, of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; or

(4) any other distribution that is reasonably expected to total less than \$200 during the year.

[2.83.500.7 NMAC - Rn, 2 NMAC 83.500.7, 12-28-00; A, 12-15-09]

### 2.83.500.8 GENERAL PROVISIONS

A. A member who leaves office for reasons other than retirement may request a refund of his or her total accumulated member contributions. Refunds shall include interest as provided in Subsection D of this section.

B. No partial refund of a member's contributions is permitted.

C. Requests for refunds

of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) The member's judicial agency must certify that the member has left office before a refund may be made.

(4) If the member has been divorced, the member shall provide the association with complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's contributions. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered pursuant to NMSA 1978, Section 10-12B-7, as amended, the member's former spouse may request, on a form prescribed by the association that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code, as specified under Subsection H of 2.83.500.8 NMAC.

(5) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

D. Interest on member contributions shall be posted annually effective June 30 at the rate of 5.25%.

E. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by the association. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the



beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

F. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any judge would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

G. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

H. ~~[For purposes of the direct rollover provisions in NMSA 1978, Section 10-12B-6(A), another qualified plan shall mean an IRA, an Internal Revenue Code Section 401(a) plan, an Internal Revenue Code Section 401(k) plan, an annuity contract under Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457 that is maintained by a state or political subdivision and which agrees to separately account for amounts transferred into such a plan from the judicial retirement plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under an Order Dividing Judicial Retirement Benefits. After-tax employee contributions shall be paid directly to the member.] For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.~~

~~(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.~~

~~(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1,~~

2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[10-15-97; 11-15-97; 2.83.500.8 NMAC - Rn & A, 2 NMAC 83.500.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.83.800 NMAC, Section 10, effective December 15, 2009.

2.83.800.10 PROCEDURE: The procedure for payment of a survivor pension is:

A. Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.

B. The completed application shall be returned to PERA along with the following documents:

(1) A certified copy of the death certificate or other proof of death acceptable in a court of law.

(2) If the application is for a surviving spouse: copy of the marriage license or other proof of marital status acceptable in a court of law, and an affidavit of the surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased.

(3) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

(4) Documents required under the Probate Code for payments to a minor if the application is on behalf of minor and dependent children.

(5) Affidavit that the applicant is not married or otherwise emancipated if the applicant is a child of the deceased member.

(6) Copies of social security cards for all prospective payees.

(7) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of

the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements for all marriages during the member's covered employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

C. The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. Upon filing of the application, and accompanying documentation as required in subsection B above, PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the death resulting in the pension. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

D. Military death. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

[10-15-97; 11-15-97; 2.83.800.10 NMAC - Rn, 2 NMAC 83.800.10, 12-28-01; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.83.1100 NMAC, Section 20, effective December 15, 2009.

2.83.1100.20 POST-RETIREMENT EMPLOYMENT

A. A member who retires must remain unemployed by an employer covered by any state system for a period of at least 90 days before returning to public employment. ~~[A retired member who performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA is not subject to the provisions of this section.] This section does not apply to a retired member who:~~

(1) performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA; or

(2) is appointed to serve as a judge pro tempore.

B. When a retired member is subsequently employed by an affiliated public employer, the retired member shall notify PERA immediately of the hire date, position and salary of the subsequently employed retired member.

C. The retired member's pension shall be suspended effective the first of the month following the month in which the subsequent employment begins.

D. If a retired member fails to report earnings from subsequent employment with an affiliated public employer, and consequently continues to receive pension payments after such payments should have been suspended pursuant to the requirements of NMSA 1978, Section 10-12B-17 and rules promulgated thereunder, the retired member will be required to repay to PERA any amounts erroneously received, plus interest at the rate set by the board for overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

[10-15-97; 2.83.1100.20 NMAC - Rn & A, 2 NMAC 83.1100.20, 12-28-00; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.83.1200 NMAC, Section 8, effective December 15, 2009

### 2.83.1200.8 G E N E R A L PROVISIONS

A. In accordance with the Judicial Retirement Act each judicial agency, as employer, shall be responsible for deducting the applicable contribution from the salary or wages paid to each member for each payroll period.

B. The employer shall transmit to PERA the member and employer contributions for every member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall

clearly set forth the amount of employer and member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in [Paragraph] Subsection G below, interest will be assessed on any remittance of employer and employee contributions not made by the due date of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st. Any interest paid on unremitted contributions shall not be posted to the member's account or refunded to the member or the employer.

D. Except as provided in Subsection G below, a penalty of fifty dollars (\$50) per day shall be assessed for any employee and employer contribution transmittal report that is untimely. For purposes of this subsection, "untimely" is defined as fifteen (15) days after the end of the month in which the transmittal report was due.

E. In the event the judicial agency fails to make the necessary deductions, the judicial agency shall be responsible to remit to PERA the total amount due for both the member and employer contributions plus interest as provided in subsection C above.

F. Current employer contributions may not be made by members except as authorized by law.

G. If a judicial agency, for good cause, is unable to timely transmit employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four hours prior to the due date, and may request waiver of the interest [and/or] or penalty that would otherwise be assessed. The executive director may waive interest [and/or] or penalty for up to thirty-one calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

H. Member contributions picked-up by the employer under NMSA 1978, Section 10-12B-10 are not considered compensation for purposes of Internal Revenue Code Section 415(c).

I. Beginning January 1, 2009, to the extent required by Internal Revenue Code Sections 3401(h) and 414(u) (2), an individual receiving differential wage payments, while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code, from an affiliated public employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. However, contributions attributable to such differential wage payments shall not be made unless and until the member returns to active employment and makes up the missed contributions. This provision shall be applied to all similarly situated individuals

in a reasonably equivalent manner.

[10-15-97; 11-15-97; 2.83.1200.8 NMAC - Rn & A, 2 NMAC 83.1200.8, 12-28-00; A, 12-28-01; A, 12-15-09]

## NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.500 NMAC, Sections 7 and 8, effective December 15, 2009.

### 2.84.500.7 D E F I N I T I O N S : [Reserved]

A. "Another qualified plan," for the purposes of the direct rollover provisions in Section 10-11-124 (C) NMSA 1978, means an eligible retirement plan, including:

(1) an individual retirement account described in Internal Revenue Code Section 408(a);

(2) an individual retirement annuity described in Internal Revenue Code Section 408(b);

(3) a qualified trust described in Internal Revenue Code Section 401(a) that accepts the distributee's eligible rollover distribution;

(4) an annuity plan described in Internal Revenue Code Section 403(a);

(5) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);

(6) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state that agrees to separately account for amounts transferred into the plan; or

(7) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.

B. "Direct rollover" means a payment by the retirement system to the eligible retirement plan specified by the distributee.

C. "Distributee" means:

(1) an employee or a former employee;

(2) an employee's or former employee's surviving spouse;

(3) an employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p);

(4) effective January 1, 2007, a non-spouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E); or

(5) effective January 1, 2002, a surviving spouse, as defined by federal

law, or a spouse or former spouse who is an alternate payee under a domestic relations order dividing PERA benefits, as defined in Internal Revenue Code Section 414(p).

D. "Eligible rollover distribution" means:

(1) any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or the life expectancy, of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(2) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

(3) the portion of any distribution that is not includible in gross income; or

(4) any other distribution that is reasonably expected to total less than \$200 during the year.

[2.84.500.7 NMAC - Rn, 2 NMAC 84.500.7, 12-28-00; A, 12-15-09]

#### 2.84.500.8 G E N E R A L PROVISIONS

A. A member who leaves office for reasons other than retirement may request a refund of his or her total accumulated member contributions. Refunds shall include interest as provided in Subsection (D) of this section.

B. No partial refund of a member's contributions is permitted.

C. Requests for refunds of member contributions shall be made on forms provided by the association.

(1) The member or the member's legal representative, or the member's designated refund beneficiary or the beneficiary's legal representative, if the member is deceased, must complete and sign the request for refund.

(2) If the member is deceased, the applicant for refund must provide PERA with a copy of the member's death certificate. If the deceased member has no living beneficiary, then the personal representative of the estate must provide PERA with a copy of the letters of administration or order of appointment of personal representative, signed and filed in court; or must comply with NMSA 1978, Section 45-3-1201.

(3) The member's judicial agency must certify that the member has left office before a refund may be made.

(4) If the member has been divorced, the member shall provide the association with complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-

spouse of the member is entitled to any portion of the member's contributions. Such documentation shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final divorce decree is required but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required. If the member's former spouse is entitled to a portion of a refund of member contributions pursuant to a court order entered pursuant to NMSA 1978, Section 10-12C-7, as amended, the member's former spouse may request, on a form prescribed by the association, that his or her share of a refund of member contributions be transferred directly to another qualified plan as allowed by the Internal Revenue Code as specified under Subsection H of 2.84.500.8 NMAC.

(5) After tax employee contributions that are not includible in gross income may be directly refunded to the member.

D. Interest on member contributions shall be posted annually effective June 30 at the rate of 5.25%.

E. Members may designate only one refund beneficiary. Such designation shall be in writing in the form prescribed by the association. If the refund beneficiary is other than a natural person, the member shall provide documentation as required by the association. The member shall be responsible for updating the beneficiary designation form with current information, including but not limited to the beneficiary's name and address. If a warrant for a refund to the most recent beneficiary on file with the association is returned as undeliverable because of incorrect name or address, the money will remain with the association until it is furnished with the correct information.

F. Forfeitures arising from severance of employment, death, or any other reason, must not be applied to increase the benefits any magistrate would otherwise receive under the plan. PERA shall make all reasonable efforts to refund contributions or to pay pensions as required by the plan.

G. The maximum annual contribution limits contained in Internal Revenue Code Section 415(c), as amended and adjusted, are incorporated herein by reference.

H. ~~[For purposes of the direct rollover provisions in NMSA 1978, Section 10-12C-6(A), another qualified plan shall also mean an IRA, an Internal Revenue Code Section 401(a) plan, an Internal Revenue Code Section 401(k) plan, an annuity contract under Internal Revenue Code Section 403(b) and an eligible plan under Internal Revenue Code Section 457~~

that is maintained by a state or political subdivision and which agrees to separately account for amounts transferred into such a plan from the magistrate retirement plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse or to a spouse or former spouse who is the alternate payee under an Order Dividing Magistrate Retirement Benefits. After-tax employee contributions shall be paid directly to the member.] For distributions made on or after January 1, 1993, notwithstanding any contrary provision or retirement law that would otherwise limit a distributee's election under this rule, a distributee may elect, at the time and in the manner prescribed by the PERA, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(1) A non-spouse beneficiary may only rollover the distribution to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution and the account or annuity will be treated as an inherited individual retirement account or annuity.

(2) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Internal Revenue Code Section 408(a) or (b), or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a), or on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred, and earnings thereon, including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

[10-15-97; 11-15-97; 2.84.500.8 NMAC - Rn & A, 2 NMAC 84.500.8, 12-28-00; A, 12-28-01; A, 9-30-03; A, 12-15-09]

### NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.800 NMAC, Section 8, effective December 15, 2009.

2.84.800.8 PROCEDURE: The procedure for payment of a survivor pension is:

A. Applicants for pre-retirement survivor pensions shall notify

PERA of the death of the member and complete an application for benefits.

B. The completed application shall be returned to PERA along with the following documents:

(1) A certified copy of the death certificate or other proof of death acceptable in a court of law;

(2) If the application is for a surviving spouse: copy of the marriage license or other proof of marital status acceptable in a court of law, and an affidavit of the surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased;

(3) Proof of age of the surviving spouse, surviving minor children or other designated beneficiary. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over ten (10) years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

(4) Documents required under the Probate Code for payments to a minor if the application is on behalf of minor and dependent children.

(5) Affidavit that the applicant is not married or otherwise emancipated if the applicant is a child of the deceased member.

(6) Copies of social security cards for all prospective payees.

(7) If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements of all marriages during the member's covered employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

C. The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. Upon filing of the application, and accompanying documentation as required in subsection B above, PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the death resulting in the pension. The amount of the survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of

the first payment of survivor pension to the applicant.

D. Military death. Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed.

[10-15-97; 11-15-97; 2.84.800.8 NMAC - Rn, 2 NMAC 84.800.8, 12-28-01; A, 12-15-09]

### NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.1100 NMAC, Section 20, effective December 15, 2009.

#### 2.84.1100.20 POST-RETIREMENT EMPLOYMENT

A. A member who retires must remain unemployed by an employer covered by any state system for a period of at least 90 days before returning to public employment. ~~[A retired member who performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA is not subject to the provisions of this section.]~~ This section does not apply to a retired member who:

(1) performs work for an employer covered by any state system as an independent contractor under a contract approved by PERA;

(2) is elected to serve a term as an elected official and filed an irrevocable exemption from membership in any state system with PERA within thirty days of taking office; or

(3) is appointed to serve as a magistrate judge pro tempore.

B. When a retired member is subsequently employed by an affiliated public employer, the retired member shall notify PERA immediately of the hire date, position and salary of the subsequently employed retired member.

C. The retired member's pension shall be suspended effective the first of the month following the month in which the subsequent employment begins.

D. If a retired member fails to report earnings from subsequent employment with an affiliated public employer, and consequently continues to receive pension payments after such payments should have been suspended

pursuant to the requirements of NMSA 1978, Section 10-12C-16 and rules promulgated thereunder, the retired member will be required to repay to PERA any amounts erroneously received, plus interest at the rate set by the board for overpayments. If erroneously paid pension payments have not been repaid when the subsequent employment is terminated and the retired member has applied for reinstatement of the pension, the erroneously paid amount must be repaid in full before the pension may be reinstated or the subsequently employed retired member must make arrangements acceptable to PERA for the erroneously paid amount to be withheld from the reinstated pension until fully repaid.

[10-15-97; 2.84.1100.20 NMAC - Rn & A, 2 NMAC 84.1100.20, 12-28-00; A, 9-30-03; A, 12-15-09]

### NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an amendment to 2.84.1200 NMAC, Section 8, effective December 15, 2009.

#### 2.84.1200.8 G E N E R A L PROVISIONS

A. In accordance with the Magistrate Retirement Act each judicial agency, as employer, shall be responsible for deducting the applicable contribution from the salary or wages paid to each member for each payroll period.

B. The employer shall transmit to PERA the member and employer contributions for every member in its employ for each pay period on or before the fifth working day following the payday applicable to the pay period. The contributions shall be accompanied by a transmittal report in a format designated by PERA, which shall clearly set forth the amount of employer and member contributions, and adjustments for prior pay periods if applicable, transmitted.

C. Except as provided in [Paragraph] Subsection G below, interest will be assessed on any remittance of employer and employee contributions not made by the due date of the remittance. The rate of interest shall be set annually by the board at a July meeting and shall be effective beginning the next succeeding January 1st. Any interest paid on unremitted contributions shall not be posted to the member's account or refunded to the member or the employer.

D. Except as provided in Subsection G below, a penalty of fifty dollars (\$50) per day shall be assessed for any employee and employer contribution transmittal report that is untimely. For purposes of this subsection, "untimely" is defined as fifteen (15) days after the end of the month in which the transmittal report

was due.

E. In the event the judicial agency fails to make the necessary deductions, the judicial agency shall be responsible to remit to PERA the total amount due for both the member and employer contributions plus interest as provided in subsection C above.

F. Current employer contributions may not be made by members except as authorized by law.

G. If a judicial agency, for good cause, is unable to timely transmit employee and employer contributions or transmittal report, the employer shall notify PERA in writing at least twenty-four hours prior to the due date, and may request waiver of the interest ~~and/or~~ or penalty that would otherwise be assessed. The executive director may waive interest ~~and/or~~ or penalty for up to thirty-one calendar days. Interest shall thereafter be charged at the rate set in subsection C above.

H. Member contributions picked-up by the employer under NMSA 1978, Section 10-12C-10 are not considered compensation for purposes of Internal Revenue Code Section 415(c).

I. Beginning January 1, 2009, to the extent required by Internal Revenue Code Sections 3401(h) and 414(u) (2), an individual receiving differential wage payments, while the individual is performing qualified military service as defined in Chapter 43 of Title 38, United States Code, from an affiliated public employer shall be treated as employed by that employer and the differential wage payment shall be treated as earned compensation. However, contributions attributable to such differential wage payments shall not be made unless and until the member returns to active employment and makes up the missed contributions. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.  
[10-15-97; 11-15-97; 2.84.1200.8 NMAC - Rn & A, 2 NMAC 84.1200.8, 12-28-00; A, 12-28-01; A, 12-15-09]

**NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

This is an amendment to 2.87.100 NMAC, Sections 10 and 20, effective December 15, 2009.

**2.87.100.10 G E N E R A L PROVISIONS**

A. Service shall be credited by calendar year.

B. In order to post service credit for any member, the following completed records must be postmarked or received by PERA no later than March 31 of

the year following the year for which service credit is to be credited:

(1) ~~[Completed]~~ membership application form; and

(2) ~~Copy of State Fire Marshal's records indicating the member's record of attendance for emergency calls, fire drills and business meetings during the preceding calendar year.]~~ volunteer firefighter service credit qualification record as prescribed by the association.

~~[(3)]~~ C. The failure to timely provide these records to PERA shall result in the loss of the member's service credit for the preceding calendar year.  
[10-15-97; 1-15-99; 12-15-99; 2.87.100.10 NMAC - Rn, 2 NMAC 87.100.10, 12-28-01; A, 12-15-09]

**2.87.100.20 SERVICE CREDIT FOR PRIOR CALENDAR YEARS [PRIOR TO JANUARY 1, 1995]**

A. Service shall be credited by calendar year.

~~[B. In order to post or adjust service credit for any member for one or more calendar years prior to January 1, 1995, PERA must receive or have on file the following records by no later than July 31, 1995:~~

~~(1) Completed membership application form;~~

~~(2) Copy of State Fire Marshal's records indicating the member's record of attendance for emergency calls, fire drills and business meetings during the calendar year(s) for which service credit is claimed; and~~

~~(3) For a member whose individual volunteer firefighter service record needs to be established or corrected, a completed "corrected qualification record" or "adjusted qualification record" as prescribed by PERA.~~

~~(4) The failure to timely provide these records to PERA shall result in the loss of the member's service credit for all calendar years prior to January 1, 1995.]~~

B. In order to post or adjust service credit for any member for one or more prior calendar years beginning on or after January 1, 1979, the member must file with the association the following completed records:

(1) membership application form;

(2) "corrected qualification record" or "adjusted qualification record" as prescribed by the association;

(3) adjusted qualification record executed under oath before a notary public.  
[10-15-97; 2.87.100.20 NMAC - Rn, 2 NMAC 87.100.20, 12-28-01; A, 12-15-09]

**NEW MEXICO PUBLIC REGULATION COMMISSION**

Repealer: The New Mexico Public Regulation repeals its Rule entitled "Profit Corporations", 12.3.2 NMAC (filed 7-1-05) and replaces it with the new Rule 12.3.2 NMAC, "Profit Corporations". Effective date of Repeal: December 15, 2009.

Repealer: The New Mexico Public Regulation repeals its rule entitled "Nonprofit Corporations", 12.3.3 NMAC (filed 7-1-05) and replaces it with the new rule 12.3.3 NMAC, "Nonprofit Corporations". Effective date of Repeal: December 15, 2009.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**TITLE 12 T R A D E , COMMERCE AND BANKING CHAPTER 3 B U S I N E S S ASSOCIATIONS PART 2 P R O F I T CORPORATIONS**

**12.3.2.1 ISSUING AGENCY:** New Mexico Public Regulation Commission. [12.3.2.1 NMAC - Rp, 12.3.2.1 NMAC, 12-15-09]

**12.3.2.2 SCOPE:** This rule applies to all domestic and foreign profit corporations, unless exempted by law. [12.3.2.2 NMAC - Rp, 12.3.2.2 NMAC, 12-15-09]

**12.3.2.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 8-8-4 and 53-18-1.

[12.3.2.3 NMAC - Rp, 12.3.2.3 NMAC, 12-15-09]

**12.3.2.4 D U R A T I O N :** Permanent.

[12.3.2.4 NMAC - Rp, 12.3.2.4 NMAC, 12-15-09]

**12.3.2.5 EFFECTIVE DATE:** December 15, 2009, unless a later date is cited at the end of a section.

[12.3.2.5 NMAC - Rp, 12.3.2.5 NMAC, 12-15-09]

**12.3.2.6 OBJECTIVE:** The purpose of this rule is to facilitate the formation and continuation of profit corporations as provided by law.

[12.3.2.6 NMAC - Rp, 12.3.2.6 NMAC, 12-15-09]

**12.3.2.7 DEFINITIONS:** See 12.3.1.7 NMAC. [12.3.2.7 NMAC - Rp, 12.3.2.7 NMAC, 12-15-09]

**12.3.2.8 DOMESTIC PROFIT CORPORATIONS:** A domestic profit corporation shall comply with the requirements of the Business Corporations Act, NMSA 1978, Chapter 53, Articles 11 through 18.

**A. Filing requirements.** A domestic profit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-2-1.

**B. Name.** A domestic profit corporation shall comply with the name requirements in NMSA 1978 Section 53-11-7 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name. A corporation in existence on June 17, 1983 is deemed to be in compliance with the requirements of NMSA 1978 Section 53-11-7 for a separate word or abbreviation describing the type of corporation named.

**C. Filing year.** A domestic profit corporation shall file biennial reports and supplemental reports with the bureau:

(1) for even-numbered taxable year ends if the last digit of its New Mexico certificate of incorporation number is an even number;

(2) for odd-numbered taxable year ends if the last digit of its New Mexico certificate of incorporation number is an odd number;

(3) for the calendar year determined by the bureau if it was assigned a duplicate number before 1980; the bureau shall notify the corporation of the appropriate filing years.

**D. Taxable year.** For a new domestic corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31. If a new domestic profit corporation selects a different end date for its taxable year, it shall so inform the commission.

**E. Required documents.**  
(1) Articles of incorporation. A domestic profit corporation shall adopt and file with the commission articles of incorporation that comply with NMSA 1978 Sections 53-12-2 and 53-12-3. The corporation may amend or restate the articles as provided in NMSA 1978 Sections 53-13-1 through 53-13-12.

(2) **Statement designating registered agent and office.** A domestic profit corporation shall have and continuously maintain on file with the commission a registered agent and office that meet the requirements in NMSA 1978

Sections 53-11-11, 53-11-12, and 53-11-13.

**F. Merger and consolidation.** Two or more domestic corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Sections 53-14-1 through 53-14-7 and shall file articles of merger, consolidation, or exchange as required by NMSA 1978 Sections 53-14-4 and 53-14-5. Shareholders may convert a domestic profit corporation into a limited liability company by complying with NMSA 1978 Section 53-19-60.

**G. Dormant status.** A domestic profit corporation that meets the requirements of NMSA 1978 Section 53-5-9 for dormant status, may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-5-9.

**H. Dissolution.** A domestic profit corporation seeking voluntary dissolution shall comply with the requirements for dissolution provided in NMSA 1978 Sections 53-16-1 through 53-16-24, and file a statement of intent to dissolve as required by NMSA 1978 Section 53-16-4, and articles of dissolution that comply with NMSA 1978 Sections 53-16-11 and 53-16-12. A domestic profit corporation may revoke voluntary dissolution proceedings as provided in NMSA 1978 Sections 53-16-7 and 53-16-8 by filing a statement of revocation required by NMSA 1978 Section 53-16-9.

**I. Administrative revocation and reinstatement.** The commission may administratively revoke a domestic profit corporation by issuing a certificate of revocation under the circumstances and following the process provided in NMSA 1978 Section 53-11-12. A corporation may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-11-12.

[12.3.2.8 NMAC - Rp, 12.3.2.8 NMAC, 12-15-09]

**12.3.2.9 FOREIGN PROFIT CORPORATIONS:** A foreign profit corporation shall comply with the applicable requirements of the Business Corporations Act, NMSA 1978, Chapter 53, Articles 11 through 18.

**A. Filing requirements.** A foreign profit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-2-1.

**B. Name.** A foreign profit corporation shall comply with the name requirements in NMSA 1978 Section

53-17-3 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, registering, formally applying for, or reinstating a name. A corporation in existence on June 17, 1983 is deemed to be in compliance with the requirement of NMSA 1978 Section 53-11-7 for a separate word or abbreviation describing the type of corporation named.

**C. Filing year.** A foreign profit corporation shall file biennial corporate reports and supplemental reports with the bureau:

(1) for even-numbered taxable year ends if the last digit of its New Mexico certificate of authority number is an even number;

(2) for odd-numbered taxable year ends if the last digit of its New Mexico certificate of authority number is an odd number;

(3) for the calendar year determined by the bureau if it was assigned a duplicate number before 1980; the bureau shall notify the corporation of the appropriate filing years.

**D. Taxable year.** For a new foreign profit corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31. If a new foreign profit corporation selects a different end date for its taxable year, it shall so inform the commission.

**E. Required documents.**  
(1) **Certificate of authority.**

Before transacting business in New Mexico, a foreign profit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-17-1 by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-17-5 through 53-17-7. A foreign profit corporation shall amend its certificate of authority as provided in NMSA 1978 Section 53-17-14.

(2) **Statement designating registered agent and office.** A foreign profit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-17-9 and 53-17-10.

**F. Merger and conversion.** A foreign profit corporation that is a party to a statutory conversion or merger shall comply with, and file articles of merger or conversion as required by, NMSA 1978 Section 53-17-13.

**G. Dormant status.** A foreign profit corporation that meets the requirements of NMSA 1978 Section 53-5-9 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status,

or may be fully revived by complying with NMSA 1978 Section 53-5-9.

**H. Withdrawal.** A foreign profit corporation seeking to withdraw from doing business in New Mexico may procure a certificate of withdrawal from the commission by filing an application for withdrawal that complies with the requirements of NMSA 1978 Section 53-17-15 and 53-17-16.

**I. Administrative revocation and reinstatement.** The commission may revoke a foreign profit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-17-17 by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-17-18. A foreign profit corporation may apply to the commission for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-17-18.

[12.3.2.9 NMAC - Rp, 12.3.2.11 NMAC, 12-15-09]

**12.3.2.10 FIRST REPORT:**

A domestic or foreign profit corporation shall file an initial report on the schedule prescribed by and as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.2.10 NMAC - Rp, 12.3.2.9 & 12.3.2.12 NMAC, 12-15-09]

**12.3.2.11 BIENNIAL REPORT AND SUPPLEMENTAL REPORT:**

A domestic or foreign profit corporation shall file biennial and supplemental reports as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.2.11 NMAC - Rp, 12.3.2.10 & 12.3.2.13 NMAC, 12-15-09]

**12.3.2.12 REQUIRED FORMS:**

A domestic or foreign profit corporation shall file initial, biennial and supplemental reports as required by NMSA 1978 Section 53-5-2 through 53-5-9 on the commission-prescribed form available as provided in 12.3.1 NMAC.

**A.** First reports, biennial reports and supplemental reports shall contain:

- (1) exact corporate name and U.S. mailing address;
- (2) principal place of business in New Mexico;
- (3) principal office outside of New Mexico for a foreign corporation;
- (4) NMPRC certificate of incorporation/authority number;
- (5) for foreign corporations: registered place of business in New Mexico

if different from registered office;

(6) state or country of incorporation;

(7) registered agent and office located within New Mexico for service or process;

(8) names and addresses of all directors and officers;

(9) date and signature and title of an authorized officer or agent; and

(10) filing fees.

**B. Filing fees, report due date, late filing penalty.**

(1) **Filing fees.** A \$25.00 filing fee is due and payable to the commission at the time of filing of each domestic or foreign first report, biennial report and supplemental report.

(2) **Report due dates.**

(a) **First report.** A domestic or foreign first report shall be filed within thirty days of the date of incorporation or qualification in New Mexico.

(b) **Biennial report.** A domestic or foreign biennial report shall be filed on or before the fifteenth day of the third month following the end of the corporation's taxable year. Biennial means every other year, not twice a year for filing purposes required report based on the last digit of the number referred to in Paragraph (4) of Subsection A of 12.3.2.12 NMAC, i.e., even number will file its biennial report for its even numbered taxable year-end.

(c) **Supplemental report.** A domestic or foreign supplemental report shall be filed within thirty days if, after the filing of the biennial report, a change is made in:

(i) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(ii) the name or address of any of the directors or officers of the corporation or the date when the term of office of each expires; or

(iii) its principal place of business within or without the state.

(3) **Late filing penalty.** A \$200.00 late filing penalty is required if a report is filed untimely.

**C. Instructions.**

(1) Enter exact corporate name and complete mailing address must be given to meet postal delivery requirements..

(2) Enter principal place of business in New Mexico. Enter "NONE," if applicable.

(3) Enter principal office outside of New Mexico, if different from the registered office in state or country of incorporation. Enter "NONE," if applicable.

(4) Enter original NMPRC certificate of incorporation/authority

number issued by the corporations bureau or as assigned by computer pre-printed information.

(5) Enter foreign corporation's registered address in state or country of incorporation which may be different from the address referred to in Paragraph (3) of Subsection A of 12.3.2.12 NMAC on principal office outside of New Mexico.

(6) Enter corporation's state or country of incorporation unless pre-printed or as corrected.

(7) Enter registered agent and address located in New Mexico. Each corporation shall have and continuously maintain in New Mexico:

(a) a registered office which may be, but need not be, the same as its place of business;

(b) a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in New Mexico having a business office identical with the registered office; and

(c) an agent's address must be acceptable for service of process purposes; a post office box is unacceptable.

(8) Officers and directors are as set forth in NMSA 1978 Sections 53-8-18, 53-8-23, 53-8-83, 53-2-10, 53-11-35, and 53-11-48. Enter all officers and directors with respective addresses. Each New Mexico corporation shall have officers, with titles and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Business Corporation Act.

(a) The number of directors of a New Mexico corporation shall consist of one or more members.

(b) Each director shall hold office for the term for which he/she is elected and until his or her successor has been elected and qualified.

**(9) NMSA 1978 section 53-2-10 private remedy.**

(a) Any person who suffers any loss of money or property as a result of being designated a director of a corporation without giving his consent may bring an action against the designating corporation to recover actual damages or one thousand dollars (\$1,000), whichever is greater.

(b) The court may award attorneys' fees and costs to the party injured as a result of the director designation if he prevails. The court may award attorney's fees to the corporation charged if the court finds that the action brought against the corporation was groundless.

(c) The relief provided in this

section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

**(10) NMSA 1978 section 53-5-5 corporate reports, affirmation, penalty.**

(a) All reports required to be filed with the commission pursuant to the Corporate Reports Act shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statement, and that all statements contained therein are true and correct."

(b) Any person who makes and subscribes any report required under the Corporate Reports Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

(c) The report shall be signed and sworn to by the chairman of the board, president, vice president, secretary, principal accounting officer or authorized agent of the corporation.

**(11) Application for period extension.** Any corporation may, upon application to the commission by the due date upon which a report is required to be filed, petition the commission for an extension of time. The commission may, for good cause, extend for no more than a total of twelve months the date on which the payment of any fee is required. A copy of a commission extension shall be attached to the required report.

**(12) Mandatory IRS extension.** The commission shall, when an extension of time has been granted a corporation under the United States Internal Revenue Code for the time in which to file a report, grant the corporation the same extension of time provided that a copy of the approved (signed) federal extension of time (IRS 7004 or 7005) is attached to the corporation's report. However, the bureau will acknowledge and approve the extension upon receiving a copy of a valid IRS extension prior to the filing of a corporate report. [12.3.2.12 NMAC - Rp, 12.3.2.10 & 12.3.2.13 NMAC, 12-15-09]

**HISTORY OF 12.3.2 NMAC:**

**Pre-NMAC History.** The material in this part was derived from that previously filed with the state records center:

Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83. SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84. SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

**History of Repealed Material.**

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

12.3.2 NMAC, Profit Corporations (filed 7-01-05) repealed 12-15-09.

**Other History.**

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.2 NMAC, Profit Corporations, effective 7-15-05.

12.3.2 NMAC, Profit Corporations (filed 7-01-05) was replaced by 12.3.2 NMAC, Profit Corporations, effective 12-15-09.

**NEW MEXICO  
PUBLIC REGULATION  
COMMISSION**

**TITLE 12 T R A D E ,  
COMMERCE AND BANKING  
CHAPTER 3 B U S I N E S S  
ASSOCIATIONS  
PART 3 N O N P R O F I T  
CORPORATIONS**

**12.3.3.1 ISSUING AGENCY:** New Mexico Public Regulation Commission. [12.3.3.1 NMAC - Rp, 12.3.3.1 NMAC, 12-15-09]

**12.3.3.2 SCOPE:** This rule applies to all domestic and foreign nonprofit corporations, unless exempted by law. [12.3.3.2 NMAC - Rp, 12.3.3.2 NMAC, 12-15-09]

**12.3.3.3 S T A T U T O R Y AUTHORITY:** NMSA 1978 Sections 8-8-4, 3-29-20, 53-8-7, 53-8-7.1, 53-8-8, 53-8-9, 53-8-31, 53-8-32, 53-8-35 through 53-8-45, 53-8-47 through 53-8-49, 53-8-50 through 53-8-54, 53-8-60, 53-8-64, 53-8-66 through 53-8-69, 53-8-71, 53-8-72, 53-8-75 through 53-8-80, 53-8-82, 53-8-83, 53-8-85, 53-8-88.1 and 53-19-60. [12.3.3.3 NMAC - Rp, 12.3.3.3 NMAC, 12-15-09]

**12.3.3.4 D U R A T I O N :** Permanent. [12.3.3.4 NMAC - Rp, 12.3.3.4 NMAC, 12-15-09]

**12.3.3.5 EFFECTIVE DATE:** December 15, 2009, unless a later date is cited at the end of a section.

[12.3.3.5 NMAC - Rp, 12.3.3.5 NMAC, 12-15-09]

**12.3.3.6 OBJECTIVE:** The purpose of this rule is to facilitate the formation and continuation of nonprofit corporations as provided by law.

[12.3.3.6 NMAC - Rp, 12.3.3.6 NMAC, 12-15-09]

**12.3.3.7 DEFINITIONS:** See 12.3.1.7 NMAC.

[12.3.3.7 NMAC - Rp, 12.3.3.7 NMAC, 12-15-09]

**12.3.3.8 D O M E S T I C NONPROFIT CORPORATIONS:** A domestic nonprofit corporation shall comply with the applicable requirements of the Nonprofit Corporation Act, NMSA 1978 Sections 53-8-1 through 53-8-99.

**A. Filing requirements.** A domestic nonprofit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-8-85.

**B. Name.** A domestic nonprofit corporation shall comply with name requirements of NMSA 1978 Sections 53-8-7 and 53-8-7.1, and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

**C. Taxable year determination.**

(1) When a domestic nonprofit corporation has a taxable year which is less than twelve (12) months, the corporation shall file satisfactory proof with, and notify the bureau, of its 12-month taxable year reporting period for purposes of corporate reports. Satisfactory proof shall include appropriately authenticated copies of internal revenue service approval of the short taxable year and of the corporation's taxable year end.

(2) For a new domestic nonprofit corporation for which no taxable year period has been determined, the bureau will presume that the corporation's taxable year ends December 31 and that the corporation will report on a calendar-year basis. When a new nonprofit corporation determines the end of its first taxable year, the corporation will notify the bureau within thirty (30) days.

(3) For a domestic nonprofit corporation, for which no taxable year has been determined because it is exempt from reporting to the internal revenue service or otherwise, the bureau will presume that the corporation's taxable year for reporting purposes ends on December 31 and the corporation will report on a calendar-year basis.

**D. Documents required.** All corporate reports shall include the



street address of the business office of the registered agent and addresses for each of the corporation's directors and officers.

**(1) Articles of incorporation.**

A domestic nonprofit corporation shall adopt and file with the commission articles of incorporation that comply with NMSA 1978 Sections 53-8-31 and 53-8-32. The corporation may amend or restate its articles as provided in NMSA 1978 Sections 53-8-35 through 53-8-39.

**(2) Statement designating registered agent and office.** A domestic nonprofit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-8-8 and 53-8-9.

**E. Merger and consolidation.**

**(1) Merger of domestics.** Two or more domestic nonprofit corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Sections 53-8-40 through 53-8-45 and shall file articles of merger or articles of consolidation as required by NMSA 1978 Section 53-8-43.

**(2) Merger or consolidation of foreign and domestic.** One or more foreign nonprofit corporations and one or more domestic nonprofit corporations may merge or consolidate in compliance with the applicable requirements of NMSA 1978 Section 53-8-45 and shall file articles of merger or articles of consolidation as required by NMSA 1978 Section 53-8-43.

**(3) Reorganization as sanitary projects act association.** A nonprofit corporation may reorganize under the Sanitary Projects Act by complying with NMSA 1978 Section 3-29-20.

**F. Dormant status.** A domestic nonprofit corporation that meets the requirements of NMSA 1978 Section 5-8-88.1 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 5-8-88.1.

**G. Dissolution.** A domestic nonprofit corporation shall comply with the requirements for dissolution provided in NMSA 1978 Sections 53-8-47 through 53-8-49 and file articles of dissolution that comply with NMSA 1978 Sections 53-8-51 and 53-8-52. A domestic nonprofit corporation may cancel voluntary dissolution proceedings as provided in NMSA 1978 Section 53-8-50.

**H. Administrative revocation and reinstatement.** The commission may revoke a domestic nonprofit corporation's certificate of incorporation for the reasons provided in NMSA 1978 Section 53-8-53, by issuing a certificate of

revocation pursuant to NMSA 1978 Section 53-8-54. A nonprofit corporation may apply for reinstatement following the process and within the time period provided in NMSA 1978 Section 53-8-54.

[12.3.3.8 NMAC - Rp, 12.3.3.8 NMAC, 12-15-09]

**12.3.3.9 FOREIGN NONPROFIT CORPORATIONS:**

A foreign nonprofit corporation shall comply with the applicable requirements of the Nonprofit Corporation Act, NMSA 1978 Section 53-8-1 through 53-8-99.

**A. Filing requirements.**

A foreign nonprofit corporation shall file all documents required by this section in compliance with 12.3.1 NMAC, General Provisions, and shall pay all filing fees required by NMSA 1978 Section 53-8-85.

**B. Name.**

A foreign nonprofit corporation shall comply with the name requirements in NMSA 1978 Sections 53-8-66 and 53-8-67 and may use the procedures in 12.3.1.15 NMAC for inquiring about, reserving, formally applying for, or reinstating a name.

**C. Required documents.**

**(1) Certificate of authority.** A foreign nonprofit corporation shall obtain a certificate of authority from the commission pursuant to NMSA 1978 Section 53-8-64 before conducting affairs in New Mexico, by filing an application containing the information and supporting documents required in NMSA 1978 Sections 53-8-68 and 53-8-69. A foreign nonprofit corporation may obtain an amended certificate of authority by meeting the requirements of NMSA 1978 Section 53-8-76.

**(2) Statement designating registered agent and office.** A foreign nonprofit corporation shall have and continuously maintain on file with the commission a registered office and agent that meet the requirements of NMSA 1978 Sections 53-8-71 and 53-8-72.

**D. Merger.** A foreign nonprofit corporation may merge in compliance with NMSA 1978 Section 53-8-75 and shall file articles of merger as required by NMSA 1978 Section 53-8-75.

**E. Dormant status.** A foreign nonprofit corporation that meets the requirements of NMSA 1978 Section 53-8-88.1 for dormant status may, in lieu of filing a required corporate report, file a statement that it is no longer actively engaged in business in New Mexico. A dormant corporation may extend its dormant status, or may be fully revived by complying with NMSA 1978 Section 53-8-88.1.

**F. Withdrawal.** A foreign nonprofit corporation seeking to withdraw from doing business in New Mexico may procure a certificate of withdrawal from the commission by filing an application

for withdrawal that complies with the requirements of NMSA 1978 Sections 53-8-77 and 53-8-78.

**G. Administrative revocation and reinstatement.**

The commission may revoke a foreign nonprofit corporation's certificate of authority for the reasons provided in NMSA 1978 Section 53-8-79, by issuing a certificate of revocation pursuant to NMSA 1978 Section 53-8-80.

[12.3.3.9 NMAC - Rp, 12.3.3.11 NMAC, 12-15-09]

**12.3.3.10 FIRST REPORT:**

A domestic or foreign nonprofit corporation shall file an initial report complying with the schedule and requirements of NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.3.10 NMAC - Rp, 12.3.3.9 & 12.3.3.12 NMAC, 12-15-09]

**12.3.3.11 ANNUAL REPORT AND SUPPLEMENTAL REPORT:**

A domestic or foreign nonprofit corporation shall file annual and supplemental reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form described in this rule and available as provided in 12.3.1 NMAC.

[12.3.3.11 NMAC - Rp, 12.3.3.10 & 12.3.3.13 NMAC, 12-15-09]

**12.3.3.12 REQUIRED FORMS:**

A domestic or foreign nonprofit corporation shall file initial, annual and supplemental reports as required by NMSA 1978 Sections 53-8-82 and 53-8-83 on the commission-prescribed form available as provided in 12.3.1 NMAC.

**A.** First reports, annual reports and supplemental reports shall contain:

(1) exact corporate name and U.S. mailing address;

(2) principal place of business in New Mexico;

(3) principal office outside of New Mexico for a foreign corporation;

(4) NMPRC certificate of incorporation/authority number;

(5) for foreign corporations: registered place of business in New Mexico if different from registered office;

(6) state or country of incorporation;

(7) registered agent and office located within New Mexico for service or process;

(8) names and addresses of all directors and officers;

(9) date and signature and title of an authorized officer or agent; and

(10) filing fees.

**B. Filing fees, report due**

**dates, late filing penalty.**

(1) **Filing fees.** A \$10.00 filing fee is due and payable to the commission at the time of filing of each domestic or foreign first report, annual report and supplemental report.

**(2) Report due dates.**

(a) **First report.** A domestic or foreign first report shall be filed within thirty days of the date of incorporation or qualification in New Mexico.

(b) **Annual report.** A domestic or foreign annual report shall be filed on or before the fifteenth day of the fifth month following the end of the corporation's taxable year.

(c) **Supplemental report.** A domestic or foreign supplemental report shall be filed within thirty days if, after the filing of the annual report, a change is made in:

(i) the mailing address, street address, rural route number and box number or the geographical location of its registered office in this state and the name of the agent upon whom process against the corporation may be served;

(ii) the name or address or any of the directors or officers of the corporation or the date when the term of office of each expires; or

(iii) its principal place of business within or without the state.

(3) **Late filing penalty.** A \$10.00 late filing penalty is required if a report is filed untimely.

**C. Instructions.**

(1) Enter exact corporate name and complete mailing address must be given to meet postal delivery requirements.

(2) Enter principal place of business in New Mexico. Enter "NONE," if applicable.

(3) Enter principal office outside of New Mexico, if different from the registered office in state or country of incorporation. Enter "NONE," if applicable.

(4) Enter original NMPRC certificate of incorporation/authority number issued by the corporations department or as assigned by computer pre-printed information.

(5) Enter foreign corporation's registered address in state or country of incorporation which may be different from item no. 3 on principal office outside of New Mexico.

(6) Enter corporation's state or country of incorporation unless pre-printed or as corrected.

(7) Enter registered agent and address located in New Mexico. Each corporation shall have and continuously maintain in New Mexico:

(a) a registered office which may be, but need not be, the same as its place of business;

(b) a registered agent, which agent may be either an individual resident in New Mexico whose business office is identical with the registered office, or a domestic corporation, or a foreign corporation authorized to transact business in New Mexico having a business office identical with the registered office; and

(c) an agent's address must be acceptable for service of process purposes; a post office box is unacceptable.

(8) Officers and directors are as set forth in NMSA 1978 Sections 53-8-18, 53-8-23, 53-8-83 and 53-2-10. Enter all officers and directors with respective addresses. Each New Mexico corporation shall have officers, with title and duties as shall be stated in the bylaws or in a resolution of the board of directors which is not inconsistent with the bylaws, and as many officers as may be necessary to enable the corporation to sign instruments required under the Nonprofit Corporation Act.

(a) One of the officers shall have the duty to record the proceedings of the meetings of the members and directors in a book to be kept for that purpose.

(b) In the absence of any provision, all officers shall be elected or appointed annually by the board of the directors. If the bylaws so provide, any two or more offices may be held by the same person.

(c) Officers and directors shall be identified accordingly, i.e., identified if an officer is also a director to meet statutory requirements. Two authorized officers are required to sign documents for filing purposes under the Nonprofit Corporations Act.

(d) The number of directors of a New Mexico corporation shall be not less than three. Each director shall hold office for the terms for which he/she is elected and appointed until his or her successor shall have been elected and qualified.

(9) **NMSA 1978 section 53-2-10 private remedy.**

(a) Any person who suffers any loss of money or property as a result of being designated a director of a corporation without giving his consent may bring an action against the designating corporation to recover actual damages or one thousand dollars (\$1,000), whichever is greater.

(b) The court may award attorneys' fees and costs to the party injured as a result of the director designation if he prevails. The court may award attorney's fees to the corporation charged if the court finds that the action brought against the corporation was groundless.

(c) The relief provided in this section is in addition to remedies otherwise available against the same conduct under the common law or other statutes of this state.

(10) **NMSA 1978 section 53-8-9 corporate reports, affirmation, penalty.**

(a) All reports required to be filed with the commission pursuant to the Nonprofit Corporations Act shall contain the following affirmation: "Under penalties of perjury, I declare and affirm that I have examined this report, including the accompanying schedules and statement, and that all statements contained therein are true and correct."

(b) Any person who makes and subscribes any report required under the Nonprofit Corporations Act that contains a false statement, which statement is known to be false by such person, is guilty of perjury and upon conviction shall be punished as provided for in the perjury statutes of this state.

(c) The report shall be signed and sworn to by any two of its directors or officers. If the corporation is in the hands of a receiver or trustee, the report shall be executed on behalf of the corporation by the receiver or trustee. A copy of the report shall be maintained at the corporation's principal place of business as contained in the report and shall be made available to the general public for inspection during regular business hours.

(11) **Application for period extension.** Any corporation may, upon application to the commission by the due date upon which a report is required to be filed, petition the commission for an extension of time. The commission may, for good cause, extend for no more than a total of twelve months the date on which the payment of any fee is required. A copy of a commission extension shall be attached to the required report.

(12) **Mandatory IRS extension.** The commission shall, when an extension of time has been granted a nonprofit corporation under the United States Internal Revenue Code for the time in which to file a report, grant the corporation the same extension of time provided that a copy of the approved (signed) federal extension of time (IRS 2758) is attached to the corporation's report. [12.3.3.12 NMAC - Rp, 12.3.3.10, 12.3.3.12 & 12.3.3.13 NMAC, 12-15-09]

**HISTORY OF 12.3.3 NMAC:**

**Pre-NMAC History.** The material in this part was derived from that previously filed with the state records center:

Docket No. 83-1-CORP, In the Matter of Rules and Regulations for the Corporation and Franchise Tax Department, 2-22-83.

SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department, 3-15-84.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department, 11-8-84.

**History of Repealed Material.**

SCC-84-1-CF, Regulations of the

Corporations and Franchise Tax Department (filed 3-15-84), repealed 7-15-05.

SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84), repealed 7-15-05.

12.3.3 NMAC, Non-Profit Corporations (filed 7-1-05) repealed 12-15-09.

#### Other History.

Only those applicable portions of SCC-84-1-CF, Regulations of the Corporations and Franchise Tax Department (filed 3-15-84) and SCC 84-3, In the Matter of the Amendment of Regulations of Corporations and Franchise Tax Department (filed 11-8-84) were replaced by 12.3.3 NMAC, Non-Profit Corporations, effective 7-15-05.

12.3.3 NMAC, Non-Profit Corporations (filed 7-1-05) was replaced by 12.3.3 NMAC, Non-Profit Corporations, effective 12-15-09.

## NEW MEXICO PUBLIC REGULATION COMMISSION

This is an amendment to 12.3.1 NMAC, Section 9, effective December 15, 2009.

### 12.3.1.9 REQUIREMENTS

**FOR FILED DOCUMENTS:** In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the commission shall be filed with the bureau as follows.

#### A. Address for filing documents.

(1) Documents filed by mail shall be sent to the New Mexico Public Regulation Commission Corporations Bureau, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico public regulation commission, corporations bureau filing desk, P.E.R.A. Building, Room 346, 1120 Paseo de Peralta, Santa Fe, New Mexico [87505] 87501.

**B. Required format.** All reports, articles, applications and other documents filed with the commission shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink. The bureau will accept for filing documents or certificates provided by foreign jurisdictions on paper that is of another size.

**C. Good standing required.** A corporation or other legal entity may not file, and the bureau will not accept, any document unless the corporation or entity is in good standing. For purposes of this subsection, good standing means the

corporation or entity has timely filed all required reports and has paid all assessed fees, penalties, and interest.

**D. Filing and requests by facsimile or electronic mail.** A person may obtain a current telephone number for facsimile filing, and may make requests, by calling the bureau at 505-827-4508. Electronic filings and requests may be sent to the address on the commission's website at [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us). The bureau will not accept documents filed by facsimile or electronic means, except for the following:

(1) a certificate of good standing and compliance from the appropriate official of another state or country, for the purpose required by NMSA 1978 Sections 53-8-69, 53-17-6, and 53-19-48, provided that the certificate is sent directly to the bureau by the appropriate official;

(2) requests for certificates, certified copies, or other documents pursuant to 12.3.1.13 NMAC; and

(3) requests for forms pursuant to 12.3.1.10 NMAC.

**E. Date of filing.** The commission shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the bureau, unless the document is returned pursuant to 12.3.1.11 NMAC except that:

(1) if a report required by the Corporate Reports Act, NMSA 1978 Sections 53-5-1 through 53-5-9, is mailed to the commission, the commission shall add three days to the postmark date for purposes of NMSA 1978 Section 53-5-7; and

(2) if the commission receives a document after regular business hours, the commission shall stamp and consider it received on the next regular business day.

**F. Filing fees.** The commission shall not accept any document for filing unless it is accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC.

**G.** [Required—addresses: ~~All reports filed by corporations and other regulated entities shall include the street address of the registered office and addresses for each of the entity's directors and officers. The report shall clearly indicate the titles of all officers and directors.~~] Expedited filing fees.

(1) Expedited request form required. Each application for expedited filing shall be accompanied by an expedited request form provided by the bureau.

(2) Nonrefundable separate payment required. All expedited filing fees are nonrefundable. Each nonrefundable expedited filing fee shall be paid by separate payment in addition to all other filing fees required by law.

(3) Expedited filing fee schedule. The commission shall accept applications for expedited filing according to the following

fee schedule.

(a) Same business day filing. For a \$300.00 expedited filing fee, the commission shall process an application for an expedited filing on the same business day the application is received by the bureau if the application is received by the bureau before 2:00 p.m. If an application for an expedited filing fee is received by the bureau after 2:00 p.m., the commission shall process the application for expedited filing by the end of the next business day for the same \$300.00 expedited filing fee.

(b) Two business days filing. For a \$200.00 expedited filing fee, the commission shall process an application for an expedited filing within two business days of the date on which the application for expedited filing is received by the bureau.

(4) Refund for failure to timely process. If the bureau is unable to provide the requested expedited filing service, the bureau shall return the expedited filing fee to the applicant for expedited filing services.

#### H. Required addresses.

All reports filed by corporations and other regulated entities shall include the street address of the registered office and addresses for each of the entity's directors and officers. The report shall clearly indicate the titles of all officers and directors.

[12.3.1.9 NMAC - N, 7-15-05; A, 12-15-09]

## NEW MEXICO RACING COMMISSION

Explanatory paragraph: This is an amendment to Subsection C of 15.2.6.9 NMAC omitting the use of clenbuterol. In addition, the subparagraphs have been re-lettered accordingly. Effective 12/15/09.

### 15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

#### C. MEDICATION RESTRICTIONS:

(4) The official urine test sample may contain one of the following drug substances, their metabolites or analogs, in any amount that does not exceed the specified levels:

~~(i) Clenbuterol: The use of clenbuterol shall be permitted under the following conditions: Any horse to which clenbuterol has been administered shall be subject to having blood and urine samples taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of clenbuterol shall be administered in such~~

dosage amount that the official test sample shall not exceed 5 nanograms per milliliter of urine, and 500 picograms per milliliter of blood. If clenbuterol is detected in the urine it must be confirmed in the blood to be a violation.]

**(†)(i) Androgenic-anabolic steroids.**

(i) No AAS shall be permitted in test sample collected from racing horses except for residues of the major metabolite of **stanozolol**, **nandrolone**, and the naturally occurring substances **boldenone** and testosterone at concentrations less than the indicated thresholds.

(ii) Concentrations of these AAS shall not exceed the following urine threshold concentrations for total (*i.e.*, free drug or metabolite and drug or metabolite liberated from its conjugates): a) 16B-hydroxystanozolol (metabolite of stanozolol (Winstrol) - 1 ng/ml in urine for all horses regardless of sex; b) boldenone (Equipose ® is the undecylenate ester of boldenone) in male horses other than geldings - 15 ng/ml in urine; no boldenone shall be permitted in geldings or female horses; c) nandrolone (Durabolin ® is the phenylpropionate ester and Deca-Durabolin ® is the decanoate ester) (in geldings - 1 ng/ml in urine, in fillies and mares - 1 ng/ml in urine); in male horses other than geldings-45 ng/ml of metabolite, 5 alpha oestrane-3 beta, 17 alpha - diol in urine; d) testosterone (in geldings - 20 ng/ml in urine, in fillies and mares - 55 ng/ml in urine).

(iii) Any other anabolic steroids are prohibited in racing horses.

(iv) The presence of more than one of the four AAS identified in Item (ii) of this subparagraph at concentrations greater than the individual thresholds indicated above shall not be permitted.

(v) Post-race urine samples collected from intact males must be indentified to the laboratory.

(vi) Any horse to which an anabolic steroid has been administered in order to assist in the recovery from illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug or metabolite in urine. After the concentration has fallen below the designated threshold for the administrated AAS, the horse is eligible to be removed from the list.

**(†)(j) Butorphanol:** The use of butorphanol shall be permitted under the following conditions: Any horse to which butorphanol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine

sample. The permitted quantitative test level of butorphanol shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(†)(k) Detomidine:** The use of detomidine shall be permitted under the following conditions: Any horse to which detomidine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of detomidine shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

**(†)(l) Dexamethasone:** The use of dexamethasone shall be permitted under the following conditions: Any horse to which dexamethasone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dexamethasone shall be administered in such dosage amount that the official test sample shall not exceed 100 nanograms per milliliter of urine, or its blood equivalent.

**(†)(m) Diclofenac:** The use of diclofenac shall be permitted under the following conditions: Any horse to which diclofenac has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of diclofenac shall be administered in such dosage amount that the official test sample shall not exceed 500 nanograms per milliliter of urine, or its blood equivalent.

**(†)(n) Dipyrone:** The use of dipyrone shall be permitted under the following conditions: Any horse to which dipyrone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of dipyrone shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(†)(o) DMSO:** The use of DMSO shall be permitted under the following conditions: Any horse to which DMSO has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian

to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of DMSO shall be administered in such dosage amount that the official test sample shall not exceed 10,000 nanograms per milliliter of urine, or its blood equivalent.

**(†)(p) Flucort:** The use of flumethasone shall be permitted under the following conditions: Any horse to which flucort has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of flumethasone shall be administered in such dosage amount that the official test sample shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

**(†)(q) Isoxsuprine:** The use of isoxsuprine shall be permitted under the following conditions: Any horse to which isoxsuprine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of isoxsuprine shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(†)(r) Methocarbamol:** The use of methocarbamol shall be permitted under the following conditions: Any horse to which methocarbamol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of methocarbamol shall be administered in such dosage amount that the official test sample shall not exceed 1000 nanograms per milliliter of urine, or its blood equivalent.

**(†)(s) Naproxen:** The use of naproxen shall be permitted under the following conditions: Any horse to which naproxen has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of naproxen shall be administered in such dosage amount that the official test sample shall not exceed 5000 nanograms per milliliter of urine, or its blood equivalent.

**(†)(t) Pentoxifylline:** The use of pentoxifylline shall be permitted under the following conditions: Any horse to

which pentoxifylline has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pentoxifylline shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**[(\*)](u) Pyrilamine:** The use of pyrilamine shall be permitted under the following conditions: Any horse to which pyrilamine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of pyrilamine shall be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

**[(\*)](v) Triamcinalone:** The use of triamcinalone shall be permitted under the following conditions: Any horse to which triamcinalone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of triamcinalone shall be administered in such dosage amount that the official test sample shall not exceed 2 nanograms per milliliter of urine, or its blood equivalent.

**[(\*)](w) Ulcer medications, i.e., cimethidine, sucralfate, rantidine:** The use of ulcer medications shall be permitted until further notice.

...  
[15.2.6.9 NMAC - Rp, 15 NMAC 2.6.9, 04/13/2001; A, 08/30/2001; A, 07/15/2002; A, 08/15/2002; A, 09/29/2006; A, 10/31/2006; A, 08/30/2007; A, 01/31/2008; A, 03/01/2009; A, 06/15/09; A, 06/30/09; A, 09/15/09; A, 12/15/09]

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

**This is an amendment to 14.5.2, Sections 7 and 19, effective January 1, 2010.**

**14.5.2.7 DEFINITIONS:**  
**A. CID rules** means sections 14.5 through 14.10 NMAC.  
**B. Commercial** means

a structure that is classified as having one of the following uses identified in the New Mexico commercial building code: assembly, business, educational, institutional, mercantile, storage or utility.

**C. Industrial** means a structure that is classified in the New Mexico commercial building code as having a factory or industrial use. Structures, of which a portion is classified as commercial as that term is defined in this rule, will be treated as industrial structures.

**D. School** means a public school, a school district, or a regional educational cooperative, shared maintenance program, charter school, or private school, recognized by the New Mexico public education department that offers grade levels from kindergarten through twelfth grade only.

[14.5.2.7 NMAC - N, 09-02-09; A, 01-01-10]

**14.5.2.19 ANNUAL PERMIT:**

**A. INDUSTRIAL (1) Types and scopes.**

(a) ERMI. Electrical R/M - industrial permits. The scope of this permit is: repair or maintenance performed on existing electrical systems in industrial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved electrical installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved electrical installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof.

(b) MRMI. Mechanical and plumbing R/M - industrial permits. The scope of this permit is repair or maintenance performed on existing mechanical/plumbing systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved mechanical/plumbing installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved mechanical / plumbing installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of a mechanical/plumbing installation or any portion thereof.

(c) General construction repair

and maintenance work that is required as a direct consequence of, or that is necessary to, work performed pursuant to an R/M industrial permit is authorized under these permits. All such general construction work must be reported pursuant to subsection 6, below, and whether general construction work is covered by an R/M industrial permit will be determined by the division. General construction work that is not covered by an R/M industrial permit will subject the permit holder to penalties as provided in the act and the CID rules.

**(2) Issuance.** R/M industrial permits may be issued to:

(a) an industrial entity duly authorized to do business in New Mexico; and

(b) a licensed contractor holding one of the following classifications of license and who has a written contract with an industrial entity to perform work covered by an R/M industrial permit:

(i) for an ERMI permit: EE98;

(ii) for an MRMI permit: MM1, 2, 3, 4 and MM98;

(c) work to be performed under an R/M industrial permit may only be performed by a journeyman, properly certified by the division in the classification of work to be performed pursuant to the permit, who is an employee of the authorized entity, or of the licensee, to whom the permit was issued.

**(3) Duration.**

(a) R/M industrial permits are valid for 12 months from the date of issuance, are not renewable. ERMI and MRMI permits automatically expire on the first day of the thirteenth month after the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

**(4) Denial.** See 14.5.2.15 NMAC of this rule.

**(5) Failure to obtain permit.** See 14.5.2.16 NMAC of this rule.

**(6) Report log.** All work performed pursuant to an R/M Industrial permit must be recorded by the permit holder in a log that contains, at a minimum, the following information:

(a) the location of the work with sufficient specificity that an inspector can locate the work;

(b) the date the work was performed;

(c) a description of the work performed. If tool replacement was performed, the identifying information for each tool replaced and for the new tool;

(d) the name of the individual who performed the work and the individual's journeyman classification and certificate number;

(e) in the case of tool exchange, a copy of the design or installation plan for the proposed exchange, which has been approved and stamped by a professional engineer who is properly licensed by the state of New Mexico;

(f) the entity authorization number, or the contractor license number, to whom the permit covering the work was issued.

**(7) Inspections.** All work performed under an R/M Industrial permit is subject to inspection by CID and must comply with all applicable codes.

(a) CID inspectors will inspect the work covered by an annual permit at regular intervals.

(b) If the work inspected is not recorded fully and accurately on the log, the annual permit is subject to forfeiture and the holder may not be eligible to apply for another annual permit for one year thereafter.

**(8) Limitation.** Industrial R/M permits may not be issued by a municipality, a county or any other political subdivision of the state.

## B. COMMERCIAL

### (1) Types and scopes:

(a) ERMC. Electrical R/M-commercial permit. The scope of this permit is repair or maintenance performed on existing electrical systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved electrical installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved electrical installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof.

(b) MRMC Mechanical and plumbing R/M - commercial permits. The scope of this permit is: repair or maintenance performed on existing mechanical/plumbing systems in commercial facilities. Repair and maintenance as used in the scope of this permit type means work that is necessary to maintain an established, approved mechanical/plumbing installation, which work is required to keep the installation operating in its approved function and configuration. Repair and maintenance includes a like-for-like exchange of a portion or portions of an approved mechanical/plumbing installation, but does not include work on systems that are generally considered in the industry to be related to be life safety systems, or work that entails new construction, relocation, expansion or alteration of a mechanical/plumbing installation or any portion thereof.

(c) General construction repair and maintenance work that is required as a direct consequence of, or that is necessary to, work performed pursuant to an R/M commercial permit is authorized under these permits. All such general construction work must be reported pursuant to subsection 6, below, and whether general construction work is covered by an R/M commercial permit will be determined by the division. General construction work that is not covered by an R/M commercial permit will subject the permit holder to penalties as provided in the act and the CID rules.

**(2) Issuance.** R/M commercial permits may be issued to:

(a) a commercial entity duly authorized to do business in New Mexico; and;

(b) a licensed contractor holding one of the following classifications of license and who have a written contract with a commercial entity to perform work covered by an R/M commercial permit:

(i) for an ERMC permit: EE98;

(ii) for an MRMC permit: MM 1, 2, 3, 4 and MM98;

(c) work to be performed under an R/M commercial permit may only be performed by a journeyman, properly certified by the division in the classification of work to be performed pursuant to the permit, who is an employee of the authorized entity, or of the licensee, to whom the permit was issued.

### (3) Duration.

(a) R/M commercial permits are valid for 12 months from the date of issuance, are not renewable. ERMC and MRMC permits automatically expire on the first day of the thirteenth month after the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

**(4) Denial.** See 14.5.2.15 NMAC of this rule.

**(5) Failure to obtain permit.** See 14.5.2.16 NMAC of this rule.

**(6) Report log.** All work performed pursuant to an R/M commercial permit must be recorded by the permit holder in a log that contains, at a minimum, the following information:

(a) the location of the work with sufficient specificity that an inspector can locate the work;

(b) the date the work was performed;

(c) a description of the work performed;

(d) the name of the individual who performed the work;

(e) the entity authorization

number, or the contractor license number, to whom the permit covering the work was issued.

**(7) Inspections.** All work performed under an R/M commercial permit is subject to inspection by CID and must comply with all applicable codes.

(a) CID inspectors will inspect the work covered by an annual permit at regular intervals.

(b) If the work inspected is not recorded fully and accurately on the log, the annual permit is subject to forfeiture and the holder may not be eligible to apply for another annual permit for one year thereafter.

**(8) Limitation.** Commercial R/M permits may not be issued by a municipality, a county or any other political subdivision of the state.

## C. School.

### (1) Types.

(a) ERMS. Electrical R/M school permit. The scope of this permit is: repair or maintenance performed on existing 120-volt or less electrical systems in a school, and is intended to allow for the exchange of like parts or components in an existing electrical system. Repair and maintenance includes work on de-energized receptacle outlets, luminaries (light fixtures), switches, fuses and circuit breakers, one horsepower or less evaporative cooler motors and specialty low voltage systems. It does not include: work on life safety systems which is intended to protect the occupants of the structure such as fire protection, energy, and egress lighting systems, except replacement of light bulbs and batteries in emergency lights and exit signs; work that entails new construction, relocation, expansion or alteration of an electrical installation or any portion thereof; work on energized electrical systems of any kind; boilers; or work product or process that is hazardous to the maintenance technician, the public, or the occupants of the school.

(b) MRMS. Mechanical and plumbing R/M school permit. The scope of this permit is: repair or maintenance performed on existing plumbing or mechanical systems in a school is intended to allow for the exchange of like parts or components in an existing mechanical or plumbing system. Repair and maintenance includes work on inoperative fixtures, such as faucets, toilets and urinals; repair or replacement of pumps, two hundred and fifty cubic feet per minute or smaller exhaust fans, and irrigation sprinkler systems excluding connections to the water source. It does not include: work on life safety systems which are intended to protect the occupants of the structure such as fire protection and smoke evacuation systems; and, all venting; work that entails new construction, relocation, expansion or alteration of a mechanical or plumbing installation or any portion thereof; work on gas piping systems of any kind.

except repair of low-pressure gas leaks down stream of the isolation valve to the appliance, limited to supply tubes or connections to gas valves or fuel train. Does not include repair or replacement of gas valves, regulators or fuel train; boilers; or work product or process that is hazardous to the maintenance technician, the public, or the occupants of the school.

(c) GRMS. General construction R/M school permit. The scope of this permit is: repair and maintenance of existing structures in a school and is intended to allow for the exchange of like parts or components in an existing structure. The scope of this permit is limited to the maintenance and repair of non-structural facility components: floor surfaces, drywall and ceiling surfaces, cabinetry, countertops, room partitions, wall and door trim, door hardware, molding, and window replacement; patching roof surfaces not to exceed one hundred square feet; asphalt, concrete, playground and athletic equipment, landscaping, fencing, gates and site drainage. It does not include new construction of any kind, or work that modifies egress, affects fire resistance or structural integrity of a wall, or any work product or process that is hazardous to the maintenance technician, the public, or the occupants of the school.

**(2) Issuance.**

(a) Permits authorized by this section may be issued to a school that employs at least one individual who holds a valid maintenance technician certification in the classification covering the work to be permitted.

(b) Work to be performed under a permit authorized by this rule may only be performed by a maintenance technician, properly certified by the division in the classification of work covered by the permit, who is an employee of the authorized school to whom the permit was issued.

**(3) Duration.**

(a) Permits authorized by this rule are valid for twelve months from the date of issuance and are not renewable. These permits automatically expire on the first day of the thirteenth month following the month of issuance.

(b) Suspension, cancellation, revocation. See 14.5.2.13 NMAC of this rule.

(c) Expiration and deactivation of permit. See 14.5.2.14 NMAC of this rule.

(d) Denial. See 14.5.2.15 NMAC of this rule.

(e) Failure to obtain permit. See 14.5.2.16 NMAC of this rule.

(f) Report log. All work performed pursuant to a permit issued according to this rule must be recorded by the permit holder in a log that contains, at a minimum, the following information:

(i) the location of the

work with sufficient specificity that an inspector can locate the work;

(ii) the date the work was performed;

(iii) a description of the work performed;

(iv) the name of the individual who performed the work;

(v) the permit number issued to the school for the work performed.

(4) All work performed under a permit issued pursuant to this rule is subject to inspection by CID and must comply with all applicable codes and rules.

(5) School R/M permits may not be issued by a municipality, a county or any political subdivision of the state. [14.5.2.19 NMAC - Rp, 14.5.2.10 NMAC, 7-1-04; A, 09-02-09; A, 01-01-10]

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

**This is an amendment to 14.6.3 NMAC, adding a new section, Section 10 effective January 1, 2010.**

**14.6.3.10 REPAIR AND  
MAINTENANCE CERTIFICATE OF  
AUTHORIZATION.**

**A. General information.**

(1) Notwithstanding anything to the contrary in the licensing requirements of the Act, an unlicensed school may perform repair and maintenance on its existing facility upon authorization by the division as provided in this rule and upon obtaining a permit for repair and maintenance work pursuant to 14.5.2 NMAC. For purposes of this rule, school shall have the meaning set forth in Subsection D of 14.5.2.7 NMAC.

(2) R/M Certificate of Authorization. Certificates of R/M authorization are:

(a) issued only to a school that employs one or more school maintenance technician, validly certified in the classification required for the type of authorization for which the school is applying;

(b) grant authority to engage only in the type of work covered by the R/M classification specified on the certificate of authorization that is issued to the school, and on the certificate issued to its school maintenance technician;

(c) are not transferable and may not be used by any person other than the school to which it is issued, and any school that permits another person to use its certificate of authorization, or knows that its certificate of authorization is being used by another

person and fails to promptly notify CID of such use, shall be subject to disciplinary action, up to and including revocation of the certificate of authorization; and

(d) authorizes only the school as named on the certificate to engage in repair and maintenance work, and no registered school may engage in such work using a name other than the name that is shown on the certificate of authorization issued to it.

(3) Any school maintenance technician who is named on an certificate of authorization application must maintain a valid maintenance technician certificate in the same classification as the employing school's certificate of authorization for the duration of employment with the authorized school, and must comply with all statutes and rules applicable to that maintenance technician certification, including without limitation, all renewal requirements. In the event a school maintenance technician who is listed on an authorization application ceases to be employed by the authorized school, the school must notify CID in writing of the separation within three business days of the separation.

(4) All written communication with a school holding a certificate of authorization shall be mailed to its address of record. The address of record is the address shown on the application for certificate of authorization, or a different address of which CID has received timely written notice from the school. A school holding a certificate of authorization shall report any change of address to CID in writing within thirty days after such change. Failure to do so is cause for disciplinary action up to and including revocation of the certificate of authorization.

(5) Certificates of authorization are effective for three years from the date of issuance.

**B. Prerequisites for certification.**

(1) Only schools, as that term is defined in 13.4.2.7 NMAC, may apply for a certificate of authorization.

(2) A school must employ at least one maintenance technician, certified by CID in the appropriate classification, at all times.

(3) A school is eligible to be certified only in the repair and maintenance classifications provided in 14.6.6.12 NMAC.

**C. Application.**

(1) Every application for authorization, and all requests for formal action to be taken on a certificate of authorization, such as renewal or addition of a classification, must be made on the applicable form issued by CID and the applicable fee as required by 14.5.5 NMAC.

(2) An incomplete or insufficient application shall be rejected and returned to the applicant, with a statement of the reason for the rejection.

**D. Authorization renewal.**

(1) CID shall mail to every authorized school at its address of record a renewal application form at least 30 days prior to the expiration of the authorization. Whether or not the application form is received by the school, it is the sole duty and responsibility of each school to timely renew its authorization.

(2) The filing date of the renewal application shall be the date the envelope is postmarked or, if hand delivered, the date it is received by CID.

(3) The signatures of each journeymen employed by the applying school must appear on the renewal form.

(4) If a renewal application is not timely received, or if received but is rejected for failure to comply with renewal requirements, the authorization shall be suspended and any active R/M permits issued to the school will be cancelled. The school will not be eligible to obtain a new R/M permit until it has been issued a valid certificate of authorization pursuant to this rule.

**E. Validity of registration.**

The following events may cause a certificate of authorization to be, or to become, invalid:

(1) failure of an authorized school to employ at least one certified maintenance technician, or failure to report the separation of a certified maintenance technician, as required by this rule;

(2) performance of repair and maintenance work without a valid permit issued pursuant to, or failure to comply with, the requirements of 14.6.6 NMAC;

(3) performance of repair or maintenance work by an individual who is not properly certified as a certified maintenance technician in the classification of work performed;

(4) failure to timely renew authorization;

(5) failure to comply with a valid correction notice issued by a CID inspector; and

(6) action of the commission.

**F. School repair and maintenance technician certification.****(1) General information.**

(a) A maintenance technician certificate in the appropriate trade classification for the work to be performed is required of an individual performing repair and maintenance work at a school.

(b) Maintenance technician certifications shall be issued such that each certificate parallels the repair and maintenance authorization classification numbers and scopes set forth in 14.6.6 NMAC.

(c) A maintenance technician certificate of competence is issued to an individual only and is not transferable or assignable.

(d) No individual under the age of eighteen (18) shall be issued a maintenance technician certificate.

(e) A maintenance technician certificate is valid for the work authorized by the certificate only when the certified individual is employed by a school holding a valid certificate of authorization.

(f) For information regarding compliance with the Parental Responsibilities Act, revocations and suspensions and administrative penalties, please see Subsections H and I of 14.6.3.8 NMAC and 14.6.3.9 NMAC.

**(2) Application.**

(a) An application submitted for a maintenance technician certificate shall be on a form approved by CID and shall be accompanied by the prescribed certification fee.

(b) An incomplete or insufficient application shall be rejected and returned to the applicant with a statement of the reason for the rejection.

(c) All requirements for certification must be met within six (6) months after the date the application is received by CID or its designee. Any application not completed within the six (6) month period shall expire and any fees paid in connection with the expired application shall automatically forfeit.

(d) The applicant must submit proof of the required experience with the application on form(s) approved by CID. No applicant shall be eligible to take an examination for a maintenance technician certificate before proof of experience is submitted and approved.

(e) Proof of completion of the appropriate CID approved training course.

**(3) Examination.**

(a) Examinations shall be administered by CID or its designee according to a schedule which shall be published.

(b) A passing examination score is seventy-five percent (75%) or above.

(c) An applicant who fails to appear for a scheduled examination or fails to attain a passing score of at least 75% may take another regularly scheduled exam, provided the applicant reapplies to take the exam, pays the fee, and does not repeat the exam more than twice in any thirty (30) day period.

(d) If CID or its agent has determined that an applicant has cheated, the exam shall be deemed invalid, all fees shall be forfeited, any certificate issued on basis of that examination shall be automatically and immediately voided, and the applicant will not be eligible to take any examination administered by CID or its designee for a minimum of one (1) year after the date of such event.

**G. Renewal of****maintenance technician certificates.**

(1) CID or its designee shall mail to every certificate holder a renewal application form at least thirty (30) days prior to the expiration of the certificate to the current address of record for that certificate holder. Whether or not the application form is received, it is the sole duty and responsibility of each certificate holder to timely renew the certificate.

(2) The filing date of the renewal application shall be the date the envelope is postmarked or, if hand delivered, the date it is received by CID or its designee.

(3) No maintenance technician certificate shall be renewed in the absence of proof of compliance with all continuing education requirements.

(4) If a renewal application is not timely received, or if received but is rejected for failure to comply with renewal requirements, the license or certificate shall be suspended and is subject to cancellation. [14.6.3.10 NMAC, N, 01-01-10]

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

**This is an amendment to 14.6.6 Section 11, Subsection B 1 (e), Subsection B 2 (d) and Subsection C, effective 12-31-09.**

**14.6.6.11 MECHANICAL AND PLUMBING CLASSIFICATIONS.****A. General information.**

(1) A journeyman certificate of competence in the appropriate trade classification for the work to be performed is required of all individuals performing mechanical and plumbing work; provided however, that an apprentice, as that term is defined in Section 60-13-2 of the act, may work under the direct supervision of a validly certified journeyman, as that term is defined in Section 60-13-2 of the act, who is employed by a validly licensed person, as that term is defined in Section 60-13-2 of the act, or a holder of a valid annual permit. Journeyman certifications shall be issued such that the certificates parallel the mechanical and plumbing license classification numbers and scopes.

(2) The definition of contracting is set forth in Section 60-13-3 of the act and nothing in this rule shall be construed to conflict with that definition. However, for the purpose of clarity in this rule, contracting is understood to include installations, alterations, repairs, servicing and maintenance involving plumbing and/or mechanical work.

(3) The definitions of plumbing,



fixtures and gas fitting as set forth in Section 60-13-32 of the act should be referenced when reading these classifications.

**B. License classifications.**

**(1) Residential and commercial.**

**(a) MM-1. Plumbing.** Requires four years experience. Install, alter, repair and service plumbing fixtures, and piping, including pneumatic or electric controls and control wiring not greater than 24 volts, concrete supports, and excavating, trenching and backfilling. Includes hot water heating systems not exceeding 30 p.s.i. or 400,00 b.t.u./hour input; piping for fuel, oil and gasoline and for solar energy systems; septic tanks, manholes and sewer lines; irrigation sprinkler systems; swimming pools and spas ;. Does not include installation of natural gas fired appliances or natural gas piping.

**(b) MM-2. Natural gas fitting.** Requires four years experience. Install, alter, repair and service natural gas piping and fittings and incidental controls and control wiring, pneumatic control systems, excavating, trenching and backfilling. Includes installation of hot water systems exceeding 30 p.s.i. or 400,000 b.t.u./hour input; steam and hot water boilers; and warm air heating systems such as chimney connections, flues, refractories, burners, fittings valves, thermal insulation, accessories and incidental piping; warm air appliances and other listed gas appliances. May not install LP Gas systems.

**(c) MM-3. Heating, ventilation & air conditioning (HVAC).** Requires four years experience. Install, alter, repair and service HVAC air handling and refrigeration equipment and piping, including fans, coils, condensing units, self-contained packaged air conditioning and/or heating units, evaporative cooling units, solar energy systems, ductwork and pneumatic tube systems. May connect water to existing valved outlets, and install controls, and control wiring not to exceed 24 volts. May bid and contract for structural alterations, painting, electrical wiring and other work incidental to this scope of work, provided such work is performed by a properly licensed contractor.

**(d) MM-4. Heating, cooling and process piping.** Requires four years experience. Install, alter, repair and service hydronic heating, cooling and process piping for steam hot water systems of any temperature pressure range, chilled water systems, condensing water systems and process piping systems. Includes pressure vessels, heat exchangers, boilers, refrigeration water chillers, cooling towers, fuel oil tanks and fuel oil piping, and pneumatic or electric controls and control wiring not to exceed 24 volts. Install high pressure and process piping solar energy systems of any temperature or any pressure conveying gas or fluids other than potable

water, and pneumatic tube systems.

**(e) MM-98 Mechanical.**

Requires four years experience. Requires licensure in classifications MM-1 through MM-4 and covers all work described in these classifications, as well as work described in the MS-3, MS-6, MS-12 and MS-14.

**(2) Specialty classifications:**

**(a) MS-3 Septic tanks & sewer.**

Requires two years experience. Install, alter, repair or service septic tanks and systems, manholes and sewer lines, starting at a point five (5) feet beyond the outside wall of a building and ending at a connection to a public or private utility. May excavate, trench, backfill and grade as necessary, and install or repair plug-in type electrical control panels, controls and control wiring not to exceed 24 volts.

**(b) MS-6. Lawn sprinklers.**

Requires two years experience. Install, alter, repair or service sprinkler systems which are connected to a potable water supply. May excavate and backfill as necessary and install or repair plug-in type electrical control panels, controls and control wiring not to exceed 24 volts.

**(c) MS-12. Fire protection sprinkler systems.** Requires four years experience. Install alter, repair or service fire protection systems using water, including any pressure or storage tanks required, controls and control wiring up to 24 volts. May excavate and backfill and install piping from structure to off-premise water supply adjacent to property involving a fire protection system. May bid or contract for structural alterations, painting, electrical wiring, etc., incidental to the system installation, provided such work is performed by a properly licensed contractor.

**(d) MS-14. Dry chemical fire protection.** Requires four years experience. Install, alter, repair or service fire protection systems using gas or chemical, including CO[~~halon~~] clean agent. Includes pressurized storage tanks, valves, temperature sensing devices and other incidental control wiring up to 24 volts. May install solenoid or shut-off valve devices in these systems. May bid or contract for structural alterations, painting, electrical wiring, etc., incidental to the system installation, provided such work is performed by a properly licensed contractor.

**C. Journeyman classifications.** Requires two years experience.

**(1) JP. Journeyman plumber.**

**(2) JPF. Journeyman pipe fitter.**

**(3) JG. Journeyman natural gas fitter.**

**(4) JPG. Journeyman plumber and natural gas fitter.**

**(5) JR. Journeyman refrigeration.** Must demonstrate compliance with EPA Recovery requirements before

certificate may be issued.

**(6) JS. Journeyman sprinkler.**

**(7) JSM. Journeyman sheet metal.**

**(8) JW. Journeyman welder.**

Must obtain either a JP or JG or JPG or JSM certification and show ASME Section 9 certification. Is not required to test separately for this certificate of competence.

**(9) JMG. Journeyman Medical Gas Installer.** Must obtain either JP, JG, JPG or JPF certification and show approved medical gas certification as referenced in Title 14, Chapter 9, Part 5.

**(10) BO1. Journeyman boiler operator. Low pressure only.**

**(11) BO2. Journeyman boiler operator. Low and high pressure.**

**(12) MS-12J. Journeyman fire protection sprinkler systems.** Requires four years experience.

**(13) MS-14J. Journeyman dry chemical fire protection.** Requires four years experience.

[14.6.6.11 NMAC - Rp, 14.6.6.14 NMAC, 2-1-06; A, 12-31-09]

## NEW MEXICO OFFICE OF THE SECRETARY OF STATE

### TITLE 1 G E N E R A L GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 9 DECLARATION OF CANDIDACY; SUPREME COURT OR COURT OF APPEALS

**1.10.9.1 ISSUING AGENCY:**  
Office of the Secretary of State.  
[1.10.9.1 NMAC - N/E, 11/23/2009]

**1.10.9.2 SCOPE:** This rule applies to any statewide primary election for the New Mexico supreme court or the New Mexico court of appeals.  
[1.10.9.2 NMAC - N/E, 11/23/2009]

**1.10.9.3 S T A T U T O R Y  
AUTHORITY:** Section 1-2-1 NMSA 1978;  
Section 1-10-8 NMSA 1978.  
[1.10.9.3 NMAC - N/E, 11/23/2009]

**1.10.9.4 D U R A T I O N :**  
Permanent  
[1.10.9.4 NMAC - N/E, 11/23/2009]

**1.10.9.5 EFFECTIVE DATE:**  
November 23, 2009.  
[1.10.9.5 NMAC - N/E, 11/23/2009]

**1.10.9.6 OBJECTIVE:** To establish the procedure for submission of nominating petitions regarding candidates for positions on the supreme court and court

of appeals.

[1.10.9.6 NMAC - N/E, 11/23/2009]

**1.10.9.7 DEFINITIONS:**

“Candidate” or “candidates” means an individual who seeks or considers running for either supreme court justice or court of appeals judge.

[1.10.9.7 NMAC - N/E, 11/23/2009]

**1.10.9.8 DECLARATION OF CANDIDACY; NOMINATING PETITION; SUPREME COURT OR COURT OF APPEALS:**

In making a declaration of candidacy and in seeking nominating petition signatures, all candidates for the supreme court or court of appeals shall designate the specific numeral position, as set forth in 1.10.10 NMAC, on the supreme court or court of appeals for which they seek nomination. Failure to do so will result in the rejection of the candidate’s nominating petition signatures.

[1.10.9.8 NMAC - N/E, 11/23/2009]

**HISTORY OF 1.10.9 NMAC:**

[RESERVED]

---

**NEW MEXICO OFFICE OF THE SECRETARY OF STATE**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS**

**PART 10 BALLOT POSITION; SUPREME COURT OR COURT OF APPEALS**

**1.10.10.1 ISSUING AGENCY:**

Office of the Secretary of State.

[1.10.10.1 NMAC - N/E, 11/23/2009]

**1.10.10.2 SCOPE:**

This rule applies to any statewide primary or general election for the New Mexico supreme court or the New Mexico court of appeals.

[1.10.10.2 NMAC - N/E, 11/23/2009]

**1.10.10.3 STATUTORY AUTHORITY:**

Section 1-2-1 NMSA 1978; Section 1-10-8 NMSA 1978.

[1.10.10.3 NMAC - N/E, 11/23/2009]

**1.10.10.4 DURATION:**

Permanent

[1.10.10.4 NMAC - N/E, 11/23/2009]

**1.10.10.5 EFFECTIVE DATE:**

November 23, 2009.

[1.10.10.5 NMAC - N/E, 11/23/2009]

**1.10.10.6 OBJECTIVE:**

To establish the order of ballot position

for supreme court and court of appeals candidates on the voting machines and paper ballots in a primary or general election.

[1.10.10.6 NMAC - N/E, 11/23/2009]

**1.10.10.7 DEFINITIONS:**

“Incumbent judge” means a judge or justice who has been appointed by the governor to the court of appeals or supreme court and who must then stand for election pursuant to the provisions of New Mexico law.

[1.10.10.7 NMAC - N/E, 11/23/2009]

**1.10.10.8 BALLOT POSITION; SUPREME COURT OR COURT OF APPEALS:**

Where there is more than one vacancy on the supreme court or the court of appeals in any given election year:

A. for the primary election ballot:  
(1) the incumbent judges shall be listed on the ballot in the order of the dates of appointment by the governor for their positions;

(2) each vacant seat will further be designated on the ballot by numerical position (Position 1, Position 2, Position 3, etc.);

B. for the general election ballot:

(1) each vacancy will be designated by the same numerical position used on the primary election ballot;

(2) the candidate, after nomination by their party, will be listed on the ballot, pursuant to the specific vacancy on the court the candidate seeks.

[1.10.10.8 NMAC - N/E, 11/23/2009]

**HISTORY OF 1.10.10 NMAC:**

[RESERVED]

---

**End of Adopted Rules Section**

---

## Submittal Deadlines and Publication Dates 2009

| Volume XX       | Submittal Deadline | Publication Date |
|-----------------|--------------------|------------------|
| Issue Number 21 | November 2         | November 13      |
| Issue Number 22 | November 16        | December 1       |
| Issue Number 23 | December 2         | December 15      |
| Issue Number 24 | December 16        | December 31      |

## Submittal Deadlines and Publication Dates 2010

| Volume XXI      | Submittal Deadline | Publication Date |
|-----------------|--------------------|------------------|
| Issue Number 1  | January 4          | January 15       |
| Issue Number 2  | January 19         | January 29       |
| Issue Number 3  | February 1         | February 12      |
| Issue Number 4  | February 15        | February 26      |
| Issue Number 5  | March 1            | March 15         |
| Issue Number 6  | March 16           | March 31         |
| Issue Number 7  | April 1            | April 15         |
| Issue Number 8  | April 16           | April 30         |
| Issue Number 9  | May 3              | May 14           |
| Issue Number 10 | May 17             | May 28           |
| Issue Number 11 | June 1             | June 15          |
| Issue Number 12 | June 16            | June 30          |
| Issue Number 13 | July 1             | July 15          |
| Issue Number 14 | July 16            | July 30          |
| Issue Number 15 | August 2           | August 16        |
| Issue Number 16 | August 17          | August 31        |
| Issue Number 17 | September 1        | September 15     |
| Issue Number 18 | September 16       | September 30     |
| Issue Number 19 | October 1          | October 15       |
| Issue Number 20 | October 18         | October 29       |
| Issue Number 21 | November 1         | November 15      |
| Issue Number 22 | November 16        | December 1       |
| Issue Number 23 | December 2         | December 15      |
| Issue Number 24 | December 16        | December 30      |

The New Mexico Register is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the New Mexico Register twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.